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Tuomas Äystö

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TIIVISTELMÄ

Uskontotieteen alan artikkeliväitöskirja tarkastelee uskonnon pilkan kriminalisointia (uskonrauhan rikkominen, lyhennetään työssä "BOSR") ja oikeuskäytäntöä Suomessa 1990-luvun lopusta vuoteen 2018. Parlamentaaristen aineistojen, valtakunnansyyttäjänviraston päätösten ja oikeusistuimien ratkaisujen diskurssianalyysillä löydetään alue, joka on rajattu erityisen suojelun kohteeksi *uskonnon* ja *pyhän* käsitteiden avulla. Nämä kategorisoinnit linkitetään laajempiin yhteiskunnallisiin huolenaiheisiin: tapoihin hahmottaa yhteiskuntaa sekä eri tahojen erilaisiin intresseihin. Löydöksistä keskustellaan Durkheimiin pohjautuvan pyhän teoretisoinnin sosiologisen ja uskontotieteellisen tradition ja diskursiivisen uskontotieteen valossa.

Väitöskirja koostuu neljästä eri artikkelista, jotka hyödyntävät pääosin eri aineistoja. Kokonaisuudessaan työn aineisto koostuu kymmenestä eduskunta-asiakirjasta, yhdestä poliisin esitutkintapöytäkirjasta, yhdestätoista valtakunnansyyttäjänviraston päätöksestä ja viidestätoista oikeusistuimien ratkaisusta. Oheismateriaalina hyödynnetään lisäksi yhdeksää oikeustieteellistä tekstiä. Aineiston käyttöä ohjaa kolme pääperiaatetta. Ensiksi, eduskunta-aineistoa analysoidaan työn ensimmäisessä artikkelissa suomalaisen uskonrauhapykälän poliittisen ja oikeudellisen taustan hahmottamiseksi. Toiseksi, kahden keskeisimmiksi tunnistetun tapauksen oikeudellisia aineistoja tarkastellaan kahdessa erillisessä tapaustutkimusartikkelissa. Kolmanneksi, työn päättävässä artikkelissa hyödynnetään kaikkea saatavilla olevaa materiaalia valtakunnansyyttäjältä ja oikeusistuimilta yleiskatsauksen saamiseksi. Työ esittää neljä keskeistä löydöstä.

Ensiksi, suomalaista uskonrauhan rikkomista koskevassa oikeuskäytännössä viranomaiset ovat painottaneet islamia, mutta myös kristinuskoa ja juutalaisuutta. Vaikka fokus on selvästi näissä kolmessa tunnetuimmassa "maailmanuskonnossa", oikeuskäytäntö ei silti ole erityisen ennustettavaa, koska aina ei ole selvää miksi yksi tapaus etenee ja toinen ei. Uskonnollisten yhteisöjen näkökulmasta uskonrauhapykälää sovelletaankin melko harvoin, ja se näyttäytyy niille todennäköisesti melko tehottomana. Työn yhteenveto-osa esittää myös alustavan kansainvälisen vertailun, joka toteaa Suomen olevan – yhdessä Puolan, Italian, Saksan ja Kreikan kanssa – eurooppalainen poikkeusmaa, jossa tällaista lakia edelleen sovelletaan aktiivisesti.

Toiseksi, pyhän kategoria määrittyy oikeusviranomaisten toiminnassa kaikkein laajimmin tunnettujen ja näkyvimpien "maailmanuskontojen" pyhien asioiden kautta, kuten profeetta Muhammadin, Koraanin, ja kristinuskon Jumalan. Uskonrauhapykälää sovelletaan usein pykälän kiihottamisesta kansanryhmää vastaan ohella, ja koska uskonrauhan rikkomista pidetään näistä lievempänä rikoksena, sen rooli on usein toissijainen. Rikolliseksi katsotuissa puheissa tai teksteissä uskonnon ja etnisyyden kategoriat menevät usein päällekkäin (esimerkiksi "muslimilla" viitataan ei-valkoisiin maahanmuuttajiin, ja päinvastoin). Lisäksi pykälä kiihottamisesta kansanryhmää vastaan sisältää "uskonnon" yhtenä mahdollisena kriteerinä suojellulle kansanryhmälle. "Pyhän" kategorian havaitaankin olevan keskeinen tapa, jolla uskonrauhasyyte erotetaan oikeustoiminnassa syytteestä kiihottamisesta kansanryhmää vastaan.

Kolmanneksi, kuten on jo todettu uskonnon kategoriaan liittyen, oikeustapaukset ovat koskeneet islamia, kristinuskoa tai juutalaisuutta. Uskonrauhapykälä hyödyntää "rekisteröidyn uskonnollisen yhdyskunnan" kategoriaa, joka on määritelty uskonnonvapauslaissa. Niin kutsutussa "moskeijatapauksessa" hovioikeus kumosikin käräjäoikeuden päätöksen uskonrauhan rikkomisesta, koska rikoksen kohteena ollut yhteisö ei ollut tekohetkellä rekisteröity uskonnollinen yhdyskunta. Toisaalta, kun oikeuskäytäntöä tarkastelee kokonaisuutena, rekisteröidyn uskonnollisen yhdyskunnan kategorialla on harvoin oikeudellisesti ratkaisevaa merkitystä. Tämä johtuu siitä, että vastaajat ovat tyypillisesti hyökänneet islamia, kristinuskoa tai juutalaisuutta vastaan yleisellä tasolla, eikä johonkin tiettyyn rekisteröityyn yhdyskuntaan keskittyen. "Uskonto" määrittyykin oikeuskäytännössä paljolti suomalaisen uskontoa koskevan maallikkodiskurssin kautta.

Neljänneksi, koska oikeuskäytäntö nojaa uskontoa koskevaan maallikkodiskurssiin – eli siihen, mitä Suomessa yleisesti pidetään "uskontona" tällä hetkellä – uskonrauhapykälästä hyötyminen on mahdollisesti hankalampaa vähemmän tunnetuille ryhmille, jotka kuitenkin identifioituvat uskonnolliksi (kuten pakanaryhmät, jotka eivät istu maailmanuskontokehykseen). Koska uskonnolliset tunteet yleisemmällä tasolla määrittyvät lain myötä erityisen suojelun arvoisiksi, tämä itsessään tekee uskonnosta ja uskonnon pilkasta politisoituneen yhteiskunnallisen kysymyksen. Islamiin negatiivisesti suhtautuvat poliitikot, kuten Jussi Halla-aho, ovatkin onnistuneet hyötymään uskonrauhapykälästä, koska syyte uskonrauhan rikkomisesta on tarjonnut heille mediatilaa, mahdollisuuden omaksua sananvapausmarttyyrin roolin, sekä tilaisuuden kritisoida verrattain monikulttuurisuusmyönteistä viralliskonsensusta. Myös uskonrauhatuomioiden islamia koskeva painotus on sopinut heidän narratiiviinsa.

ASIASANAT: uskonto, Suomi, jumalanpilkka, pyhä, uskonnon pilkka, islam

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ABSTRACT

This article-based dissertation examines the criminalization of, and the case law related to religious insult (or breach of the sanctity of religion, here acronymized as BOSR) in Finland between the late 1990s and 2018. By analysing parliamentary materials, and decisions of the Prosecutor General and the Finnish courts via discourse analysis, the study demonstrates how the categories of *religion* and the *sacred* are used to demarcate the area which is the target of special protection. These categorizations are linked to wider societal concerns; it is investigated how these categorizations and the related discourses connect with different conceptions regarding society, and with the different interests of various stakeholders. Issues raised are discussed in the context of theoretical work regarding the discursive study of religion and Durkheim-rooted conceptualizations of the sacred in the fields of the study of religion and sociology.

The four articles making up the analytical part of this work mainly use different sets of data. Described as a whole, the data of this study is composed of 10 parliamentary documents, one pre-trial investigation report by the police, 11 decisions of the Prosecutor General, and 15 court rulings. As secondary material, 9 pieces of legal scholarship were taken into account. There are three main emphases that define the usage of this material in the articles. Firstly, the parliamentary materials are assessed in a single article in order to encapsulate the political and legal background of the law on religious insult in Finland. Secondly, two cases identified as being central are analysed in individual articles, respectively. Thirdly, the final article of this work provides an overview of the criminalization of religious insult by utilizing all the acquirable materials from the Prosecutor General and the courts. The dissertation presents four key findings.

Firstly, it is found that the contemporary BOSR cases investigated have mostly been connected with Islam by the officials, but also with Christianity and Judaism. Despite this focus on three of the publicly best-known "world religions" in Finland, the officials' decisions are not very predictable, as it is not always clear why one particular case is advanced by the officials while another is not. From the perspective of religious communities, the provision on BOSR is applied quite rarely, and will therefore most likely appear to be relatively ineffective. A tentative international comparison is also presented, pointing out that Finland is among few European

countries – alongside Poland, Italy, Germany and Greece – that still actively apply such legislation.

Secondly, the category of the sacred, as it becomes defined in the legal practice, refers primarily to well-known and publicly visible things that known "world religions" hold sacred, such as the Prophet Muhammad or the Quran in Islam, or God in Christianity. It is observed that the BOSR charge frequently co-occurs with a charge of ethnic agitation (Chapter 11, section 10 of the Finnish Criminal Code) and as BOSR is considered to be a less serious a crime, BOSR is not treated as the primary charge in such cases. The language deemed to be criminal often has overlaps within the categories of religion and ethnicity (for example, terms for non-white immigrant groups are used to refer to Muslim immigrants, and vice versa). Furthermore, the ethic agitation section itself has "religion" as one of the criteria for defining a protected group. It is found that the category of "sacred" is the key instrument by which the BOSR charge is distinguished from the ethnic agitation charge.

Thirdly, regarding the category of religion, as stated, the cases have concerned either Islam, Christianity or Judaism. The law makes use of the category of "registered religious community", as defined by the Act on the Freedom of Religion. Indeed, in the "mosque case", a guilty verdict on BOSR was overruled by the appellate court on the grounds that the attacked group in question was not a registered religious community. However, looking at the cases as a whole, the category of registered religious community rarely has a pivotal role in the verdicts, as the defendants have typically attacked Islam, Christianity or Judaism in general, not a particular registered community. Instead, in the legal practice "religion" often becomes defined along the lines of Finnish lay discourse regarding religion.

Fourthly, the legal practice, as it depends upon the prevalent lay understanding of religion – i.e. what is commonly thought to be "religion" in Finland at the moment – potentially makes it more difficult for lesser known groups, identifying as religious (e.g. "non-world religions", such as pagan groups), to benefit from the law. More generally, as religious sentiments are placed as a target for special protection, the protected status itself elevates religion, and insults towards it, as a politicized societal question. Anti-Islamic politicians such as Jussi Halla-aho have managed to make use of this criminalization, as it has granted them more media space, the opportunity to claim the martyrdom of freedom of speech, and an opening to mount criticism towards the official, relatively pro-multiculturalist consensus. The fact that most of the convictions have indeed concerned Islam also suits their narrative.

KEYWORDS: religion, Finland, blasphemy, sacred, religious insult, Islam

Acknowledgements

The roots of this work were laid out during the early phases of my academic life. My studies in the Study of Religion (formerly Comparative Religion) at the University of Turku began in 2006. I was intrigued by the *Jyllands-Posten* cartoon crisis, which had started in 2005. I continued to follow the related discussions throughout my studies.

I was lucky to be studying in a department, chaired by Veikko Anttonen at the time, where I was immediately supplied with devices for tackling topical questions, such as the above cartoon affair. While Anttonen's research interests are more in the category of the sacred as it can be examined in language, folklore and topographies, he has never shied away from societal questions either, and I found his project highly relevant.

During my studies, I also became familiar with the work of Teemu Taira, who had been writing about the possibility of researching the category of religion from the perspective of religious studies since the early 2000s. Taira, who engaged with cultural studies, continental philosophy, sociology of religion and other fields in his writings, and was also affiliated with the University of Turku at the time, became another central influence.

After receiving my master's degree in 2012, I spent about six months planning my proposal for this doctoral dissertation. In the process, I was fortunate to gain Taira and Anttonen as my supervisors. Thank you both for your invaluable advice, criticisms and endorsements during my research and funding application processes.

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1.10.2019
Tuomas Äystö

Table of Contents

List of Original Publications

This dissertation is based on the following original publications, which are referred to in the text by their Roman numerals:

I Tuomas Äystö. The Sacred Orders of the Finnish Political Discourse on the Revision of the Blasphemy Law. *Numen*, 2017; 64 (2–3): 294–321.

II Tuomas Äystö. Blood on a Mosque: Religion, Sacred and the Finnish Criminal Court Process. *Journal of Religion in Europe*, 2017; 10 (3): 274–300.

III Tuomas Äystö. Insulting the Sacred in a Multicultural Society: The Conviction of Jussi Halla-aho under the Finnish Religious Insult Section. *Culture and Religion*, 2017; 18 (3): 191–211.

IV Tuomas Äystö. Religion, Ethnicity and Race in the Finnish Legal Cases on Insults Against Religion. *Temenos*, 2018; 54 (2): 185–212.

1 Introduction

1.1 What is meant by “religious”, “insult” and “societal concern”?

During the controversy over the Muhammad cartoon in the Danish *Jyllands-Posten* newspaper in 2005 and 2006 (see e.g. Linjakumpu 2010), Manuel Barroso, the President of the European Commission, stated the following in his speech to the European Parliament on 15 January 2006 in reaction to the events:

> I share the views expressed by Prime Minister Fogh Rasmussen [of Denmark], where he made clear that his government respects Islam as one of the world’s major religions and that it has no intention to insult Muslims and does not support activities in this sense. I want, personally today, to emphasise my deep respect for Islamic civilisation and the contribution it has made and continues to make to Europe. (…) This issue raises wider themes. Our European society is based on respect for the individual person’s life and freedom, equality of rights between men and women, freedom of speech, and a clear distinction between politics and religion. (Speech/06/86, European Parliament.)

The speech aims, of course, for diplomacy, as the cartoon controversy in question was Denmark’s greatest international political crisis since World War II. It was also delivered at a time when the 9/11 attacks were a quite recent memory, and discussions concerning Muslim immigration and Islamic militantism were prominent. While Barroso describes Islam as “one of the world’s major religions” and as something he greatly respects, he nonetheless contrasts “Islamic civilization” with what he considers to be the basis of “European society”: human rights and a clear separation of religion from politics, reflecting Western constitutionalism and modern liberalism. In his view, religion appears to be simultaneously something grand and worthy of respect, one of the freedoms to which people have a right, a challenge to European values, as well as an object of regulation, since it is to be kept in its proper place in society.

Western law is, indeed, commonly thought to be a secular institution, and the separation of law and religion one of the founding myths of Western modernity, as

Winnifred Sullivan (2015) puts it. She continues by describing modern secular law as something that is measured partly by the degree to which it is separate from religion, while making sure that religion is both "free" and subject to the rule of law at the same time.

The *Jyllands-Posten* cartoon controversy reached Finland in 2006, when a nationalist organization, *Suomen Sisu* republished the cartoons on its website. The cartoonist Ville Ranta also drew another comic, commenting on the controversy on a more general level and featuring the prophet as the main character, which was published by culture magazine *Kaltio* (see Ridanpää 2009; 2012). Neither were prosecuted, but the questions of freedom of speech and insults aimed at religious sentiments– as raised by the *Jyllands-Posten* affair – were addressed quite extensively by the Finnish media (Kunelius 2007; Männistö 2007). At that time, many Finns became aware that Finland has legislation prohibiting *breach of the sanctity of religion* – referred to as BOSR throughout this study – and that it is still occasionally applied. Many remembered the famous blasphemy convictions of the late 1960s and early 1970s involving the author Hannu Salama and the artist Harro Koskinen, but these were in the past.[1] Debate over freedom of speech and the special protection granted to religious sentiments and items ensued, also involving the highly politicized topic of Muslim immigration and integration, and the assumed nature of Finland as either a secular or a Christian society (or both). Similar discussion occurred during anti-immigration politician Jussi Halla-aho's highly publicized court case (2009–2012), and again after the *Charlie Hebdo* attacks (2015). Since then, these issues have become a standard topic, regularly revisited by the Finnish mass media and political discussions on social media.

The current provision on BOSR, Chapter 17, section 10 of the Finnish Criminal Code, came into effect in 1999, and is worded as follows:

> A person who
> (1) publicly blasphemes against God or, for the purpose of offending, publicly defames or desecrates what is otherwise held to be sacred by a church or religious community, as referred to in the Act on the Freedom of Religion (267/1922), or

[1] Hannu Salama published a novel titled *The Midsummer Night's Dance* (Finnish: *Juhannustanssit*) in 1964, that featured a passage that can be viewed as a parody sermon, considered by some to be sexually and religiously inappropriate. Major public controversy and a blasphemy sentence followed (see Arminen 1999; Peltonen 2010; Äystö 2017). Harro Koskinen, in turn, published paintings titled *Pig Messiah* and *Pig Coat of Arms* (Finnish: *Sikamessias* and *Sikavaakuna*) in 1969, which featured a crucified pig and the coat of arms of Finland, where the heraldic lion was replaced with a pig. Again, controversy and a blasphemy sentence followed (see Raitmaa 2012; Äystö 2017).

> (2) by making noise, acting threateningly or otherwise, disturbs worship, ecclesiastical proceedings, other similar religious proceedings or a funeral, shall be sentenced for a breach of the sanctity of religion to a fine or to imprisonment for at most six months.

There have been approximately 20 guilty verdicts for BOSR between 1999 and 2018. All the punishments have been small fines. As can be seen from the provision quoted, it effectively contains three prohibitions: blaspheming against God, defamation of that held to be sacred by churches or religious communities, and disturbance of religious proceedings. All known case law concerns the criminalization of the defamation of sacred things, and this element is also the focus of this study. The law contains a link to the Freedom of Religion Act, in which the terms "church" and "religious community" are defined. In brief, the former refers to the two state churches[2] (the Evangelical Lutheran Church and the Orthodox Church), and the latter to *registered religious communities,* i.e. groups which have been granted this legal status by the officials upon application.[3] The formal reading of the provision is thus that only these kinds of communities are protected by the law against BOSR, not, for example, unregistered groups or groups not active in Finland (see e.g. Henttonen et al. 2015, 79–80).

As can be seen from the text quoted above, what officially counts as a "religious" group matters. The category of religion, while circulated constantly in public life, is also the fundamental and thus the most contested term in the field of the study of religion, in which this study is located. In this field, the concerns go as far as questioning the grounds for the justification of religious studies as an independent discipline. Kocku von Stuckrad (2013, 5–6) writes:

[2] These churches are not designated "state churches" by Finnish law. Indeed, the Lutheran Church prefers the term "folk church". In this study, the designation of a "state church" is a shorthand for the fact that these two churches have a special position granted to them by the state, and that they are more entangled with the state than other religious communities. Both have their specific laws (*Kirkkolaki* 26.11.1993/1054 and *Laki ortodoksisesta kirkosta* 10.11.2006/985, respectively), and the Lutheran Church is referred to in the Finnish Constitution. They also have taxation rights, which are incorporated into the regular Finnish taxation system.

[3] Twenty adult founding members may apply to the Patent and Registration Office for the status of *registered religious community*. General principles are defined by the Freedom of Religion Act. According to it (Chapter 2, section 7), the "purpose of a religious community is to organize and support the individual, community and public activity relating to the professing and practising of religion which is based on confession of faith, scriptures regarded as holy or other specified, established grounds of activity regarded as sacred." Upon successful registration, the groups gain the right to apply for permission to perform legally valid marriage ceremonies, protection under the BOSR section of the Criminal Code, and the right to receive religious education in schools (as defined by the Finnish religious education model) (see Kääriäinen 2001; Äystö 2017).

> [T]he concept of "religion" is charged with difficulties that have thrown its study into contestation. The study of religion is particularly challenged in regard to its link to theology and thus to confessional or experiential approaches to religion, its link to colonial agendas that imposed a Eurocentric view on non-Western cultures, as well as the tendencies in influential parts of the discipline to essentialize religion as something sui generis.

Lay definitions of religion often involve belief in the supernatural or gods, participation in rituals in special locations such as churches or mosques, holy books, sacred symbols or ancient traditions (see e.g. Nongbri 2013, 16–22). In most cases the word "religion" works perfectly well – i.e. it conveys the intended meaning – in everyday speech, literature, and societal decision making. From the perspective of everyday discussions, most Western people probably have a similar enough notion of what is meant by a "religious" building, and how it is different from, say, a government administrative building, which we would call a "secular" building. Even in academia, the field of the study of religions is, for the most part, the only location where the term is continuously problematized in depth; most of academia is content with a lay or a refined lay concept of religion.

The ease of use of the concept of religion does not mean, however, that it is not also highly contested in society as well. It matters whether the social group or activity a person is affiliated with is labelled as, for example, "a folk church", "alternative medicine", "a religion", "a form of alternative spirituality", "superstition", or "a cult". These labels have different connotations (see e.g. Moberg et al. 2015) and thus they, in themselves, have social consequences. Furthermore, there are legal devices that depend on the definition of such concepts. Perhaps the most famous examples are the tax exemptions granted by the United States to groups recognized as religious. Suspicious groups – often called "cults" in Anglo-American terms – need to fight more legal battles to gain such privileges, if they qualify at all. More broadly, all Western states have some kind of legal categories intended for religious groups, and several related laws that aim to ensure both freedom of religion and the state control of religion, while simultaneously maintaining the fundamental modern separation between religion and secular domains such as law and politics (Sullivan 2015; Doe 2011, 92–133). This study revolves around these kinds of legal categories and their effects in the case of Finland: how the officials understand religion, why this understanding is applied rather than any other, and what the actual and potential consequences of this are. In brief, it investigates the "religion" referred to in Finnish law on religious insults and in legal practice.

