

# SOCIOLOGIA DEL DIRITTO DELLE RELIGIONI

(‘The Sociology of the Law on Religion’)

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1. ‘Law on Religion’ is the study of both secular and religious law. It may be defined as the study of State law on religions and of the internal laws or other regulatory instruments of religious organisations. This legal discipline became well-established in the twentieth century, particularly in the United States and Europe. Scholars, primarily based in Law Schools, researched and taught the juridical form of particular religious groups (such as Islamic law, Canon law and Jewish law) and / or provisions in national and international law that affected religions. Furthermore, comparative analyses were employed to compare different religious legal systems and the ways in which different secular legal systems regulated religion. Although the subject-matter was distinctive, the method was not. For most of the time, scholars working in this field employed standard legal methodologies to understand legal texts. Invariably ‘law on religion’ academics employed a ‘black letter’ doctrinal approach focussing purely upon legal materials and attempting to understand only their legal significance. That said, their distinctive subject-matter did lead them occasionally to take into consideration material and approaches from other parts of the academy. Some work had a clear historical focus whilst other writers included some theological reflection. Furthermore, in some cases a sociological approach was employed.

- 1.1 The use of social science materials and approaches in the study of ‘law and religion’ may be seen as a move towards a ‘sociology of law on religion’.

The influence of sociology may be methodological or theoretical. Fieldwork

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might be used to discover how the law is applied in practice in the judicial system or in any sphere of social life (such as within the education system, the workplace, religious organisations, the mass media). Alternatively social theory may be employed to contextualise legal data and to predict future developments. The use of such sociological materials is not constrained to 'law and religion' academics but has been felt in the Law Schools generally. As Campbell and Wiles pointed out in the context of the UK, the field of 'socio-legal studies' is characterized by the employment of social scientific approaches as a tool for data collection whilst the 'sociology of law' has developed as a legal discipline which seeks to understand the nature of social order through the study of law by use of theory. Although this distinction is often criticised (see, for example, Banaker and Travers (2005) who called it 'an obstacle which hinders the development of the social scientific study of law'), it is nevertheless underlines the increased use of social science, in various different guises, within the Law School. Indeed, the subject-matter of 'law on religion' provides more scope for interdisciplinary inspiration in that in addition to drawing upon the sociology of law (defined broadly to include socio-legal studies), a 'sociology of law on religion' may also draw upon the sociology of religion. As such, the 'sociology of law on religion' may be conceived as the synthesis of three distinct sub-disciplines, namely: law on religion, the sociology of law and the sociology of religion. Alternatively, one may speak of the fusion of three disciplines, religion, law and sociology. Defined narrowly, a 'sociology of law on religion' may be seen as an interdisciplinary collaboration in that it requires 'an ambition to understand and integrate aspects of two or several disciplinary perspectives into a single approach'. However, a wider conception may see the study, a 'sociology of law on religion' as being multidisciplinary, in that it 'juxtaposes several disciplines' or even transdisciplinary in that it 'indicates interactions which transgress the boundaries of the science system' (see Banaker and Travers (2005) for the definitions of these terms).

2. The history of the 'sociology of law on religion' in the twentieth century is circular. Although the 'sociology of law on religion' became popular in the later parts of the century, the use of social science materials and approaches in

the study of 'law and religion' was by no means novel. It was a re-discovery of the spirit of the founding fathers of social science (it should also be noted that this spirit can be traced back to predate the birth of sociology. One may cite a number of other theoretical works, such as the contribution of Ancient Greece and Rome, on which see McLeod (2003)). The works of Karl Marx, Emile Durkheim and Max Weber, amongst others, were characterised by a thirst of knowledge that transcended disciplinary borders. Although the work of these European post-enlightenment thinkers is classified by modern eyes as works of social science, the breadth and depth of their works extended to examine philosophy, economics, history, religion and law. Durkheim, for example, noted that his aim was 'to introduce [the sociological] idea into those disciplines from which it was absent and thereby to make them branches of sociology' (1982). He also wrote book reviews of legal and other texts where he put a sociological 'gloss on writings that were not necessarily sociological' (See Cotterrell, 1999). In addition to Weber's numerous, seminal and wide-ranging works on religion, his opus *Economy and Society* (1978) included chapters dedicated to the sociology of religion and the sociology of law. However, this approach of the founding fathers in the nineteenth and early twentieth centuries, which may be seen as either multidisciplinary or transdisciplinary, was lost for most of the twentieth century as academic specialisation led to discrete disciplines and sub-disciplines.

