1. Snakepits & sandpits

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THE PATH NOT TAKEN

In the summer of 2018, while editing this collection and another edited book on *Leading Works in Law and Religion*,² I was flicking through a new book edited by Rosemary Auchmuty published in the Great Debates in Law series, entitled *Great Debates in Law and Gender*.³ That book is structured around legal subdisciplines, with each chapter ‘identifying gender issues in traditional legal subject areas’ such as property law, contract law, tort law and so on.⁴ The aim is that, having read the book, ‘all law students [would] emerge from university recognising the importance of gender in everything they study, seeing it not as an optional add-on for a few people interested “in that kind of thing” but integral to law-making and the legal process, as well as to their own lives’.

Auchmuty’s collection is an important and landmark publication. There is much more to be done in relation to emphasising gender in the law curriculum. However, it is telling that as gender is increasingly (and belatedly) being seen as important, it is not being set aside as a specialism (and as a result is marginalised as something done only by specialists). Gender is rather seen as a factor that interacts with all areas of law and which provides a critique, an alternative way of looking at law which changes the outlook not just on the specific matter being looked at, but generally. This reflects the work of Joanne Conaghan and, in particular, her brilliant monograph *Law and Gender*, in which she points out that gender is barely visible in conventional narratives and conceptualisations of law questioning the assumptions of the ‘official’ position that the idea of law and legal fundamentals are at least meant to be independent of gender.⁵

Conaghan’s critique could be applied in relation to religion. The official narrative of the law sees law as neutral and objective and independent of religion. Like gender inequalities, taints of religious privilege are presented as being in the past. However, to date, legal scholarship on religion has developed in a different way to legal scholarship on gender. A focus on religion in legal scholarship emerged later and has developed much more as what Auchmuty called ‘an optional add-on for a few people interested “in that kind of thing”’. ‘Law and religion’ has developed as a specialism. While early works on the subject tended to be shaped around particular legal issues (how religion interacts with employment and charity law, for instance),⁶

¹ I am grateful to Dr Sharon Thompson for her invaluable comments on an earlier draft of this chapter.

² R Sandberg (ed), *Leading Works in Law and Religion* (Routledge, 2019).

³ R Auchmuty (ed), *Great Debates in Law and Gender* (Palgrave, 2018).

⁴ R Auchmuty, ‘Introduction’ in R. Auchmuty (ed), *Great Debates in Law and Gender* (Palgrave, 2018) xi, xii.

⁵ J Conaghan, *Law and Gender* (Clarendon, 2013).

⁶ Epitomised by St John Robilliard, *Religion and the Law: Religious Liberty in Modern English Law* (Manchester University Press, 1984).

much work now focuses either on one area in particular (say, religious discrimination in isolation from other laws on discrimination or laws affecting religion)⁷ or develops an argument that ‘law and religion’ (or aspects of it) constitutes a distinct field of study, an emerging sub-discipline in its own right.⁸ There is no work that looks at religious issues in traditional legal subject areas such as property law, contract law or tort law either individually or in the way that Auchmuty’s collection does.⁹

Rather, a field of law and religion scholarship has developed, and ironically the very developments that have fostered and accelerated the field as a specialism (the number of specialist research groups, journals, conferences, book series and so on) have resulted in its marginalisation.¹⁰ Instead of dialogue with the legal mainstream, law and religion has developed at the margins of law schools and the focus has been mainly the pragmatic question of the extent to which, and how, religious difference should be accommodated by law. Questions discussed by Joanne Conaghan about the theoretical relationship between law and gender have not been asked in relation to law and religion. Questions such as how religion has operated as a historical trace and as an ideology, and how it is reflected in the law, have not been raised – at least not in the law and religion literature in England and Wales.¹¹

Renowned American scholar of law and religion John Witte Jr has described how ‘a new interdisciplinary movement has emerged in the United States dedicated to the study of the religious dimensions of law, the legal dimensions of religion and the interaction of legal and religious ideas and institutions, norms and practices’.¹² While it is true that a law and religion movement has also emerged in England and Wales (and indeed elsewhere), it does not reflect the US experience as described by Witte. On this side of the pond, the field has developed in law schools and has focused on the ‘legal dimensions on religion’; it has studied religion as law, how religious texts and practices can be understood legally. By contrast, little attention has been given to the ‘religious dimensions of law’ – studying law as religion, how laws and legal mechanisms can be understood religiously. Indeed, the main focus here has been upon a very narrow understanding of the ‘legal dimensions on religion’. Attention has tended to be afforded to understanding how national and international laws regulate religion (which I have

⁷ For example, L Vickers, *Religious Freedom, Religious Discrimination and the Workplace* (2nd ed, Hart Publishing, 2016).

⁸ See J Rivers, *The Law of Organized Religions* (Oxford University Press, 2010) and R Sandberg, *Law and Religion* (Cambridge University Press, 2011) for slightly different examples of this.

⁹ Though some publications in Cambridge University Press’ Law and Christianity series move in that direction – but then only in relation to Christianity.

¹⁰ See further R Sandberg, ‘Prologue’ in R Sandberg (ed), *Leading Works in Law and Religion* (Routledge, 2019) 1.

¹¹ There is also, of course, the need for these questions to be raised with regard to gender in the law and religion literature. As with more traditional fields, it is the experiences and perspectives of the architects of the field that influence whether gender is talked about. The criticism that the architects of traditional legal subjects have been men, with a ‘neutral’ point of view, and therefore gender is normally excluded from these areas can also be made of law and religion. See further Fallinger’s contribution to this volume and S Thompson and R Sandberg, ‘Multicultural Jurisdictions: The Need for a Feminist Approach to Law and Religion’ in R Sandberg (ed) *Leading Works in Law and Religion* (Routledge, 2019) 179.

¹² J Witte Jr, ‘The Study of Law and Religion in the United States: An Interim Report’ 14 (2012) *Ecclesiastical Law Journal* 327.

labelled as ‘Religion Law’)¹³ and the challenges that religious conviction (both individually and collectively held) poses for the State. There has been some growing focus upon how religious groups use law to regulate their own internal affairs (which I have referred to as ‘Religious Law’) but even there the focus has been very much upon debating the proper role of the State.

There seems to be a political and pragmatic reason for this focus. The rise in scholarly writing and teaching on religion in law schools in England and Wales has coincided with significant changes which have challenged conventional assumptions that predicted the social decline of religion. The development of law and religion as a field of study is largely a post-11 September phenomenon. As Julian Rivers has noted, there has been ‘a new loss of consensus about the role and significance of religion’.¹⁴ There are numerous causes of this.¹⁵ The notion of religion as a benign force has been challenged in an age where all authority is questioned, where populations are more diverse than ever before, where individuals’ identities are more multifaceted and where acts of terror in the name of religion dominate the news headlines. The conventional account has drawn a line of causation between these political and social developments and the rise of law and religion studies. It has been commonly assumed that law and religion blossomed as an area of study as its subject matter became more controversial. The early years of the twenty-first century saw a number of moral panics about the place of religion in the public sphere: media and political heat roasted such topics as religious dress and symbols,¹⁶ the operation of religious tribunals,¹⁷ and the clash of rights between religious freedom on the one hand and freedom of expression or homosexual rights on the other.¹⁸ These moral panics invariably had a legal dimension which resulted in legislation, case law, scholarly analysis and – hey presto! – a subdiscipline we could call ‘law and religion’.

The increase in law about or affecting religion has provided a catalyst for a subdiscipline to develop with indecent speed. A literature has blossomed.¹⁹ There is now a plethora of law and religion journals and book series, many specialist conferences and symposiums, numerous centres and research groups, several prolific national and international networks and many academics who define themselves primarily as law and religion scholars. Yet, the study of law and religion remains in a state of adolescence. There has not been a significant increase in the amount of specialist modules or textbooks. It is also noticeable that legal textbooks on areas such as public law, family law and employment law continue to rarely mention religion.

¹³ R Sandberg, *Law and Religion* (Cambridge University Press, 2011) Chapter 1.

¹⁴ J Rivers, ‘The Secularisation of the British Constitution’ (2012) 14 *Ecclesiastical Law Journal* 371, 385.

¹⁵ See further R Sandberg, *Religion, Law and Society* (Cambridge University Press, 2014) Chapter 5.

¹⁶ In England and Wales, see especially the cases of *R (Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15 and *Eweida and others v United Kingdom* [2013] 57 ECHR 8.

¹⁷ Note the reaction to the lecture by the then Archbishop of Canterbury, Rowan Williams, published as R Williams, ‘Civil and Religious Law in England: A Religious Perspective’ (2008) 10 *Ecclesiastical Law Journal* 262.

¹⁸ Note the enactment of legislation prohibiting discrimination on grounds of religion or belief and sexual orientation now found consolidated in the Equality Act 2010.

¹⁹ A bibliography compiled for the Ecclesiastical Law Society’s silver jubilee indicated that while between 1987 and 1997 there were on average 2–3 books published per year, this figure grew to an average of 6 books between 1997 and 2000 and to 10 books after 2007. This rise was even more accelerated in the case of edited books. See R Sandberg, ‘Silver Jubilee Bibliography: Ecclesiastical Law Publications 1987–2011’ (2012) 14 *Ecclesiastical Law Journal* 149.

Scholarship in this field has tended to be published in specialist journals or edited collections. Law and religion's creation narrative – some might say myth – has played a key role in this. By focusing on immediate changes and issues, by regarding them as discrete problems to be solved, by linking itself too firmly with the news agenda, law and religion has not developed a level of permanence or maturity within academia. This, coupled with the related haste in which law and religion has developed institutionally, has resulted in short-term gain only. Law and religion has developed as a specialism on the margins of legal studies and the very activities that have helped to constitute law and religion as a distinct entity have ironically curtailed its development by cutting it adrift.

As the number of legal changes affecting religion has slowed down in recent years, the field has shown some signs of stagnation. The ghettoisation of law and religion as a separate field has been both the cause and result of this.²⁰ Much law and religion work is being disseminated in ways and in places that limits its appeal only to those who are already within the clique. Law and religion scholars are tending to speak mostly to one another and so are becoming immune from and unable to shape wider debates within the discipline of law. There are, of course, exceptions, especially where the particular law and religion scholar is also an expert in the wider area of law, such as Lucy Vickers' work on religious discrimination and Malcolm Evans' work on religion and international human rights law.²¹ However, overall, law and religion writers on religion and criminal law, discrimination law, human rights law, family law and so on do not engage with or place their work within the wider context of those legal subdisciplines.²² The differences between the development of the legal study of religion and the legal study of gender, as reflected in the works of Auchmuty and Conaghan, are telling and sobering.

This has resulted from the speed at which, and the pragmatic way in which, law and religion has developed. It has meant that little attention has been paid to questioning how the field has developed and how it may develop in the future.²³ The near absence of textbooks or student-friendly texts has meant that, unlike in other legal subdisciplines, there have been only a few attempts to map the field as a whole or even to formulate a conception (either explicitly or implicitly) of what is taught and researched under the banner of law and religion in British law schools. More significantly, perhaps, the reflections that have taken place have tended to describe and list research outputs. True, there have been some attempts to classify these and to predict trends for the future but there has been very little, if any, attempt to understand more broadly how law and religion has developed not just as a collection of outputs but as

²⁰ See further R Sandberg, 'Prologue' in R Sandberg (ed) *Leading Works in Law and Religion* (Routledge, 2009) 1.

²¹ Most notably MD Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press, 1997) and L Vickers, *Religious Freedom, Religious Discrimination and the Workplace* (2nd ed, Hart, 2017).

²² For a discussion of this in relation to family law see R Sandberg and S Thompson, 'The Sharia Debate: The Missing Family Law Context' (2016) 177 *Law & Justice* 188.

²³ For notable exceptions see A Bradney, 'Politics and Sociology: New Research Agenda for the Study of Law and Religion' in R O'Dair and A Lewis (eds), *Law and Religion* (Oxford University Press, 2001) 65; the essays in N Doe and R Sandberg (ed) *Law and Religion: New Horizons* (Peeters, 2010); R Sandberg, *Law and Religion* (Cambridge University Press, 2011); R Sandberg, *Religion, Law and Society* (Cambridge University Press, 2014) and the essays published as part of the 25th anniversary of the Ecclesiastical Law Society in (2012) 14 *Ecclesiastical Law Journal*.

a community of scholars and the values, biases, objectives and culture of that community (or indeed communities). Anthony Giddens once likened the development and self-legitimation of intellectual disciplines to the founding of nations, noting that like nations, disciplines ‘have their fictive histories’: they are ‘all are imagined communities which invoke myths of the past as a means of both charting their own internal development and unity, and also drawing boundaries between themselves and other neighbouring disciplines’.²⁴ This insight has been ignored in the narrow stocktaking exercises that have occurred so far.