Scholars of religion have pointed out that, in its currently known form, the category of religion, despite its ancient roots in the Latin term "*religio*", is a product of the Protestant Reformation and the periods that followed, particularly colonialism

and the formation of nation states (see e.g. Nongbri 2013; Asad 1993; Fitzgerald 2000; 2007). As the concept is so thoroughly Western and modern, scholars of religion have problematized its application to other contexts. Should it be used at all in research concerning a pre-modern setting, or in locations where there is no native term for religion (Boyarin and Barton 2016)? Of course, all research depends on scholarly analytical terms that may be exclusive to academia or even to a specific sub-field. Whether religion should be applied as such a term is a topic of debate in religious studies. Many, including most of the classic texts, have suggested a definition for religion (see e.g. Arnal 2000, 21–30), while some have talked about different strategies for approaching the task of definition, such as the perspective of family resemblance (Saler 1999), or viewing religion in a nominalist manner (as opposed to realist and functionalist definitions), i.e. viewing it merely as an instrument by which the researcher demarcates the data of the study (Anttonen 2010, 99-102; Comstock 1984; see Smith 1982). There is also a branch of research that takes as its subject the act of defining and categorizing religion itself (see e.g. McCutcheon 2003; Fitzgerald 2015; Taira 2016a).

The present study falls in this final category. While the study's conceptual decisions are elaborated on in the chapter on methodology, it is in order to state briefly at this point that the author has deliberately avoided the analytical definition of religion. Instead, the research is about how the category of religion is constructed in the data. One of the key objects of this study is answering the first question posed in the title of this section – what is meant by "religious"? – the very act of categorization performed by the Finnish officials working on religious insult cases. This involves researching what is protected legally and what is not, i.e. which groups are perceived as religious and thus granted special protection under the Finnish Criminal Code.

It should be noted that in a strict legal sense, Finnish law does not explicitly define "religion" – although it is mentioned in several pieces of legislation. Only the categories of "church" and "registered religious community" are defined in the Freedom of Religion Act, and these definitions are intended to be applied only in certain contexts (Heikkonen and Slotte 2012). Nonetheless, things connected with "religion" are addressed by the officials. This work looks into the meaning of religion from a broader, constructionist perspective. It examines how the category of religion becomes understood and characterized in practice in various locations: in parliamentary work, in the legal sources (in so far as they address it at all), in prosecutions and in case law, when matters of "religious insult" are addressed.

Moving on to the second term, the "insult", it is clear that this is associated with similar social complexities as the concept of religion – although, of course, there is no academic discipline entirely dedicated to the question of insult. In any case, most people will be likely to recall instances where they felt personally insulted, or a

public event that was widely considered to be insulting. For example, a politician might be insulted by remarks made by the news media. An artistic piece, such as stage play, can receive a damning moral criticism, describing it as offensive in a more general sense. Insult is commonly understood to encompass both the personal or psychological aspect (i.e. something might be insulting to some, but not everyone), and the social aspect, i.e. something can be said to be *generally offensive*. The latter is the case, when public morals are not followed, for example.

While the former aspect of insult is certainly common and related, the latter, involving insult as a social phenomenon, is more interesting from the social scientific perspective. How do people of a particular community understand what is meant when a stage play, caricature, film or novel is said to be offensive? This study's attempt to answer this question revolves around the sociological and anthropological concept of the sacred. As with the concept of religion, "sacred" is also a traditional, central and contested term in religious studies; the relevant discussions are elaborated on in the methodology section. Similarly, the concept of sacred also comes loaded with various lay meanings.

The word "sacred" is likely to conjure up images associated with religion: churches, holy books, deities, statues of saints, figures such as the Prophet Muhammad, traditions and rituals. In everyday speech, sacred is indeed often connected to religion (Anttonen 2000, 275–277). However, the social scientific tradition regarding the sacred that this study builds upon, initiated by Émile Durkheim (1964/1912) in the broad sense, has a wider understanding of the sacred, although Durkheim himself addressed the sacred as part of his theory of religion. Anything can be seen as sacred by the community in question, and nothing is sacred by itself; sacredness is always attributed by people. Sacred objects are those items that are thought to be so special and central that the mere lack of respect towards them has the potential to cause strong social reactions, such as angry remarks, legal action or even physical violence. These reactions and the existing prohibitions aim to safeguard the sacred. From this perspective, sacred objects are considered to be constitutive elements of the community's way of life (see Anttonen 2000, 2010; Knott 2010; 2016; Lynch 2012). The imaginary stage play, used as an example above, might have to do with religious items as well as national symbols or cultural customs, but if it involves something sacred, a strong public reaction is possible, and in such an instance – in the case of modern societies at least – potentially applicable legal instruments probably exist as well.

This study approaches the concept of the sacred in two ways. Firstly, as the concept itself is indeed used in the materials studied, the study examines how the sacred is understood and constructed by officials – similarly to the way the category of religion is approached. Secondly, in contrast to the approach concerning religion, it utilizes an analytical definition of the sacred, using the Durkheimian tradition

referred to above as its starting point. This means that the attributions of sacredness – as defined by the researcher – can be recognized from the data even in instances where the concept itself is not explicitly used. In sum, this analysis is about tracing the conceptualizations, interests and power relations relating to the act of setting things apart. What is considered to be so special and constitutive for society that it requires such operations? What is reflected by these choices and by the ways the sacred is protected? Who has the power to choose what becomes set apart as sacred? What do these demarcations entail for the society?

The final part of the title, "societal concern", is meant to communicate the societal aspect of the religious insult law and phenomenon, and this is discussed throughout the analytical part of this study.

One should note, however, that "societal concern" is not a central term in the actual analysis *per se*. Rather, it is a reference to and a rough characterization of the general aims of the research. The point is that while the law is, in one sense, a protection of emotions deemed to be religious, this is not the full story. This study aims to illuminate the societal side of legal practice related to religious insult. Why does it receive special attention from lawmakers and legal officials, who are central societal actors? What kind of attention is this? What does it tell us about the societal and institutional understanding of the phenomenon in question, and what are the potential consequences?

As a brief initial remark, one may note the location of the provision on BOSR in the Finnish Criminal Code; the provision is placed in Chapter 17, entitled "Offences against public order". Of course, the legal institution is a central building block of contemporary society, regulating social life with its set of norms, and this alone makes BOSR (and law in general) a societal question. According to Finnish law, the Office of the Prosecutor General handles cases relating to freedom of speech (placing most of the BOSR cases under its jurisdiction), as they are seen to have wide societal relevance. Even the historical blasphemy convictions from pre-modern times were not merely about the defamer and God; by blaspheming, the perpetrator was effectively attacking the monarch and the integrity of society at the same time, as these were ultimately thought to be legitimated by God (Nash 2007, 46; Cabantous 2002, 65). "Societal concern" is thus understood broadly; it refers to the societal and institutional interests and discourses which are found in the material studied, and which have to do with the configuration and continuance of the society and social reality.

1.2 Previous research

Religious insult and blasphemy in Finland and elsewhere have been the subjects of numerous scholarly studies from several different perspectives. Some studies aim to criticize, support or transform the studied social practices – i.e. the studies have a

normative orientation – while others remain on the analytical and descriptive level. On the other hand, part of the research is historical and focused on past eras, while others deal with the contemporary times.[4] The review below explores the varieties of the research. Note that some of the studies listed do not have religious insult or blasphemy as their main focus but have addressed it as part of their research. Also, the following review is not comprehensive; it is restricted to the Western world in general and emphasizes Europe and particularly Finland. Furthermore, studies that deal with the legal aspects of blasphemy and religious insult have been stressed instead of, for example, those where blasphemy is examined primarily as a theological (e.g. Malcom 2001) or artistic (e.g. Pattenden 2011) phenomenon.

Most studies of pre-modern or early modern blasphemy are non-normative, often carried out in the discipline of history (see Tolan 2016; Levy 1993; Loetz 2009; Marsh 1998), but also in other disciplines, such as literature (Lawton 1993). For example, French historian Alain Cabantous' research (2002) focuses on the period between the sixteenth and the nineteenth centuries, aiming to provide a broad survey of blasphemy in the Francophone countries in that era. Well-known examples also include the historian David Nash (2003; 2007; 2008) who has studied blasphemy in the British, American and Australian contexts between the sixteenth and twentieth centuries. However, Nash has also dealt with contemporary topics. Gerd Schwerhoff (2005; 2008), on the other hand, has charted the history of blasphemy, especially in German-speaking Europe between the thirteenth and seventeenth centuries. Very few studies have been conducted on blasphemy in the Kingdom of Sweden (of which the area of Finland was part between approximately 1250 and 1809). However, Soili-Maria Olli (2008) has studied blasphemy in seventeenth and eighteenth-century Sweden. According to Pulkkinen (1990, 85–87), the law was practically dormant from 1734 until 1889 (when a new Criminal Code was introduced, see Neuvonen 2012, 209–210). Mikko Ketola (1995), Matti Pulkkinen (1990) and Mikko Kemppainen (2016) have scrutinized early twentieth-century blasphemy cases in Finland, of which there were hundreds.

In turn, the legal discipline is very prominent in the studies focused on contemporary times. While the past is often seen as the territory of the historians, religious insults as such are often thought of as legal topics in today's judicialized world, permeated by the human rights discourse. Firstly, there are legal surveys carried out by international bodies, such the Venice Commission report from 2008 (Venice Commission 2010) and the Organization for Security and Co-operation in Europe report from 2017 (OSCE 2017). Secondly, legal scholars have completed

4 For the purposes of this review, "contemporary times" is used to denote the era after World War II. In the Finnish context in particular, this was the turning point after which rapid modernization ensued in the form of economic growth, urbanization and pluralization (see Alasuutari 2017).

various studies on the subject. These studies tend to be normative, i.e. they criticize or support the existing law or legal practice or offer insights on how the law ought to be applied, or whether it should be abolished or modified. This reflects the traditionally strong branch of the legal discipline: legal dogmatics.

International law in the European context is particularly well studied, primarily dealing with the European Court of Human Rights, the United Nations, and various international treaties (Gozdecka 2009; Belnap 2010; Danchin 2008; Evans 2010; Keane 2008; Leo et al. 2011; Patrick 2013; Temperman 2011; Lewis 2017). There are several such scholarly takes on individual countries that either have religious insult law, have recently abolished it, or where the topic is otherwise under debate. These include Finland (Saarela 2011; Henttonen et al. 2015; Neuvonen 2012; Tiilikka 2012; Nuotio 2009; Tulkki 2010; Heikkonen 2010), Italy (Gianfreda 2011; Cianitto 2017), Ireland (Rollinson 2011; Goldman 2011; McGonagle 2017; Cox 2000), UK (Sandberg and Doe 2008; Wiles 2006), Poland (Kulesza and Kulesza 2017; Pietrzak 2003), Greece (Fokas 2017) and Germany (Cornils 2017). As a general observation, current legal scholarship tends to favour the abolition of blasphemy laws and, for example, the guilty verdicts passed by the European Court of Human Rights in blasphemy cases have been widely criticized.

There are, however, also several non-normative studies of contemporary cases of blasphemy and religious insult, in several different fields including political science, sociology, geography, history, literature, and study of religion (see Larsen 2014; Al-Rawi 2016). Unsurprisingly, much has been said about the Salman Rushdie and *The Satanic Verses* (1988) controversy (Kuortti 1997; Malik 2009; Pipes 1990) and the *Jyllands-Posten* Muhammad cartoon crisis of 2005 and 2006 (Linjakumpu 2009b; 2010; Tiryakian 2009; Hassner 2011; Larsson and Lindekilde 2009; Rothstein 2007; Jensen 2011). The *Charlie Hebdo* attack in 2015 has attracted a growing scholarly interest (Weston 2015; Lyombe and Hellmueller 2018; Sumiala et al. 2016) – although importantly, neither blasphemy nor religious insult are crimes in France. In the Finnish context, most previous non-normative studies have concerned the famous case of the writer Hannu Salama from the 1960s (Arminen 1999; Kankkunen 1984; Nykänen 2001; Peltonen 2010) and the effects of the *Jyllands-Posten* crisis in Finland (Kunelius 2007; Kunelius et al. 2007; Männistö 2007; Ridanpää 2009; 2012; Linjakumpu 2009a).

In the field of the study of religion, blasphemy and religious insult as contemporary phenomena are explored to some extent, but they are not highly prominent topics. For example, the above-cited Tim Jensen (2011) and Mikael Rothstein (2007) have analysed the *Jyllands-Posten* cartoon controversy. Brent S Plate (2006) has, in turn, looked at various art related controversies and their relation to blasphemy. Göran Larsson and Lasse Lindekilde (2009) have compared the Danish cartoon controversy with the Swedish case of Lars Vilks. The Nordic

situation, where Finland is the only country that still applies a legal provision on blasphemy, is also noted by Lene Kühle and others (2018). Teuvo Laitila (2009) has analysed the relationship between atheism, the Orthodox Church and the law pertaining to religious defamation in Russia. Talal Asad's (2013) essay deals with the conceptions and practices of Western secular modernity, as they relate to blasphemy and freedom of speech. Ilkka Pyysiäinen (2005) has addressed the above case of Hannu Salama briefly in a popular book.

Perhaps one would expect religious insult and blasphemy to feature more in the field of the study of religion. Since these questions often revolve around the defamation of the sacred, and the sacred has been one of the traditional topics in the discipline, it is slightly surprising that defamation in the legal context has not attracted more attention. The classic texts of the sacred as a scholarly category, such as those by scholar of religion William Robertson Smith (1894), sociologist Émile Durkheim (1964/1912), anthropologists Arnold van Gennep (2004/1909) and Mary Douglas (1996), and phenomenologists of religion Rudolf Otto (1958/1917), Nathan Söderblom (1913), Gerardus van der Leeuw (1938/1933) and Mircea Eliade (1961) mostly left unexamined the question of blasphemy as a law-related phenomenon.[5] The same can be said about most of the more recent theorists of the sacred in the field of the study of religion, such as Jonathan Z. Smith (1978; 1982), William E. Paden (1999; 2000), Veikko Anttonen (1996; 2000; 2010), Timothy Fitzgerald (2007) and Kim Knott (2005; 2010; 2016), as well as in other fields (see Wydra 2015; Lynch 2012; Mellor and Shilling 2014; Couldry 2003; Alexander 1998; 2003). Thus, there is a need for research dealing specifically with insults towards the sacred as both a societal and a legal phenomenon.

Turning away from the topic of blasphemy and the sacred for a moment, the present study can also be placed among research concerning religion and Finnish parliamentary politics (Hjelm 2014a; Mahlamäki 2008; Kanckos 2012), and research on governance and religion in Finnish official institutions. Teemu Taira's (2010; 2016a) previous research on the category of religion in the registration of religious groups has been particularly influential in this study. Alongside Suzanne Owen (Owen and Taira 2015) Taira also represents the branch of discursive study of religion (see Murphy 2000; Engler 2005; von Stuckrad 2013) which is the most similar to the approach assumed here. Tuomas Martikainen's (2013a; 2013b; 2016) studies on Finnish governance of religion, particularly minorities and Islam, similarly connect well with the findings of this work. Titus Hjelm (2007) has, in turn, offered relevant insights on the social legitimation of religion. The study is also in

[5] There are some exceptions. For example, Durkheim does make brief references to blasphemy (in the legal sense) in the *Division of Labor in Society* (2014/1893, 128), and in his essay "Two Laws of Penal Evolution" (1968, 41).

conversation with previous takes on Finnish public religious discourse, as described especially by Marcus Moberg, Måns Broo, Janne Kontala and Peter Nynäs (2015), and with media scholars investigating religious discourse in the media (Männistö 2000; Maasilta et al. 2008; Hokka et al. 2013).

The present study is non-normative in nature and focused on contemporary times. In relation to previous research, it contributes social scientific findings and perspectives regarding the law and legal practice relating to religious insult in twenty-first-century Finland. As such, it opens up the topic of religious insult in the field of the study of religion in Finland and aims to contribute to the body of research concerning religion and parliamentary politics, governance of religion, religion and law, discursive study of religion, and the sacred.

1.3 Aims of this study

By scrutinizing official documents, such as court rulings and prosecutor's decisions, and parliamentary materials via discourse analysis, this study aims to examine the legal protection granted to religion against insults in Finland between the late 1990s and 2018. The oldest material concerns the legal and parliamentary origins of the currently existing law, and the application of the law is then investigated up until 2018. It focuses on the categories of *religion* and the *sacred* – the categories constituting the area which is protected – and investigates how official and parliamentary language and actions connect with societal and institutional discourses, with different conceptions concerning society and with various interests.

The main questions examined here are: how is the Finnish law on religious insult understood by the politicians and by the legal officials, how can this understanding be interpreted in the light of contemporary Finnish society, and what do these details add to the previous theoretical conceptualization? Phrased more accurately and using the methodological terms of choice, the study is guided by these three questions:

1. How do the Finnish officials and lawmakers construct the categories of *religion* and the *sacred* when they asses or apply the law on breach of the sanctity of religion?
2. How do these categorizations and the connected discourses (both general and institution-specific) relate to the different conceptions regarding society, and to the interests of the various stakeholders?
3. With this data, what can be said about the discursive study of religion and the analytical category of the sacred on a theoretical level?

By doing this, the study aims to analyse the categorizations, perceptions, and interests of the institutions wielding legislative or judicial power when the phenomenon referred to as religious insult or blasphemy is assessed within them.

Broadly speaking, these connect to various topics such as immigrant integration, minority politics, freedom of religion, values in politics and law, the integrity of society and racism. Despite the relatively narrow focus of this study, the goal is to offer relevant insights to researchers interested in the societal themes concerned, and to open up new avenues for future research.

Social constructionism and non-normative orientation are the main guiding principles of this study. Firstly, legal and political language is treated as a language that reflects particular conceptualizations, choices, and interests, not as a neutral description of reality, and furthermore, a language that is a constituent of the social reality Finns inhabit. Secondly, non-normative framing functions as a means of setting this study apart from the bulk of previous legal studies on the subject, as well as from the studies employing critical discourse analysis containing a normative critique of ideology, and of placing emphasis on the empirical analysis.

This connects with the "socio-political approach" to hate speech Maussen and Grillo (2014) have called for; one that supplements the prevalent normative-legal approaches with constructionist investigations of those who engage in it, those who are victims of it, and those who seek to problematize and control it. Of course, legal scholarship also has an empirical basis, as it builds upon textual legal sources which need to be investigated prior to interpretation. However, as Kaijus Ervasti (2004) describes it, the key difference involves the knowledge interests; what the research aims to get out of the material. In Finland, according to Ervasti, a traditional division in the legal discipline has been between legal dogmatics (understood as the core of the discipline) and non-normative and empirical, social science style orientations. Social scientific approaches to law, such as sociology of law, have been prevalent in the Anglophone and Germanophone countries, but relatively rare in Finland. While legal dogmatics aims to interpret and systematize the legal sources, non-normative approaches – within which the present study falls – aim for empirical observations and interpretations concerning the social world.

1.4 Remarks on the research and writing process

As is the case with most article-based dissertations, this work, too, contains some repetition. The articles are also independent publications that need to stand on their own. Therefore, they often list the same basic information concerning the topic of religious insult in Finland. Another style of repetition is where a detail is discussed briefly in one article but explored in more detail in another article. Furthermore, the articles reference each other and contain summaries of previous findings by the author. These are the main styles of overlap between the articles. Research is also, of course, always an ongoing process, and interpretations and findings made may require specifications or even alterations at a later stage.

This study exclusively analyses materials written in the Finnish language, which is also the first language of the researcher. Thus, Finnish is the language in which the research proper was conducted, while English is the language in which it is presented. The articles are published in different journals with somewhat divergent practices, so there are some linguistic differences (for example, British versus American English conventions), and of course, differences in citation practices. Also, all the articles, as well as the introductory part were language checked by different native speakers, which also might bring about slight differences in style. Different journals also have different academic profiles, which undoubtedly affected the writing process of the articles. Obviously, the author takes full responsibility for both the content and the form of this work.

If an established English translation of materials is available, it has been used when presenting quotations from the data. Thus, the study consistently uses the (unofficial) translations by the Ministry of Justice (Criminal Code) and the Patent and Registration Office (excerpts from the Freedom of Religion Act). Translations are essentially choices, so they are not without their problems. For example, the Ministry of Justice translates "*uskonrauha*" (literally: "peace concerning faith") as "sanctity of religion" – a translation in itself interesting from the perspective of this study. However, since only the original Finnish materials were analysed, and English is merely the language in which the study is presented, the translations in question were selected due to their established nature and easy availability online.

Quotations from the other analysed materials (the parliamentary and legal documents) were translated by the researcher. The goal was to offer as direct translations as possible, while also communicating the original meaning to an English-speaking audience. Grammatical errors were retained, and often complicated sentence structures were kept intact as much as possible. It should be noted that the mode of discourse analysis adopted for this study emphasizes context-heavy scrutiny focusing on ways of constructing various topics instead of focused linguistic analysis *per se*, so original language quotations are, for the most part, not provided.

The Finnish Advisory Board on Research Integrity has set general preconditions for an ethics review that some research requires. The present study does not, however, necessitate an ethics review by the Board. The ethics of this research are the responsibility of the researcher.

Protection of privacy is one of the cornerstones of research ethics (Kuula 2011, 75–98), and it is also relevant for this study. Privacy is also regulated by Finnish law. The Finnish Data Protection Act (*Tietosuojalaki* 1050/2018) and the EU General Data Protection Regulation state that information related to e.g. political or religious affiliations is deemed to be sensitive. While this research does not involve e.g. interviews or participant observation, it does utilize materials that often include

sensitive information, such as the names of the defendants and the crimes they are accused of – although these documents are mostly public in the legal sense. In order to protect privacy more strictly, names are omitted throughout the study, with the exception of cases involving public figures such as politicians, the details of whose cases are already publicly well known. However, as the study mostly utilizes public documents, anybody can request the documents from the officials in question with the provided archiving numbers (Finnish*:* *diaarinumero*). This is an unavoidable trade-off, as the archiving numbers are necessary for citation purposes. The materials obtained from the officials were kept in a locked cabinet or password-protected computer throughout the study, and they will be destroyed at the end of the dissertation process.