- 2.1 The effect of law schools in the twentieth century was described and criticised by Anthony Bradney, in an article entitled 'Law as a Parasitic Discipline' published in 1998. Bradney described how the academic doctrinal project had dominated UK law schools. However, he contended that this 'black letter approach' was 'now entering its final death throes' since few young scholars were engaged in work of significant scale that attempted to explain law solely through the internal evidence offered by judgments and statutes. Although doctrinal work still occurred in the Law Schools, by the end of the century the product of such work was case notes and textbooks as opposed to research periodicals and journal articles. For Bradney, academic lawyers now employed doctrinal methods as part of a broader attempt to understand law, alongside a range of methods from humanities and social sciences. Bradney

contended that this abandonment was not a *volte face* but rather a new stage in an evolution process of Law Schools. It has been realised that doctrinal work alone was not sufficient. Even in trying to understand the narrowest of legal rules, doctrinal lawyers have constantly felt it necessary to ask questions which could not be answered by their methodology. Rather than dealing with these non-doctrinal issues by 'mere anecdote, hearsay, and assertion', law academics had realised that a 'new method of working' was required, most typically 'infusing doctrinal work with other techniques'. For Bradney, law becomes no longer a unique and self-contained discipline but rather 'parasitic in large part on work started elsewhere in the university'. Furthermore, as Bradney points out, this process is not one way: if it is accepted that law is a component part of the wider social and political structure, it follows that not only should academic lawyers engage with other disciplines but also other disciplines should engage with law. For Bradney, this means that, 'Law, far from being an abstruse, technical discipline marginal to the university, is intricately involved in all that study in the university which involves either humanity, society or the state'.

2.2 For Bradney, this 'new spirit does not mean the subjugation of law to sociology' but rather 'represents the realisation that law can become a site or a focus for many disciplines within the academy'. However, sociologists of law, amongst others, have contended that a sociological approach is needed. However, the sociological approach required is not the narrow approach of academic sociology but rather a wider conception of sociology as practised by the founding fathers, Marx, Durkheim, Weber *et al.* Put another way, in order to treat 'law as a parasitic discipline', the academic lawyer needs to use what C Wright Mills called the 'sociological imagination' (1959). For Wright Mills, three sorts of questions are asked by social analysts 'who have been imaginatively aware of the promise of their work', namely questions on the how society is structured and how social organisation is possible, questions on how societies change over time and questions on how social change affects 'human nature'. These questions represent a sociological approach that is reminiscent of that followed by the founding fathers. They also support Bradney's view that that the 'new spirit' he identified is inescapable in that

trying to answer these questions is inevitably a multidisciplinary affair. The academic lawyer attempting to understand the broader significance of law invariably answers in part these questions and thus requires the ‘sociological imagination’. Furthermore, sociologists and others who attempt to answer these questions invariably require reference to and an understanding of law to achieve a fuller understanding.

- 2.3 As noted above, a number of legal academics in the late twentieth century appreciated the need for a social scientific understanding of law (see, for example, Rawls (1971, 1999), Habermas (1976, 1986, 1989, 1997, 2006) and Dworkin, 1977, 1986, 2002)). One of the leading advocates of the benefits of sociology to law is Roger Cotterrell. In his classic and widely-read textbook entitled *The Sociology of Law* (1992), Cotterrell contends that the disciplines of law and Law and sociology are ‘similarly comprehensive’ in that both examine ‘the whole range of significant forms of social relationships’ and both derive ‘from the same cultural assumptions or conceptions of policy relevance’ and “typically seek to view these phenomena as part of ... an integrated social structure’. For Cotterrell, it is ‘this common concern of law and sociology with the whole range of social relations which makes a sociological perspective on law potentially more generally fruitful’ than the interaction of law and others discipline concerned with ‘a particular category of human relationships’. Furthermore, Cotterrell contends that in order to ‘progress in understanding the complexity of social life’ there is a need to breakdown the ‘boundaries between existing intellectual disciplines, or a systemic denial of the autonomy of disciplines’. As he puts it, interdisciplinary work requires ‘intellectual non-conformity’. Following Wright Mills, Cotterrell concludes that ‘A sociological perspective on law does not require that law should somehow be subsumed as part of academic sociology’s territory but that it should be viewed with a “sociological imagination”’. Pointing out that Marx, Durkheim and Weber ‘sought answers to large questions’, Cotterrell notes that the contribution of sociology is not ‘finished knowledge’ but rather ‘a continuing broadening, self-critical effort to explore the conundrums presented by the empirical data of social life’ (for a fuller account see Cotterrell, 2006).