Scholarship on law and gender can again not only provide a useful point of comparison but also suggest a way forward. In March 2009 a roundtable discussion organised by the AHRC Research Centre for Law, Gender and Sexuality was held at the University of Westminster which turned its attention to reflect on the nature of the ‘field’ of law, gender and sexuality (LGS).²⁵ Papers resulting from that roundtable published in *Feminist Legal Studies* provide various helpful and challenging ways of thinking not only of LGS as a field, but more generally about fields, specialisms and disciplines/subdisciplines. As Rosemary Hunter and Ruth Fletcher noted in their introduction to the journal section, although a variety of perspectives, approaches and ideas were elucidated, what united the contributors was their preference for seeing the field as contingent, dynamic and constantly being constructed and reconstructed. As they put it, the authors viewed ‘the field of LGS as one that is in process, moving and changing, rather than as a fixed, marked-out territory or state of being’; they argued that ‘the field is not, and perhaps never will be or ought to be “made”, but rather is one whose making is an activity in which we are all, in various ways, engaged’.²⁶

This reflects that the process of formulating a field is always an exercise in power. It is a means of inclusion and exclusion, deciding what is analysed and what is not and the margins of the intellectual pursuit. Moreover, this takes place even if attention is not being afforded explicitly to questioning the definition or ambit of the field. Every course lecturer, every textbook writer, every researcher, every journal or book series editor is constantly involved in this process implicitly, often unwittingly, and frequently with significant effects. Joanne Conaghan highlighted this in her contribution to the roundtable, reflecting upon her experience assembling a four-volume anthology on Feminist Legal Studies for the Critical Concepts in Law series²⁷ – an experience that I have also had in relation to law and religion.²⁸ Conaghan’s recognition that the exercise of fieldmaking in the micro context of anthology assembling as well as in the macro context of disciplinary formation was ‘a far from neutral exercise’ reflected my own experience.²⁹ As she put it:

To delineate a field, to give it form, content, texture and depth, was an active not a passive interaction with the materials. It entailed the drawing up of boundaries by which the outer reaches of the field could be determined (essentially a process of inclusion and exclusion). It required the static, cartographic representation of a dynamic, multidimensional, spatially and temporally contingent

²⁴ A Giddens, *Politics, Sociology and Social Theory* (Polity Press, 1995) 5.

²⁵ R Hunter and R Fletcher, ‘Law, Gender and Sexuality: The Making of a Field – Introduction’ (2009) 17 *Feminist Legal Studies* 289.

²⁶ Ibid, 292.

²⁷ J Conaghan, *Feminist Legal Studies: Critical Concepts in Law* (Routledge, 2009).

²⁸ N Doe and R Sandberg, *Law and Religion: Critical Concepts in Law* (Routledge, 2017).

²⁹ J Conaghan, ‘The Making of a Field or the Building of a Wall? Feminist Legal Studies and Law, Gender and Sexuality’ (2009) 17 *Feminist Legal Studies* 303, 304.

sphere of ongoing intellectual and political engagement. It instituted a normative order which could then serve as a frame for interpretation and evaluation. Its effect, in other words, was unavoidably prescriptive.

This is perhaps why fieldmaking occurs more implicitly than explicitly. The ‘unavoidably prescriptive’ nature of the endeavour allies it with a positivist approach to law that is out of vogue and under attack by critical approaches. This was especially clear to Conaghan given the nature of her anthology. As she noted, ‘Feminists, in keeping with other dissonant traditions, have not been generally receptive to efforts to impose upon them conceptual, classificatory and/or other normative orderings. The inclination rather has been to resist such efforts and to voice concerns about their disciplinary and normalising effects.’ Yet, as she also reflected, this disinclination of prescriptive delineations is also more pronounced in critical scholarship because that work necessarily struggles with the issue of where it positions itself to perform its critique. Work of a critical persuasion has the problem of often finding itself part of the very thing that it is seeking to criticise. Yet, not only is removal from the context impossible, also, a retreat away from the mainstream blunts the critique by relegating it to the margins. Conaghan writes of the

recurrent anxiety – evident within feminist legal studies in particular – about whether and where to locate feminist scholarship within broader fields of the discipline. For example, is feminist legal studies best positioned at the margins of law (where, arguably, it can more easily retain its critical edge) or should feminist scholars strive towards the absorption and incorporation of feminist perspectives within the legal academic mainstream?

She observes that while these concerns and dilemmas are ‘an inevitable and necessary feature of critical scholarship’, they also ‘make the business of field-making infinitely more complex and contestable’.

These concerns and dilemmas also apply in relation to the legal literature on religion, but are rarely articulated. An exception can be found in the work of Suhraiya Jivraj, who has called for a critical approach deriving from anthropology, religious studies and critical race studies that understands religion contextually and historically ‘as contingent upon and as part of particular political, economic, and other circumstances’ to ‘challenge not only the onto-theological notion of religion through various methodological routes, but also the idea that there can be any fixed concept of religion at all’.³⁰ Jivraj highlights how legal scholarship on religion has tended to ‘marginalize [the] racialization of non-Christianness’ and understands religion ‘as a contingent concept that can come to be produced within law’.³¹ As Michael King has noted, law and legal discourse has reconstructed religion ‘essentially as those customs, rites and rituals which in the public domain come to symbolize statements of faith and holiness . . . as rights of worship and performance of ritual’, and that law would see religion ‘as constituting for law a set of rights’ which would often result in judges ‘seeing it in terms of some external

³⁰ S Jivraj, *The Religion of Law: Race, Citizenship and Children’s Belonging* (Palgrave, 2013) 6–7. This argument about the constructed nature of legal religion and the impossibility of defining religion has also been articulated in the work of US professor Winnifred Fallers Sullivan, especially her acclaimed book *The Impossibility of Religious Freedom* (Princeton University Press, 2005).

³¹ S Jivraj, *The Religion of Law: Race, Citizenship and Children’s Belonging* (Palgrave, 2013) 82.

authority' such as 'a law, God's law, Islamic law'.³² A critical approach to the interaction between the legal and the religious therefore cannot be genuinely critical if it remains within the confines that the field has created for itself. Yet, moving out of that paradigm risks moving the activity even further away from the mainstream of law school activity, and therefore may dilute its influence and significance.

Being aware and critical of the constructed nature of the law and religion discourse is itself an important step forward. But it is not sufficient. As Conaghan points out, the effect of fieldmaking is political.³³ She points to the way 'it lends strength to an intellectual tradition' and 'raises the visibility and enhances the authority of scholarship which might otherwise be excluded or marginalised by the established conceptual or disciplinary infra-structure'. This is why field formulation is important, it has a significant and often unappreciated long-term effect by normalising a particular conception which not only becomes unquestioned in itself but also masks the very fact that the construction process is precisely that – a time and space-specific active process of choice. Clocking this is important. However, it is possible and necessary to go further than that. A critical approach would not only question but also play with and use the process of fieldmaking in order to subvert the field, to question orthodoxies and to reclaim the field as part of the critical tradition. As Conaghan puts it, 'field-making may serve as a technique of disruption or an act of resistance'. Paying attention to fieldmaking can be far from a dry semantic question of definition by means of an assumed objective analysis and classification of research outputs, provided that the role of agency is central to fieldmaking. Fieldmaking is a creative act, a deliberate act, a human act, and so, Conaghan reminds us, is always and should always be a contestable act:

To mark out a field, then, is never simply to describe what is already there; it is to create, to produce, to bring forth. Envisioning a field requires a vision, projection or plan, the execution of which involves selection, discrimination, and judgement making. Both the vision and the selection are contestable. Indeed, it is the nature of field-making to engender, often deliberately to provoke, contestation.³⁴

Conaghan's argument is developed further in contributions to the roundtable by Ruth Fletcher and Alison Diduck. Fletcher's article distinguishes a field from a discipline and body of scholarship on the basis that a field is 'less than a discipline and more than a body of scholarship'.³⁵ For Fletcher, 'a field connotes an area of research and teaching, rather than a disciplinary mode of knowledge production, or a collection of academic scholarship'. She writes of 'intellectual fields as distinguishing themselves from each other as they take on particular logics through the application of key concepts and methods to research terrain'.³⁶ It is no dusty administrative task akin to filing, rather it is an active, dynamic and authored act of creativity. Fletcher emphasises the agency of those who work in and therefore construct the fields: 'Fields develop through critical practice as field-makers communicate their findings and exchange over the

³² M King, 'The Muslim Identity in a Secular World' in M King (ed) *God's Law versus State Law* (Great Seal, 1995) 91, 108, 110.

³³ J Conaghan, 'The Making of a Field of the Building of a Wall? Feminist Legal Studies and Law, Gender and Sexuality' (2009) 17 *Feminist Legal Studies* 303, 304.

³⁴ Ibid, 305.

³⁵ R Fletcher, 'Embodied Practices' (2009) 17 *Feminist Legal Studies* 315.

³⁶ Ibid, 316.

significance of such findings.³⁷ Fletcher paints fields as collective endeavours which develop as a result of and as part of ‘embodied practices’.³⁸ As she puts it:

Fields are clearly sites on which agents put energy into the carving out of new research items. But fields are more than sites of intellectual agency it seems to me. Fields could not have these particular logics, critical practices and spheres of action unless they acquired them through the activity of those agents. Rather the making of the field happens through practice in a larger sense; through the embodied intellectual struggles that researchers have with logics and critiques, with their own energy and time, with each other.

Put another way, field construction is relational. It is affected both by the political and social stimulants of public life and the relationships formed by those within the field relative to each other and relative to those outside the field. Fletcher applies this to LGS as a field, noting that it

came into being as people grew law, gender and sexuality into a research framework by giving each component new content and the relationship between them new shapes. They have done this by producing changes in the object of research, for example, as law reform campaigns have become part of what we study as law.

Moreover,

gender became a key category of activity because anger at the impact of kinship and market practices on women’s lives grew into a concern about the differential valuing of feminine and masculine roles. And sexuality-related questions proliferated as objections to sexual violence and compulsory heterosexuality generated a more general interest in the role of erotic assumptions.

In contrast to top down and sterile narratives of the developments of fields that focus on objective measurements invariably limited to outputs, seeing field construction and reconstruction as a relational embodied practice allows us to see fields not only as being contested but as being shaped by such contestation. As Fletcher notes: ‘thinking about LGS field-making as embodied practices helps us to acknowledge the ways in which feelings of alienation or excitement at new legal developments become a source of knowledge and a motivation for further investigation’, and how ‘hunger in turn provoked a rethinking of key concepts and methods’.³⁹

Two key consequences of looking at field construction (and reconstruction) follow from Fletcher’s understanding of it as an embodied practice. The first is the realisation that the construction and reconstruction of the field is a dynamic process that is ongoing, and so, the current construction of a field is neither fixed nor the end point. This further supports a shift from focusing solely on results (epitomised by analysis based upon research outputs) towards looking at the culture and context in which fields have grown. But it also goes further than that. It complicates the conventional lazy understanding that accompanies stories of growth, by eliminating or at least seeking to mitigate the usual linear narrative of progress which the

³⁷ Conaghan suggests that here Fletcher is thinking of the word ‘field’ as ‘as a verb rather than as a noun (as in: to field a player in a sport or a fighter on a battlefield)’ in that the focus ‘is more on process (or practice in Ruth’s conception) than on product, on doing rather than being’: J Conaghan, ‘The Making of a Field of the Building of a Wall? Feminist Legal Studies and Law, Gender and Sexuality’ (2009) 17 *Feminist Legal Studies* 303, 307.

³⁸ R Fletcher, ‘Embodied Practices’ (2009) 17 *Feminist Legal Studies* 315, 316.

³⁹ *Ibid*, 317.

benefit of hindsight confers upon histories we construct. As Fletcher puts it, ‘thinking in terms of embodied practices helps us identify the ways in which LGS grows organically in fits and starts, in cycles and flows, rather than in a top-down, even and linear fashion’.⁴⁰ This provides a way to critique the creation narratives that disciplines tell about themselves and which they use to constrain their development.

The second realisation is that the focus ought to be at the micro rather than macro level. The account needs to be personal rather than institutional. A grounded analysis is very much a characteristic of feminist scholarship. Feminist theory is built ‘from the ground up, from the shared experience of women talking from personal testimonies, story-telling, consciousness-raising, and other revelatory techniques aimed at highlighting perspectives ignored by traditional narratives’.⁴¹ A feminist approach is a critical approach that disturbs not only conventional narratives but also the conventional sources by utilising a much wider range of primary and secondary materials to examine lived lives under the law rather than the usual ‘top-down’ analysis.⁴² This comes to the fore in Alison Diduck’s contribution to the roundtable. Here the contrast between Diduck’s critical feminist approach and the approach previously taken in law and religion becomes telling. Her contribution begins:

I wish to reflect upon the origins of LGS as a field of study, but rather than attempting an objective or even partial history of this intellectual field, I want to offer a personal history. I want to reflect upon my journey into it and on what it meant and still means for me to call this field, or field-in-progress, home for my intellectual and political pursuits . . . It is important, I think, not to abstract out of existence the real people who do the work of actively constituting field. The frame, walls and doors of any intellectual ‘home’ are not self-erecting and do not shift on their own. They are constructed, maintained and re-constructed by people, each of whom brings her or his life to the project.⁴³

Drawing upon Fletcher, Diduck sees a field as being more than just ‘a place or space’, it is ‘as much our actions as it is the products of those actions’.⁴⁴ A personal history of the field is for Diduck an exploration of her intellectual ‘home’ and ‘a set of embodied practices in and around a particular home that is undergoing constant renovation’. Understanding the developments of a field in this way requires a change of focus from the usual presumed objective approach of telling and thus perpetuating the field’s conventional narrative to a more subjective approach that looks at the agency of the fieldmakers. Lydia Hayes has noted that ‘a feminist approach to a book review requires recognition that a book is embodied, in the sense that it is part of its author and has its own “story”’.⁴⁵ An embodied approach to fieldmaking is similarly interested in the ‘stories’ of those who work in fields, their experiences, their practices, their assumptions. Exploring the history of a field should therefore become an exercise in biography or autobiography.