One problem with hate speech research based on empirical data is that convincing argumentation often requires that the hateful expressions are reproduced by the researcher, either in the form of verbatim quotations or descriptions of them. Thus, the scholar, in a way, participates in the dissemination of such material. In the case of the research at hand, such reproductions were certainly necessary in order to understand the actions of the officials who reacted to them. To lessen the harmful social impacts of this, the most extreme expressions (such as racial slurs) have been redacted. Admittedly, this can be considered as a normative choice, as the expressions in the data are essentially judged without telling the reader what they were.

The author decided not to include any visual imagery, such as depictions of Muhammad, although such images are often at the heart of religious insult cases. However, the main reason for this is methodological rather than ethical. By, for example, publishing a picture that is potentially offensive, the researcher is effectively participating in the phenomenon (here composed of insults, injuries and reactions) which is the object of their research. Perhaps the mere description or analysis of such a phenomenon already, to a degree, locates the researcher within it. At the very least, the research becomes part of the related public discourse on the phenomenon. This does not mean, however, that the researcher should not strive for neutrality in relation to the topic at hand, or in relation to the interests of the connected stakeholders. While there are certainly many ways to understand the researcher/object relationship (see e.g. Reiss and Sprenger 2017), the present study aims for a distanced analysis that consciously avoids normative goals, while recognizing that the position of a purely neutral observer is more of an ideal than a reality.

1.5 Introduction of the research articles

The analytical part of this doctoral dissertation is composed of the following articles, previously published in peer-reviewed journals. A longer summary of the results of these articles, alongside further discussion can be found in Chapter 4.

Article I, "The Sacred Orders of Finnish Political Discourse on the Revision of the Blasphemy Law", originally published in the journal *Numen* (2017, vol 64, issue 2–3, p. 294–321), analyses the political and legal origin of Finland's contemporary religious insult law. It focuses on the Government bill, committee statements and the parliamentary discussion regarding the updating of the Criminal Code in the late 1990s, when the current form of the BOSR was born. It transpired that the bulk of the parliamentary discussion on the topic revolved around the inclusion of the term "God" in the letter of the law, and the significance of the term in contemporary Finland, while the Government had initially proposed a more general religious insult section without an explicit penalization of blasphemy towards God. It is argued that it is useful to conceptualize the differences regarding the law as two *sacred orders,* as they represent two different views on the organization of society, its sacred symbols and the location of religion within it. Despite the differences, all parties relied on a category of religion built upon the Protestant prototype for religion, and – unlike later, when Islam is emphasized in the topic of religious insult – very few minority religion concerns were raised.

Article II, "Blood on a Mosque: Religion, the Sacred, and the Finnish Criminal Court Process", originally published in the *Journal of Religion in Europe* (2017, vol 10, issue 3, p. 274–300), is a case study about a particular court case that occurred between 2006 and 2008, involving the spattering of blood on a mosque. The lower court initially ruled that the case constituted a religious insult, but this decision was overturned by the appellate court on the grounds that the community under attack did not fulfil the formal requirement; it was a not a registered religious community. The article argues that the case demonstrates firstly how the Finnish arrangement for managing "religious diversity" relies on the system of registered associations, and secondly how the prevalent discourses on religion, the sacred and blood can be reflected in the discourses of the officials.

Article III, "Insulting the Sacred in a Multicultural Society: The Conviction of Jussi Halla-aho Under the Finnish Religious Insult Section", originally published in the journal *Culture and Religion* (2017, vol 18, issue 3, p. 191–211), is another case study, focusing on the most well-known contemporary case, that of Jussi Halla-aho. Halla-aho, a Finnish politician and former blogger known for his anti-immigration and anti-Islam positions, wrote a blog viewed as profaning against the prophet Muhammad. It is argued that religious insult cases can be political disputes, where various visions and interests regarding the "multi-religious" society are negotiated and advanced. Also, the case demonstrates that besides the things sacred to Islam which were at the core of the case, other secular things, often located in the "secular realm", constitute the official framing or *sacred order* through which cases such as this are assessed.

Article IV, originally published in *Temenos* (2018, vol 54, issue 2, p. 185–212), utilizes all the available case documents from the Office of the Prosecutor General and the courts concerning the current statutory provision on BOSR. By analysing a total of fifteen individual cases, the article aims to assess how these legal officials construct the area which is a target of special protection: religion. Due to empirical reasons, discourses on ethnicity and race were also analysed, as they were found to be highly entangled with the discourse on religion. Both the language of the defendants as well as that of the officials was found to be influenced by lay discourse on religion. While Article II highlighted the importance of the official category of a registered religious community, Article IV makes the picture more accurate by demonstrating that in most cases, the registered status of communities rarely becomes a crucial issue. This is because the crimes, categorized as BOSR, typically target Christianity, Judaism or Islam in a general sense rather than distinguishable real-life communities. While being a community that identifies as one of the three above – that is, as part of the established religion discourse – improves the odds of benefitting from the provision on BOSR, the law is found to be a relatively ineffective avenue for groups advancing their interests, since it is applied so rarely.

Lastly, a corrigendum is in order. In the editorial process of Article IV, tables now found in the Appendix to the article were removed from their original intended place within the body text. These tables list the legal cases analysed in the article, and they were intended to be placed within the subsection titled “The Cases”. The reader is thus encouraged to read that subsection with the Appendix at hand. The author assumes full responsibility for this blunder.

2 Background

2.1 A brief history of blasphemy and religious insult in the area of Finland

Religious insult and blasphemy are not usually conceived of as new phenomena. Blasphemy is often thought to have Biblical roots[6] in the Christian context, and seen as something that was also addressed by later theologians such as Thomas Aquinas.[7] The word "blasphemy" originates from a Greek word "*blasphemia*", meaning slander or speaking ill. Of course, "blasphemy" did and continues to mean different things depending on the time and the place. For example, making a pact with the Devil was blasphemy *par excellence* in sixteenth-century Sweden, but during the late seventeenth century this practice became categorized as a mere "superstition" (Olli 2008, 470). This emphasis on the contextuality of blasphemy and religious insult – that they gain their meaning only in their particular contexts – is the prominent framing throughout this study.

While popular and modern perceptions regarding blasphemy place it quite strictly in the religious sphere (whatever that entails), historians have pointed out that the European blasphemies of medieval and early modern times can, in fact, be viewed as more general societal crimes in several senses. Rulers might fear God's wrath against their kingdom if blasphemies – usually understood as utterances or gestures taken to defame God's honour – were committed or allowed. Accusations of blasphemy were frequent in condemnations of Jews and heretics, although heresy was in itself a different charge (Schwerhoff 2008, 400–403). While there was obviously a link to Christian doctrinal considerations, blasphemy accusations functioned in resolving societal conflicts – those involving people defying the prevailing order – in a desired way. Medieval blasphemy charges could target various types of improper public behaviour such as drinking, gambling or vagrancy in addition to defaming words (Nash 2007, 3).

6 See e.g. Mark 3:29.

7 See "Question 13" in *Summa Theologiae.*

In the Kingdom of Sweden, to which the area of Finland belonged between approximately 1250 and 1809, blasphemy was viewed as a crime against both God and the state. As one of the most serious crimes imaginable, it was subject to the death penalty until 1864, as well as to corporal punishments (Olli 2008). Historian Soili-Maria Olli (2008, 459) writes that the punishments were intended to "demonstrate the power of the state" and "prevent others from committing the same crimes", while they also "reminded the common people that the body belonged to the state and thereby to God". Examples include seventeenth-century blasphemy convictions against Sámi people, who were perceived to engage in non-Christian acts, such as ancestral worship and polytheism (Olli 2008, 462). When Lutheranism became the official religion of Sweden in 1527, great efforts were made to ensure proper adherence and rejection of competing elements, such as Catholicism and paganism, throughout the kingdom during the sixteenth and seventeenth centuries (Olli 2008, 463–464).

The conscious act of blasphemy was thought of as a defiance of both earthly and divine authority, and as such, it could be equally used as threat or boast in a pub fight, or as a demonstration of sovereignty by a nobleman (Schwerhoff 2008, 405–406). Hence, blasphemous acts and utterances had practical social uses precisely because they were considered to be severe transgressions imbued with symbolic power. In medieval and early modern European societies, insulting God effectively meant attacks of the worst kind against the ruler and society itself as well, as these were often seen as constituents of the same whole (Olli 2008, 464–465; Nash 2007, 46).

When Finland was part of Tsarist Russia (1809–1917), blasphemy convictions were initially quite rare; they had become much less frequent earlier in the eighteenth century. Convictions became more regular, however, as political tensions grew at the end of this period. The new Criminal Code of 1889, which introduced the comprehensive term "religious sentiments" among the things subject to protection, a legal feature preserved to this day, also contributed to this growth. Several hundred guilty verdicts were passed around the turn of the century (Neuvonen 2012, 209–211).

Blasphemy as a phenomenon has a great deal to do with the power relations of the era. The Lutheran Church of Finland, to which practically the entire population belonged, aligned mostly with the political right during the first half of the 1900s (Haapala 2009). Influenced by the Tsar's unpleasant "Russification" policies and growing Finnish nationalism, but complicated by internal power struggles, the process towards Finland's independence was on its way. International tensions culminated in the First World War (1914–1918), in the collapse of the Russian Empire in 1917 and in the Finnish Civil War of 1918.

Reflecting some of the same political clashes on a smaller scale, many blasphemy cases of the early twentieth century involved anti-church socialists and

free thinkers, who were quite strongly affiliated at the time. Among the prosecuted were the editors of the *Sosialisti* (The Socialist) and *Vapaa ajattelija* (The Free Thinker) magazines. Criticism of the law on blasphemy was presented by leftist parties in the Parliament (Ketola 1995; Neuvonen 2012, 209–211). Several left-wing figures, while many of them considered themselves Christians (see Kemppainen 2016), viewed anti-church language as a useful form of struggle against the religious right-wing hegemony, while the blasphemy law itself clearly functioned to preserve the status quo.

After the World Wars, Finland, having first gained and then retained its independence, gradually moved towards economic growth and increasing modernization. People moved increasingly into the cities, abandoning agriculture-based lifestyles. While living under a degree of political influence of the Soviet Union – although not as part of it – Finland also became more international by, for example, joining the UN in 1955. Finland became a full member of the European Free Trade Association in 1986, and a member of the Council of Europe in 1989. The Nordic welfare state model began developing soon after World War II, gaining momentum in Finland in the 1960s and 1970s. The Soviet Union disintegrated in 1991, and Finland joined the EU soon after, in 1995.

The change in society was also reflected in the position of the Evangelical Lutheran Church of Finland, which had a membership of 98.1% of the population in 1920. However, in 1960, the percentage of Finns who belonged to the church had dropped to 92.4%, and in early 2019 to 69.7% (Sohlberg and Ketola 2016, 26).[8] After World War II, leftist parties continued to push their anti-church policies for a few decades. The relationship between the Finnish state and Lutheran church was investigated by a special parliamentary committee in 1972, but no major changes were made. However, the pluralization and modernization of society was visible in other ways. For example, the first women were ordained by the Lutheran church in 1988 (Heininen and Heikkilä 1995, 235–245). Other religious groups appear in Finland as well particularly from the 1970s onwards, diversifying the religious landscape thus far defined by the traditionally strong institutional churches (Junnonaho 1996, 27–39; Martikainen et al. 2015, 73–76).

Immigration on a larger scale is a recent phenomenon in Finland. From the late 1980s and early 1990s onwards, increasing numbers of people from Africa, the Middle-East, East Asia, and the former Soviet countries started to immigrate. They included work or family-based immigrants, as well as refugees and asylum seekers. In recent decades, these immigrants have contributed to the religious and cultural

[8] The most recent statistics on membership of the Finnish Lutheran Church are available here: http://www.kirkontilastot.fi/ (accessed 11 April 2019).

diversification of Finland, particularly in and around its biggest cities in the South (Helsinki and the Capital Area, and Turku) (Martikainen 2013, 1–17).

The most historically famous Finnish blasphemy convictions are from the 1960s; the cases of Hannu Salama and Harro Koskinen. Both of them reflect an era of a rapid societal transformation from a relatively homogenous agricultural society towards urbanized modernity, a degree of conflict between left-leaning liberals and conservatives clinging to Lutheran morality, as well as a generation gap (Arminen 1999; Malmisalo 2009; see Rautiainen 2012, 103–104). Hannu Salama's breakthrough novel *Juhannustanssit (*Midsummer Night's Dance) 1964, after being brought under the national spotlight by Archbishop Martti Simojoki's blasphemy accusations, sparked a legal process and intense public debate, culminating in Salama being convicted of blasphemy by the Supreme Court. Salama's sentence was three months' conditional imprisonment (Arminen 1999). The key part of the novel, in this regard, was a parody sermon that described Jesus as having regular intimate relations with a donkey (see Salama 1990, 140).

Harro Koskinen, in turn, was an artist who published the paintings *Pig Messiah* and *Pig Coat of Arms* (Finnish: *Sikamessias* and *Sikavaakuna*) in 1969. They depict respectively a pig being crucified and the Finnish coat of arms in which the heraldic lion is replaced with a pig. Koskinen, too, was convicted of blasphemy, as well as of defaming the coat of arms by the Supreme Court. The paintings were seen to profane Christian as well as national sacred symbols. These two aspects were also interwoven in the related discussion, reflecting their close relationship in Finland (Malmisalo 2009; see Rautiainen 2012, 103–104).

However, both Salama's and Koskinen's controversies can be viewed as moral and symbolic victories for the liberals of the era (Arminen 1999). Blasphemy turned out, yet again, to be an effective means of challenging existing norms and advancing one's own. Salama, who openly confessed to the court that his blasphemy was intentional, was eventually pardoned by the President. These convictions were also quickly viewed as being outdated during the decades that followed and launched a critical discussion regarding the criminalization of blasphemy. Guilty verdicts for blasphemy or religious insult were not, indeed, passed for decades – not until the law was renewed in its current form in 1998.

Nevertheless, there have been several attempts to change the Criminal Code of 1889 regarding religious insult and blasphemy over the years, but most have failed. One possible reason for the poor success includes the internal divisions of the political left, as well as the new act on freedom of religion (1922) with the related reasoning that protecting religious rights is now relevant (Tulkki 2009, 92). On the other hand, the famous court process of Hannu Salama with its conflicting interests and outcomes undoubtedly had a long-lasting impact on the political discussion. Before the revision of 1998, when the law gained its contemporary formulation, one

change was successfully made. A law prepared in 1965 proposed that the provision on blasphemy be abolished but the religious insult section retained. However, Parliament decided to keep both sections but update them slightly regarding the wording and the maximum punishment. The new provisions came into effect in 1971 (Backman 1972, 597–599). Interestingly, during the update in 1998, Parliament made practically the same decisions, retaining the criminalization of blasphemy as well as religious insult (see Article I).

Between 1971 and 1999 there were several borderline cases that were deemed to be religiously offensive by the public but were not ultimately prosecuted. For example, at Whitsun 1981, the Finnish Broadcasting Company (YLE) broadcasted an opinion piece on the radio, written by the chair of *Vapaa-ajattelijat ry* (Freethinkers Association of Finland), entitled "A Letter to Jesus". In it, the historicity and the divine nature of Jesus was questioned, and the topic was addressed in a mundane but critical tone. However, the Chancellor of Justice ruled that no crime had been committed.[9] A more famous event in the art world was the stage play *Jumalan teatteri* (God's theatre) presented by a group of four actors from the University of the Arts Helsinki in Oulu in 1987. In the performance, blood and faeces were thrown at the audience, and the room was filled with thick powder sprayed from fire extinguishers (stolen from a train). A large public controversy, comparable to that of Hannu Salama's *Juhannustanssit*, ensued. The performers were convicted of several crimes and blasphemy was considered as well, presumably due to the play's name, but was eventually not used (Arminen 1989, 91–92; 1999, 225–226; see Seppänen 1995). As a final example, in 1998 and 1999, a person from Jyväskylä published a piece on their personal webpage in which they described the Christian God as a "sadistic paedophile, junkie, criminal and a psychopath", and also stated directly that "I hereby blaspheme against God". The acts were committed before the new law on breach of the sanctity of religion came into effect. Interestingly, the prosecutor viewed the crime as a very minor one and appealed to the fact that the blasphemy law had been a dead letter for decades.[10]

2.2 Religious insult and blasphemy as contemporary public questions

Insults against religion, the related legal devices and questions concerning freedom of expression have been recurrent topics throughout the twenty-first century. Discussions have occurred around international legal proposals, major events such

9 See the issue 2/2008 of *Vapaa-ajattelija* magazine.

10 Decision of the District Prosecutor of Jyväskylä, 98/2021, 15 January 1999.

as the *Jyllands-Posten* caricature controversy, and around specific national affairs. The following explores the most significant instances where the topic has come up, with an emphasis on Europe and Finland in particular.

In the United Nations, the Organization of Islamic Cooperation (OIC, formerly known as Organization of Islamic Conference) sponsored several motions seeking to ban the *defamation of religion* between 1999 and 2010. Pakistan initially introduced a draft resolution intended to oppose the "defamation of Islam" to the UN Human Rights Commission in 1999. Later, the title was changed to incorporate defamation against all religions, although only Islam was mentioned specifically. Throughout the years, the OIC continued to push for the defamation of religion to be banned internationally. Finally, the UN General Assembly narrowly passed Resolution 64/156 Combating Defamation of Religion in 2010, although Western countries, including Finland, opposed it. In addition to opposing incitement to hatred, the resolution deplores the hurtful targeting of religious symbols and urges all states to offer protection from the defamation of religion. However, in 2011, the Western member states made a compromise with the OIC. In Human Rights Council Resolution 16/18 from 2011, the phrases referring to the "defamation of religion" were removed, and instead, it promoted measures against incitement to hatred based on religion or belief (Knechtle 2017, 208–209; Belnap 2010; Leo et. al 2011).

To pick an example on a much smaller scale, in 2000, a photo exhibition titled *Ecce Homo* by Swedish photographer Elisabeth Ohlson was displayed at the Finnish Museum of Photography. The photos display the story of Jesus, presented amongst symbolism from LGBT culture and same-sex intimacy (Silvanto 2002, 35; see Kuosmanen 2007). Several MPs, citizens and representatives of various religious communities criticized the exhibition in public, and the City of Helsinki received complaints demanding the removal of the photos. Borrowing a phrase from the sociologist Ilkka Arminen, sociologist Satu Silvanto calls the exhibition and its reception a cultural conflict. Such conflicts bring forth prevalent cultural and political currents (Silvanto 2002, 35–37). However, the exhibition was displayed as planned, and it was not investigated by the police as criminal.

A more tragic event occurred in the Netherlands, where the film director and producer Theo van Gogh was murdered in 2004. The crime occurred after he had published a short film titled *Submission* (2004), written by the well-known critic of Islam and politician Ayaan Hirsi Ali. The film, broadcast by the public television broadcaster, criticized Islam and particularly the treatment of women in Islam, and met with outrage from the Muslim community of the Netherlands. Van Gogh was also a known critic of Islam even before the film, having, for example, published a book titled *Allah weet het beter* (Allah knows best) in 2003, and having written newspaper columns presenting, among other things, criticism of multiculturalism

since the 1980s. Van Gogh was murdered by a supporter of a militant Islamist group in 2004 while commuting to work (see Hajer and Uitermark 2007).

The *Jyllands-Posten* Muhammad caricature controversy is, with the *Charlie Hebdo* attacks, the biggest religious insult-related incident in twenty-first-century Europe. Already referenced at the beginning of this work, its centrality merits further elaboration, particularly regarding its effects in Finland. The Danish newspaper *Morgenavisen Jyllands-Posten*, based in Aarhus, published a story entitled *Muhammeds ansikt* (The face of Muhammad*)* in September 2005. Beside a small box of text in the middle of the page, the page was surrounded by 12 editorial caricatures, most of which were generally interpreted to depict the prophet Muhammad. Certain Danish imams toured Muslim-majority countries, agitating the crisis by presenting the pictures and Denmark in a very negative light (Linjakumpu 2010, 177). After a few months, an international controversy ensued, involving demonstrations in certain Muslim-majority countries, and even bomb threats against the newspaper. The protests turned violent in some countries, and over a hundred people died in demonstrations in Nigeria, Pakistan, Afghanistan and Libya (Hassner 2011). For Denmark, the events constituted a major diplomatic crisis. While Denmark does have a religious insult law, it had not been applied for decades, and neither the newspaper's staff nor the cartoonists were prosecuted. The Danish prosecutor argued, among other things, that the requirement of intention to offend (similar to the requirement in Finnish law) could not be shown (Jensen 2011, 348–353; Linjakumpu 2010). According to Signe Engelbreth Larsen (2014), the political response to the *Jyllands-Posten* events reflects Danish, particularly right-wing identity politics, in which Muslims are "religious" and "we Danes" are thus now "blasphemous".

None of the Finnish newspapers republished the caricatures as such, although some published pictures of other newspapers or websites featuring the images (Männistö 2007, 43–44). However, marginal[11] nationalist organization *Suomen Sisu* republished them on their website. The republication was investigated by the police, but the Prosecutor General decided not to prosecute. The prosecutor argued, similarly to the Danish prosecutor, that the images were not published with the intention to offend (see Article IV). The President of Finland Tarja Halonen and Prime Minister Matti Vanhanen publicly apologized for *Suomen Sisu's* publication, although they had no particular link to it. There was also a peaceful demonstration of roughly a hundred people held in front of the Danish Embassy, demanding the condemnation of the caricatures and an apology (Ridanpää 2009, 739).