- 2.4 Other academic lawyers, even those engaged in the sociology of law, are less keen than Cotterrell. For example, Banaker and Travers (2002) stress how law and sociology have always had a close but troubled relationship. Although they have both weathered a sustained post-modern challenge, the two disciplines ‘remain frustratingly apart’ since lawyers do not take sociology seriously as a discipline in its own right and do not pay attention to the range of traditions in the disciplines. They point out that social theory and social policy are often confused. David Nelken (1994, 1996) has contended that sociology cannot ultimately transcend its own methods of arguments and style. William Twining (1997) has contended that to understand law in context academics need to seek ‘to undermine boundaries between fields of study’. Although Twining concedes that sociology is a route to understanding, he sees it as is simply one of many and warns that legal theory should not be reduced to a branch of social theory. Banaker (2003) expresses similar concerns, noting that the precarious position of the sociology of law at the intersection of the disciplines of law and sociology means that it is often ‘caught in between and pulled apart by the academic momentum of these two disciplines’. However, the approach taken by Cotterrell (1992) avoids this by seeing the sociology of law not as ‘an academic discipline or sub-discipline with specific methodological or theoretical commitments’ but ‘a continually self-reflective and self-critical enterprise of inquiry aspiring towards ever broader perspectives on law as a field or aspect of social experience’.
- However, Cotterrell (1995) does concede that the term sociology of law ‘is in many respects unsatisfactory to refer to the enterprise of inquiry involved in systemically adopting a sociological perspective on law’. He agrees that the application of law as a minor subdivision within the discipline is misguided since ‘the classic founders of modern sociology, who refused to confine their vision within narrow disciplinary boundaries, did not usually see law in such a limited way’.
- 2.5 Despite its quantity and international breadth, it is seldom the case that works within the sociology of law tradition makes reference to laws on religion, with the possible exception of work on legal pluralism (See, for example, Petersen

and Zahle (1995), Tie (1999) and Prakash (2005)). The most developed account of legal pluralism in relation to religious law is Yilmaz (2005)). In the UK, Cotterrell gives only brief mention to the question of whether religious law is 'law' (1992) and to the relationship between the State and belief communities (2006). However, in other jurisdictions where the interaction of law and religion is less subtle, mainstream sociology of law literature includes sociological understandings of 'law on religion'. For example, Indra Deva's edited work entitled *Sociology of Law* published by Oxford University Press in India in 2005 includes four essays in a section entitled 'Law and Religious Identity'. Legal anthropologists studying certain areas have also made reference to religion especially in relation to studies of religious courts in Islamic countries (see, for example, Rosen, 1989, 2000)). These exceptions aside, most of the 'sociology of law and religion' developed in the twentieth century was by 'law and religion' experts with some work also contributed by sociologists of religion.

3. As mentioned above, Bradney's portrayal of multidisciplinary work as the latest stage in the evolution process of Law Schools should be less radical for those legal academics who study the interaction of law and religion in that their study is inevitably a multidisciplinary affair. By studying religion, their work has a natural connection with religious studies, theology, ecclesiology and the sociology of religion. In one of the leading works on the law of the Church of England, Mark Hill (2001) noted that, 'The meaning, effect and future of establishment [of the Church of England] is a complex matter of history, ecclesiology, sociology and politics'. In *Religion, Law and Tradition: Comparative Studies in Religious Law* (2002), Andrew Huxley noted that the comparative study of religious law was 'irrepressibly interdisciplinary'. The work of Silvio Ferrari is proof of this (see Ferrari 2002, Ferrari and Bradney 2000, Ferrari, Durham and Sewell 2003, Ferrari and Mori (2003), Ferrari and Durham, 2004). Although most of the 'law and religion' literature in the twentieth century remained aligned to the 'black letter' approach, the obvious potential for inter-, multi- and trans-disciplinary work was grabbed by some academic lawyers who throughout the latter half of the century developed a

piecemeal literature which may be regarded as a ‘sociology of law and religion’.