⁴⁰ Ibid, 316.

⁴¹ J Conaghan, ‘Reassessing the Feminist Theoretical Project in Law’ (2000) 27(3) *Journal of Law and Society* 351, 364.

⁴² R Sandberg, ‘The Time for Legal History: Some Reflections on Maitland and Milsom Fifty Years On’ (2018) 180 *Law & Justice* 21, 31.

⁴³ A Diduck, ‘Doing Home’ (2009) 17 *Feminist Legal Studies* 293.

⁴⁴ Ibid, 295.

⁴⁵ L Hayes, ‘Review of Gender Equality in Law by Barbara Havelkova’ (2018) 45(3) *Journal of Law and Society* 497.

The remainder of this chapter therefore adopts a subjective and personal approach. The next section will provide an autobiographical reflective account of the development of law and religion studies through my experiences and how I have come to realise the need for the need for the book that you have in your hands.⁴⁶ The final section will then introduce the contributions to the volume. This is provided given that this Handbook is designed to be a coffee table read for law and religion academics and others who want to explore varied interdisciplinary approaches and ideas that can inspire, challenge and perhaps occasionally frustrate their research. It is designed to be dipped into and read in any order. It is not intended to be exhaustive or prescriptive in any way, but rather provides a menu of ideas and resources that could be used to explore, challenge and reconstruct the ambit of the field. It is only fitting, therefore, that this chapter shows how one law and religion scholar (one who is not intended in any way to be representative, but one who is conveniently the author of this chapter) has arrived at this restaurant, before providing his introduction to the various offerings on the interdisciplinary menu.

THE UNQUESTIONED PATH

Maitland's comment that 'such is the unity of all history that anyone who endeavours to tell a piece of it must feel that his first sentence tears a seamless web' applies as much to autobiography as it does to the history of the common law.⁴⁷ Various starting points can be attributed. For me, however, most of the possibilities in terms of describing my intellectual journey and interaction with the field of law and religion involve Professor Norman Doe. Norman made an incredible impression on me when I joined Cardiff University as an undergraduate in 2002 studying law and sociology – and not just as my personal tutor; it was his first-year lectures on public law that underlined what a university education was about, not slavishly following the textbook accounts but exploring, analysing and questioning the law with erudition, wit and a significant number of seemingly (and often actually) irrelevant asides. For the first time in my life, I saw someone I could relate to intellectually – someone who clearly relished learning and his subject but did not take it or himself entirely seriously. It would be no exaggeration to say that the seeds for my academic career were sown that early, although not the seeds of my interest in law and religion. I remember being shown his work on the Church in Wales at an early personal tutor meeting during which we bonded over our common Welshness, but it was two years later that my interest in the subject was piqued.

In 2004, in my final year of study, I wrote a dissertation under Norman's supervision on the legal and constitutional position of the civil service (for which I convinced myself that binge watching of *Yes Minister* and *The Thick of It* was required) and also studied a module that he

⁴⁶ To use the distinction noted by Cownie, this is very much a 'life story' ('the story we tell about our life') rather than a 'life history' ('a collaborative venture between the subject of biography and the researcher, which draws on a wide range of evidence so as to locate the life in a broader contextual analysis'): F Cownie, 'The United Kingdom's First Woman Law Professor: An Archerian Analysis' (2015) 42(1) *Journal of Law and Society* 127, 130. See also the other contributions to that issue. For a recent example of autobiographical writing in law that provides an intellectual biography of both the person and the field see W Twining, *Jurist in Context: A Memoir* (Cambridge University Press, 2018).

⁴⁷ F Pollock and FW Maitland, *The History of English Law* (2nd ed, vol 1, Cambridge University Press, 1968 [1898]) 1.

led entitled Comparative Law of Religion. What struck me about this module was how free it was. While other modules had shelves full of textbooks prescribing their content and approach (which would be similar in most law schools up and down the country), Comparative Law of Religion had no set text. Instead, the lectures and seminars were accompanied by a list of reading matters as well as materials drafted by those teaching on the course. The subject matter instantly felt more alive, more fluid and more experimental. The actual legal materials discussed (cases and statutes) were rather thin on the ground. Much emphasis was given to history and to the law of the Church of England, and when the focus eventually shifted to religious freedom there was precious little substantive law to discuss, though this was rectified by discussion of international legal instruments and some comparative analysis.

The paucity of legal material added, however, to the excitement. Norman had begun the module by saying that we were studying something new, something at the start of its development, and this feeling was felt throughout the course, making other modules feel staid and passé by comparison. The discussion of the new religious freedom laws made the subject feel cutting edge but this sat oddly with the emphasis on history and the focus on the law of the Church of England. It felt that there were numerous subjects competing for attention, none of which quite justified being a module of study in its own right. Despite its imperfections, the module provided a groundbreaking introduction to not only a new subject but also a new way of studying law, away from the mainstream modules that were animated by a series of textbooks perpetuating and thus dictating their contents.

This was particularly true of the second lecture delivered on the course. Boldly, this was devoted to the topic Religion, Law and Society, and saw Norman basically deliver the text of an article he had recently submitted to *Law and Justice* proposing the development of a new field: a sociology of law on religion.⁴⁸ This article was the concluding reflection in a special edition which recounted the findings of an Arts and Humanities Research Board-funded project, *Legal Responses to Religious Pluralism in European Society*, which had brought together scholars from the UK, Ireland, France, Italy, Spain and Greece to interview religious leaders, policymakers and academics. This had led Norman to speculate that collaboration between lawyers and sociologists of religion might be fruitful, and so the article and lecture elaborated principles and ideas from the sociology of religion for which Norman then used legal examples as evidence to support or refute. For most of the audience, one week into their course, the discussion no doubt went over their head or seemed irrelevant. The lecture handout Norman was supposedly speaking to was more than 5,000 words long and had 147 footnotes (which I was to learn was low by his standards). This was not a typical undergraduate lecture: it broke almost all of the rules. But for me that lecture in the autumn of 2004 was a watershed moment. Not only did it show what academic research really looked like, but for the first time the two halves of my degree in law and sociology made sense. By this stage, I had become somewhat disillusioned by the imprecision of sociology as a discipline, while law excited me by being about and related to everyday life. In just 50 minutes this had all changed. I could see how sociology could extend the study of law beyond the black letter analysis that I loved. I could see how vague references to social change could actually be substantiated. I could see how the two disciplines could enrich each other.

⁴⁸ N Doe, 'A Sociology of Law on Religion – Towards a New Discipline: Legal Responses to Religious Pluralism in Europe' (2004) 152 *Law and Justice* 68.

However, it was the experience of writing the dissertation that convinced me that a PhD and hopefully a career in academia was for me. And so I flirted with the idea of developing that into a doctoral level examination of constitutional law.⁴⁹ The one thing I was sure about was that I wanted Norman to supervise it. By now we had clicked both personally and intellectually and there was no one else who I had wanted to work with. Not only was his teaching style hugely inspiring – if rather unorthodox – but his seemingly dense scholarship showed a mastery of the detail and the ability to reach erudite and often audacious conclusions. Although the appeal of writing more about Whitehall did not fade, I kept having flashbacks to the Religion, Law and Society lecture and the revelatory effect that it had had on me. And so I decided that I wanted this to be the focus of my PhD study and I wanted to develop further the ideas presented in that lecture, bringing my background in sociological theory to complement and be complemented by black letter legal analysis. I was also taken by the dynamism of the subject: the law on religious freedom seemed to be in flux and this excited me.

In September 2005, generously funded by Cardiff Law School, I began work on my PhD, only to become distracted by other exciting matters. The doctorate was to be a study of the interface between the law on religion and the sociology of religion. However, these two disciplines were in very different states. While the sociology of religion was an established field of study, law and religion was in a state of infancy. Moreover, it was in a state of flux. Both fields were being affected by changes which came to the fore post-11 September, but this was more revolutionary and destabilising in relation to the legal study of religion. During the years of my PhD research, tide after tide of new legislation and case law on religious matters not only added legal meat to topics but also brought the subject matter into the glare of the news agenda. This provided a need to get my head around the likely effect of these significant changes but also was incredibly exciting. The land was moving under my feet and more often than not the legal earthquakes were attracting media and public interest. And there I was, free of any other commitments, with a front row seat, watching and commenting.

This was the making of my academic career because it provided an opportunity to get short articles and comments published in journals. This began with an invitation from a friend of Norman's, Mark Hill (who was then the editor of the *Ecclesiastical Law Journal* and who was to become a close friend), to speedily write two comments for that journal on the new Equality Act and also human rights challenges to the law on exhumation.⁵⁰ After this I had caught the bug and writing for journals became normal. It was not something I did with any career plan in mind, but just a natural activity every time there was a notable legal development on religion. So over the next few years, often coauthoring with Norman or Mark, I wrote a number of usually short pieces which sought to contextualise and analyse specific developments and predict their likely significance.⁵¹ I traipsed over many traditional legal subdisciplines, I would write about anything legal as long as it affected religion.

⁴⁹ One of the chapters was subsequently revised for publication as R Sandberg, 'A Whitehall Farce? Defining and Conceptualising the British Civil Service' [2006] *Public Law* 653.

⁵⁰ R Sandberg, 'To Equality and Beyond: Religious Discrimination and the Equality Act 2006' (2006) 8 *Ecclesiastical Law Journal* 470; R Sandberg, 'Human Rights and Human Remains: The Impact of *Dödsbo v Sweden*' (2006) 8 *Ecclesiastical Law Journal* 453.

⁵¹ For example, R Sandberg, 'Flags, Beards and Pilgrimages: A Review of the Early Case Law on Religious Discrimination' (2007) 9 *Ecclesiastical Law Journal* 87; N Doe and R Sandberg, 'Religious Exemptions in Discrimination Law' (2007) 66(2) *Cambridge Law Journal* 302; R Sandberg, 'Controversial Recent Claims to Religious Liberty' (2008) 124 *Law Quarterly Review* 213; R Sandberg,

Although I also published work based on my PhD,⁵² it was the pieces on the legal changes that received more attention and earned me a reputation as a law and religion researcher. They also shaped how I understood the field: although I covered a wide range of areas, as time went on my work identified the growing importance of human rights and discrimination laws affecting religion and their growing interdependence. An article in *Public Law* authored with Mark Hill proved pivotal.⁵³ ‘Is Nothing Sacred? Clashing Symbols in a Secular World’ – or, as one set of offprints called it, ‘Is Nothing Scared?’ – provided a trenchant critique of the English courts’ interpretation of Article 9 ECHR, benefiting enormously from being cowritten by a barrister at the top of his game. However, what we did not realise at the time was that we were also writing the narrative. Our elucidation of how Article 9 had been interpreted (or, in our view, misinterpreted) became accepted as the ‘story’; the phrases we coined to describe the law became the accepted vocabulary, especially our talk of the ‘specific situation rule’.

That article and a number of subsequent publications including research on the definition of religion led me to develop the view that there was now a body of English law affecting religion. And unwittingly, the work I was producing was helping to provide the building blocks for this. Implicitly I began to accept and to argue that law and religion was not just about specific interactions between religion and areas of law such as employment law, human rights law and criminal law. Rather, those interactions interrelated with one another and had led to common principles and understandings. Cases on religious discrimination could not be read separately from discussion of the jurisprudence on Article 9; cases on the definition of religion under charity law referred and used registration law decisions affecting religion and so on. Some of these overlaps had long existed but I argued that the importance being placed on freedom of religion as a human right and discrimination on grounds of religion by new legal provisions gave increased impetus to the unifying effect. I unconsciously subscribed, created and perpetuated the idea that law and religion was a separate body of study and that a, if not the, key focus of the study was upon national and international laws on religious freedom and discrimination. This situated the field very much within the doctrinal legal tradition found within law schools.