[11] Marginal in the mid 2000s, but in 2011, four members of the association (Jussi Halla-aho, Juho Erola, James Hirvisaari and Olli Immonen) were elected to the Finnish Parliament. In 2017, Halla-aho became the chair of the *Perussuomalaiset* party (English title: The Finns).

Another trace of the *Jyllands-Posten* crisis in Finland was the publication of cartoons by Ville Ranta in *Kaltio* magazine in 2006. The cartoons featured the prophet Muhammad as the central character, but their main intention was to comment on the *Jyllands-Posten* crisis on a more general level. *Kaltio* is a relatively small cultural magazine, published in the northern city of Oulu. Upon publication, the main sponsors of the magazine announced that they would withdraw their support unless the cartoons were removed from the online magazine. The editor of the magazine refused, for which he was fired by the executive board. The events also gained some minor international fame (Ridanpää 2009). However, a large public controversy in the national media did not occur, no public comments from Finnish Muslims were heard, and no police investigation was carried out.

In 2007, soon after the *Jyllands-Posten* affair, Sweden had a similar controversy, although not quite as large internationally. The events concerned a drawing by the Swedish artist Lars Vilks. The drawing, published by several major Swedish newspapers, depicts the prophet Muhammad's head on the body of a dog, or potentially as part of a *rondellhund* installation.[12] Many art galleries declined to exhibit the drawing, but after the image had spread abroad on its publication by the *Nerikes Allehanda* newspaper, the OIC and some governments of Muslim-majority countries, including Egypt, Pakistan and Iraq, condemned the drawing. Having actually drawn several pictures depicting the prophet and submitted them to two different exhibitions, Vilks commented that his intention was to analyse the political correctness of the Swedish art community which, according to Vilks, is eager to criticize Israel and the USA, but not Muslim values. In Sweden, a few small and peaceful protests took place outside the newspapers which had published Vilks' drawing. Sweden's Prime Minister met with ambassadors from several Muslim countries, but no significant actions such as policy changes followed. Most dramatically, Vilks began receiving death threats, and the Islamic State of Iraq, a former militant Islamist group, declared bounties on the heads of Lars Vilks and the editor-in-chief of *Nerikes Allehanda.* In 2010, a group of seven people were arrested in Ireland after a plot to assassinate Vilks was discovered. In 2015, a gunman attacked a public meeting in Denmark entitled "Art, Blasphemy and Freedom of Expression" where Vilks was present, killing one civilian (Agius 2017; Högfeldt 2008). Sweden has no blasphemy or religious insult law, and thus no police investigation was carried out concerning the drawing itself.

[12] *Rondellhund* (literally "roundabout dog") installations were dog sculptures, made from various materials, placed by anonymous people in different parts of Sweden from the autumn of 2006 onwards. This form of guerrilla art had no particular connection to the prophet Muhammad before Vilks' drawing.

In a more peaceful example of a series of events, the "Atheist bus campaign" ran originally in the United Kingdom from 2008 to 2009, spreading to many other Western countries soon afterwards. Created by comedy writer Ariane Sherine and supported by the British Humanist Association and Richard Dawkins, the campaign involved a text displayed on the city busses, saying: "There's probably no god. Now stop worrying and enjoy your life." The aim was to gather donations to pay for more such ads. The campaign received huge international media coverage and ran in Finland as well. As expected, the campaign received criticism from Christians in several countries. In the UK, for example, the Advertising Standards Authority received many complaints claiming that the campaign was offensive to Christians and to other adherents of monotheistic religions. However, no blasphemy or religious insult prosecutions took place (Tomlins and Bullivant 2016; Taira 2016b; Aston 2016).

Originally an American controversial short film, but one that had ramifications in Europe and elsewhere as well, *Innocence of Muslims* (2012) was initially screened once in a small movie theatre in Hollywood, California under the title *Innocence of Bin Laden.* The film was written and produced by Egyptian-born Nakoula Basseley Nakoula, residing in the United States, who later uploaded the film to YouTube.com with two different titles. The film is explicitly anti-Islamic in tone, and some perceived it as defaming Muhammad. Violent protests occurred in Egypt, outside the US embassies in Yemen, India and Tunisia, and in several other Middle-Eastern, African and European countries, leading in total to 50 deaths. Certain Salafist leaders issued a fatwa saying that the people involved in the film should be killed, and a Pakistani cabinet minister and the Taliban organization declared a bounty on the director (Al-Rawi 2016; Herrenberg 2015).

The attack on the satirical French newspaper *Charlie Hebdo* in 2015 is the most recent of the major international incidents. The newspaper, featuring cartoons, polemics, jokes and other content, has a very non-conformist history, identifying as leftist, secular and atheist, and it has been involved in many controversies and even attacks before the events of 2015. Mockery of religions was frequent in the paper. In January 2015, gunmen attacked the office of *Charlie Hebdo*, killing 12 people and injuring 11. The attackers, who belonged to the militant Islamist organization al-Qaeda of Yemen, were later shot by the police in an exchange of fire. The attacks occurred soon after the newspaper featured the recent novel *Soumission* (Submission) (2015) by Michel Houellebecq, which portrayed France as an Islamic dystopia. A week after the attack, the paper featured the prophet on its cover again, holding a "*Je Suis Charlie*" ("I am Charlie") sign. Partially due to financial support by the French government, a massive print run of five million copies was made, and the phrase "*Je Suis Charlie*" became widespread on social media and elsewhere. A series of big rallies followed in France, featuring leaders from various countries. The

rallies claimed both to respect the memory of the victims and to celebrate freedom of speech (Giglietto and Lee 2017; Klug 2016; Yoo 2017).

The twenty-first century is characterized, among other things, by global online communications. Thus, controversial acts that might have stayed within the national sphere in the past decades can now spread rapidly across the world via the internet. Religion-related controversies are increasingly transnational, and indeed, the most extreme responses in the form of violent militant Islamist attacks were also mobilized transnationally. Many have noted that the emphasis on such incidents is clearly on Islam, while there certainly have been Christianity-related controversies recently as well (for a brief assessment of this in the Finnish context, see Article IV). The most visible and brutal responses by the Islamist extremists, but also the peaceful protests and comments by others are undoubtedly feeding back into the acts intended as provocative insults. After all, why bother with a prolonged series of insults, unless there is a reaction? What about the political motives of the defamers? At the same time, the topic is indeed connected to the discussions regarding the "religiousness" of the Muslim immigrants versus the "secularity" of Europeans, Muslim integration, freedom of expression, and racism (Weaver 2010; Joppke 2010, 137–142; Knott et al. 2013, 79).

Regarding the major crises mentioned above, the legal devices pertaining to religious insult or blasphemy have, in fact, been of very minor importance, since they have either been abolished or dormant in the countries in question. For example, in the Netherlands, there was a blasphemy law in effect (until it was abolished in 2014), but it had not been applied for decades, and it was not revived during the large controversies around van Gogh and Hirsi Ali, although the Minister of Justice did announce a general investigation on the topic after *Submission* (Janssen 2017, 628–629). In Denmark, the prosecutor decided not to prosecute the parties involved in the *Jyllands-Posten* drawing case, maintaining the law as dormant (Binderup and Lassen 2017, 436–437), and in Sweden, the blasphemy law was removed in 1970, so it had no relevance in the case of Lars Vilks (Hill and Sandberg 2017, 118–119). France abolished blasphemy law in 1789 and state secularism has traditionally been strong, although religious issues are addressed in various cases relating to fundamental rights (Gil 2017, 25).

These events nonetheless are one of the primary contexts in which the discussions of religious insults also as a legal problem occur. Finland, where the law on religious insult is still applied, has avoided large international controversies related to it, but one occasionally finds references to the international events in Finnish legal documents. Furthermore, Article IV in this study argues that after the *Jyllands-Posten* controversy, a shift to an emphasis on Islam occurred in Finnish religious insult case law. Also, it is clear that – in addition to the otherwise globalized world of today – Finland does not exist in a legal vacuum, and it has sought to be a

member of the international law community over recent decades. It is therefore necessary to also be familiar with the international contexts when researching Finnish political and legal practices on religious insult.

2.3 Finland among other European countries in terms of the law on blasphemy and religious insult

There are several reports on the situation of legislation of the religious insult or blasphemy type in Europe, but many of these are already slightly out of date, as such laws have recently been in a state of flux, or at least under debate in several countries. According to the Venice Commission report from 2008, blasphemy is a crime in eight Council of Europe member states, and religious insult in 22 member states. Finland was included in both numbers. A general observation was that blasphemy convictions are rare and that typical penalties are fines or short terms of imprisonment. The report notes that there are no universally agreed definitions of blasphemy or religious insult, but it seems to identify blasphemy mainly as the criminalization of insults towards (presumably Christian or Judeo-Christian) God, and religious insult as attacks on religious sentiments more generally or insults based on belonging to a particular religion (Venice Commission 2008).

According to the Pew report from 2012, blasphemy is criminalized in eight European countries, and defamation of religion in 36 (Grim 2012). In this report, Finland was included only in the latter category, presumably because Finland's criminalization of blasphemy is contained in the religious insult section instead of being a separate section. The number of existing laws on defamation of religion provided by this report is very high (80% of European countries), which is probably due to the report's inclusion of "religious hate speech" laws under the same label. This refers to laws such as incitement to hatred towards groups of people, particularly minorities, where the "group" protected might be identified by criteria such as skin colour, national background or religion. In Finland, while these laws have similarities, it is best to clearly distinguish them (see Article IV).

As a more recent example, a report published in 2017 by the Organization for Security and Co-operation in Europe found that 20 OSCE member states have blasphemy or religious insult laws. These countries are Andorra, Austria, Canada, Cyprus, Denmark, Finland, Germany, Greece, Ireland, Italy, Kazakhstan, Liechtenstein, Poland, Portugal, the Russian Federation, San Marino, Spain, Switzerland, Turkey, the United Kingdom (Northern Ireland and Scotland only) and Vatican City. The OSCE report uses a similar criterion for identifying blasphemy and religious insult as that of the Venice Commission above, and it too mentions how different legal arrangements in various countries occasionally make

this difficult. For example, some countries have narrower laws that resemble blasphemy or religious insult laws, such as Belgium and Luxembourg, which have criminalized insults to objects in places of worship or public ceremonies (OSCE 2017, 28–30).

Legislation of the type covering blasphemy or religious insult has recently been abolished in Norway, England, Wales, Iceland and the Netherlands. In England and Wales, blasphemy as a criminal offence was abolished in 2008, while remaining in place in Scotland and Ireland (Howard 2017, 595). However, several commentators have argued that there are other laws in England that have to do with religious hatred and religiously aggravated public order offences that effectively function as modern blasphemy laws (Hare 2017, Howard 2017). In the Netherlands, the blasphemy law, while retained due to support from confessional political parties for the most of the twentieth century, was finally removed in 2014. Originally created to counter the anti-religious leftist rhetoric in the 1930s, it had remained dormant after the late 1960s (Janssen 2017). Following the example of the Netherlands, Iceland abolished its blasphemy law in 2015 (Kulesza and Kulesza 2017, 411–412). In Norway, too, the prohibition of blasphemy was removed from the Penal Code in 2015. Its application had been extremely rare for centuries, and the legal reform process initiated in the 1990s eventually led to its abolition (Årsheim 2017). Generally, the authors describing abolition, as cited above, link it to the pluralization and secularization of the societies in question, as well as to integration into the international law community.

It is relatively easy to survey which countries have legislation of the blasphemy or religious insult type in their law books, but finding out how many countries actually apply such laws and especially what the case law looks like – and what it means in particular societal and cultural contexts – is a far greater endeavour. This difference is crucial also in the sense that the blasphemy and religious insult laws are inactive in most European countries, i.e. the laws exist, but they are not actually applied any longer– company into which Finland does not fit. An anthology entitled *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections After the Charlie Hebdo Massacre,* edited by Jeroen Temperman and András Koltay (2017, Cambridge University Press) currently contains the most up-to-date information on various countries, complete with examinations of the related case law.

In addition to Finland, there are active blasphemy or religious insult types of legislation at least in Italy, Germany, Greece and Poland. From the perspective of sociology of religion, there are no easily identifiable common factors between these countries that would, from the outset, seem to explain the existence of the blasphemy prohibition in the contemporary era. These include Catholic, Protestant and Orthodox-majority countries from various corners of Europe with very different

political histories. More research is needed if one wishes to learn about the possible dependencies between the position of blasphemy prohibitions and individual factors, such as secularization or general legal frameworks.

Catholic-majority Italy had previously criminalized insults against Roman Catholicism, but later the law shifted towards protection granted under administrative law for any legally recognized religious denomination, or more specifically, the protection of religious people (Cianitto 2017; Gianfreda 2011). According to Cristiana Cianitto (2017), the Italian law primarily has a symbolic role and is rarely enforced in practice. The few known examples involve attacks against the Catholic church.

Germany, on the other hand, revised its blasphemy legislation in 1969. The law had previously protected God from defamation. Currently, it prohibits the defamation of religion or ideology of others in a manner that could disturb the public peace. According to Matthias Cornils (2017), however, this criminalization has a slim constitutional basis, is controversial among legal experts, and is also rarely enforced. Examples include a case from 1985, when a person called the Catholic and the Protestant Churches big criminal organizations, and a case from 1998 where a punk band's T-shirts pictured a crucified pig, which was considered to be a profanation of a Christian symbol (Cornils 2017, 370). There are also examples involving Islam, namely a more recent case from 2006, when a person disseminated toilet paper rolls imprinted with the text "Quran" and his views on how recent terrorism was attributable to Muhammad, mosques and other Muslim organizations to e.g. Muslim associations (Ibid).

Greece is an interesting case, where the prevalent religious body (the Orthodox Church) is at the centre of the numerous blasphemy cases by being both the victim and a powerful body in the related political discussion. The current blasphemy legislation originates from the 1950s, with a minor change made in 2012, when the maximum punishment was increased. There have been several blasphemy cases, all of which have concerned the Orthodox Church, and they have involved the banning of artistic works such as books, films and plays, and punishments meted out to the people connected, such as curators, artists, publishers and salespersons. A notable example is the banning of the Martin Scorsese Film *The Last Temptation of the Christ* (1988), as the court considered it contained blasphemous elements. As a more recent example, comic book writer Gerhard Haderer was sentenced to six months in prison for his comic entitled *The Life of Jesus* (2005) which depicted Jesus as an avid party-goer. However, a higher court acquitted Haderer, noting that such humorous comics cannot be considered as blasphemy. The most famous example in recent years is the case of Phillipos Loizos, who was arrested in 2012 because of a Facebook page he had created. The page made fun of a famous Greek monk, who was later canonized as a saint, by depicting him as a Pastafarian. His arrest was due to calls by

MPs, headed by a Golden Dawn MP. Loizos was eventually sentenced to four months in prison (Fokas 2017).

Poland also has an active blasphemy law that has recently been confirmed as being compatible with fundamental human rights by the Constitutional Tribunal. The law prohibits offending the religious feelings of others by publicly defaming an object of religious worship or a place dedicated to religious ceremonies. There need to be at least two individuals who felt offended by the act for it to constitute blasphemy. Poland is predominantly Roman Catholic, and the blasphemy case law concerns offences against Catholicism, although it would be legally possible to apply the law to other religions as well. Legal scholars debate whether the "object" in the section's wording refers exclusively to material objects or also to non-material objects. Public debates concerning acts deemed blasphemous are quite common in Poland, and while blasphemy is frequently evoked in the legal sphere, it rarely leads to convictions. One of the well-known cases involves a Polish singer, Dorota Rabczewska, who discussed evolution in a newspaper interview in 2009, stating that she is more convinced by scientific evidence than something written by Biblical prophets "high on alcohol and weed". She was convicted of blasphemy and fined, and her case is currently pending before the European Court of Human Rights. As another example, in 2004, a Norwegian metal band Gorgoroth performed in Krakow with a stage show involving a naked woman tied to a cross, fake blood, and animal remains. The local event organizer was fined for blasphemy, since he had helped to organize a concert deemed to be offensive to Catholics (Kulesza and Kulesza 2017).

Regarding the countries with inactive blasphemy laws, Denmark is similar to Finland in many respects, such as in regard to the welfare state system and the sociocultural position of the Lutheran church. However, the Lutheran church is more clearly a state church in Denmark, and it has very little legal autonomy, unlike in Finland. The churches have similar membership rates. Denmark joined the EU in 1973 and Finland in 1995. Regarding immigration, Denmark saw anti-immigration politics enter the mainstream famously early, in the 1970s, while in Finland this did not occur until the 2000s. Both countries have taken in far fewer immigrants than Sweden; Finland slightly less than Denmark (Furseth et al. 2018). While both countries have legislation of the blasphemy and religious insult type in place, a key difference is that Denmark, unlike Finland, has not applied it for decades. Binderup and Lassen argue that this is partly because of political fears regarding hostile reactions from Muslims were the legislation to be abolished – obviously with the *Jyllands-Posten* and *Charlie Hebdo* incidents in mind (Binderup and Lassen 2017). Interestingly, this is not a theme in the discussion regarding the corresponding legal provision in Finland.

In Ireland, blasphemy law has been retained, although it remains dormant. Notably, the prohibition is included in the Constitution, and the provision in the

Criminal Code was renewed as recently as 2009. Unlike in Finland, however, the recent Irish legal renewal was not followed by a surge in new case law. The topic is very controversial in Ireland, and the current Government (in office since 2016) held a referendum on the constitutional blasphemy ban (McGonagle 2017), favouring its abolition in 2018. This referendum did not, however, concern the aforementioned 2009 Defamation Act.

International law on blasphemy and religious insult is described as "highly fragmented, if not outright contradictory", by Jeroen Temperman and András Koltay (2017, 4). The European Court of Human Rights has controversially concluded in its jurisprudence that sanctions concerning blasphemy are compatible with human rights. This has to do with the principle of margin of appreciation, a space granted for the member states in the interpretation of human right norms. In its earlier case law, the court emphasized that a person has the right not to have their religious feelings insulted, illustrated in cases such as Otto-Preminger-Institut v. Austria (1995), Wingrove v. United Kingdom (1996), and Murphy v. Ireland (2003), while later, the court shifted its arguments towards the protection of public order, morals and generally the rights and freedoms of others, visible in cases like I. A v. Turkey (2005) (Temperman 2011, 729–737). Such case law was, of course, picked up by the Finnish Supreme Court, when it argued for the guilty verdict over Jussi Halla-aho's blog post (see Article III).

Since 1999, The Organization of Islamic Cooperation (OIC) has advanced several UN resolutions which encourage the member states to criminalize the "defamation of religions", as noted in the previous section. While the language has broadened during the years, these resolutions, according to Allison G. Belnap, aim mainly to empower and protect Islam and the status quo in several Muslim countries (Belnap 2010, 635). Many European countries have criticized these resolutions as threatening freedom of expression and freedom of religion – while several European countries, as described above, essentially have legislation against defamation of religion in effect already (Temperman and Koltay 2017, 3).

Various organs of the Council of Europe have taken a completely different position. Many critical voices were clearly inspired by the *Jyllands-Posten* Muhammad cartoon controversy, which was a huge diplomatic crisis for Denmark. In 2007, the Council of Europe's Parliamentary Assembly noted the discriminatory nature of such laws; they tend to protect the dominant religions, and furthermore, blasphemy should not be considered a criminal offence at all and should be abolished in all member states. Similarly, the Venice Commission, in its "Preliminary Report on the National Legislation in Europe Concerning Blasphemy, Religious Insults and Inciting Religious Hatred" (2010, 32), notes that blasphemy should be abolished in all member states, that it should not be reintroduced, and that nor is it necessary to criminalize insults against religious feelings (Saarela 2011, 57–59).

In 2013, several EU countries took a critical stance towards blasphemy laws in the context of foreign policy when the Foreign Affairs Council meeting adopted the "EU Guidelines on the promotion and protection of freedom of religion or belief". The guidelines state that "When faced with restrictions to freedom of expression in the name of religion or belief, the EU will (…) recall at all appropriate occasions that laws that criminalize blasphemy restrict expression concerning religious or other beliefs; that they are often applied so as to persecute, mistreat, or intimidate persons belonging to religious or other minorities, and that they can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief; and recommend the decriminalisation of such offences." (See Temperman and Koltay 2017, 3.)

Various United Nations actors have also voiced their criticism of blasphemy laws. The UN Human Rights Committee stated in 2011 that the criminalization of insults towards religions is incompatible with the UN International Covenant on Civil and Political Rights (Human Rights Committee 2011, 12). Certain UN Rapporteurs have described blasphemy laws as harmful, vague, and as having the potential to be abused. Also, the Rabat Plan of Action, a joint endeavour by human rights experts adopted by the UN in 2013, stated that blasphemy laws diminish discussion and debate between religions, and that there are examples of such laws being used as instruments of persecution of religious minorities or non-religious people (Temperman and Koltay 2017, 6–9).

It is clear then that as a whole, international law offers ingredients for multiple lines of legal argumentation, and indeed, national actors invoke it to enforce and to criticize, and even to abolish such laws. Another observation is that laws of the blasphemy and religious insult type stem from the respective societal and legal histories of the individual countries (particularly their historical legal devices pertaining to the crime of blasphemy), albeit they are often somewhat transformed upon contact with the trends of international law. Therefore, the situation and legal practices need to be investigated separately in different countries.