- 3.1 An important contributor to this literature is Werner F Menski, a Senior Lecturer at the Law Department University of London School of Oriental and African Studies, who specialises, *inter alia*, in Hindu law, Islamic law and the law of Southern Asians in the UK. Although he has published widely (see, for example, Menski, 1993, 1998, 1999, 2000a and 2000b), his major theoretical contribution to the ‘sociology of law and religion’ is his *Hindu Law: Beyond Tradition and Modernity* (2003). Menski contends that a revival in interest in religious law can be explained by reference to sociological notions of modernity and postmodernity: whilst modernist assumptions about the irrelevance of Hindu law led to its neglect, the reconstruction of Hindu law within a post-modern analysis which accepts legal plurality shows the continued importance of religious law. For Menski, Hindu law’s ‘internal dynamism and perennial capacity for flexibility and realignment in conjunction with the societies to and in which it applies’ renders it ‘a manifestation of postmodernism’ since it constitutes ‘a complicated hybrid reflecting both a disjunction as well as an interweaving of “modern” and “pre-modern” legal cultures’. For Menski, it is the ‘widespread ignorance of social science subjects’ and the prevalence of study of black-letter law, that has resulted in legal scholars being ‘reluctant, if not overtly hostile, to accept radical postmodernist ideas that would transform the way in which we understand and study law. He contends that such a post-modern legal analysis recognising the plurality of laws ‘as a complex amalgam of state-produced, religious and social rules which... interact systematically’ would allow scholars to ‘question claimed “essentialisms” under the law’, to ‘identify, deconstruct and examine’ power relations and ‘to question the processes of legitimization’ to provide a ‘much deeper critique of the role of law itself’.
- 3.2 Menski’s call for a social scientific approach has been partially answered by a number of US academic lawyers, the most renowned of whom is Harold J Berman, Professor of Law at Emory University. His best known and prize-



winning book *Law and Revolution: The Formation of the Western Legal Tradition* (1983) has been published in German, French, Chinese, Russian, Polish, Spanish, Italian, and Lithuanian translations. It contends that the ‘Papal Revolution’ (1075-1122) led to the emergence of the first modern legal system and makes reference to the works of Marx and Weber. A sequel, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (2004) addresses the ‘German and English Protestant Revolutions’ of the sixteenth and seventeenth centuries. However, other Berman texts also provide answers to Menski’s call. In *The Interaction of Law and Religion* (1974), Berman used anthropology, history, philosophy and sociology to elucidate how law and religion are two different but interrelated dimensions of social experience in all societies. Berman’s seminal *Faith and Order: The Reconciliation of Law and Religion* (1993) not only examines historically how religious beliefs have shaped Western constitutional, criminal and contract law but also includes a number of essays on ‘Sociological and Philosophical Themes’ including essays on Weber’s Sociology of Law and the effect of globalisation upon law and religion.

- 3.3 A number of other US academic lawyers have contributed to what may be called a ‘sociology of law on religion’. David Little’s *Religion, Order, and Law* (1969) reassessed the validity and usefulness of Weber’s *The Protestant Ethic and the Spirit of Capitalism* by focussing upon religious and legal developments in the latter sixteenth and early seventeenth centuries in England. Another prolific American contributor to the interdisciplinary study of law on religion is John Witte Jr, a specialist in legal history, marriage, and religious liberty, who is Director of the Center for the Interdisciplinary Study of Religion at Emory University. His works include *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (1997), which explores the interplay between law, theology and marriage in the West, and two co-edited multidisciplinary volumes on *Religious Human Rights in Global Perspective* (1996), one on legal perspectives, the other on religious perspectives. The Center for the Interdisciplinary Study of Religion, established in 2000, is devoted to advanced study of themes at the intersection of religion, law, and society,

with emphasis on the traditions of Judaism, Christianity, and Islam. Their work is interdisciplinary in perspective, seeking to bring the wisdom of religious traditions into greater conversation with law and the social sciences. The work is structured as a series of projects on discrete themes that have religion at their core but command the analysis of several other disciplines. Each project also sponsors a series of public forums on the campus each year and culminates in a major international conference. Each two-year project of the Center for the Interdisciplinary Study of Religion will yield several new books, dozens of new articles and occasional writings.