This was shaped by my own background and place. Being in Cardiff and at its Centre for Law and Religion shaped the way in which I saw and contributed to this. It also provided me with the opportunity to develop initiatives and entrench this understanding of law and religion as a field of study, through themed conference sessions and most notably through the establishment of the Law and Religion Scholars Network (LARSN) in 2008. This resulted from

‘Gods and Services: Religious Groups and Sexual Orientation Discrimination’ (2008) 10 *Ecclesiastical Law Journal* 20; N Doe and R Sandberg, ‘The Strange Death of Blasphemy’ (2008) 71(6) *Modern Law Review* 971; N Doe and R Sandberg, ‘The Changing Criminal Law on Religion’ (2008) 161 *Law and Justice* 88; R Sandberg, ‘Underrating Human Rights: *Gallagher v Church of Jesus Christ of the Latter-Day Saints*’ (2009) 11 *Ecclesiastical Law Journal* 75.

⁵² For example, R Sandberg, ‘Religion and Morality: A Socio-Legal Approach’ [2007] *DISKUS* (online); R Sandberg, ‘Religion and the Individual: A Socio-Legal Perspective’ in A Day (ed) *Religion and the Individual* (Ashgate, 2008) 157; R Sandberg, ‘Defining Religion: Towards an Interdisciplinary Approach’ (2008) 17 *Revista General de Derecho Canonico y Derecho Ecclesiastico del Estado* 1; R Sandberg, ‘Church–State Relations in Europe: From Legal Models to an Interdisciplinary Approach’ (2008) 1(3) *Journal of Religion in Europe* 329.

⁵³ M Hill and R Sandberg, ‘Is Nothing Sacred? Clashing Symbols in a Secular World’ [2007] *Public Law* 488.

the realisation that by now a number of legal academics were writing work that focused on religion. The legal changes had resulted in a not insignificant amount of scholarship, including regular pieces in mainstream generalist law journals. The idea was to bring legal academics working on religion together in a roundtable meeting so each of us could learn what the others were working on, and so not to reinvent the wheel. That original meeting was so successful that it spawned an annual conference, with the number of delegates increasing rapidly over the years. Soon scholars flew in from around the world to attend, and so the infant national discipline became more closely connected with other jurisdictions where such work had a long scholarly tradition.

More importantly, however, LARSN underscored that law and religion was beginning to be seen as a field of study, that this study was based within law schools, and that the audience for a paper on religious discrimination law was legal scholars with an interest in religion rather than an interest in discrimination. Of course, papers were also presented at other conferences and scholarly events, but the next decade (and the next few years in particular) was to see a huge growth in the number of law and religion-specific journals and book series as well as online blogs and news sites. LARSN was not the sole cause of this development, though it was often cited as evidence for the increase in attention. Moreover, LARSN and associated developments also unwittingly limited the interactions so that they became within the field rather than outside it. The papers presented at LARSN conferences also reflected the focuses of the news agenda. Even when legal change slowed, certain topics dominated. Attending a law and religion conference or reading a journal meant being subjected to many papers on Article 9 alongside other areas where the cases kept coming, such as the clashes between freedom of religion and the prohibition of discrimination on grounds of sexual orientation and, oddly enough, the employment status of ministers of the clergy.

I was not unaware of the problem that law and religion was being too narrowly understood. Being in Cardiff (where I had got a permanent academic position) shaped this. Cardiff was where Norman Doe had pioneered the study of the law of the Church of England through the LLM in Canon Law, the first such degree since the Reformation. This background heightened my awareness that the literature on law and religion in England rarely mentioned the Church of England and its distinct legal position and status. The focus was on developments in national and international laws affecting religion. Little if any attention was paid to the rules and norms within religious groups. This became evident the more I taught our module on law and religion (the word ‘comparative’ being dropped at some point, though we ironically increased discussion of the legal place of religion in European legal systems).⁵⁴ It struck me not only that the study of religious law was a subject in its own right, but also that it was vital to understand how State law interacted with religious law. Separate exceptions from discrimination laws for the Church of England and the distinct provisions relating to marriage and to education underlined this. But additionally, this was particularly important in the English context, given that the Church of England courts and its ecclesiastical law are part of the law of the land. The development of law and religion as a subdiscipline did little to increase awareness of this. It still felt as if these topics remained at the margins, notwithstanding the development of law and religion as a subject.

⁵⁴ Especially following the publication of N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press, 2011).

My first opportunity to reflect upon and to comment on this came in the introduction and conclusion to an edited collection based on papers originally delivered at a Law and Religion Stream Norman and I had organised at the Socio-Legal Studies Association Annual Conference at Canterbury in April 2007. Many of the papers were eventually published in a collection entitled *Law and Religion: New Horizons* for which Norman and I wrote a short introduction and a lengthy conclusion.⁵⁵ The introduction provided the first detailed definition of what we meant by law and religion, in a passage that is worth quoting in full.

Given this collection's focus upon both the substantive law and the scholarly study of that law, it seems appropriate to reflect briefly at the outset about what we conceive of as 'law and religion'. For us, to study law and religion is to study both:

The 'external' national and international laws affecting religious individuals and collectives; which may be styled 'religion law'; and
The 'internal' laws or other regulatory instruments created by religious collectives themselves, which may be styled 'religious law'.

'Religion law' and 'religious law' are two complimentary and overlapping entities. The distinction is made to stress their interconnected state and to allow closer analysis to be paid to the proper ambit of the discipline. Many works on religion law routinely exclude the study of religious law and many studies on religious law fail to place it within the wider environment of State law on religion and society. This seems misguided, especially given the establishment of the Church of England. The prime question for most law and religion academics in England and Wales is how law does and does not (or should and should not) accommodate religious difference. We submit that the word 'law' in this question should be interpreted to include both the laws that apply to religious groups and also the laws created by those religious groups. It includes the study of how State law accommodates religious difference manifest in religious law. The study of law and religion is actually the study of *laws* and *religions*.⁵⁶

The conclusion summarised the chapters into an account of the development and nature of law and religion. The late publication of this book meant that by the time it had arrived, further work on developing law and religion as a field had taken place. An invitation to Mark Hill had led him, Norman and I to contribute the British monograph in the Religion Law series of the *International Encyclopaedia of Laws*,⁵⁷ which was subsequently republished as a monograph.⁵⁸ The use of the term 'religion law' in the title was notable but undefined. However, as we wrote to a prescribed table of contents, it became clearer and clearer what a body of religion law looked like in an English context.⁵⁹ The prescribed order of the contents was to allow comparison but at times frustrated the flow and coherence of the text. It convinced me, however, that something was needed that outlined the new legal framework on religion in England and Wales in a way that was more accessible and which gave some attention to religious law in general, and the place of the established Church in particular. This something was to become my textbook for Cambridge University Press boldly titled *Law and Religion*.⁶⁰

⁵⁵ N Doe and R Sandberg (eds) *Law and Religion: New Horizons* (Peeters, 2010).

⁵⁶ N Doe and R Sandberg, 'Introduction' in N Doe and R Sandberg (eds) *Law and Religion: New Horizons* (Peeters, 2010) 9, 11.

⁵⁷ M Hill, N Doe and R Sandberg, *Religion Law: United Kingdom* (Kluwer, 2010).

⁵⁸ M Hill, N Doe and R Sandberg, *Religion and Law in the United Kingdom* (Kluwer, 2011).

⁵⁹ Although the title referred to the United Kingdom we excluded Northern Ireland from our coverage and paid little attention to Scotland, relying on the good will of Frank Cranmer to help with this.

⁶⁰ R Sandberg, *Law and Religion* (Cambridge University Press, 2011).

I received the contract for the textbook the day before my PhD viva. The plan was to extract the work I had done for and in the PhD about the development of the new legal framework, add it into the textbook and then reflect upon how to develop the PhD's argument about the need for a sociological approach to law and religion into a subsequent publication. Telling the story of how the law had developed felt more pressing and was also becoming increasingly necessary for the purposes of teaching the Law and Religion module. The various articles written over the course of the PhD did not really add up to a coherent whole and so there were gaps on the reading lists. The plan was to quickly collate my existing materials and notes to write the textbook before then paying attention to getting the PhD thesis into print. Half of the plan came into operation. From March 2010 to September 2010, I wrote the textbook. I wrote out of order so that I could do the most straightforward chapters while teaching. This led to quite a lot of notes about things I was referring to but had yet to write. The contents of the book had evolved during the process of putting together the proposal and evolved further during its writing. The speed in which I wrote meant that I paid little attention to the significance of the task. The absence of textbooks in the field meant that I was defining the subdiscipline. I was distilling the main topics, the canon and the approach.

Law and Religion expressed what I considered to be the core of the subdiscipline. The religion law/religious law distinction was expanded into the first chapter, which also explored the growth of the field. This recognised that the question of defining a field was a means of inclusion or exclusion. However, I did not seek to explain or justify my own choices in terms of inclusion and exclusion. An initial conversation with the publishers led to the plan that the book was to be small and selective in the first edition and could then subsequently grow in coverage. To date, however, only one edition has been produced. Notwithstanding the intention to subsequently expand, the choice of topics in *Law and Religion* notably reflected my focus on what I called 'religion law' and, within that, fixated upon matters of religious freedom. Coverage was given to Church–State relations, but almost as background, early on and a penultimate chapter was devoted to religious law, which addressed questions of definition and status and so examined the topic from a Statecentric approach. The emphasis throughout was upon State law, providing a doctrinal account of where the legal framework affecting religion now stood.

The opening chapter on the development and various labels for law and religion studies was followed by a historical chapter which argued that the changes of recent years had witnessed a move towards the articulation of a positive right to religious freedom. That whistlestop tour from 1066 to the current day was one of the last chapters to be written, and the most enjoyable. Developing ideas that Mark and I had mentioned in the *Public Law* article, which themselves were inspired by some assertions in one of Norman's early pieces, the chapter divided the history of Church–State relations into periods. Although there was some criticism of this act of periodisation in the chapter itself, this was something that, over the years, came to be a focus of the law and religion seminar we devoted to the topic. Through teaching this chapter I became increasingly convinced that it was an exercise in storytelling: a useful overview, but one that needed to be questioned. A conviction hardened that such a critique could not take place until the conventional narrative had been told. A critical approach to law had to follow the conventional elucidation of law, otherwise it would not be understood what was being criticised or subverted.

The next chapter looked at the different definitions of religion in differing legal contexts, arguing that a move towards harmonisation could be identified. This was followed by

a chapter on Church and State relations, exploring the legal position of religious groups – a topic then ignored in the literature but explored in detail by Julian Rivers in a book that was published just as I was about to submit my manuscript.⁶¹ This was followed by chapters on Article 9 and discrimination law which sought to describe the new laws on individual religious freedom with a detailed discussion of the case law and some coverage of exceptions for religious groups. This was followed by two chapters that looked at discrete interactions between religion and areas of law, criminal law and education. These provided the heart of the book but its subject matter was telling. The chapters deliberately did not refer to other areas of law: so, for instance, the one on religion and criminal law was entitled ‘religious offences’. Rather, the intent was to demarcate the main contours of religion law. This meant that there was no room for discussion of religion under charity law, employment law or family law. Instead, the focus was on particular laws that dealt explicitly with religious rights. I remember a colleague at the time suggesting that the book might have been better titled ‘Religious Rights’. I dismissed this at the time on the basis that the field had become known as law and religion. However, in so doing I made the error of conflating the field with the selective and limited coverage given in my book. The benefit of hindsight shows that at the very least I was operating under a ‘religious rights’-driven understanding of my subject matter. This would not have happened had I been writing – and perhaps had I been educated – a decade earlier. The lens through which I saw the subject was shaped and constrained by the new laws on religion and their rights-based nature. This was underlined by the sole chapter on religious law and a substantial concluding chapter discussing emerging trends and pressure points. Such a conclusion was atypical in a student text but was indicative of the ambition of the work to set the agenda. I was unaware, however, of some of the implicit choices I had made. The nature of the book as a legal textbook dictated some of these choices, but nevertheless the book now stands as an attempt to portray law and religion as a subject similar to other doctrinal areas of law in law school. It is not about an interaction between two social institutions: it is about the detail of how the legal system governs religion at the time of writing.

In part, this focus was selected because of the other half of my post viva plan, to move onto writing about the main arguments of the PhD thesis. This would necessarily employ a different, more interdisciplinary approach, though it would be a specific interdisciplinary approach: a sociological one. However, the second half of my post viva plan took longer to materialise. Instead, the academic year 2010/11 was spent working on a project funded by the AHRC/ESRC Religion and Society Programme on ‘Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts’. Norman and I had unsuccessfully sought funding from this programme for a number of ideas including LARSN but reworked an application with Gillian Douglas (a family law professor at the Law School) and Sophie Gilliat-Ray (the director for the Centre for the Study of Islam in the UK at the School of History, Archaeology and Religion at Cardiff) following a lecture given by Rowan Williams, then Archbishop of Canterbury, on the relationship between religious law – primarily though not exclusively Islamic – and civil law in England and Wales.⁶² The lecture had led to a moral panic about the operation of Islamic courts and tribunals and it was perhaps not a coincidence that the newfound newsworthiness

⁶¹ J Rivers, *The Law of Organized Religions* (Oxford University Press, 2010). Rivers also provided a chapter on the historical development.