3 Methodology and data

3.1 Social constructionism and discourse analysis in the case of official materials

This study is concerned with the analysis of materials produced by Finnish legal officials and politicians, i.e. textual documents. Linguists Vesa Heikkinen, Pirjo Hiidenmaa and Ulla Tiililä describe politicians and officials as *textual workers* (Finnish: *tekstityöläinen*) (Heikkinen et al. 2000, 11; see Ruuskanen 2006, 50-51), whose work, and wielding of power is crucially enabled by the use of written language. Thus, it is worthwhile to study the material they produce. The way these textual workers go about using language has consequences for the members of society. From another perspective, however, language use is preceded by existing conventions, both by the popular conventions of the broader linguistic community of which they are part (e.g. Finnish speakers) and institution-specific linguistic rules (e.g. legal and political language).

The concepts of *social constructionism* and *discourse analysis* are elaborated below. The specific questions brought about by the data of choice (political and official materials) are then addressed in the context of the chosen methodology. Next, the following subsection on discursive study of religion further clarifies the meaning of discourse analysis in this study.

Originally coined by sociologists Peter L. Berger and Thomas Luckmann (1966), the term *social construction* refers to a theoretical view regarding society, according to which the individuals, who compose the society, create language-based conceptions based on their interactions with the world and each other, producing the social reality itself in the process. Knowledge is fashioned and institutionalized over time, achieving the status of the natural and the obvious, as it is continuously passed to the next generation (the process of socialization). It is an empirical fact that different societies have different views of reality. Thus, in their view, reality can be described as socially constructed. At its core, *The Social Construction of Reality* concerns the sociology of knowledge and aims to analyse how intersubjective and objectified knowledge regarding reality is created and maintained. This taken-for-granted knowledge or common sense is born out of linguistic interactions between members of the society. These interactions solidify this knowledge as objective

reality and institutionalize it. This includes, for example, different roles assigned to the society's members (the division of labour). Social reality is legitimized by what Berger and Luckmann call *symbolic universes,* which are subjectively approachable theories of cosmos, composed of things like proverbs, moral norms and myths, and which locate things in their proper place.

Berger expanded on these ideas in the context of religion in his following solo work *The Sacred Canopy* (1990/1967). He repeats the point that humans make their own world in social interactions, which then gains the status of objective reality. This created human world has a particular order with certain principles. Berger refers to this organized world and experience as *nomos,* which he also identifies as a psychological need for humans: a craving for meaning and order. Its opposite is *anomy,* chaos and terror that threaten the stability and familiarity of the lived reality. In its ideal state, nomos is taken-for-granted knowledge, objective reality. According to Berger, the process of world-construction has often been religious; religious beliefs connect the individual with the cosmic, providing an important building block of *nomoi*. "Religion is the human enterprise by which a sacred cosmos is established", and "[r]eligion legitimates social institutions by bestowing upon them an ultimately valid ontological status (…) by locating them within a sacred and cosmic frame of reference", (1990/1967, 25, 33) he writes. Drawing on both the tradition of the phenomenology of religion and Durkheim, Berger talks of the sacred as a mysterious and awesome power that man (sic) attributes to certain things. Sacred things "stick out" of everyday interactions, they concern power and realities beyond humans. Berger uses two dichotomies. On the one hand, the opposite of the sacred is the profane, routine and non-special things. On the other, its opposite is chaos, as the sacred ultimately constitutes the order and reality which the society's members wish to maintain. Berger's concepts are returned to in section 3.3, when discussing the work of William E. Paden (1999, 2000).

Concerning social constructionism and broadly Foucault-inspired discourse analysis (elaborated below), it should be noted, however, that Berger & Luckmann (1966) drew on a completely different theoretical tradition than Foucault and other French theorists often referred to as post-structuralists, and that they disagree on many issues. Berger & Luckman built upon the German-Austrian sociological and phenomenological traditions, particularly those of Max Weber (1978/1922), Edmund Husserl (1970/1936) and their teacher Alfred Schütz (1967), whereas the French discussion engaged heavily with the work of Ferdinand de Saussure (1983/1916). They share the broad view that the culture and the social reality are constructed, but where Berger & Luckmann ultimately grounded social reality in the intentional consciousnesses of individuals and subjective attribution of meaning, the French post-structuralists built on the notion, influenced by de Saussure, that reality is composed of meaningful articulations (connections), which are determined by the

cultural structure (Heiskala 1995). Characterized in this manner, the language of individual and intentional consciousness is not meaningful in the discursive framing discussed. Instead, discourses are what construct the reality, i.e. determine meanings and objects of knowledge.

Today, social constructionism comes in many forms. Psychologist Vivien Burr (2003) has emphasized – in a manner more compatible with the discursive framing utilized here – four anchoring points that different styles of social constructionists have in common: a critical attitude towards commonsensicality or taken-for-grantedness, a view that conceptions are historically and culturally relative, the formation of knowledge in social processes, and the connected nature of knowledge and social action. In the field of the study of religion, for example, Titus Hjelm (2014c, 107–112) has argued that social constructionism should be thought of as an "approach", encompassing ontology, epistemology, theory and methodology. In practice, this entails asking the right research questions and recognizing the extent to which one can answer why-questions, in addition to how-questions. Relatedly, Hjelm (2014b) has also argued for broadly Marxist and Norman Fairclough-informed critical discourse analysis that engages with the society in a normative manner.

In this work, constructionism is primarily a framework that guides the study's basic assumption that politicians and legal officials do not describe the world in neutral way, but rather fashion it in particular ways, informed by certain interests. Furthermore, the central categories studied – religion and the sacred – are viewed as constructed.

Discourse has been defined in many ways, and, indeed, there are multiple different traditions dedicated to the analysis of discourse. One commonly used starting point is the work of Michel Foucault (1972/1969, 1981/1970), who has influenced many of the theorists this study builds on – although the present work cannot be described as "Foucauldian" *per se*. Importantly, Foucault used the term discourse in several different ways. He notes this himself in *Archeology of Knowledge* (1972/1969, 80), where he writes that he speaks of discourses sometimes as "the general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a number of statements". Sara Mills (2003, 53–54) notes that the first sense simply refers to all language use that has meaning and effects. The second sense, talking about individualizable groups of statements, refers to utterances that appear to form a grouping, such as discourse on femininity. Finally, the third sense refers to the underlying rules that regulate how utterances are produced in particular ways. According to Mills (2003, 54–55), many have found Foucault useful because he closely linked the idea of discourse with power. However, discourse is not inherently for or against e.g. those wielding the most power. In the

Foucauldian sense, discourse can both produce and renew power, and also expose and subvert it.

A useful way to see this relationship is to observe how discourses portray reality in a certain light, taking space away from other possible ways of representing it. A "pure" or "neutral" description of the world is not possible with language. Furthermore, some actors in society have more possibilities to influence the societally prevalent discourses than others; compare, for example, an average citizen or particularly members of a minority group with the mass media, lawmakers and central officials (see van Dijk 1996, 84–104; Mayr 2015). The media in particular has been highlighted as the key area where societal reality is constantly being constructed via discourse use, modification and production (see e.g. Richardson 2006).

From the perspective of this study, all of the above Foucauldian senses of the term discourse are generally useful, particularly the second and the third, as is the link between discourse and power. For the more specific purposes of this work, however, Stuart Hall (1997, 6) offers a slightly more practical and concrete definition, one clearly influenced by Foucault. He writes (italics in the original):

> Discourses are ways of referring to or constructing knowledge about a particular topic of practice: a cluster (or formation) of ideas, images and practices, which provide ways of talking about, forms of knowledge and conduct associated with, a particular topic, social activity or institutional site in society. These *discursive formations*, as they are known, define what is and is not appropriate in our formulation of, and our practices in relation to, a particular subject or site of social activity; what knowledge is considered useful, relevant and 'true' in that context; and what sorts of persons or 'subjects' embody its characteristics.

Legal scholars Johanna Niemi-Kiesiläinen, Päivi Honkatukia and Minna Ruuskanen (2006, 32) describe social constructionism and discourse analysis in the study of legal materials by emphasizing how-questions instead of why-questions. For example, a realist approach to material dealing with sexual harassment would start with a definition of the crime and proceed from there in assessing the phenomenon (i.e. why it occurs), whereas a constructivist discourse analytical approach would research the multiple understandings of sexual harassment; how or in what kind of processes does action become defined as sexual harassment, and what potential implications does this categorization practice entail? Furthermore, they continue, legal institutions are not considered to be neutral or objective. Neither are they viewed as autonomous. Rather, a discourse analytical approach will investigate how legal discourses are entangled with other societal discourses. Historical and cultural background undoubtedly affects laws and legal practice. On the one hand,

commonsensical and taken-for-granted knowledge and ways of speaking regarding e.g. violence against women potentially affect the legal processes. On the other, the legal actions also construct the more general societal understanding of the phenomenon (Niemi-Kiesiläinen et al. 2006, 31–32). A similar point is made by anthropologist Lawrence Rosen (1941/2006, xii), when he describes law as being constituted by culture, and culture by law – i.e. thoroughly entangled.

Minna Ruuskanen (2006, 47–57) states that when applying discourse analysis, official language use is investigated as action that is formulated in social processes, and which constructs social reality. Language use is in itself always value-laden. Things are talked about in certain ways and not others. Some things achieve the status of naturalness or obviousness, but not others. Often, one can recognize competing discourses in the material and how their use reflects particular hierarchies between them. Discourse analysis aims to chart the potential societal implications of the language use practices studied.

3.2 Discursive study of religion

Discursive study of religion comes in many varieties. As all the key concepts – discourse, discourse analysis, religion and the study of religion – take on different meanings in themselves, and their referents are not always perfectly explicated in individual studies, it is clear that it will be difficult to briefly characterize "discursive study of religion". A strong candidate for a central point of reference that anchors all such studies in similar waters, is the assumption of *social constructionism;* the conviction that language does not reflect reality but instead constructs social reality, and thus has implications for the people inhabiting it (see Wijsen 2013, 1). Discourse analysis, in one form or another, has not been immensely popular in the field of the study of religion (Moberg 2013, 4–5; Wijsen 2013, 1), although it is widespread in the humanities and social sciences in general. So much so, in fact, that some have considered it passé (McCutcheon 2015, 121). However, in the study of religion, it appears that critical self-reflexivity regarding the category of religion, often utilizing the discursive perspective, is increasingly thought to be needed (von Stuckrad 2013; McCutcheon 2015). Of course, other approaches have sprung up in both the human and social sciences in general, as well as in the study of religion specifically. Discourse analysis is thus best characterized as one methodological option among many available to scholars of religion.

Marcus Moberg (2013), for example, has distinguished between first, second and third-level discourse analytical approaches in the study of religion; a continuum ranging from meta-theoretical investigations to empirical case studies. Moberg's categories are intended to be overlapping, meaning that elements of several of them can often be found in individual studies. The first level refers to meta-theoretical

reflections on the foundational tools of the research, such as on the category of religion, and to a focus on how they become established in the field. The second level, on the other hand, concerns more contextualized scholarly theorizing, where a discourse analytical approach is proposed as a way of conducting research in a particular sub-field or concerning a narrower concept of the study of religion. An example would be a historical analysis of the scholarly discourse on the secularization of the West, a discourse that has constituted a sociological explanatory tool and an object of research, but when it is historicized using the discursive perspective, quite a different picture emerges. A similar analysis could be performed on other circulated scholarly concepts, such as "de-secularization", "de-privatization" or "resacralization". Finally, Moberg's third-level approaches encompass empirical studies utilizing discourse analysis in the field of study of religion – a level, of which he himself is a proponent. Here, the focus is no longer on the field of the study of religion itself, or on its particular theoretical questions, but on the analysis of various social phenomena, such as the portrayal of religions in the media or on the construction of identity within particular groups.

Teemu Taira (2016a) has, instead, made two distinctions: between "historical-leaning" and "textual-leaning" approaches, and between focuses on "religious discourse" and "discourse on religion". Kocku von Stuckard's (2013, 2014) recent work, where he has traced historical narratives on religion from a broad discursive perspective, is an example of the historical-leaning approach, whereas Titus Hjelm (2011) offers discourse analysis as more precise method that builds on the linguistic features of the text. According to Taira, this is also a way to separate (not religion scholars) Michel Foucault (2002) from Norman Fairclough (1992). Where Foucault located large, historical discursive frameworks, Fairclough is known for his linguistic methodology, linking texts to power relations and ideology by close reading. The second distinction made by Taira refers to the ways in which the category of religion is approached. If one studies "religious discourse", one adopts such discourse by definition and investigates how it operates in the data. For example, Bruce Lincoln (2012) has researched how a discourse that claims transcendent origin and authority, and makes claims of eternal truth, works in societies. An alternative to this is to avoid the analytical definition of religion and instead study the "discourse on religion", i.e. how various things become classified as religion or religious, and what this tells us about the relations of power. Russell T. McCutcheon (2003) has been a prominent proponent of such an approach and has focused on the scholarly discourse in the field of the study of religion.

One branch of the discursive study of religion has revolved around examinations of the category of religion. According to Boaz Huss (2015), the academic tradition critical of the category of religion took its founding steps in the writings of Jonathan Z. Smith (1982) and Talal Asad (1993), and emerged further in the late 1990s and

early 2000s in the works of Russell T. McCutcheon (1997), Tomoko Masuzawa (2005) and Timothy Fitzgerald (2000), among others. They view the category of religion to be contingent, historical and contextual. This approach is comparable to the way contemporary, constructionist scholars often view the categories of nation state, race or gender, for example. These writers hold that the distinction between "religion" and the "secular" is not universal, but that these conceptualizations emerged alongside Western modernity, and that they are entangled in capitalism, colonialism and the nation state (Boaz 2015, 98).

McCutcheon (2015) lists several scholars who, according to his description, study "religion" and not religion – i.e. the concept itself and the implications of its usage – and he also claims that this is mostly a recent development in the field: Wilfred Cantwell Smith (1962), Jonathan Z. Smith (1982), Talal Asad (1993, 2003), Tomoko Masuzawa (2005), Daniel Dubuisson (2003), Timothy Fitzgerald (2000, 2007, 2011), Naomi Goldenberg (2013), David Chidester (1996), and Richard King (2013), among others. Other authors categorized in this company are Brent Nongbri (2015), Jason Ānanda Josephson (2012) and Aaron Hughes (2012).[13] Looking at McCutcheon's list, scholarship on the category of religion appears to have emphasized a historical focus.

There is an interesting point of contention between McCutcheon, Craig Martin (2015), Timothy Fitzgerald (2015) and others versus the proponents of a perspective influenced by critical theory and theology. Recently, a debate sprung up in social media on an editorial piece by Warren S Goldstein, Roland Boer, Rebekka King and Jonathan Boyarin (2015) for the journal *Critical Research on Religion*, and this discussion was republished by the *Bulletin for the Study of Religion*.[14] In the original editorial, Goldstein and others argued that critical theory would aid in refining the study of religion into a discipline that serves human interests. This would entail interdisciplinarity and the eventual denaturalization and overcoming of the religion/secular divide by, for example, seeing the value of Christian theology and religious traditions, as well as that of the secular ideologies. The social media exchange between McCutcheon, Goldstein and others revolved around the normativity of research; where Goldstein saw values and striving for social progress as essential features of critical research, McCutcheon argued that critical research should, instead, aim to historicize particular values and notions of progress and thus to demonstrate that they are not universal nor natural.

13 Specific citations other than McCutcheon (2015), Nongbri (2015), Josephson (2012) and Hughes (2012) added.

14 https://journals.equinoxpub.com/index.php/BSOR (accessed 1 January 2019).

Later, Timothy Fitzgerald (2015) maintained, similarly to McCutcheon, that critical religion should be about research concerning the historical transformation of categories such as "religion", "secular" and "society". Martin (2015) stated that until scholars of religion provide a definition of religion that is strictly a second-order analytical term (i.e. it does not engage in social battles, of which the lay term "religion" is a crucial part), and also has true analytical value (i.e. something is gained, for example, by separating "religious culture" from other forms of "culture"), religious studies should be about the rhetoric and politics in those locations falling under the folk taxon "religion", and about the contestations over the concept of "religion" itself. In a concluding reply, Goldstein et al. (2016) stated that while work on the category of religion provided by the aforementioned authors is important, merely deconstructing the category is not enough. Critical research is, according to them, also constructive and counter-hegemonic. This entails the use of certain values in order to critique particular social actors and their interests. Goldstein and others maintain that there is an empirical reality of religion, and that religion has both good and bad aspects.

The normativity of "critical research" has been emphasized elsewhere as well. For example, Titus Hjelm (2014b) argues that critical discourse analysis influenced by Marx, as described by Norman Fairclough (1992), provides the basis for critical sociology of religion. This involves a focus on ideology and hegemony being constructed in the discourse, and a focus on normativity, i.e. applied ethics and the aim of transforming social practices. However, critical discourse analysis is more about providing resources for change, rather than direct formulas of emancipation. Hjelm also speaks of the alienating power of religion and religion's contribution to social inequality,[15] locating the latter at the core of critical sociology of religion. A critical feminist perspective, provided by Elisabeth Schüssler Fiorenza (2013), echoes many aspects of this debate as well. Building on critical theory, as described by the Frankfurt School, Fiorenza argues that a theory aiming to be "critical" needs to explain what is wrong in society and how liberation is possible; it needs to be practical in that it identifies the agents of change, and it needs to be normative by articulating goals, ethics and theoretical visions for an alternative future. Here, both Fiorenza and Hjelm are closer to the perspective of Goldstein et al. (2015, 2016) than, for example, Martin (2015) or Fitzgerald (2015), as the emphasis is not so much on the category of "religion" itself, but on the connected issues of oppression and on how to overcome them, building on the assumption that "religion" does refer to something in the world, and it may even have an agency of its own.

[15] It should be noted that social inequality and alienation are not necessarily normative notions if defined in another way.

The discussion presented above allows several clarifications regarding the present study. Firstly, the study falls into the category of the third-level discourse analytical approach, as characterized by Moberg (2013), since its main goal is to analyse empirical materials. However, it has elements of the first-level approaches as well, as it returns repeatedly to the question of the category of religion and examines the relationship between the official and the societally dominant religion discourse. Secondly, using Taira's distinctions (2016a), this study is "historical-leaning" (although it analyses contemporary data), using discourse analysis more as a broad framework than a toolbox of nuanced linguistics (and, as such, is, very broadly speaking, Foucault inspired), and it is focused on "discourse on religion", meaning that it refrains from the analytical definition of religion and opts, instead, to investigate how "religion" is constructed and utilized in the data.

Thirdly, regarding normativity, this study does not aim for the direct transformation of social practices by, for example, arguing how the Finnish law on religious insults *should be applied*, or how particular convictions are either right or wrong. Neither is its focus on deprivileged social groups, but on the work of the officials, who, on the contrary, wield considerable societal power. This non-normativity is one of the ways in which the study sets itself apart from the more common legal approaches (see section 1.2) to the subject of religious insult, and indeed, from those critical approaches to religion that necessitate normativity and applied ethics outlined above.

The most central influence for the methodology of this study comes from Taira (2010), who has approached the category of religion as a discursive technique, and emphasized the role of a context-heavy, non-linguistically oriented discourse analysis, concerned about how categories such as religion contribute to the organization of society (Taira 2013, 2016a). From Taira's (2010, 379) perspective, classifying a group as religious is a discursive technique, "by which different kinds of social and practical interests are promoted or prevented and by which social formations are idealized and controlled". For example, groups may seek to gain social legitimation or legal privileges upon applying for the status of "religious community" from the state officials. The officials, in turn, can wield power in deciding what kinds of groups qualify for this status. Taira's example is the failed attempt of a Wiccan group to apply for the status of "registered religious community" in Finland. The religiosity of groups or practices is often debated in other institutions as well, such as the media – exemplified by the British media's portrayals of Jediism.

Implications of the category of religion go beyond individual groups, however. According to Taira, religion is a conceptual tool in the organization of a modern state. For example, in China – where the category of religion is a fairly recent Western import – the status of Confucianism is disputed. On the one hand,

Confucianism was not included in the official category of religions, when the Communist state was established, and some would rather protect it as "national heritage". On the other, there are drives to establish Confucianism as a state religion, which would provide support for a good and just society and protection against the spread of Christianity (Taira 2016a; see Sun 2013).

In sum, the present work analyses how Finnish politicians and legal officials construct the categories of religion and the sacred. Their language use is examined in the light of the most influential institutional discourses as well as prevalent lay discourses circulated throughout society at the moment. This enables the assessment of how they fashion the area which is granted special protection in the form of a religious insult law. The practice is interrogated further by identifying its implications for various stakeholders, such as different kinds of Finnish communities identifying via the religion discourse.

3.3 The sacred: from a Durkheimian perspective into constructionism

In the study of religion, a theological and phenomenological understanding of the sacred has historically been more prominent than a social scientific one. As part of the hermeneutical tradition, phenomenologists of religion sought to understand religion from the perspective of the subjective experience of its adherents. Relatedly, the sacred was conceptualized as a *sui generis* (in a class of itself or unique) category, a force that becomes manifest in overwhelming religious awe (Anttonen 2000, 272–273). Influential theorists such as Nathan Söderblom (1913), Gerardus van der Leeuw (1938/1933), Rudolf Otto (1958/1917), and Mircea Eliade (1961) fit this description. Later, such approaches received much criticism. For example, Jonathan Z. Smith (2004, 13–19), who was himself a student of Mircea Eliade, was critical of the phenomenological project regarding the identification of universal patterns, interrogating it and related questions via empirical counterexamples. Russell T. McCutcheon (1997, 51–53) on the other hand, argued that Eliade failed to define the sacred properly and merely described some things as "obviously sacred", and this was connected to his essentialist view regarding religion as a special experience of the sacred, observable in history but manifesting ahistorical essence (see also Murphy 2010).

However, more social scientific ways to conceptualize and theorize the sacred also emerged early on. There were anthropologists such as Arnold van Gennep (2004/1917), scholars of religion like William Robertson Smith (1894), and French social theorists such as Marcel Mauss (2010/1925), Roger Caillois (2001/1939) and Georges Bataille (1986/1957) working with or following the sociologist Émile Durkheim (1964/1912), who himself is the central figure of social scientific

theorizing regarding the sacred. For these scholars, the sacred is socially defined rather than manifesting a universal essence, and it is investigated primarily in relation to the community in question.