3.4 The field of ‘law on religion’ also became well established in Europe by the end of the twentieth century as shown by the work of the European Consortium on Church and State Research. Even in the United Kingdom, where ‘law on religion’ was not taught in the universities following a prohibition on the teaching of (Roman Catholic) Canon law in the sixteenth century, academic study of ‘law on religion’ has blossomed in the last decades of the century with the advent of the Ecclesiastical Law Society and the Centre for Law and Religion at Cardiff University. In 2002, the Centre was granted an Innovation Award by the Arts and Humanities Research Board for a project entitled *Legal Responses to Religious Pluralism in European Society*. The project brought together scholars from the UK, Ireland, France, Italy and Greece, and resulted in the establishment of the European Forum for the Study of Sociology, Law and Religion. A number of studies by members of this forum were published in an edition of *Law and Justice* in 2004 and reflected upon the relationship between religion, law and society in Europe. In ‘Sociology, Law and Religion in the United Kingdom’, Javier Oliva (2004a) presented his findings of interviews he had conducted with three academic sociologists of religion and eleven leaders or members of mainstream religious denominations. The interviews focussed on what religious groups needed from the legal system, how religious leaders and sociologists of religion perceive the law of the State concerning religious bodies and the influence of social developments and legal changes on the internal laws, liturgy and doctrine of religious denominations. In ‘France and Greece: Two Approaches to Religious Pluralism’, the findings of similar

interviews with sociologists of religion and religious leaders were presented by Alessandro Ferrari (2004a). Sociologists of religion were asked about the religious make-up of their country including any emerging trends, the reception of minority religions into mainstream society and their view as to the State's regulation of society. Religious leaders were asked to evaluate current legislation on religious liberty and the need of religious groups, the relation between religious groups and public administration, the influence of religious groups upon secular government, the role of religion in society and the impact of social change on religion. In 'Sociology, Law and Religion in Italy and Spain', Javier Oliva and Juan Antonio Aberca de Castro (2004) presented interviews with sociologists of religion, political scientists and religious leaders concerning the interplay between society, religion and law in these countries.

- 3.5 The last article in the edition of *Law and Justice* featured an introductory essay by Norman Doe, Director of the Centre for Law and Religion (2004). In 'A Sociology of Law on Religion – Towards a New Discipline: Legal Responses to Religious Pluralism in Europe', Doe provided a theoretical overview of the preceding empirical reports. Locating the 'sociology of law on religion' as an 'obvious discipline' merging from the three disciplines of the law of religion, the sociology of law and the sociology of religion, Doe defined the discipline as the 'study of the relations between society, religion and law, and in particular, the distinctive role of law in sociology of religion: the place of law in relations between society and religion, and how the treatment of questions fundamental to the sociology of religion may be enriched by an understanding of their juridical dimensions'. Doe contended that 'law provides a concrete test to determine and verify the commitment of society (in the case of State law) and religious organisations (in the case of religious law) to actual development articulated in propositions of sociology of religion'. Like Bradney, Doe noted that this process is not one way: he contended that law and sociology may 'enrich each other' if sociology of religion is placed in the context of law and the law on religion is placed in the context of the sociology of religion. Doe's essay suggests a 'rudimentary agenda' for the discipline of 'sociology of law on religion' focusing upon

social interest in religion, the effect of the State interest in religious affairs upon the privatisation of religion, whether religion plays a cohesive or divisive social role, the relations between religious groups and public authorities, religious influence in secular government, religion and social change, plurality within religious traditions, secularisation of internal governance, globalisation and the portrayal of religion in the media.

3.6 Doe's thesis is supported by Bradney a conference paper later published in a book of essays (2001). Bradney contended that a number of 'law and religion' works such as the works of Poulter (1986, 1990) and Robrillard (1984) were 'socio-legal' in that 'the writers refused to restrict themselves to the traditional tools and question of doctrinal legal analysis'. However, he noted that with the exception of Poulter's final book (1998), such works 'largely restricted themselves to discussion of mainstream legal material in their work; their work may not have been doctrinal but the sources were mainly statutes and cases'. Bradney thus concluded that since 'writers on law and religion have tended not to look outside the law school for intellectual stimulation', future scholarship needed 'to consider the structural relationships not between law and religion in society but between differing forms of religion and differing forms of law in differing forms of society, seeking not a solution to a problem but, rather, a description of a situation'. For Bradney, 'this politics of law and religion and this sociology of law and religion will necessitate a clearer and more consistent use of the methods and concepts to be found elsewhere in the Universtiy'.