⁶² R Williams, ‘Civil and Religious Law in England: A Religious Perspective’ (2008) 10 *Ecclesiastical Law Journal* 262.

of the topic meant that the funding application was successful on the second attempt. Our research sought to contextualise fears about sharia law by exploring the existence, organisational structure and legal status of three selected religious tribunals (the Catholic National Tribunal for Wales in Cardiff; the Jewish London *Beth Din*, Family Division; and the Shariah Council of the Birmingham Central Mosque); the jurisdiction each of these tribunals has in relation to marriage, divorce and remarriage; and whether that jurisdiction (and its use) is compatible with civil law in the UK. Although I was not directly involved in most of the interviews, this was my first engagement with empirical research. Through the events we organised bringing members of the studied tribunals to Cardiff in particular, I was struck by what could not have been uncovered by doctrinal work alone: how the individuals understood and responded to the legal framework.

The time spent on the ‘Social Cohesion and Civil Law’ project reinforced the need to study religious laws, rules and customs and awakened an interest in legal pluralism and family law. My Statecentric understandings of law were beginning to dilute and I was beginning to appreciate the gender dimensions of the issue. While most of the outputs on the project focused on institutional matters,⁶³ I focused on a piece which would begin to explore these wider issues. The article for the *Oxford Journal of Legal Studies* revisited the work of Canadian political scientist Ayelet Shachar, whose monograph *Multicultural Jurisdictions: Cultural Differences and Women’s Rights* had been discussed and praised by Rowan Williams in his lecture.⁶⁴ I had read and engaged with the book simply because it had been discussed by Williams and had consequently often been cited in the literature. But it opened my eyes to a wider political science literature and, although I did not recognise it at the time, gave me my first serious encounter with a feminist analysis of law.⁶⁵ The benefit of hindsight makes me now shudder at this. To be blunt, it seems wrong that it is possible to study law at both undergraduate and PhD level and to teach it for a number of years without having come into contact with feminist legal studies. Moreover, although the sociology side of my first degree covered class, globalisation and race, it did not seem to pay much attention to gender. This might have been the result of module choices and I am confident that the curriculum now, at least in law, is much broader than it was when I was a student. But this surely remains a matter of concern.

This was a matter to which I was eventually to turn, indeed, by introducing critical and feminist approaches in particular to the courses I taught. But this was only to happen much later on. While the *Oxford Journal of Legal Studies* had opened my eyes to potential new sandpits in which to play in, my immediate concern in the academic year 2012/13 was a return

⁶³ G Douglas, N Doe, S Gilliat-Ray, R Sandberg and A Khan, ‘Marriage and Divorce in Religious Courts: A Case Study’ (2011) 41 *Family Law* 956; G Douglas, N Doe, S Gilliat-Ray, R Sandberg and A Khan, ‘The Role of Religious Tribunals in Regulating Marriage and Divorce’ (2012) 24(2) *Child and Family Law Quarterly* 139; G Douglas, N Doe, S Gilliat-Ray, R Sandberg and A Khan, ‘Accommodating Religious Divorce in the Secular State: A Case-Study Analysis’ in M Maclean and J Eekelaar (eds), *Families: Deviance, Diversity and the Law* (Hart Publishing, 2013) 185; G Douglas, N Doe, S Gilliat-Ray, R Sandberg and A Khan, ‘Religious Divorce in England and Wales: Religious Tribunals in Action’ in P Shah, M Foblets and M Rohe (eds) *Family, Religion, and Law: Cultural Encounters in Europe* (Ashgate, 2014) 195.

⁶⁴ A Shachar, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights* (Cambridge University Press, 2001).

⁶⁵ R Sandberg, G Douglas, N Doe, S Gilliat-Ray and A Khan, ‘Britain’s Religious Tribunals: “Joint Governance” in Practice’ (2013) 33(2) *Oxford Journal of Legal Studies* 263.

to the long postponed task of converting the PhD (now minus the account of the development of law and religion that had provided the core of the textbook) into a monograph. I was given study leave to write this and basically spent the year writing the PhD I would have written had I started again at the end of the viva. Although some of the arguments had been hinted at in previous publications,⁶⁶ the monograph was the place where I explored at length the need for a sociological approach to law and religion.⁶⁷ This book also betrayed my implicit perception of what law and religion was, and crucially still regarded it as a sub-discipline that was then comparable to the sociology of religion. The accuracy of this was briefly questioned in the text; the desirability of regarding law and religion as a subdiscipline was not questioned.

A chunk of Chapter 1 of *Religion, Law and Society* featured material from the PhD thesis, where I explored the development of law and religion studies and the sociology of religion before exploring the interdisciplinary literature to date in each subdiscipline. This came after an extended opening sequence which explored the novelty and limitations of the new legal framework on religion developing the idea of the juridification of religion which had been mentioned in the final chapter of the textbook. The chapter began by using the House of Lords decision in *Begum* as a case study of the new approach, presented provocatively as denoting the death of religious freedom.⁶⁸ The chapter closed with a detailed case study from the PhD on the definition of religion, showing that lawyers and sociologists shared similar problems in defining religion and that legal definitions of religion had sociological effects, meaning that both disciplinary perspectives were necessary. This unusual structure reflected my conviction that both legal and sociological analysis was needed in detail before talk of an interdisciplinary analysis could truly begin.

Chapters 2–5 then tested my hypothesis that a sociological approach was necessary by reference to the secularisation thesis, a topic that had been a few pages long at most in the original PhD. Here, the secularisation thesis was explored and questioned by juxtaposing sociological and legal materials and by exploring how legal change reflected or refuted the sociological theory. The resulting analysis put forward an explanation of how the relationship between religion and society had developed in the late twentieth century and how this had paved the way for the tensions of the twenty-first century which were both the cause and also a context for the new and ineffective legal framework. Chapter 5, however, ended on a positive note, looking at the then recently delivered Strasbourg decision on *Eweida*.⁶⁹ It was argued that this judgment had the potential to correct many of the misunderstandings and restrictions found in the domestic case law. As the opening sentence of Chapter 6 put it, this decision allowed for religious freedom to be reborn. These chapters contained much more sociological analysis than had been in the PhD thesis but they also included – mostly within the case studies – detailed doctrinal analysis. Showing how legal and sociological approaches to religion worked separately illustrated the argument that the two could complement one another.

The sixth and final chapter of *Religion, Law and Society* is the most important part of the book and, unfortunately, placing the argument there and not repeating it in a more accessible

⁶⁶ Particularly pivotal was a chapter coauthored with a sociologist of religion: R Sandberg and R Catto, 'Law and Sociology: Toward a Greater Understanding of Religion' in N Doe and R Sandberg (ed) *Law and Religion: New Horizons* (Peeters, 2010) 275.

⁶⁷ R Sandberg, *Religion, Law and Society* (Cambridge University Press, 2014).

⁶⁸ *R (Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15.

⁶⁹ *Eweida and Others v United Kingdom* (2013) 57 EHRR 8.

place has meant that the argument has not really been heard. In some respects the chapter provided a revised version of the conclusion to the PhD. The chapter revisited Norman's call for a 'sociology of law on religion' (as made in that early undergraduate lecture and as published in *Law and Justice*).⁷⁰ Here I supported Norman's argument but not his need for a new discipline. At this stage I did not question the usefulness and effect of understanding the development of law and religion as a subdiscipline but an argument was beginning to develop that self-contained subdisciplines could limit the ambit of legal studies. I developed a throw-away suggestion in Norman's work to argue that the sociology of law had a role to play in bringing work on religion from the two disciplines of law and sociology together and enabling a meaningful analysis to take place. However, I was critical of the way in which the sociology of law had been regarded as a specialism and so its ideas, concepts and methods had remained the preserve of a select few.

It struck me that I had been unaware of the sociology of law until fairly late on in my PhD. My degree in law and sociology had never required the two to meet. So in Chapter 6 I developed an argument that was the exact reverse to the argument I had spent years developing in relation to law and religion. Whereas I had made a career of arguing that law and religion ought to be seen as a subdiscipline in its own right, I now argued that the sociology of law ought not to be a subdiscipline, since that meant that its insights were being limited to specialists rather than being part of the toolkit of all academic lawyers, to be used whenever they were exploring the social context of law. And in four pages towards the end of the chapter, I tentatively applied this argument to historical approaches to law too. Criticising the way in which both sociological and legal accounts of social and legal change paid scant attention to history, the chapter argued:

Both the sociology of law and legal history should not be regarded as separate sub-disciplines but rather as an integral part of the study of law (and therefore every legal sub-discipline) alongside the doctrinal study of the current legal position. They are better regarded, not as sub-disciplines, but as methods. To an extent, this is already the case. All legal sub-disciplines are concerned to some extent with historical and sociological matters even if this amounts only to a vague aim to understand law within its context. However, the problem with this informal approach is it is not systematic. The literatures, methods and approaches of the sociology of law and legal history do not tend to become part of the toolkit of each sub-discipline. Seeing the sociology of law and legal history as methods which complement and build upon doctrinal approaches would allow this to occur.⁷¹

However, Chapter 6 was also insistent about the value of doctrinal study. It dismissed the frequent assertion that a law degree does not teach methodology by exploring how the development of doctrinal legal skills constitutes a methodology. Chapter 6 argued that an interdisciplinary approach to law needed to build upon rather than replace this doctrinal analysis. The monograph version went further than the PhD in this regard. Now I argued that a sociological approach that did not include enough legal analysis would be 'law lite' and would be like a house built on sand. Similarly, legal accounts that tried to reflect, let alone explain, the context of the law without proper sociological investigation would simply provide a 'man in pub'-level analysis. In arguing this, I attempted to stand on the shoulders of impor-

⁷⁰ N Doe, 'A Sociology of Law on Religion – Towards a New Discipline: Legal Responses to Religious Pluralism in Europe' (2004) 152 *Law and Justice* 68.

⁷¹ R Sandberg, *Religion, Law and Society* (Cambridge University Press, 2014) 262.

tant works in the sociology of law about the study of law as a discipline, including the work of Roger Cotterrell and an essay by Tony Bradney that I had first read while writing the PhD and which had reanimated my conviction for an interdisciplinary approach to law.⁷² I was, and am, adamant, that neither approach is more worthy than the other and was also insistent that interdisciplinary work was only necessary when the research questions posed required it. However, following Bradney, I asserted that most of the time research questions would require some reference to context beyond the legal text and the legal institutional discourse and so interdisciplinary work would be necessary, though this could be achieved by collaboration rather than by reskilling.

Chapter 6 left a mark on me personally and made me question where I wanted to go next intellectually. It made me crave a deeper form of analysis than continuing to map the legal framework on religion. This was also motivated by a realisation that much of what I had written on this was already outdated. My original thought was to develop the sociological approach of religion, law and society and to move from the general to the particular, and instead of talking about sociological theory as a whole, to talk and apply a particular sociological theory. I alighted on a theory which I had mentioned in the monograph but had never come across in my studies: the social systems theory of Niklas Luhmann. I knew about functionalist sociological approaches and the works of Durkheim and Parsons but was intrigued by how Luhmann had developed this and had written on both law and religion. I spent a summer researching this, developing my thoughts into a concluding chapter for an edited collection that had sprung from the religious tribunals project.⁷³ I still felt that that project was not completed and the edited volume was an attempt to get some form of closure, including a draft Bill (written with Frank Cranmer, another associate of Norman's who has provided a rock of support from my dissertation days onwards) intended to enact the proposals I had suggested in the *Oxford Journal of Legal Studies* article. But the research on Luhmann provoked more general questions about the nature of law, its autonomy and its interaction with society, and how law and religion could be seen as two social systems and their interaction needed to be analysed: how law understood religion and how religion understood law. I began to feel that the prevailing focus in law and religion scholarship was too State-centric and too legalistic. I began to wonder if the criticisms I had made of the sociology of law and of legal history could also be made of law and religion, and whether I had unwittingly helped to create the very situation of which I was being critical.

It was fortunate that several opportunities arose at this time that allowed me to address and critique the development of law and religion as an area of study. My invited appointment as series editor of Routledge's ICLARS Series on Law and Religion required me to assess the ambit and direction of the field when soliciting and reviewing proposals. The coediting of a festschrift for Norman to mark the 25th anniversary of the LLM in Canon Law required the review not only of his accomplishments but of the field as a whole.⁷⁴ The contents of that volume suggested a wider understanding of law and religion than was common at the time, both in terms of its focus on religious law and in its call for interdisciplinary collaboration

⁷² A Bradney, 'Law as a Parasitic Discipline' (1998) 25(1) *Journal of Law and Society* 71.

⁷³ R Sandberg, 'Religious Law as a Social System' in R Sandberg (ed), *Religion and Legal Pluralism* (Ashgate, 2015) 249.