Although this study does not utilize any analytical definition of religion or Durkheimian social theory *per se*, it is nonetheless useful to describe how Durkheim's understanding of the sacred is connected to his understanding of religion and society more thoroughly. For Durkheim (1964/1912, 36–37), the sacred, or rather, the sacred–profane dichotomy, formed a conceptual basis for defining religion, which, in turn, was part of his broader social theory. Durkheim argued that "all known religious beliefs (…) presuppose a classification of things (…) into two classes (…) effectively translated by the words *profane* and the *sacred.*" Anything at all can be categorized as sacred by the community. However, sacred things are those that are "superior in dignity". His examples include gods, the Four Noble truths of Buddhism, a building, as well as things in the environment, such as rocks, trees and springs. Durkheim (1964/1912, 109) also refers to the totemic emblem, a plant or animal represented by the emblem, and members of a clan practicing totemism as sacred.

Durkheim argued that the sacred–profane distinction is the most profound and absolute differentiation in human history. Where, say, the distinction between good and evil merely represents two aspects of morality, the sacred and the profane refer to entirely different realms with nothing in common. Things may pass from the realm of the profane into the realm of the sacred, but this occurs in a way that highlights their dramatic qualitative difference (e.g. in rites of initiation). This separation, the set-apart nature of the sacred, is safeguarded against transgressions threatening its foundational value. Improper actions regarding the sacred, Durkheim argues, seem dangerous, as this contradicts the logical "state of dissociation" between the two (1964/1912, 38–39). In brief, sacred things are those which the community keeps in high regard and protected as special, while the profane is everything else: the mundane.

Durkheim (1964/1912, 40) then presents a preliminary definition:

> Sacred things are those things protected and isolated by prohibitions; profane things are those things which such prohibitions apply and which must keep their distance from what is sacred. Religious beliefs are representations that express the nature of sacred things and the relations they sustain among themselves or with profane things. Finally, rites are rules of conduct that prescribe how man must conduct himself with sacred things. When a certain number of sacred things sustain relations of coordination and subordination between them, forming a system that has a certain unity but does not enter into any other system of the same kind, this set of beliefs and corresponding rites constitutes a religion.

After assessing the difference between magic and religion – this being, in his view, that magic lacks the communal nature of religion – Durkheim (1964/1912, 46) modifies this definition into its final form (italics in the original):

> *Religion is a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and surrounded by prohibitions – beliefs and practices unite its adherents in a single moral community called church*. The second element (…) is no less essential that the first: demonstrating that the idea of religion is inseparable from the idea of a church suggests that religion must be something eminently collective.

Durkheim (1964/1912, 236) further notes that sacred commands respect, and this respect inspires feelings of inhibition in individuals. The sacred and profane express mutually exclusive worlds; there is a mental antagonism between them. In social situations, the sacred must be treated using appropriate language, gestures and attitudes.

Religion scholar Veikko Anttonen has developed the Durkheimian notion of the sacred further, characterizing it as a "fundamental structure in human cultures, without which no religion, nation-state or political ideology can ensure the continuity of its power, hierarchy and authority (Anttonen 2000, 272). Building on Mary Douglas (1966), George Lakoff and Mark Johnson (1980), and others, Anttonen (1996, 2000) draws particular attention to the corporeal and territorial boundaries. He traces the logic of the vernacular term for "sacred" in various languages, arguing that the "sacred" originates from the need to place symbolic limits, which is answered by socio-religious systems. Anttonen views the sacred as a cognitive and cultural category boundary that simultaneously separates and binds. It symbolizes the boundaries and boundary crossings related to the individuals and the society.

Others recent theorists have utilized a Durkheimian style understanding of the sacred in various ways. For example, agreeing with Anttonen (1996) on several points, religion scholar Kim Knott (2010) has noted that sacralization does not respect the religion/secular dichotomy, but is constituted by other categorical boundaries, such as human/animal, life/death, and those related to gender and sexuality. Knott (2005) has also built a theory of sacred spaces, drawing attention to the ways in which particular sites gain sacred status. Media scholars Nick Couldry (2003) and Johanna Sumiala (2001, 2010) have used it in relation to media rituals that define societal meanings. Cultural sociologists Jeffrey Alexander (1998, 2003, 2004) and Gordon Lynch (2012) have developed the notion in the context of recent societal questions, and with the multiplicity of sacred things in mind. For instance, Alexander has analysed the events of 9/11 as a "sacred drama", and Lynch has examined how numerous "sacred forms" are in play in questions such as the BBC's

coverage of the Middle East. Sociologists Philip A. Mellor and Chris Shilling (2014) talk of multiple "modalities of the sacred", categorizing them as socio-religious, bio-economic, transcendent, or bio-political forms of the sacred. Scott Attran and Robert Axelrod (2008) have argued that "sacred values" are important but often overlooked aspects in conflict resolution, as they can be valued more than the items of conventional Realpolitik.

This study is informed by all of the above authors and connects with most of them at least to a degree. To be specific, however, the sacred is used in the analytical sense that follows here. Sacred things are those which are set apart by the examined actors in question, and treated as if the future of the community itself depended on them. In this sense, they can be viewed as symbolic constituents of society, but only in so far as the members of the society in question consider them as such. They are granted a special position and treatment, and offences against them often arouse strong reactions. Anything can be considered sacred, but one typical context is that identified as religious. The notion of sacred is returned to in Chapter 4, as it is re-assessed in the light of this study.

Building on Durkheim (1964/1912), Berger (1967) and Otto (1958/1917) in particular, religion scholar William E. Paden has proposed the notion of *sacred order,*[16] which allows useful additions to the present understanding of the analytical sacred. Where Durkheim highlighted the importance of individual things, set apart as sacred, and where phenomenologists such as Otto focused on the special religious qualities of certain objects, Paden (2000, 208) draws attention to the "sacrality of the system itself". Paden theorizes religious worlds as those that both interact with the superhumans (such as gods) and objects imbued with their power or related meaning (which, according to Otto, inspire numinous awe), and that maintain a set of loyalties and behavioural norms that keep the moral cosmos intact (Paden 2000, 207–208). *Sacred order* refers to the "constraint of upholding the integrity of one's world system against violation". Fundamentally, it is about the cognitive distinctions of order versus violation, or system versus anti-system. While the notion is part of Paden's theory on religion, he notes that sacred order is potentially a part of any social world, arguing that it is "linked with common human needs for self-maintenance, including the defence of territory, tradition, honour, authority, social bonds and roles, and other forms of status" (Paden 2000, 208). In a sacred order, things are perceived to be in their proper place; this is what makes the moral reality work.

[16] Notably, Berger (1990, 53) also used the concept of sacred order, although briefly. Compare also with Gordon Lynch's (2012, 46–50) notion of *sacred form*. Furthermore, see Sumiala 2001, 44–46.

Since sacredness is understood as inviolable order by Paden, the profane is defined as violative or transgressive, not as the mundane, natural or ordinary. The profane is subversive to the system of loyalties and norms, it threatens the world's integrity. Such violations against the sacred order risk anomy and disorder in the minds of its supporters, and thus, the system is safeguarded with prohibitions, and transgressions are met with potentially strong reactions. Paden's examples of transgressions against the sacred order include "moral or ritual pollution, dishonouring infractions, apostate disloyalties, ruinous moral lapses, or chaotic anomy" (Paden 2000, 209). In such cases, the world needs to be made "right" again, i.e. the sacred order's integrity needs to be re-established. Prototypal examples of sacred order include the Sanskrit concept of *dharma,* referring to the divine order of the universe, complete with the norms guiding human behaviour (Paden 2000, 214). Paden (2000, 215–220) identifies territory, bonding (i.e. group membership), tradition (maintenance of behavioural lineage), hierarchy and authority, social roles and grids, high-definition membership (e.g. priesthood) and honour as social structures that correlate with the sacred order.

The similarities between Paden and Peter L. Berger are noticeable, and indeed, many of Paden's ideas presented above build on the foundation laid by Berger (1967), and Berger and Luckmann (1966). Therefore, it is important to note the differences. Crucially, what is the relationship between Paden's concept of sacred order, and the general concept of social reality described by Berger and Luckmann? Both of them are human creations that simultaneously constitute the lived worlds of the community's members, and both are maintained against the threat of disorder and anomy. However, not all social realities are sacred orders as described by Paden. Rather, sacred orders appear to be a subset of social worlds. Sacred order refers to the cosmic and social order the individual values personally, and it is not necessarily the same as that the particular individual inhabits. For example, a person living in slavery in a foreign environment has to conform to a social world, which in all probability does not correspond to their own sacred order.

Furthermore, there are differences in the ways in which Paden and Berger locate religion in this picture. For Berger, religion renders the symbolic universe into a sacred cosmos, or sacred order. Religion is what enables the *sacred canopy* that can be stretched over the society, providing it with meaning, order and a shield against uncertainties.[17] In contrast, for Paden, religion is not a necessary element for a sacred order, although it is a typical component of it. Unlike Paden, Berger also highlights the alienating potential of religion; it effectively makes the individual forget the

[17] However, Berger does not use the concept of sacred canopy in the body text of the volume (1967) in question, but only in its title, and talks of sacred cosmos instead.

difference between the social world and the natural world, it masks the contingency of the social. In Paden's view, religion is described more as an example of effective source of legitimacy for sacred orders.

This connects well with what Russell T. McCutcheon (2001, 31–32) has argued in his earlier work regarding social formation; how society is organized in relation to what is set apart as components of the desired moral cosmos. Building especially on Durkheim (1964/1912) and Burton L. Mack (2000), he describes ideals as part of the establishment, organization, contestation and maintenance of human communities. "[S]ocial formation is the activity of experimenting with, authorizing, and reconstituting widely circulated (…) idealizations (…) that function to control acts and sites of signification." Ideals reproduce "certain specific social values as if they were universal". The application of criminal law – the "normative censorship of practices" that seeks to standardize communal life under desired societal reality (Nuotio 2010, 138–145) – then, ought to offer fruitful material for this type of research, as it is one of the main sites where the central boundaries of society are guarded in a contemporary Western setting.

Law also is a fruitful topic of study from such a perspective, since law is, at bottom, about preserving societal order. Relatedly, anthropologist and legal scholar Simon Roberts (1979) argues in his classic book *Order and Dispute* that anthropology of law investigates how the society in question maintains order and resolves disputes. Roberts criticizes the legal evolutionist perspective, where the control mechanisms of non-Western societies are compared to their Western counterparts in order to assess how "advanced" they are. Rather, he posits that each community, including those in the modern world, has its way of preserving order in its society, and of solving disputes.

Since the *sacred* is used in two senses in this study – as an item of discourse, and as an analytical tool of the researcher – it is in order to specify what this means from the constructionist perspective. The first sense is straightforward; the sacred is constructed in discourse when the concept itself is used. For example, the meaning ascribed to the legal term "sacred" in the preparatory materials, the letter of the law and in legal practice is observed. The second sense expands the analysis of the sacred outside instances where the word "sacred" is used directly. Following the definition of the sacred offered above, the study identifies the instances of setting apart things considered as crucial and constitutive for society. By using discourse analysis, the study examines the discourses that construct certain things as sacred. Attention is paid both to instances where individual things are identified as sacred, as well as to cases where the entire social reality is envisioned as a sacred order.

Lastly, there is a need to clarify the reason why the concept of sacred is used in the analytical sense in this work, but the concept of religion is not. Timothy Fitzgerald (2007) has argued, based mainly on the historical analysis of these

categories, that while the category of religion should be rejected as an analytical device, the sacred–profane dichotomy remains analytically useful. However, in the case of this study, this methodological choice is mainly justified by the content of the data itself; what it can offer to the researcher. Unlike Fitzgerald's work, no further methodological generalizations are made here. It is the case that the data – documents from legal officials and the Parliament – are abundant in setting things apart as of special importance, the activity theorized here as sacred-making. The sacred, as an analytical device, then, offers many possibilities for interpreting the material at hand. In contrast, the data would be much more problematic were the category of religion to be used analytically, since expressions or effects of religiosity (as they are most commonly defined in the field of the study of religion) are not clearly observable in it. For example, this material does not offer a clear way of understanding the religiosity of the judges, victims or the defendants, as it addresses religion from quite a restricted and formal perspective. However, the official understanding and usage of the category of religion is in itself important, and thus, the study opted to include the study of religion by focusing on "religion", i.e. on how this category is constructed.

3.4 Materials for the study

The primary data of this study is composed of various legal and political documents connected to the Finnish BOSR legislation and its application. The articles use different sets of data, and the data is most easily described via unfolding its role in the different articles. All the data is in Finnish. A full list of the data can be found in the Appendix.

Article I utilizes parliamentary documents that relate to the formulation of the current BOSR legislation. This includes the preparatory material (the Government bill, committee statements and reports) and plenary session transcripts concerning the new law on BOSR, from 1997–1998. The main difference between this data and the data of the other articles is the institution responsible; here, the material is produced by politicians in the Finnish Parliament and legal experts doing preparatory work for the Government, while the bulk of the other material comes from the legal institution. The data for Article I is available from the Parliament's website.[18]

Articles II and III are more focused case studies. Article II utilizes material from a case concerning the spattering of blood on a mosque (pre-trial investigation report, court rulings) from 2006–2008, while Article III uses similar material from the case concerning politician Jussi Halla-aho (Prosecutor General's decision, court rulings),

[18] http://www.eduskunta.fi (accessed 1 January 2019).

dated between 2009 and 2012. As a general remark, all the documents from the legal institutions were obtained directly from the officials themselves via request, and indeed, most of them are not available in open access form, although they are legally public. These two cases were selected as objects of more thorough analysis because of their empirical significance; these two cases are the only ones provided as examples of BOSR case law in the legal databases intended for legal professionals (Finlex, Edilex and Suomen Laki) at the time of the research, and they are regularly cited in the legal literature. Furthermore, the Halla-aho case is the only one that has been addressed by the Supreme Court. Finally, the "mosque case" revolves around the official category of "registered religious community", thus, it is necessary to investigate it in detail.

Article IV is oriented differently. It uses all the Prosecutor General's decisions and court rulings the author was able to obtain and aims for more general observations concerning the legal practice regarding BOSR. However, the dataset is not random, as the well-known cases are emphasized. As elaborated in Article IV, this is sufficient for the aims at hand. The study does not offer a complete overview of Finnish BOSR case law. However, this work does utilize a greater amount of case law than any previous scholarly take on contemporary Finnish law on religious insult.

In addition, the articles refer to Chapter 17, section 10 of the Finnish Criminal Code, which is the current wording regarding BOSR, as well as to Chapters 1 and 2 of the Freedom of Religion Act. Furthermore, they refer to legal literature and other expert material, which is also listed in the Appendix.

Legal literature and other material produced by experts in the legal discipline commenting on BOSR have a double role in this study as academic literature and as supporting data. In the articles, this material is listed under "references" rather than "data", since it is customary to list academic sources in this manner, and it is also mentioned as being part of the "previous research". However, this material is also used to examine the legal discourses, not merely as sources of directly citeable information or as scholarly points of reference. Although the articles best illustrate this themselves, a quick example would be how both the primary legal sources utilized by the legal institution (letter of the law, Government bill, committee documents) and the legal expert material is used to examine *how the law on BOSR is supposed to be applied* in the technical sense, i.e. how the legal discourses construct it. In the legal practice, the legal literature and other similar material is not as important as the primary legal sources (the letter of the law and its preparatory working materials) or the preceding case law of the Supreme Court, but it is an essential part of the education of lawyers and the canon of reference material used by the legal profession.

According to the *Seuraamusjärjestelmä 2016* report by the Institute of Criminology and Legal Policy Krimo (formerly Optula), there haves been 13 guilty

verdicts in district courts between 2000 and 2016. However, the total number of convictions may be slightly higher, since in this report, some years are marked as "0" while the author is in possession of guilty verdicts dating to those years – thus, there is a possibility that other cases are missing as well. This detail is behind the author's cautious estimate of the number of BOSR guilty verdicts between 1999 and 2018: 20. This is in accordance with an average of one conviction per year.

Court convictions, particularly district court convictions, are not listed in any single, browsable location, but instead, each conviction needs to be requested from the courts separately. A successful data request, in turn, usually involves the names of the defendants and the archiving number (Finnish: *diaarinumero*). This can be problematic for researchers collecting data, as the names of the defendants and the archiving numbers are not usually easily available. For example, while BOSR cases feature in the media quite regularly, the media reports never include archiving numbers, and they include the names of defendants only when the case concerns a well-known figure such as a politician. Thus, a starting point for gathering case files from the courts was the previous research done primarily by legal scholars, as this work includes archiving numbers that can be used for data requests. The Legal Register Centre (Oikeusrekisterikeskus) was also contacted, but since their database is only searchable by the most serious criminal cases (and BOSR is rarely that), they were only able to provide details of two BOSR cases. Furthermore, the author was able to acquire some case files by making data requests with insufficient details (the date, the court involved, and crimes considered, as reported by the media).

In addition, a fine can be imposed by a police officer without a court process (Finnish: *Rangaistusmääräysmenettely*) for crimes where the maximum punishment is not higher than six months. According to criminologist Heini Kainulainen (email dated 17 Feb 2017), this is possible for BOSR, but this – as well as a proper examination of the police's investigations in general – fell outside the scope of this study.

Material from the Office of the Prosecutor General was easier to obtain. The office publishes annual reports of its decisions, complete with the details required for data searches. Thus, most of the relevant material from the Office of the Prosecutor General was obtainable with a single data request.

Like the police, a proper examination of the district prosecutors was not included in the study. The focus was intentionally directed towards the higher levels of the legal process, i.e. the Office of the Prosecutor General and the courts. One reason for this was the observation that all of the central BOSR cases were prosecuted by the Office of the Prosecutor General, since by law they involve cases related to freedom of speech. Another reason has to do with time management and with the aim of preventing the study from becoming too convoluted, as in-depth examination of

several different offices would have been necessary. The third reason relates to access to the data; whereas the Office of the Prosecutor General reports its decisions quite well, the same difficulties of obtaining data and the necessary details for a data request apply to the district prosecutors as to the district courts.

4 Results and discussion

4.1 Finland and other European countries: a preliminary comparison

Since this study is not comparative as such, a thorough assessment of the differences and similarities between laws of the blasphemy or religious insult type in various countries is not possible here. However, it is in order to point out what was discovered here regarding Finland and compare it to previous research literature on other European countries. This can, then, serve as a preliminary comparison that can be upgraded by future studies.

As explored in section 2.3, roughly half of the European countries have abolished law on blasphemy or religious insult, while the other half retain it in one form or another. Out of the countries that do have such laws, most no longer apply them. Finland, alongside Italy, Germany, Greece and Poland, belongs to the smaller group where the law is still actively used (Venice Commission 2008; Grim 2012; OSCE 2017). It was concluded earlier that there are no easily identifiable common factors between these countries with active laws from the perspective of the sociology of religion. The fact that the Finnish provision on BOSR is, indeed, quite new (it was renewed in 1998), is likely to be the central reason for it being applied relatively often, unlike in most countries that have a comparable law.

Unlike in Eastern or Southern Europe, where the blasphemy or religious insult law functions effectively to protect the dominant national church (see Cianitto 2017; Gianfreda 2011; Fokas 2017; Kulesza and Kulesza 2017), Islam is featured most prominently in the Finnish cases. There are, however, also examples of recent cases concerning Islam from Germany (Cornils 2017). Articles III and IV link this Finnish emphasis on Islam with the public religion discourse, the visibility of religions, legal reasons, and local developments in immigration. In brief, the legal renewal of the Finnish BOSR[19] section occurred at a time when Muslim immigration was a major emerging topic in public discussion. Also, the twenty-first century saw a notable growth in the

[19] An abbreviation used in this study for the name of the Finnish religious insult section, breach of the sanctity of religion.

public visibility of Islam, partly in the form of the *Jyllands-Posten* cartoon controversy in 2005 and 2006. Article IV also shows how BOSR is often evoked as a secondary crime alongside the more serious one of ethnic agitation.[20] Since the provision on ethnic agitation, stemming from the International Convention on the Elimination of All Forms of Racial Discrimination (1965), is oriented towards protecting minorities in particular, this too partly explains the Finnish emphasis on Islam.

Recently, blasphemy or religious insult law has been abolished in Denmark (2017), Norway (2015), the Netherlands (2014), Iceland (2015), and England and Wales (2008). Ireland held a referendum in 2018, concluding that the constitutional blasphemy ban should be removed. However, the situation is very different in Finland. After its renewal in 1998, the law on religious insult has remained untouched, and attempts to remove it since have been marginal and unsuccessful. Most Finnish law originates from Government proposals, and no Government has displayed any interests in modifying the law since. In 2013, Jussi Halla-aho made an unsuccessful motion calling for the abolition of blasphemy and religious insult (see LA 39/2013). In early 2015, there was also a citizens' initiative[21] by Oula-Antti Lintula (OM 3/52/2015), seeking the required 50,000 signatories demanding the removal of the section, but it managed to gather a mere 3,000 supporters. There has been quite intense discussion around the issue as related, highly publicized events have occurred (the *Jyllands-Posten* cartoon controversy, the *Charlie Hebdo* attack, and even the court process of Jussi Halla-aho), but none of them have led to legal changes. It is likely that this pattern will continue in the near future, as there are no signs of religious insult or blasphemy becoming a theme in the policies of the leading parties.

4.2 The sacred as judicial protection of the society: domains, practices, distinctions

As described in the methodology chapter, the articles use the term "sacred" in two ways; they investigate the sacred, firstly as an item of discourse, and secondly, also

[20] Ethnic agitation is defined in Chapter 11, section 10 of the Criminal Code as follows: "A person who makes available to the public or otherwise spreads among the public or keeps available for the public information, an expression of opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis, shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years."