⁷⁴ F Cranmer, M Hill, C Kenny and R Sandberg (eds), *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge University Press, 2016).

and the way in which this call was not restricted to the social sciences. By contrast, the invitation to contribute four volumes on Law and Religion to the Critical Concepts in Law series allowed Norman and I to curate articles and book chapters around four main themes: Religion at the Constitutional Level; Religion at the Sub-Constitutional Level; Religious Law: Internal Norms; and Religious Law: External Interface.⁷⁵ This structure was meant to reassert the equal importance of both religion law and religious law but the relative mass of literature on the first two themes underpinned the prevalence not only of the focus on State law relating to religion, but also of the notion that the regulation of religion by the State was a problem at the heart of law and religion studies. The absence of interdisciplinary work, the lack of work that looked at law religiously, the dearth of work from outside law schools was noticeable. Aware that the absence might just be the reflection of our own biases and understandings of the field, I employed research assistance to attempt to track down scholarship of which we were unaware. However, this assistance found very little work by scholars operating in the UK.

The extended introduction to the first volume provided an opportunity to revisit the nature and development of the field in light of the work I had done since the textbook had been written. It revisited and restated the religion law–religious law distinction but then examined the work of John Witte Jr, one of the leading lights of the area in the US, to explore the potential for the subject to grow further on this side of the pond.⁷⁶ I remained insistent that the study of both religion law and religious law was necessary but now emphasised even more that even this would not be sufficient. This argument grew yet more critical in the introduction to the volume on *Leading Works in Law and Religion*. That chapter began with a survey of law and religion scholarship in the United States by John Witte Jr and then lamented what was styled as the ghettoisation of law and religion scholarship in England and Wales.⁷⁷ Similar concerns were developed in the chapters that followed and, appropriately enough, the book ended with a response from John Witte Jr himself.

The two other chapters I contributed to *Leading Works in Law and Religion* developed two further strands that had come to the fore in my recent work and which I now related to my argument that new approaches to law and religion studies were now needed. Both strands revisited threads that I felt had not been tied up in my earlier work. The first was to return again to the religious tribunals debate. This still felt like unfinished business because, although the edited collection, the use of Luhmann and the draft Bill had attempted to move the debate on, they did not provide concrete solutions. A further step came from collaboration with a family law academic who had recently joined the law faculty, Dr Sharon Thompson. Discussions with Sharon about her own work, and reading her phenomenal debut monograph, opened my eyes to a more ambitious style of legal scholarship:⁷⁸ one where doctrinal work was not only historicised and contextualised but was also theorised using feminist perspectives. I read *Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice* during a couple of long train rides and was buzzing in the same way I had been at

⁷⁵ N Doe and R Sandberg (eds), *Law and Religion – Critical Concepts in Law* (Routledge, 2017).

⁷⁶ N Doe and R Sandberg, ‘Religion Law and Religious Law’ in N Doe and R Sandberg (eds), *Law and Religion – Critical Concepts in Law* (Routledge, 2017) 1.

⁷⁷ R Sandberg, ‘Prologue’ in R Sandberg (ed), *Leading Works in Law and Religion* (Routledge, 2018) 1.

⁷⁸ S Thompson, *Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice* (Hart/Bloomsbury 2015) as well as her exceptional article ‘In Defence of the “Gold Digger”’ (2016) 6(6) *Oñati Socio-Legal Series* 1225.

that undergraduate lecture given by Norman. Reading her work, my initial reaction was that I needed either to quit or to up my game. I was also adamant that I wanted to work with her. In particular, I was taken by the potential wider application of Sharon's Feminist Relational Contract Theory (FRCT),⁷⁹ and in an article written in the summer of 2016 we applied and developed that theory to the context of religious tribunals.⁸⁰ While writing that piece I experienced a level of excitement that I had not felt for years. The lens and focus had shifted from a top down, institutionally based approach and suddenly topics I had spent years writing about felt new, different and challenging.

This collaboration reawakened my critique of the ghettoisation of law and religion scholarship and gave a new impetus to my concern. It gave me firsthand experience of what could be achieved, what the potential was, where work was done in collaboration with experts from outside the law and religion stable. Indeed, the collaboration deepened and grew. Further articles explored how placing the religious tribunal debate in the context of family law reform could point towards different solutions which were felt to be necessary in family law in general and which would mitigate perceived problems caused by the existence of religious tribunals.⁸¹ Further work developed FRCT more generally in relation to the regulation of religion,⁸² and this work – and especially our chapter in *Leading Works in Law and Religion*⁸³ – compared FRCT to the work of Shachar, contending that unlike Shachar's own theoretical responses, FRCT provided an approach that was not subject to the criticisms that Shachar laid out: FRCT really did shift the focus away from being on the State and the religious tribunal and enabled the focus to be placed on those who used religious tribunals, recognising the power dynamics in play but also, crucially, recognising the agency of actors. Moreover, our chapter in *Leading Works in Law and Religion* in particular explored and made the case more generally for a feminist approach to law and religion, contending that acts of deconstruction and reconstruction were required.

The other contribution to *Leading Works in Law and Religion* reflected the second focus that had come to the fore in my recent work, exploring the need for a historical approach to law and for understanding this as part of an interdisciplinary approach to law.⁸⁴ Those four pages in the concluding chapter of *Religion, Law and Society* had sown the seeds for this and so when Norman and I were approached to edit the Law and Religion volumes in the Critical Concepts

⁷⁹ On which see also S Thompson, 'Feminist Relational Contract Theory: A New Model for Family Property Agreements' (2018) 45(4) *Journal of Law and Society* 617. Thompson's suggested approach was applied by the Australian courts in *Thorne v Kennedy* [2017] HCA 49; see S Thompson, 'Thorne v Kennedy: Why Australia's Decision on Prenups Is Important for English Law' (2018) 48 *Family Law* 415.

⁸⁰ R Sandberg and S Thompson, 'Relational Autonomy and Religious Tribunals' (2017) 6(1) *Oxford Journal of Law and Religion* 237.

⁸¹ R Sandberg and S Thompson, 'The Sharia Debate: The Missing Family Law Context' (2016) 177 *Law & Justice* 188; S Thompson and R Sandberg, 'Common Defects of the Divorce Bill and the Arbitration and Mediation Services (Equality) Bill' (2017) 47 *Family Law* 447.

⁸² R Sandberg and S Thompson, 'The Paradox of Pluralism: Towards a Relational Approach to Religious Freedom' in WC Durham Jr and D Thayer (eds) *Religion, Pluralism, and Reconciling Difference* (Routledge, 2018) 3.

⁸³ S Thompson and R Sandberg, 'Multicultural Jurisdictions: The Need for a Feminist Approach to Law and Religion' in R Sandberg (ed), *Leading Works in Law and Religion* (Routledge, 2019) 179.

⁸⁴ R Sandberg, 'Roman Canon Law in the Church of England: Maitland's Legacy on the Study of Religious Law' in R Sandberg (ed) *Leading Works in Law and Religion* (Routledge, 2019) 162.

in Law series, I proposed that we also edit four volumes on Law and History. The contents of these volumes were compiled from the reading lists of the course on legal history that I had reintroduced at Cardiff following my study leave. Looking at the contents as a whole was a sobering experience: they reflected a particular way of doing legal history as a niche specialism and did not reflect the reality of wider work on law which utilised a historical perspective. Our introduction to the volume made this point, describing the value of a historical approach but contrasting it with the comatose state of legal history as a discipline,⁸⁵ before developing an argument for collaboration between the ‘old’ legal history, those who call themselves legal historians, and the ‘new’ legal history, found in work by those who take a historical approach to law but often would not refer to themselves as legal historians.⁸⁶ This call was not meant to denigrate writers of the ‘old’ legal history, indeed, teaching the legal history course constantly reminded me of the value of that scholarship, but also that it was increasingly inaccessible. There was a need to build upon that legacy, bringing legal history into the twenty-first century, reducing the divisions between ‘old’ and ‘new’ and reclaiming a historical approach to law as part and parcel of the legal academic’s toolkit.

As throughout my career, collaborations with others provided the impetus for such work and a supporting but questioning environment for it to develop. Mark Hill had originally suggested the need for a historical chapter in my *Law and Religion* textbook and ironically it was an invitation from him to contribute to a book that he was coediting on *Great Christian Jurists in English History* that set me firmly on this new path. During a discussion with Mark about who ought to be included, I made the case for Maitland’s inclusion, and that resulted in an invitation to write a chapter making the case for an inclusion of a known agnostic in the volume.⁸⁷ Writing that chapter, which I did shortly before the introduction to *Law and History*, was great fun and again revelatory. Not only did I delight in making the case for Maitland’s inclusion but during the writing process I became inspired by Maitland’s approach. Although seen as epitomising the ‘old’ approach to Legal History, Maitland was actually asking large questions and was often answering them with a certain sense of subversion. Suddenly a key reason for both the neglect and the importance of legal history became clear: it was a subversive approach that questioned everything that we are socialised into thinking about the law. It showed that every concept, every dividing line, every sacred cow, did not exist from time immemorial. Rather, every way of thinking, of articulating, of conceptualising the law was a historical construct, a choice that had been made, and therefore a choice that did not always need to be made in that way. Legal history revealed that wider legal change was possible.

These ideas were expressed in rudimentary form in the introduction to *Law and History* but were subsequently developed further. For the first time in my career, I did not rush them into print. Unexpectedly I took on the role of Head of the Law Department at Cardiff and this not only slowed the pace of my writing but gave me opportunities to develop these ideas in conversations with a wider range of colleagues. I presented a revised version of the introduction as

⁸⁵ Siemens has described legal history as ‘slowly and inevitably dying – or . . . in a coma for the last 30 years, at least’: D Siemens, ‘Towards a New Cultural History of Law’ (2012) 2 *InterDisciplines* 18, 19.

⁸⁶ R Sandberg and N Doe, ‘Textual and Contextual Legal History’ in N Doe and R Sandberg (eds), *Law and History – Critical Concepts in Law* (Routledge, 2017) 1.

⁸⁷ R Sandberg, ‘F W Maitland’ in R Helmholz and M Hill (eds), *Great Christian Jurists in English History* (Cambridge University Press, 2017) 277.

part of our staff seminar series within the first few months of my headship and then developed it at presentations to PhD students and at events organised as part of a new Law and History group that I set up with Sharon. I invited Sharon to join me teaching on the Legal History module and she provided a fresh and different perspective, bringing feminist and colonial perspectives into the syllabus. The argument that was made in the introduction to *Law and History* became more and more compelling. It became clearer that there were a great number of legal academics using historical approaches who would not see themselves as legal historians. The argument for a historical approach to law became stronger. Although some papers were published,⁸⁸ I concentrated on developing the argument, knowing that the fuller elucidation of the argument in print would need to wait until after my headship. I focused not only on furthering the content of argument but also on making it visible. And I sought to make it a collaborative effort, working closely with Sharon, whose own research had developed to take on a historical dimension.⁸⁹ The Law and History research group became visible on social media and we both taught and delivered conference papers on feminist legal history as an example of a subversive approach to law. With two colleagues then at Cardiff, Professor Lydia Hayes and Dr Katie Richards, we developed a new book series with Routledge, 'Transforming Legal Histories', which would be the home of bold scholarship using history to subvert and question law.

These endeavours are ongoing and are hopefully only at the beginning stages, especially since my term as Head of Department concluded. They will build upon and indeed accelerate an intellectual journey of which the article in the *Oxford Journal of Legal Studies and Religion, Law and Society* was the turning point. Up until then my work had focused largely on exploring the new legal framework of law and religion and its development as a subdiscipline. Since then, I have become increasingly aware that this was a story, an interpretation, and I have become conscious of my role as a storyteller. I have become critical of law and religion as a development not only in respect of its ghettoisation (which, ironically, my work played a significant role in creating) but also in relation to its emphasis, especially what is excluded by its top down Statecentric focus seeing religion as a problem. Moreover, I have become convinced that much of this criticism applies not only to law and religion but to legal scholarship more generally, and not only in relation to research but particularly in relation to teaching. The role of Head of Department had made me think long and hard about the nature and purpose of legal education and of law schools – and, in particular, of the stories we tell and perpetuate about the law, and more importantly the stories we do not tell. The rich textbook tradition in law casts a long shadow. There is a need to question the lens that it applies, to realign it and to subvert it. And a key means of achieving this is my exploring alternative perspectives. When I was an undergraduate I felt that the two sides of my degree, law and sociology, were not speaking to one another. That lecture by Norman on a sociology of law and religion demonstrated that this need not be the case. My PhD research underscored this while reminding me of the importance of legal doctrinal analysis. For me, interdisciplinary

⁸⁸ R Sandberg, 'The Employment Status of Ministers: A Judicial Retcon?' (2018) 13(1) *Religion and Human Rights* 27; R Sandberg, 'The Time for Legal History: Some Reflections on Maitland and Milsom Fifty Years On' (2018) *Law & Justice* (2018) 180 *Law & Justice* 21.

⁸⁹ This built upon Chapter 2 of S Thompson, *Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice* (Hart/Bloomsbury 2015) and S Thompson, 'Married Women's Property Act 1964' in R Auchmuty and E Rackley (eds) *Women's Legal Landmarks: Celebrating 100 Years of Women and Law in the UK and Ireland* (Hart, 2018) 263.

research is about building upon the strengths of disciplinary approaches, not supplanting them. Law as a discipline excites me now as much as ever – I continue to love teaching and writing doctrinal analysis. But I want to go further. The tentative steps I have taken so far have whetted my appetite. There is a whole world of opportunities out there. There are far too many for one career.