[21] A citizens' initiative is a new way of delivering legislative drafts to Parliament. Introduced in 2012, 50,000 supporters of voting age within 6 months are required in order for the draft to move forward. The Ministry of Justice maintains an electronic platform for setting up the initiatives and collecting signatures. So far, two citizen's initiatives have led to legal changes, those concerning the legalization of gay marriage and changes to the Maternity Act.

utilize the sacred as an analytical term. To start with the first meaning, the term "sacred" is used in the BOSR section itself, and its meaning is described in the legal literature. It is observed that the category of sacred in the Finnish legal understanding shares some features of the social scientific analytical concept formulated in the Durkheimian tradition more than it does those of the phenomenological and theological traditions. As pointed out in Articles I and III, the Government's bill (HE 6/1997),[22] from which the current BOSR law originates, and which is often used as a legal source by the officials, describes the sacred as "not very precise", but as "something the members of a religious community greatly respect". Thus, the "sacred is defined by the prevalent views in the religious communities, not by the views of the outsiders". This is reminiscent of Durkheim's (1964/1912) emphasis on the community; how the community alone defines what is sacred to it, and how the sacred is particularly something respected and protected by prohibitions. In contrast, the experiential or universal characteristics of the sacred – features associated with the phenomenological tradition regarding the sacred (see Fitzgerald 2000, 18–19; Murphy 2010) – are not present. This is not an argument regarding the origins of the Finnish legal understanding of the sacred, however. Rather, it serves as an illustrative comparison for scholars of religions, sociologists, and the like.

In the legal practice, the sacred refers, as one might expect, to well-known sacred things of established religions. For example, as discussed in Article III, the Supreme Court (KKO 2012: 58) assessed what Islam holds sacred in Jussi Halla-aho's case in the following manner:

> 21. The Supreme Court holds that the claims in question, according to which the prophet Muhammad is a paedophile, that Islam is a religion that sanctifies paedophilia, and that paedophilia is the will of Allah, are defaming and desecrating in content and especially in style. The offensive nature of these utterances is obvious even to those, who themselves do not consider the aforementioned things to be sacred. The claims were not, thus, only about criticizing religion and the related phenomena using acerbic, hurtful or provocative expressions, but they were a defaming attack on Islam and what Islam considers to be sacred that Muslims can rightly interpret as an unjustified and insulting attack. The insulting nature of the claims in question (…) is not

[22] The original Finnish passage from the Government's bill (HE 6/1997): "Käsite 'pyhä' ei ole kovin tarkka. Se ilmaisee kuitenkin jotakin sellaista, jota kohtaan uskonnollisen yhteisön jäsenet tuntevat suurta kunnioitusta. Käsitteen 'pyhyys' voitaneen katsoa saaneen käytännössä riittävän vakiintuneen merkityksen. Toisaalta 'pyhyyden' sisältö vaihtelee eri uskonnollisissa yhteisöissä. Sanontaa 'mitä uskonnonvapauslaissa tarkoitettu kirkko tai uskonnollinen yhdyskunta pitää pyhänä' on käytetty sen osoittamiseksi, että 'pyhyys' määräytyy uskonnollisissa yhteisöissä vallitsevien käsitysten eikä ulkopuolisten käsitysten mukaan."

> mitigated by the fact that the defendant's text attempted to support the claims by referring to the life of Muhammad as told in the Quran.

Notably, the Supreme Court states that the sacred nature of the said figures (Muhammad and Allah) is "obvious" even to outsiders – a reference to Government bill (HE 6/1997) which characterized the sacred in a similar manner, as noted above. Simultaneously, the court relies on the lay discourses on religion and the sacred in that it assumes what is generally known about Islam and the things it holds sacred. Article IV points out that the sacred mostly gains its meaning in a similar way. Whether the case concerned Islam, Christianity or Judaism – and all the cases studied were connected to one of these three – the religious sacred things the officials ended up protecting were generally well-known. In a few cases, the officials utilized academic experts to confirm what is held sacred in religion x, but mostly they assessed this by themselves.

The emic category of sacred is the key category by which BOSR as a crime is distinguished from other crimes involving the category of religion in Finnish legal practice. This is particularly important in cases where the section on ethnic agitation is used alongside that on BOSR. Article IV found that these sections co-occur frequently, or more precisely, the ethnic agitation section – one considered more serious, less controversial and better supported by international law than that on BOSR – is often the main crime the officials are concerned with, and where there is a possibility to apply BOSR as well, it might be used. The ethnic agitation section also mentions the concept of religion, although it is left undefined, unlike in the BOSR section which refers to the definition in the Freedom of Religion Act. In contrast, the concept of sacred is unique to the provision on BOSR in criminal law. As described above, the section on BOSR is applied in cases where a well-known sacred thing of an established religious group is attacked. As highlighted by Article IV, due to contextual factors, the perpetrators of religious insult crimes often end up employing hostile discourses associated with "race" and "ethnicity" as well, thus often leading to an ethnic agitation charge.

However, if one utilizes the sacred as an analytical category in assessing the legal practice, other things emerge as sacred as well. For example, in the case of Jussi Halla-aho, as explored in Article III, the Supreme Court's main argument did not, in fact, refer to the Islamic discourse, but instead built primarily on the human rights discourse, preservation of public order and societal peace, equality, tolerance and normative pluralism. In the court's language, these emerge as the core values of a Western society that are sacred enough that the restriction of free political speech – a sacred value in its own right – is in order. In other words, as the court protects the things sacred to Islam, it simultaneously aims to protect Finnish society itself; a society that wishes to uphold certain norms regarding public behaviour.

Meanwhile, Article I pointed out that the sacredness of Christian God was important in the political discussion in the late 1990s, from which the current formulation of BOSR originates. Most of the parliamentary debate centred around the term "God" in the letter of the law. Those arguing for its inclusion often described God as a central and sacred symbol for the Finns, while those favouring its exclusion might state that leaving God out of mundane political and legal matters precisely constituted a proper sense of respect. In this early context from the l990s, the Christian God and concerns over the supposedly Christian or secular Finnish nation trumped, for example, multiculturalist viewpoints.

Borrowing the analytical term from William E. Paden (1999, 2000), Article I identified two *sacred orders* from the political discussion on the current law on BOSR, revolving around the inclusion of the term "God", and ultimately relating to the societal purpose of the law. These two sacred orders represent two different views on the proper organization of society, as it relates to religion. The first one was termed "secular sacred order", which is mainly about religious plurality, secular progress, the principles of public order, and freedom of religion. Proponents of this order, found in the left-wing and Green parties, argued for the exclusion of the term "God" from the letter of the law, and aimed to pass the bill without relying too much on Christian terminology or authority. In this view, society has more religions than one, and must therefore seek to establish public order via general notions, such as freedom of religion. On the other hand, secular progress naturally takes place, and thus, too great an emphasis cannot be placed on a traditional Lutheran perspective.

The second example was described as "Christian sacred order", concerned with the defence of Finnish national and cultural identity, entangled with national Lutheranism, and highlights the importance of the Christian God in the letter of the law. This view was advanced by certain parts of the Center and right-wing parties and the Christian party. For them, Finland was a community of Christians and a Christian nation; it therefore had to preserve the sanctity of God by, for example, effectively maintaining the criminalization of blasphemy by retaining the word "God" in the text of the law. They utilized Biblical discourse extensively, by, for example, talking about the threat of divine retribution. They also constructed the history of Finland as a mythical past, where Finnishness and its core morality were enmeshed with Christianity, and referred to the way in which some of the historical key figures (such as the veterans of World War II) were relying on God.

In the parliamentary discussion and voting, from which the current law on BOSR originates, the proponents of the Christian sacred order won, in the sense that they managed to include the term "God" in the letter of the law against the initial proposal by the Government. However, as identified by Article III, the aspects highlighted by the secular sacred order dominated the actual legal practice in following years. The blasphemy aspect of the BOSR provision is practically never used, and convictions

concerning the Lutheran church are rare. Rather, the provision on BOSR is often used in conjunction with the provision on ethnic agitation, which was specifically implemented in order to protect Finland's minorities. Thus, the provision on BOSR became more about protecting the minority religions – mainly Islam – now present in a religiously plural society.

Article III draws attention to the legal practice, where the secular sacred order is in play. In such instances, the human rights discourse functions as the source of sacred values, and the protection of religion is connected to ideals such as freedom of religion and public order. The secular sacred order thus does not exclude a practice where the authorities intervene in actions deemed to be offending to someone's religion. Furthermore, this practice is connected to a broader interest of preserving the societal order. Jussi Halla-aho's case serves as an example of practice that aims to protect the sacred order that, unlike in the past, is no longer anchored on majority Christianity. Where pre-modern blasphemy trials served to preserve the predominantly Christian society and the rightful honour of the monarch (Olli 2008), contemporary Finnish practice serves a "secular" society, where different things are set apart as sacred, such as minority rights and human rights in general. The secular sacred order is threatened by overemphasis on one particular religion that disregards the norms of religious plurality and secular progress. It was also threatened by Jussi Halla-aho himself, who proposed lessening the role of human rights and the predominant multiculturalist politics by questioning the authorities who defended these.

4.3 The category of religion in official use: interests and tensions

As visible in the letter of the law, the BOSR provision relies officially on two formal categories of religion: *church* and *registered religious community.* The church refers to the Evangelical Lutheran Church of Finland and to the Finnish Orthodox Church, both of which are special cases for historical reasons, illustrated by their special legal and societal position (especially in the case of the Lutheran church). For example, both have their own law,[23] both have taxation rights, and the Lutheran church is mentioned in the Constitution of Finland (section 76). The Lutheran church often identifies as and is described in public as the "folk church of Finland", and currently about 69% of Finns are members. The term "registered religious community", in turn, is a more recent legal personality tailored to other groups perceived as religious. The BOSR provision refers to the Freedom of Religion Act, according to which "the purpose of a religious community is to organize and support the individual,

[23] Kirkkolaki (26.11.1993/1054), Laki ortodoksisesta kirkosta (10.11.2006/985).

community and public activity relating to the professing and practising of religion which is based on confession of faith, scriptures regarded as holy or other specified, established grounds of activity regarded as sacred." A group of twenty adults can apply to be a registered religious community. The registration process is handled by the Finnish Patent and Registration Office, which is advised by a group of religion experts (see Kääriäinen 2011, 158). In January 2018 there were 129 registered religious communities.[24]

Formally, then, the BOSR provision would not be applicable to groups which are not churches or registered religious groups, as described above. This does have significance in the actual legal practice as well. As explored in Article II, one community identifying as Islamic, but which had not yet applied for registered status, had animal blood splattered on the space they used as a mosque. The perpetrators were initially charged with criminal damage and breach of the sanctity of religion, and the district court did convict them of these crimes, stating that the purpose of the law on BOSR is to "protect the practice of religion" and that the unregistered status of the community in question was irrelevant. However, the Court of Appeal later overruled the BOSR verdict precisely on the grounds that the community in question was not a registered religious community. The case, referred to in this dissertation as "the mosque case", demonstrates how the formal category of religion is meaningful in the criminal court. However, the earlier stages of the legal process (police investigation, prosecution and the district court phase) also point out how the position of Islam in the prevalent Finnish religion discourse – as a highly visible "world religion" and thus self-evidently "religious" – also influences the work of the officials. There is, then, potentially a tension between these two categories of religion, one located in the lay discourse and the other in the institutionalized official discourse.

The mosque case, examined in Article II, also draws attention to the link between the Finnish governance of religion and practice regarding BOSR. Tuomas Martikainen (2013) has previously noted the importance of registered associations in the management of diversity in Finland. An association – generally relating to a popular pastime and a form of citizen organization in Finland – enables the minorities to participate in civil society, gain particular privileges (such legal personality as a group, and in the case of a religious association, more specific rights), and a degree of social standing. Associations are socially accepted and a relatively easy way to organize and to participate in public discussion. On the other hand, associations provide an avenue for the state to monitor civil society and minorities. As associations are registered, the applications are processed by officials,

[24] http://yhdistysrekisteri.prh.fi (accessed 1. January 2018).

and in the case of religious communities, also reviewed by a special expert committee. The law on BOSR connects to these themes in the sense that, in practice, it encourages registration; formally, the law is applicable only to registered religious communities. The mosque case demonstrates that this detail can also affect the outcome of the actual legal process.

This tension is re-assessed in Article IV, where it is concluded that the official language shows a firm reliance on the lay discourse on religion, in addition to the institutional discourse. "Religions" comes to be understood along the lines of a Finnish popular understanding of religion, moulded by the Lutheran form of religion and the media discourse on religion as particular practices and dogma, holy books, sacred figures and buildings, and so on. (See Moberg et al. 2015, 59–62; Taira 2006, 102–103.) In most cases, then, the issue of whether or not the target of the insults at hand was a registered religious community is not particularly important. One practical reason for this is that most of the prosecuted insults do not target a particular, real-life community, but e.g. "Islam" in a general sense. Therefore, it would be difficult for the officials to pinpoint the concrete victim. Furthermore, since the cases have concerned either Islam, Christianity or Judaism – major "world religions", often considered self-evidently to be religions in Finland – the question of whether or not the insults target "a religious community" does not really come up in the official considerations very often. In this sense, there is a discontinuity between the letter of the law and the legal practice; while the provision on BOSR emphasises the requirement of registered status, in practice, this is rarely a crucial factor in the legal proceedings – with the mosque case being a significant exception.

A Christian, or more specifically Nordic Lutheran prototype (see Moberg et al. 2015, 59–62; Saler 2000; Smith 2004, 375–390) for the category of religion features prominently in the letter of the law itself, as well as in the preceding political discussion, as pointed out by Article I. To start with, the BOSR section, in its final form, contains the word "God" (Finnish: *Jumala*) with an upper-case J, which customarily refers to the Christian deity in the Finnish language. Furthermore, the part of the section that describes the religious ritual in the context of disturbing it – "who (…) disturbs worship, ecclesiastical proceedings, or other similar religious proceedings or a funeral (…)"[25] – relies on concepts originating from Christianity ("worship", "ecclesiastical"). This is underlined by the phrase "or similar religious proceedings", guiding the reader to compare events with these prototypical Christian rituals. Finally, the name of the section itself, "breach of the sanctity of religion", or *uskonrauhan rikkominen* in the original Finnish (literally translated "breach of the

[25] Original Finnish: "*Kuka (…) häiritsee jumalanpalvelusta, kirkollista toimitusta, muuta sellaista uskonnonharjoitusta taikka hautaustilaisuutta*".

peace concerning faith"), reveals its roots. A section aiming to protect religion, uses the word "faith" (Finnish: *usko*) to refer to religion, highlighting its Protestant context (see Smith 2004, 182).

As explored in Article I, the parliamentary discussion on the BOSR provision focused almost exclusively on Christianity and national Lutheranism in particular, with only a few references to minority religions such as the Orthodox Church or Islam. When the politicians discussed "God", they were referring to the god of the Lutheran church. Since the section in question did concern religious insult on a more general level, one can observe the influence of the Protestant prototype for religion in this instance as well.

The same observation regarding the prototypical nature of Christianity can also be made about the definition of a "religious community", as laid out by The Freedom of Religion Act. "Based on the confession of faith" is taken to be the first mode of religion in the Act, immediately revealing its Protestant (here, Nordic Lutheran) background by likening belief with religion (see Smith 2004, 182). The second option is a group wherein there are "scriptures regarded as holy or other specified, established grounds of activity regarded as sacred". The category of sacred is thus – here, too – in a crucial defining role; it functions as a way to expand the Christianity-specific class (one emphasizing faith) into other religions amid increasing diversity in society. It is up to the applying community to demonstrate via required documents that they correspond to the said criteria, and are, therefore, a religion along the lines of the Freedom of Religion Act. This reliance on the category of the sacred here presumably has much to do with its culturally strong religious connotation (see Anttonen 2000; Lynch 2012, 5).

4.4 Implications of the legal practices

It was argued that the category of religion, as applied in the examined legal practice, draws on lay discourse regarding religion, i.e. on the everyday ways of speaking about religion, circulated in Finnish society. Is it reasonable to ask who is left out? Which groups does the category of religion – as wielded by the officials – include, and which does it not? Previously, Teemu Taira (2010) has shown that features considered unconventional (specifically, those of a Wiccan group) can be a crucial disadvantage in an attempt to gain the status of a registered religious community. Owen and Taira (2015), Doe (2011, 112–113) and Hjelm et al. (2018) have made comparable observations. This study concurs. Both the lay discourse regarding religion and the official institutional discourse, found in the legal language examined here, emphasize the well-known "world religions". In practice, this means that lesser-known groups, perhaps with some unfamiliar features, are required to take a more proactive role if they desire legal outcomes in a situation where they feel they

are being targeted by religious insults, as argued by Article IV. The same article also points out, however, that BOSR is a relatively rare conviction while there is a great amount of potentially offensive material e.g. being circulated online, and thus the law is not that effective from the perspective of religious communities in general.

Hate crimes, as they are often called, are criminalized throughout Europe in some form or another, often following the formula set by the International Convention on the Elimination of All Forms of Racial Discrimination of the United Nations. For example, Finland signed the treaty and criminalized ethnic agitation (or incitement to hatred) in 1970, currently found in Chapter 11, section 10 of the Criminal Code. The treaty does reference religion. It states, firstly, that one of the purposes of the UN itself is to "promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion". In Article 5, the treaty states that the states should guarantee everyone the freedom of "thought, conscience and religion" regardless of their "race, colour, or national or ethnic origin". As visible in the former quoted passage, religion is seen as a comparable group criterion to race, sex or language. Finnish legal scholar Kimmo Nuotio (2009) and Anna Saarela (2011) have argued that the ethnic agitation section could be used to protect religious groups from hate speech as well, thus rendering the BOSR section unnecessary.

The fact that Finland does have religious insult and blasphemy in its law and it actively applies it grants the category of religion more legal space and makes it, in a sense, a bigger issue. In addition to protection granted by the ethnic agitation section, religious emotions are granted additional protection. Furthermore, due to the special role granted to religion by officials, and due to the fact that most of these cases have been about Islam, this legal practice strengthens the position of religion discourse where Muslims (and people assumed to be Muslims) are concerned. That is to say, Muslims are *religionized,* often perceived and talked about in terms of religion, instead of anything else. According to Tuomas Martikainen (2008, 66–68), from the early 1980s onwards questions connected to Islamic nations and Muslim immigrants were increasingly especially addressed in terms of religion, but also in terms of culture, race or ethnicity instead of e.g. the economic factors that were popular at earlier dates. This is visible in the Finnish legal practice concerning hate crime, particularly in the form of BOSR.

As discussed in Article III, the social scientific definition of the sacred, alongside some of the conventions of the Finnish legal system, leads to a situation where the prevalent societal perceptions regarding the sacred things of various religious groups are likely to influence the legal reasoning. The Government bill (HE 6/1997) states that the sacred is defined by the religious communities, but admits that the meaning of the sacred is not very precise. However, the bill continues by stating that the "meaning of the sacred can be said to have an established meaning". Through that

"established meaning", the lay discourse on religion and the sacred enters the legal language. And, as pointed out by Article IV, the Finnish legal practice surrounding BOSR revolves around the three "world religions" which are best known in Finland: Christianity and Islam, and to a lesser extent, Judaism. The "established meaning" of the sacred, then, relates to what is generally thought to be sacred in Christianity, Islam and Judaism according to the Finnish lay discourse. The things that religious groups hold sacred, protected via the provision on BOSR in cases with a guilty verdict, as investigated by Article IV, are all very well known to the general public: holy books, such as the Quran or the Talmud, central figures, such as the prophet Muhammad or God, or religious buildings.

Since religious insult is a crime in Finland, it also becomes politically more useful to engage in it, as explored in Article III. Legal scholar Heli Askola (2014, 61) argues that the legal process aided the aforementioned Jussi Halla-aho's political career via bullhorn and martyr effects. Such hate speech cases also often place the defendant in a win–win situation. If they are found guilty, they can claim the cause of the freedom of speech and martyrdom (and pay a small fine). If the defendant is acquitted, the actions in question receive, in a sense, an official validation. Article III argued that in a context where populist politicians attack the predominant order for being e.g. too multiculturalist or accuse them of pandering to immigrants, and Muslims in particular, the BOSR provision itself makes religious insult a practical political tool. Here, visible attacks on Islam enable simultaneous criticism of the officials, and, for example, a populist juxtaposition of "us" versus "them" (such as white Christian Finns versus non-White Muslim immigrants) and of "the people" versus "the elites" (white citizens versus officials who allegedly pander to immigrants).

Since most of the BOSR convictions investigated were connected to Islam – and that this is true of all of the cases that gained widespread media publicity– the results of the legal practice itself also become politically useful. This fits well with the political narrative circulated by Jussi Halla-aho and other similar figures that the officials pander to Muslims and protect them from insults, while Christianity, "our" religion, is up for grabs. At the same time, it also has the potential to amplify the discourse of emotionality, quite popular in the contemporary Finnish media, which conveys an image of Muslims as easily angered and prone to violence (Taira 2015, 161–183). Most Finns are not aware that whether or not someone is actually offended is irrelevant to the legal understanding of BOSR, and probably link religious insult convictions with real-life emotional reactions. In this way the convictions may help to strengthen the image that Muslims are particularly incapable of tolerating insults.

The Finnish provision on BOSR is often criticized in public debate as being an unnecessary and old-fashioned restriction of freedom of speech. Indeed, the section is, by definition, a restriction of a basic right to freedom of expression. While the

section is not applied very often, this restriction of a central right is nonetheless one of its concrete impacts. However, it is difficult to reliably assess its actual effectiveness in preventing crimes, or its deterrent effect. Certainly, material that can be assumed to be potentially religiously offensive is constantly being circulated online, but only some of its distributors are prosecuted. Furthermore, the punishments are minor; usually small fines and a requirement to remove the material found to be criminal. However, the latter requirement is practically impossible to enforce in the era of the internet, as, for example, the supporters of the defendant can maintain the material online fairly easily – as occurred in the Jussi Halla-aho case.