This is where the book that you are holding in your hands becomes important. In an early workshop featuring some of the contributors, I said that this was basically an exercise in my further education, finding out about new approaches that could be used. That comment was not entirely a joke. Talk of interdisciplinarity is scary. Academic lawyers have spent years being trained into the methodology of law (though we often do not talk of it as such, preferring instead to erroneously see it as a vocational thing – as shown by talk of training students to ‘think like a lawyer’) and so they are rightly wary of crossing over disciplinary lines, of assuming a competency in a discipline in which they are not trained. When you are aware of the nuances and difficulties of your own terrain, daring to enter another culture becomes daunting and offputting. The allure of a sandpit to play in can often be replaced by the fear of a snakepit. This is one reason why many lawyers writing about law and society do not call themselves sociologists of law and why those writing about the past refrain from calling themselves legal historians; this is why the sociology of law and legal history are seen as specialisms of the few.

The pressures currently on higher education are likely to worsen this predicament and increase the fears of going outside one’s comfort zone. In an era of mass higher education where technology means that you are always on call and where there is a pressure to produce research outputs over a short-term period, there are many incentives to specialise in increasingly narrow research topics. Broadening the approach in a way that requires time and the development of new skills and knowledge bases makes no sense in that climate. Yet, intellectually, it makes perfect sense. The more you zoom in, the greater attention you give and mastery you develop over the detail, but also the more you can contribute to a broader interdisciplinary discussion. And that broader interdisciplinary discussion is likely to revitalise your interest and passion for the subject by pointing to future directions. What makes little sense in the short term makes perfect sense in the longer term. This Handbook exists to help with this. It provides a range of different approaches from a number of disciplines that can be used to ask different questions, to begin interdisciplinary adventures, to question and to subvert existing stories, assumptions and expectations.

THE PATH THAT LIES AHEAD

The Handbook begins with several chapters that use historical approaches to challenge, question and subvert law. It begins with a chapter by Bronach Kane, who explores the debate about the need for historical approaches to law from the perspective of the academic discipline of history. ‘Ecclesiastical Court Records for Social and Cultural History’ complements the argument that I initiated in the introduction to *Law and History*, showing the differences between different types of legal history and how social and cultural historians have developed new methods and approaches to study law. The chapter explores historical approaches to church court records and traces the emergence of increasingly subtle methods to analyse these archives in the fields of cultural and social history. It shows ways in which law is being ana-

lysed in history departments and in so doing makes the case for interdisciplinary collaboration and for new approaches to the historical study of law by lawyers.

Lindsey Bell's chapter also provides a challenge to legal history as routinely studied in law schools. It revisits a concept that is often mentioned – trial by ordeal – but subjects it to an interdisciplinary critique which provides far reaching insights. Bell explores the issue of 'siloiing', the tendency to focus on a particular historical period or geographical location, and shows how this has led to mistaken assumptions and category errors in relation to trial by ordeal. However, the points she raises are of wider application than this. As she notes, 'Inherent to traditional legal history approaches and methods is a deep and intensive understanding of phenomena within a specific period, and placing them within the relevant cultural context.' Bell's challenging chapter highlights this and provides pointers that can move scholarship forward. In particular, she revisits the familiar internal and external approaches to law, here conceptualised as the *emic* and *etic* approaches. The chapter highlights the value of anthropological approaches and, for me, questions the dividing line often drawn between legal history and legal anthropology. Reading the chapter, it becomes clear that Bell's skill is not only to provide an act of erudite diagnosis but also to point towards solutions. Her discussion of how a crosscultural definition of trial by ordeal could be achieved is both enlightening and exciting.

The focus on witchcraft and the like continues in the next chapter. This is appropriate since, as the author Jan Machielsen asserts, witchcraft existed at the intersection of law and religion. On the surface, his chapter 'Moved and Seduced by the Instigation of the Devil: Witchcraft and the Law, 1450–1700' provides a riveting account of the realities of witchcraft and how witchcraft trials served as a way of accessing village life. However, I found what the chapter reveals about the use and place of history even more interesting. Machielsen's chapter soars where it explores why the analysis of early modern witch hunts matters today. This is not to say that historical study is only important in terms of its modern relevance, but it does underline why history is important. Historical study allows us to understand the past and in so doing we grasp a better understanding of the present. As Machielsen puts it, such work 'can teach us a great deal about the early modern period – in particular, its fears, hopes and beliefs – and it may lead us to reflect on what future historians will find puzzling and opaque about our own time period, and the "false" things we believe that later generations will recognize as untrue'. Moreover, history is important because historical ideas – or, to be more precise, historical myths – permeate our culture and our understandings. These find themselves articulated and perpetuated within legal discourse and practice. Machielsen notes that 'modern judicial analogies are generally the product of nineteenth-century positivist thinking, not recent historical scholarship'. The chapter also shows how legal materials are important historical sources but are also limited. It is noted that legal records 'offer historians one of the few ways to enter early modern village life' but that 'trial records are no longer seen as either transparent records of the truth'. This underscores the need for both doctrinal legal methods analysing legal sources and varied historical methods scrutinising extralegal sources. To go back to the internal–external theme discussed by Bell, it becomes clear that analysis of both the internal and external dimensions of law is needed and that these require different methodologies.

The final chapter in the historical section addresses head on the importance of the interaction of legal and historical study. It addresses the secularisation thesis, a much discussed, strongly debated and often unjustifiably maligned argument which I explored in detail in *Religion, Law*

and Society.⁹⁰ However, although it is probably the chapter with whose content I am most familiar, I learned much from the social historian Callum G. Brown in ‘Secularisation and Law in Modern Societies’. A number of intriguing points are made. Brown’s assertion that apparent evidence of legal desecularisation may actually reflect the pervasiveness of secularisation complicates but enriches the quest. As he puts it, ‘the lobbying power of churches, secularisation in society can have the appearance of instigating desecularisation of the law (or parts of it) in some jurisdictions’. Also of note is Brown’s identification of Glanville Williams as a key architect of the secularisation of the law. The ubiquity of Glanville Williams’ scholarship perhaps masks the extent and pervasiveness of his substantial contribution. I particularly enjoyed Brown’s deft distinction between the ‘concept of secularisation’ and ‘the Theory of Secularisation’; the use of capitalisation alone brought a smile to my face. However, the importance of Brown’s chapter is that it makes law the centre of attention but demonstrates what can be gleaned from looking at religion and the law from a nonlegal perspective. Brown makes a compelling case for the importance of the study of the law. As he puts it, ‘Legal processes are in fact meat and drink to the scholar of medieval and early modern Europe and North America.’ It therefore follows that in the study of secularisation in modern history, discussion of the law is of assistance. Indeed, Brown maintains that ‘in the study of religion and the law, there is greater clarity about secularisation as a concept of relevance than is to be found in the field as a whole’. Brown makes the argument for the study of legal materials, stating that ‘it is largely in relation to statute law and, in smaller part, in relation to constitutional provisions that secularisation research interacts with the study of the law’.

The section on Historical Approaches as a whole lends ample weight to the contention that both doctrinal legal and interdisciplinary extralegal methods are required. Moreover, the study of the internal story of law is not just of interest to legal scholars, it is a rich historical source that both causes and reflects social change. Law provides concrete evidence that enriches the external stories. These external stories are all, in essence, theories. And so it follows that legal evidence can be used to support, refute or challenge theoretical statements provided that they have a political or legal dimension. Brown’s chapter shows how this is true of theories of secularisation. The next section explores how this can be true in relation to philosophy. As with any section of this handbook, it was possible to structure this section in a variety of ways. The focus could be on particular theorists or theories or on specific concepts, ideas or subdisciplines. As with other sections, we have opted for variety rather than uniformity.

The opening chapter of the section, ‘Philosophy, Law and Religion’ by Daniel Whistler and Daniel J. Hill, distinguishes between the ‘top down’ approach in philosophy, in ‘which pre-existing philosophical frameworks are applied to the topic of religious freedom’, and the ‘bottom up’ approach, which ‘engages in detail with the cases themselves in order to work up to more general philosophical issues’. Through a detailed and close textual analysis of recent leading religious freedom cases heard by the European Court of Human Rights, the authors show the advantages of the ‘bottom up’ approach. Aside from being a useful primer on the Strasbourg case law in its own right, their chapter argues that ‘beginning with the reasoning of the cases themselves is a way of doing philosophy that takes the legal material seriously, rather than constraining it within preestablished conceptual structures’. Their chapter can be juxtaposed with those that follow it, which take a more ‘top down’ perspective.

⁹⁰ R Sandberg, *Religion, Law and Society* (Cambridge University Press, 2014).

On the surface this is epitomised by the chapter by Paul Billingham and Jonathan Chaplin on ‘Law, Religion and Public Reason’. As the title suggests, the chapter takes what Whistler and Hill have dubbed a ‘top down’ approach by taking a philosophical framework – in this chapter ‘public reason’ – and applying it to the legal recognition and regulation of religion. Yet, the chapter seeks to ground the liberal philosophical debates over public reason by showing that they highlight the ‘fundamental questions about both the relation between law and religion and the very legitimacy of law in a religiously pluralist yet increasingly secularised society’ which is reflected in ‘concrete legal questions’. The chapter is designed to begin a conversation with law and religion scholars, highlighting ‘three specific areas – legal reasoning, law reform and religious literacy – where, in the light of public reason controversies, law and religion scholars might contribute to a clarification of the place of religious reasoning in law’. The chapter shows that the ‘top down’ approach can be equally, but differently, useful to the ‘bottom up’ one, since both techniques if used in a certain way bring together two different disciplinary positions and outlooks. It matters little the direction from which such travel begins. What matters is that the travel takes place, and that the interaction is of mutual benefit. This means that it needs to build upon the strengths of each disciplinary perspective, with the insights from the other widening the outlook, and possibly overcome the shortcomings of each solitary discipline. As Billingham and Chaplin put it, ‘it takes two to tango: if legal practitioners need greater religious literacy, religious campaigners and litigants likely need greater political and legal literacy’.

Simon Thompson and Tariq Modood provide an example of this in their chapter on ‘Multicultural Political Theory’, making an argument as to why multicultural political theory can fruitfully contribute to the field of law and religion. Their chapter is a primer and a pitch for and to law and religion specialists. They claim that both legal scholars and multicultural political theorists ‘share a common concern with the rules governing society’, ‘focus on how these rules impact on certain aspects of individuals’ identities’ and develop ‘views about the significance of the diversity of such identities for contemporary societies in general, and for their political and legal systems in particular’. Their top down account again reaches the same point as the same conclusion as the other chapters in this section. They identify ‘overlapping concerns’, which shows how political theory ‘can bring a relevant yet distinctive perspective to bear on matters of law and religion’.

Our next duo, Camil Ungureanu and Paolo Monti, turn their attention to a particular philosopher, and one who is mentioned frequently in the chapters that precede theirs. The work of Charles Taylor is often name checked in a great deal of scholarly literature on religion, and legal academic writings are no exception to that trend. Indeed, such is his ubiquity that I felt obliged to provide some mention of his work in *Religion, Law and Society* despite him not being a sociologist of religion.⁹¹ Taylor’s work defies easy categorisation along interdisciplinary lines, and this, plus the size of his opus *A Secular Age*, has probably meant that his work is more often cited than read in detail.⁹² He feels like a familiar presence in the law and religion literature, but reminiscent of an uncle you occasionally see at Christmastime: you think you know him but, when pushed, you would find it difficult to describe or understand him. I found the chapter ‘Charles Taylor on Recognition, Inclusive Secularism, and Religion’ particularly welcome in giving a chronological account of Taylor’s writings. This not only contextualises

⁹¹ Ibid.

⁹² C Taylor, *A Secular Age* (Harvard University Press, 2007).

his well known pieces by exploring the trajectory of his earlier work, but also explores work published after *A Secular Age* that develops and crucially applies his argument.⁹³ Again, the chapter provides an invitation to law and religion scholars, this time to get to know in more detail an ever present but often fuzzy interdisciplinary interloper.

The final chapter in this section on philosophical approaches also focuses upon an influential philosopher, but one who is far less cited in the mainstream literature. This is reflected in the tone and pitch of Peter Fitzpatrick's chapter. "‘Gods Would Be Needed . . .’: Derrida on Law and Religion" provides an appraisal of Derrida's work. Unlike the chronological account of Taylor, here the discussion is arranged thematically. It cleverly explores the work of Derrida by the means of exploring and cumulatively collecting three sets of affinities: (1) the affinity between Derrida's deconstruction and law, taking deconstruction as the focal idea in Derrida's thought and taking law as a telling instance of it; (2) the affinities between law and religion which show that elements associated with religion are also found in law; and (3) the affinities between religion and law. The chapter shows how the work of 'big thinkers' often included discussion of both law and religion and so law and religion as an area of study could bring together these discussions which usually exist separately. This is also true, of course, of much work in social theory. Many of the classic social theorists – Marx, Weber and Durkheim – all wrote about law and religion as two important agencies of socialisation and social control. It is fitting therefore that the final chapter on philosophical approaches links into the next section on sociological approaches. Indeed, drawing a line between the two sections is problematic.