4.5 Methodological remarks on the sacred and the discursive study of religion

The present work suggests a perspective on the sacred that combines constructionism with the Durkheimian tradition. It builds on the classical approaches of Durkheim (1964/1912) that the things that are found to be sacred are defined by the communities themselves, that they constitute their social world, and that they are characterized by being set apart as special and of core importance by the community (see Anttonen 1996; 2000; Knott 2005, 2016; Lynch 2012). In turn, the constructionist perspective (see Burr 2003; Hjelm 2014c) allows one to examine, of course, how the sacred is protected and maintained, but also how it is challenged or transformed. In this view, the sacred is not a static or stable category in culture, but comparable to other constructed categories, such as religion, gender, race or nationality. However, from the perspective of the theoretical tradition influenced by Durkheim, the sacred emerges as a *special construction*, or more specifically, something that is constructed as special.

Such a view has similarities with the perspective of the social theorist Jeffrey C. Alexander (2003), who has famously argued for the "strong programme" in cultural sociology, referring to an emphasis on culture as an autonomous strand that runs through all social life, granting meanings to the social structures. His view on the Durkheimian sacred makes use of Ferdinand de Saussure's (1983/1916) semiotics, as well as the concepts of performance theory, drawing on several authors. The latter aspect is part of his development of a model regarding social action as cultural performance (Alexander 1998; 2003; 2004; 2006). Alexander describes sacred things as constructed and arbitrary, similarly to the way in which Saussure understood the relationship between the sign and the world it refers to. This signifying process is influenced by power relationships, identities, and the distribution of resources. Sacred things are historically contingent, and only become such through particular trajectories (Alexander 2003; 1998). On the other hand, sacred symbols are brought to the fore as they are evoked in a particular

dramaturgical way, following cultural scripts and involving various kinds of stakeholders and spatiotemporal contexts. Those who control symbolic production and distribution (such as in the mass media or physical spaces) are in a position to affect these sacred dramas. According to Alexander, contemporary symbolic performances are different from pre-modern rituals, because late modernity is characterized by a higher degree of reflexivity of the social actors themselves, as well as the effects of social differentiation, rendering the possibility of a performance influencing and engaging the entire community in a desired manner much smaller (Alexander 2004; 2006). (See Lynch 2012, 40–46; Giesen 2006.)

This constructionist view on the sacred and the social world it is constituting also has a resemblance to the post-Durkheimian and anti-functionalist perspective, as described by media theorist Nick Couldry (2003). He emphasizes the contingent nature of the social order, viewing it as prone to change. Couldry argues that in the traditional Durkheimian view, found in the original work as well as among some of the work building upon it (what he dubs neo-Durkheimian), the social order is taken for granted; it is viewed as an inevitable, normative order (see Kyyrö 2019). Couldry (2003, 7) writes: "What is distinctive about the use of Durkheim I propose (we can call it 'post-Durkheimian') is its emphasis on the process of social *construction* that underlies the *apparent* fit modern societies of Durkheimian or neo-Durkheimian analyses of ritual and what we will bring under the term 'media ritual'" (italics in the original). In sum, Couldry argues that the notion of a unified community with a particular symbolic core is a social construction, maintained by the media rituals. In contrast, according to him, Durkheim and the neo-Durkheimians take the coherent social order more or less for granted.

The constructionist view draws attention to the sacred-making activity. Article I uses the location of the World Trade Center as an example of a sacred site, which only became sacred after the events of the 9/11 attacks, and how the discussion around Park 51 (or the "Ground Zero Mosque") – a planned interfaith and Islamic community centre in Lower Manhattan – affected the meanings constituting its sacred nature (see Alexander 2003, 101–102). Similarly, the sacredness of the prophet Muhammad, a figure repeatedly referred to in this work, is constructed further and refined, as insults are circulated in the contemporary Western world, and as the controversies follow. For example, while the prohibition against drawing the prophet is very old theology derived from the Hadith, an explicit notion according to which one should not create electronic caricatures or photoshopped images featuring this sacred person are obviously present day. Expressed in general terms, the potential and actual threats are a part of what constitutes the sacredness of a given thing. Thus, the sacredness is not explained merely via, for example, theology or cultural tradition, but also by the nature of its potential or actualized violations in the present.

The constructionist perspective can also avoid the either–or view regarding sacredness and instead, note how there can be various degrees of sacredness in different contexts. The traditional sacred–profane dichotomy leaves little space for such a notion; things are either sacred, i.e. special and set apart, or profane, i.e. mundane and ordinary. However, examination of different contexts where the sacred things or values are employed creates a need for a more dynamic view. In simple terms, sacred things can be viewed as being more or less sacred in different contexts. For example, Article I discussed how the Christian God emerged as sacred for both sides of the examined political debate, but one side viewed God's sacredness as clearly more important than the other. Similarly, for the average member of the Finnish Lutheran church, the sacredness of the Bible or words spoken at the ecclesiastical service can be viewed as very sacred during special occasions, such as funerals, but simultaneously hold a very minor significance in everyday life. Pointing in a parallel direction, Ann Taves (2009) has previously argued how there can be a continuum in how *special* (a term she prefers over sacred, although it has a comparable meaning to sacred in her work) things are in different contexts, while Gordon Lynch (2012) has talked of hierarchies between different *sacred forms*, where some sacred forms are dominant, and others subjugated.

Durkheim's writings predate, for example, the linguistic turn's expansion into social sciences during the twentieth century, and more recent considerations on multiculturalism and diversity in other areas. In an attempt to fill the multiculturalist gap regarding the Durkheimian concept of the sacred, this study used the concept of *minority sacred* to refer to the "sacred of the other", to the things considered sacred by non-majority groups of society (see Article III). The concept was introduced to draw attention to power and visibility differences between groups that hold things sacred. That is to say, it adds the focus on conflict. From the perspective of the minority itself, the Durkheim-based concept of the sacred works in its previously described configuration. However, in a bigger picture, the minority sacred requires further elaboration.

The non-members of a particular minority community are, in fact, often competent to decode and recognize the sacred of the other, since the underlying logic of setting apart (e.g. in the case of burial grounds, central holidays and mythical figures) is often similar enough (Anttonen 2000, 271–272). However, the visibility of the particular things considered sacred by certain communities, is important. Simply, if a sacred thing is well known, it is more likely to have a broader social impact. The minority sacred, or the sacred of the other, does have the potential to affect the behaviour of the non-members as well. However, the things considered sacred by minorities are not considered to be constitutive societal things by non-members, i.e. sacred in the sense that that they are at the heart of societal identity and reality.

Exemplifying the importance of visibility, it is difficult to image a crisis like the *Jyllands-Posten* caricature controversy without the preceding fame of the sacred prophet laying the groundwork for the crisis. The publication of the *Jyllands-Posten* article was preceded by a media story in 2005 regarding the Danish writer Kåre Bluitgen, who failed to find an illustrator for her children's book about the life of the Quranic prophet, as well as the murder of the Dutch film director Theo van Gogh in 2004. On a broader level, the controversy over Salman Rushdie and the *Satanic Verses* (1988) and the 9/11 attacks had brought forth the now-common juxtapositioning of Islam and secular Western society. The original *Jyllands-Posten* story, which featured the infamous caricatures, argued that some Muslims reject modern secular society and demand the special treatment of their sacred figures, and that the self-censorship caused by this jeopardizes the Western ideal of freedom of speech. While the controversy is correctly analysed as a case where the notion according to which Islam is incompatible with secular society is being mobilized (Rothstein 2007), as well as a case containing certain racist undertones (Keane 2008), it is also crucial that the character of the prophet, and importantly, as a very sacred figure, was widely known at the time.

It is, however, much more difficult to envision a similar crisis occurring with the defamation of, for example, a site held sacred by a neo-pagan group. Again, this is partly because neo-pagans are not, unlike Muslims at present, perceived as the big other threatening the secular and liberal or Christian order – at least not to a similar degree. However, the low visibility of pagans in general, and the consequent sheer lack of knowledge among the masses regarding what they consider sacred are also important.

Moving on to the *discursive study of religion*, as described in section 3.2., there are multiple ways to characterize the field. In the present work, this term is not simply used to refer to any study concerning religion and utilizing discourse theory. Rather, it is used primarily to denote a specific development in the field of the study of religion, informed by the discursive perspective that pays particular attention to the category of religion. Such studies have often aimed to historize the concept of religion, showing its biased background and underlying power structures (Huss 2015). The founding works of this *critical religion* perspective (see e.g. Horii 2018) have mostly been historical studies (Smith 1982; Asad 1993; 2003; Chidester 1996; Fitzgerald 2000, 2007; Masuzawa 2005), arguing that the background of the category of religion, as it is known today, lies in Western modernity, and that it is thoroughly entangled with colonist and nationalistic interests. Others have focused on the scholars themselves who formulated the concept during the nineteenth or twentieth centuries, of course often linked with such colonialism and nation formation, or theological interests (McCutcheon 1997; Dubuisson 2003). Since then, a comparable scholarly perspective has been expanded elsewhere, moving forward from the

historical to the contemporary, and from academia to elsewhere in society. Similarly oriented research has concerned, for example, the officials (Taira 2010; Owen and Taira 2015; Hjelm et al. 2018; Mäkelä 2018). The present work resembles these studies in particular: it examines how the Finnish legal officials and politicians have constructed the categories of religion and the sacred.

Jonathan Z. Smith famously addressed the category of religion in legal material in his lecture titled "God Bless This Honourable Court: Religion and Civic Discourse", originally delivered in 2003 at the University of California. The printed version of the lecture has been highly instructive to the present study. He argued (2004, 376) that the Internal Revenue Service (IRS) is "both de facto and de jure, America's primary definer of religion." Smith found the definitions of religious organizations circular, which suggests that in practice, the IRS will be reluctant to adjudicate the claims of established religious organizations. The construction of religion in the context of taxation displays the role of the self-evident religion, derived from "lay understanding of varied forms of Christianities to serve what cognitive scientists term a 'protype'" (Smith 2004, 377). He also offers further examples of classification by prototype from the Supreme Court, and notes (2004, 385), for example, that, "[i]n courts' reasoning, religion would be present only if the exhibit consisted entirely of sacred symbols" – an observation, which connects well with the findings of this study.

Following Smith's example and the observations made in this work, it can be suggested that legal materials are highly relevant for the discursive study of religion, as they typically hold so much of the defining power. Furthermore, sensitivity to the relationship between formal language and everyday notions, exemplified also by Smith, proves to be a fruitful one, and thus, it is recommended to compare institutional discourses with otherwise widespread discourses. However, Smith relies upon the shared understanding between him and his audience and does not specify how he knows what is held to be self-evident; the lay religion discourse. The present study aimed to tackle this challenge by drawing primarily upon media studies, as the mass media is undoubtedly one of the key sites in which the lay discourse surrounding religion is moulded. Other potential sources include primary education materials, which will hopefully be investigated within the discursive study of religion in the future.

Moving forward, Article IV addresses the category of religion in conjunction with the categories of ethnicity and race, attempting to draw more scholarly attention to the intertwinement of these categories. As argued by Malory Nye (2018), race and religion are key components by which differences are organized in a contemporary Western society. Thomas Lynch (2017, 289) posits that "[m]en are to gender what whites are to race what Christianity is to religion. Gender indexes the superiority of men, race indexes the superiority of whiteness, and religion indexes the superiority

of Christianity." That is to say, the predominant uses of the terms religion and race both depend on their historically formed prototypes, Christianity and whiteness, respectively. Theodore Vial (2016) has claimed, in turn, that the category of religion is always a racialized one, even in instances where no explicit references to race are made. This is because they share a mutual genealogy: Western modernity. Although Vial's argument could be criticized as one conflating origins with contemporary uses (history as a racialized category does not necessarily mean that the category is destined to remain as such forever), the present study nonetheless offers contemporary empirical examples where the category of religion certainly is racialized. That is to say, while talking about religion, claims about ethnicity or race are effectively made as well, and vice versa.

A constructionist standpoint on race is certainly not a new idea but a very widespread one (see e.g. Nayak 2006). However, from the perspective of the discursive study of religion, more could likely be gained by investigating the interactions of the categories of religion, ethnicity and race. As mentioned, scholars of sociology and gender studies have already scrutinized the relations of these categories (in the Finnish context, see e.g. Seikkula 2015, 22; Keskinen 2014; Toivanen 2014: 193–195). Discursive study of religion could bring the rich body of scholarly work already done on the Western category of religion into this discussion. State officials and politicians are a good choice for further studies, since they wield substantial societal power and manage society via these categories, at least to some degree, in all modern states.

Despite their partially shared historical roots and their being intertwined in the contemporary discourse, Western religion discourse and race discourse also have their distinguishing features. The following generalizations can be proposed. While both of them are categories used in the organization of society, religion is often thought of as both a sphere in society (separate from e.g. politics, law and science) and a feature by which people can be categorized, whereas race discourse is typically only concerned with the latter. The private–public dichotomy is often thought to be crucial when talking about religion, but not so much when discussing race. If one is concerned with public religion in some manner, the division between the religious and the secular is probably a distinction one needs to address in many instances, while in contrast, the religion–secular dichotomy has no analogous pair in the race discourse. Religion discourse typically emphasizes both the *forum internum* and the *forum externum,* i.e. internally held beliefs and outward expressions of religiosity through practices and bodily signs, whereas race is primarily associated with bodily features such as skin complexion and sometimes with things like customs, and to a lesser degree with the contents of one's mind – although, the connections made between the race and religion discourses make this division more complicated. Relatedly, freedom of religion is one of the central principles of the modern

discourse on human rights, whereas "freedom of race" is not, the underlying logic being that one can apparently choose what one believes in and practices, while one is somehow born with a particular race.

Concerning their commonalities, in the prevalent discourses both religion and race are often considered to be potential components of identity, be it a communal or individual one. As already touched upon, they are particularly important in the vocabulary of differences. For example, the International Convention on the Elimination of All Forms of Racial Discrimination (1965) states that the purpose of the UN is to "promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion", as previously mentioned. These notions regarding identity and difference are one of the key points where the entanglements of race and religion occur. People are thought to have a both religion and race, and certain things are thus implied. Article IV presents examples from the Finnish contexts.

4.6 Limitation of this study and avenues for future research

Despite the initial insistence that the study is non-normative in orientation, this study does clearly have some borderline normative elements. For example, Article IV argues that the legal practice favours well-known and established groups identified as "religious", and that the Finnish BOSR convictions are not consistent. These empirical observations contain an implication that there is something problematic about them; balance between rights is better than imbalance (as the latter is inequality), and consistent application of law is better than inconsistent application (since the legal institution is supposed to be fair and predictable according to the predominant ideals). One of the limitations of this work is that it does not investigate such points further. For example, what should be done instead of the current practices? Abolish or change the law on BOSR, abandon the category of religion in legal language, or something else?

Looking at the data of this study, there are some obvious gaps. For example, more could be learned by researching the Finnish Police more thoroughly, as well as by utilizing the materials from the various district prosecutors. Also, as the controversies over religious insults tend to be media heavy, future research would do well to utilize newspaper archives and other media data, not to mention social media materials, in assessing the phenomenon. Potential research questions include, but are not limited to, the following: what kind of attacks are picked up and investigated by the police? How do the district prosecutors approach the issue, and do they differ from the courts and the Prosecutor General in their understanding of

the sacred and the category of religion? How are the events portrayed by the news media? Who can benefit from social media?

Religious insult as a phenomenon goes, of course, beyond the state officials. The present study has offered a non-normative perspective on a theme that is predominantly researched via normative frameworks, but it has left the other dominant orientation – focus on the apparatuses of the state instead of citizens – intact. The other side of religious insult and blasphemy is the people who are attacked, or who feel that things they consider sacred are being defamed. Unlike in the past, where blasphemy meant an attack on official Christianity, the monarch and the church, religious insult today is often entangled with the majority vs. the minority power relationship and racism. There are many possible avenues for future research in this area, and this could utilize both interviews and pre-existing materials where these topics are addressed. What are the social effects in a minority community when its sacred symbols are attacked? Does a hostile environment affect the formation of identity or the construction of the sacred symbols? How is the category of religion fashioned on a micro level when a group attempts to benefit from legal devices pertaining to religious defamation?

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Appendices

Appendix 1. Full list of the analyzed material

Parliamentary documents

YEAR	NAME	DESCRIPTION
1997	HE 6/1997	Government bill regarding the renewal of legislation concerning crimes against judicature, officials, public order, and sex crimes.
1997	PeVL 23/1997	Constitutional Law Committee statement on Government bill 6/1997.
1997	LaVM 3/1998	Legal Affairs Committee report on Government bills 6 and 117/1997.
1998	SuVM 2/1998	Grand Committee report on Government bills 6 and 117/1997.
1997	Täysistunnon pöytäkirja	Plenary session transcript, 26 March 1997.
1998	Täysistunnon pöytäkirja	Plenary session transcript, 4 June 1998.
1998	Täysistunnon pöytäkirja	Plenary session transcript, 5 June 1998.
1998	Täysistunnon pöytäkirja	Plenary session transcript, 8 June 1998.
1998	Täysistunnon pöytäkirja	Plenary session transcript, 9 June 1998.
1998	Täysistunnon pöytäkirja	Plenary session transcript, 15 June 1998.

Pre-trial investigation report by the police

YEAR	ARCHIVING NUMBER	DESCRIPTION
2006	6200/R/4991/06	Pre-trial Investigation Report of the Kajaani Police Department, 4 October 2006.

Decisions of the Office of the Prosecutor General

YEAR	ARCHIVING NUMBER	CRIMES CONSIDERED
2003	R 02/3	BOSR, ethnic agitation
2005	R 05/8	BOSR, ethnic agitation
2005	3/27/05	BOSR, ethnic agitation
2005	R 05/14	BOSR, interference with communications
2006	R 06/11	BOSR
2007	R 07/2	BOSR, ethnic agitation
2008	R 08/10	BOSR, editorial misconduct
2009	R 09/4	BOSR, defamation
2007	R 07/11	BOSR, ethnic agitation, aggravated defamation
2009	R 09/8	BOSR, ethnic agitation
2016	R 16/700	BOSR, ethnic agitation

Court Rulings

YEARS	ARCHIVING NUMBERS AND COURTS INVOLVED	CRIMES CONSIDERED
2002	R 02/259 (The District Court of Turku)	BOSR
2003, 2006	R 03/1129 (The District Court of Vantaa); R 04/2483 (Helsinki Court of Appeals)	BOSR, ethnic agitation
2005	R 05/3096 (The District Court of Tampere)	BOSR, interference with communications
2006, 2008	R 06/926 (The District Court of Kajaani); R 07/200 (The Court of Appeals of Eastern Finland)	BOSR, criminal damage
2007	R 07/9732 (The District Court of Helsinki)	BOSR
2008, 2009	R 07/3284 (The District Court of Tampere); R 08/1921 (Turku Court of Appeals)	BOSR, ethnic agitation, aggravated defamation
2009, 2010, 2012	R 09/3080 (The District Court of Helsinki); R 09/2786 (Helsinki Court of Appeals); KKO 2012:58 (The Supreme Court)	BOSR, ethnic agitation
2014	R 13/6335 (The District Court of Pirkanmaa)	BOSR, ethnic agitation
2017	R 16/2412 (The District Court of Oulu)	BOSR, ethnic agitation
2017	R 16/1796 (The District Court of Satakunta)	BOSR, ethnic agitation, possession of a sexually offensive picture depicting a child, money collection offence.

Secondary legal material

YEAR	NAME	TYPE
2002	Majanen, Martti. 2002. RL 17: Rikokset yleistä järjestystä vastaan. In Olavi Heinonen (ed.): *Rikosoikeus*. Helsinki: WSOY Lakitieto, 671–704.	Scholarly book chapter
2008	Tulkki, Kaj-Erik. 2008. Uskonnonvapauden rikosoikeudellinen suoja. Oikeustieteellinen tiedekunta, Turun yliopisto.	Licentiate thesis
2009	Nuotio, Kimmo. 2009. Jumalanpilkasta viharikoksiin. *Haaste* 1/2009, 24–27.	Scholarly article
2009	Gozdecka, Dorota A. 2009. Religions and Legal Boundaries of Democracy in Europe. European Commitment to Democratic Principles. Helsinki: Helsinki University Press.	Doctoral dissertation
2010	Tulkki, Kaj-Erik: Uskonnonvapauden ja sananvapauden keskinäisestä suhteesta rikosoikeuden kannalta arvioiden. *Edilex* 28/2010, 1–9.	Scholarly article
2010	Rautiainen, Pauli. 2010. *Kuvataiteilijan oikeudellinen asema. Ammattimaista taiteellista toimintaa rajoittava ja edistävä oikeussääntely*. Tampere: Tampere University Press 2012.	Doctoral dissertation
2011	Saarela, Anna. 2011. Uskonnollisten loukkausten kriminalisointi erityisesti sananvapauden näkökulmasta. *Helsinki Law Review* 2011 (1), 37–64.	Scholarly article
2012	Tiilikka, Päivi. 2012. KKO 2012:58. In Pekka Timonen (ed.): *KKO:n ratkaisut kommentein* 2012:I. Helsinki: Talentum, 443–459.	Scholarly book chapter
2015	Henttonen, Sini; Tero Kivinen; Tapio Rasila; Johanna Sammalmaa; Jonna Vihavainen: Kommentaari. In Riku Neuvonen (ed.): *Vihapuhe Suomessa*. Helsinki: Edita, 15–135.	Scholarly book chapter

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