The section on Sociological Perspectives could very well have included chapters on Marx, Weber and Durkheim, the founding fathers of the discipline. As I noted in *Religion, Law and Society*, all three men wrote on religion and what they considered to be its declining social significance, and all three men wrote on law and what they considered to be its increasing social significance. There is a copious literature on all three men within social theory generally and in the sociology of religion and the sociology of law, though there is little work that brings together their work on law and religion. Yet their ubiquity has meant that we have opted for chapters on lesser known figures and approaches in this section.⁹⁴ It begins with a primer on 'Interpretive Issues in Researching Law and Religion'. Following the social action approach espoused by Weber, Max Travers and Doug Ezzy explain the approach of interpretive sociologists in studying law and religion, through the use of ethnographic methods. The chapter illustrates what such methods can show religions through studying legal processes, both inside religions and arising in the interactions or encounters between religions and the State. Interestingly, this is an area where the sociology of law can be influential. As the authors note, 'considerably more research has been conducted by these interpretive traditions in researching law than in investigating religious institutions'.

The next chapter examines a figure in modern social theory who, like the founding fathers, wrote at length – albeit separately – on law and religion as social institutions. The work of Niklas Luhmann follows the functionalist tradition begun by Durkheim. Since I am the author of this chapter it would perhaps be improper for me to comment further, but 'The Lure

⁹³ Especially G Bouchard and C Taylor, 'Consultation Commission on Accommodation Practices Related to Cultural Differences, Building the Future: A Time for Reconciliation. Report' (2008) available at www.mce.gouv.qc.ca/publications/CCPARDC/rapport-final-integral-en.pdf.

⁹⁴ For a feminist questioning of this canon see S Delamont, *Feminist Sociology* (Sage, 2003) especially appendix 1: 'A Critique of the Paradox Histories of Sociology'.

of Luhmann: A Systems Theory of Law and Religion' is intended to develop my previous musings on the topic,⁹⁵ seeing what can be achieved by bringing together his work on law and his work on religion within his theory of social systems to develop a theory of law and religion. This is followed by two chapters that push at the edges of sociology as a discipline. The first explores 'Social Anthropology'. Méadhbh McIvor's chapter 'Social anthropology' complements Lindsey Bell's chapter in the 'Historical approaches' section. The chapter combines an introduction to anthropology as an academic discipline with practical examples of its relevance to scholars of law and religion. It complements the Luhmann chapter in that, after surveying the history of anthropological research, it explores legal anthropology and the anthropology of religion as two important subfields. As McIvor notes, 'from its inception, both law and religion have been of interest in anthropology'. Her chapter and her own research convincingly underlines that those interested in the interaction of law and religion should have an interest in anthropology.

The final chapter on sociological perspectives continues the grounded approach but looks in a different direction. 'Religion or Belief, Equality and Human Rights Law and the Media' by David Perfect and Simon Perfect is an extremely welcome addition to this collection given that the media attention given to law and religion issues has been a major catalyst in the development of the field. However, as the authors correctly assert, law and religion scholars rarely pay attention to the role of the media. Their chapter, located in and furthering the sociological literature on how the media represents religion, provides a case study of how legal and nonlegal analysis can be used separately and then combined. They take an innovative, dual approach to employment legal cases to do with religion or belief. First, a 'law centred' approach focuses on the impact of the legal cases on the law itself. Second, an alternative, 'public discourse' approach uses quantitative analysis to consider how far particular cases have penetrated media consciousness, to examine how the law is viewed by the wider public. The chapter finishes by setting an agenda for future research, noting the range of future research options that could use a public discourse approach to legal cases concerning religion or belief.

Preparing this Handbook has strengthened my view that the borders between disciplines are often thin and invariably movable. Several chapters could have featured in more than one of the sections. Each section could have been named in various different ways. These thoughts perhaps particularly apply to the section on Theological Approaches, perhaps reflecting the way in which theology and religious studies is invariably understood as an interdisciplinary field defined by its focus on religion. The three very different chapters included here provide different ways of looking at law. The first, Jonathan Burnside's chapter on 'Biblical Law', sheds light upon something that is often on the margins of law and religion studies – dare I say it, a specialism within a specialism, a niche within a niche. Yet, the study of Biblical law provides inspiration for interdisciplinary work on law and religion more generally. As Burnside argues, Biblical law is inherently interdisciplinary. Moreover, his chapter demonstrates the relevance of its study (and in many respects the study of religious laws generally). Burnside focuses on the authority, offensiveness, application and communicability of biblical law but

⁹⁵ R Sandberg, 'Religious Law as a Social System' in R Sandberg (ed), *Religion and Legal Pluralism* (Ashgate, 2015) 249; R Sandberg, 'A Sociological Theory of Law and Religion' in F Cranmer, M Hill, C Kenny and R Sandberg (eds), *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge University Press, 2016) 66 and R Sandberg, 'The Failure of Legal Pluralism' (2016) 18 *Ecclesiastical Law Journal* 137.

perhaps the most convincing part of his analysis is how the study of biblical law reflects a coherent biblical social vision. For Burnside, this should be influential because ‘just as Shakespearean scholarship should lead naturally to more authentic, better grounded and more inspiring performances of his plays, so the study of biblical law should enable us to be better equipped to do justice’.

Interdisciplinarity also comes to the fore in Joshua Neoh’s chapter on ‘Political Theology and Legal Theory’. This explores a particular interdisciplinary approach to law and religion that lies at the intersection of legal theory and theology. Neoh achieves this by explication of a single sentence in Carl Schmitt’s *Political Theology*: ‘All significant concepts of the modern theory of the state are secularized theological concepts.’⁹⁶ The final chapter in this section, ‘Feminism Meets Law and Religion: Commonalities and Critiques’ by Marie A. Failing, explores what the author calls ‘the emerging field of religious feminist jurisprudence’. This chapter complements some of my own work in this area with Sharon Thompson.⁹⁷ As Failing puts it, her focus is on how law and religion theory shaped by feminist insights might approach common problems in law and religion from a different perspective than mainstream law and religion theory. She explores the difficulties of essentialising feminism but, unlike our work, she explores and applies different forms of feminism. She also comes at the topic from a different perspective, her ‘own standpoint in the Lutheran Reformation and American religious freedom traditions’. I found the chapter fascinating and useful especially in how it focuses the feminist reconstruction. Failing focuses on what she calls ‘three foundational issues for scholars of law and religion: the ways feminist theorists describe the nature of reality including the effects of male–female power relations; feminism’s understanding of religious liberty; and the role of the state in seeking justice for women’, and she does this by examining two particular controversies: the debate over religious women’s right to wear so-called modest clothing in public settings, and the problem of domestic violence in religious communities.

The final section, ‘Comparative approaches’, is not dedicated to a particular disciplinary perspective but rather to an approach. In some respects, this is the ‘applied’ part of the Handbook, providing case studies of interdisciplinary work that often defies definition by reference to just one discipline (in addition to law). The section draws together ideas and methods found in other parts of the Handbook proposing that rigid borders cannot be built around disciplinary fields. It begins with a chapter by Brigitte Clark which provides an analysis of an exemplar of comparative legal studies. ‘A Comparative Method for the Study of Law and Religion: Is This a Defensible Methodology?’ lives up to its title by exploring the value of a comparative approach, arguing that ‘a comparative approach is not only useful to the task of the scholar of religion, but also at the heart of religious studies as a discipline and foundational to the field’s methodology’. Clark’s example is a topic with which I am familiar: the issue of unregistered Islamic marriages. But her account comparing England with South Africa is not only of interest in its own right but demonstrates the value of a comparative methodology.

This is underlined further in the chapters that follow. ‘Monotheism and the Death Penalty: Towards a Homogenous Exegesis for Abolition’ by Jon Yorke and Amna Nazir provides

⁹⁶ C Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab tr, MIT Press, 1985) 36.

⁹⁷ Especially S Thompson and R Sandberg, ‘Multicultural Jurisdictions: The Need for a Feminist Approach to Law and Religion’ in R Sandberg (ed) *Leading Works in Law and Religion* (Routledge, 2019) 179.

an example of comparative religious law. It examines the evolution of the death penalty in Judaism, Christianity and Islam. It is argued that a comparative approach shows a similar trend: the history of the death penalty is the manifestation of privileging of retribution in punishment and that there has not been enough understanding of the importance of God's mercy and grace, and this can be used to inform a criminal justice system. It provides a further example to support Clark's thesis. The next chapter, 'The Turkish Constitutional Court Rulings on the Headscarf: The Construction of Villains and Victims' by Laçın İdil Öztuğ, focuses more upon method. It explores a means by which comparative work can be achieved. It employs a critical constructivist approach, maintaining that meanings are socially constructed and essentially contested, to provide a narrative analysis of how identities, threat perception and meanings attributed to objects are interwoven. It explores as a case study the puzzle of the Turkish Constitutional Court's referral to laicism as the justification for decisions which the author deems contradictory, exploring how the Court employed different narratives in justifying the ban, and ultimate liberalization, of the headscarf.

The final chapter in the Handbook also uses a case study to provide a grounded 'bottom up' analysis. Indeed, this is perhaps one of the main features of the Handbook as a whole: the way in which nonlegal approaches decentres the focus upon the State and institutions to focus more upon the lived experiences and/or wider social context. This Handbook began with chapters that focused on time, so it is only fitting that the final chapter focuses on space. 'Diversity in Death: A Case Study of a Muslim Cemetery Project in Quebec' by Dia Dabby and Lori G. Beaman provides a different perspective to any of the previous chapters. Their grounded analysis draws not only on social science research methods but also on geography. As they put it, their chapter 'sits at the confluence of law, geography and sociology'. Legal geography is a relatively neglected field in comparison to legal history, legal philosophy or legal sociology. It has developed less as a specialism within law and more as an interdisciplinary endeavour.⁹⁸ It therefore provides an appropriate point on which to conclude this collection.

This is the tenth book which I have authored or edited.⁹⁹ It is undoubtedly the one that is furthest outside my comfort zone. This is unquestionably a good thing, especially for a tenth book. I found editing the chapters to be inspiring. Some were inevitably more appealing to me than others; some seemed more relevant than others and some were easier for me to understand than others. But this all reflects my own background, biases and shortcomings. Every chapter in its own way is inspirational, showing a new way of looking at law and religion, a way that is no better or no worse than doctrinal legal study but which can complement it and further

⁹⁸ See I Braverman et al (eds) *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014). See also, for example, D Delaney, *The Spatial, the Legal and the Pragmatics of World-Making* (Routledge, 2010); S Kennan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge, 2015) and the essays in S Pratchett and S Keenan (eds), *Spatial Justice and Diaspora* (Counterpress, 2017).

⁹⁹ M Hill, N Doe and R Sandberg, *Religion Law: United Kingdom* (Kluwer, 2010), R Sandberg, *Law and Religion* (Cambridge University Press, 2011); R Sandberg, *Religion, Law and Society* (Cambridge University Press, 2014); N Doe and R Sandberg (eds), *Law and Religion: New Horizons* (Peeters, 2010); R Sandberg (ed) *Religion and Legal Pluralism* (Ashgate, 2015); F Cranmer, M Hill, C Kenny and R Sandberg (eds), *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge University Press, 2016); N Doe and R Sandberg (eds), *Law and Religion – Critical Concepts* (Routledge, 2017); N Doe and R Sandberg (eds), *Law and History – Critical Concepts* (Routledge, 2017); R Sandberg (ed), *Leading Works in Law and Religion* (Routledge, 2019).

the analysis. The interdisciplinary approaches included here (and indeed the countless others which we did not have room to include) both enrich and can be enriched by doctrinal legal study. Reading these chapters does not make me want to shred my earlier work! – but they do underline that my earlier work was shaped by a method. Doctrinal legal study is not a neutral exercise, it is an interpretation – indeed, an interpretation within a particular perspective and in a particular style which shapes the questions you ask and the answers at which you arrive. Doctrinal legal study is an interpretative act shaped by a culture and discourse: a particular culture and discourse that is self-perpetuating. This for me is the ultimate importance of interdisciplinary work. It underscores that the legal approach is precisely that: an approach (or, perhaps to be more correct, a cluster of related approaches). And, like any approach, it has its strengths and weaknesses, its preoccupations and biases. Like any approach, those inside may forget that it is just one approach and that others are possible. Interdisciplinarity is therefore vital in reminding ourselves of this. Of course, there is room for work within a particular disciplinary approach but it always needs to be remembered that approaches are interpretations, specific stories reached by particular paths. It needs to be remembered that we choose and take those paths. The paths we take and do not take need to be questioned. There is a need for us to be self-aware and subversive.