3.7 Cardiff's *Legal Responses to Religious Pluralism in European Society* project resulted in publications and further informal collaborations by the Centre for Law and Religion and its many associates, some of whom are based in law faculties in other European States, including: Doe and Payne (medic) on the interaction between public health and religious freedom (2005) and Puza (theologian) and Doe on state-religion cooperation (2006). The Centre has also contributed to a number of multi-disciplinary conferences, including the annual conferences of the British Association for the Study of Religions and the British Sociological Association Sociology of Religion Study Group. The

Centre also hosted a multidisciplinary conference on *The Portrayal of Religion in Europe: The Media and the Arts* (held at Cardiff in 2002). The interaction between law and religion and sociology of religion is the subject of doctoral research by Sandberg (2006a, forthcoming). The research, which focuses on the question of the definition of religion and the role of religion within society, develops the work of Doe to contend that the relationship between religion, law and society can be understood using the concept of ‘banal religiosity’. For Sandberg, this denotes a post-Christian mindset that clings on to religion simply as a vague moral source of identity. Building upon Billig’s (1995) concept of ‘banal nationalism’, ‘banal religiosity’ is constantly perpetuated by everyday habits. It is a civic religion based upon basic ethical principles traditionally aligned with religious traditions which has grown as a response to religious difference. In the same way that ‘banal nationalism’ can be contrasted with ‘hot nationalism’ which occurs at time of ‘social disruption’ (Billig, 1995), ‘banal religiosity’ can be contrasted with fundamental religiosity. Whilst dramatic but peripheral displays of religiosity dominate the debate regarding the role of religion in society, the concept of ‘banal religiosity’ allows us to draw attention to the powers of an ideology which is so familiar that it hardly seems noticeable. Sandberg has also developed the ‘sociology of law and religion’ literature by analysing the legal and sociological understandings of religion as a collective or individual force (2006b) and by using legal and sociological evidence to understand the relationship between religion and morality (2006c). Doe and Sandberg have taught the ‘sociology of law and religion’ to undergraduate law students who opt to study the module ‘Comparative Law of Religion’ and to postgraduate law students studying the LLM in Canon Law.

- 3.8 Other European ‘law on religion’ scholars have also developed an interest in works that may be included under the umbrella of ‘sociology of law on religion’. A number of courses on ‘law and religion’ under various names and in various forms include reference to sociological materials such as the interdisciplinary and interregional course entitled ‘Law & Religion – Text and Context’ offered to students from Law, Theology, Religion, and Political Sciences at the Universities in Lund and Copenhagen and directed by Lisbet

Christoffersen. A number of research centres and clusters have contributed to the field such as Le Centre National de la Recherche Scientifique, the Groupe Sociétés, Religion, Laïcités, both based in France, and the Société, Droit et Religion in Strasbourg. The Groupe Sociétés, Religion, Laïcités, and the Société, Droit et Religion have collaborated to create the EUREL website which aims to provide accurate and up-to date information on the social and legal status of religion in Europe from an interdisciplinary perspective, focussing upon Europe as a whole from an institutional perspective as well as the comparative analysis of the treatment of issues by various European countries. The data on the website is provided by social scientists and academic lawyers.

- 3.9 A number of European ‘law and religion’ academics have furthered the sociological analysis of their juridical field. For example, Alessandro Ferrari, Professor of Canon Law and State-Church relationships at the Faculty of Law of the University of Insubria, has published a number of works which use a sociological background to deepen the understanding of the law. Ferrari’s publications include work on secularism and pluralism (2003, 2004b, 2005) and the role of schools in civic cohesion (2006). An earlier example can be found in the work of Margiotta Broglio (1976). Jean Gaudemet, professor emeritus at the Universities of Paris II and Strasbourg and Directeur of Studies at the School practises High Studies, Ve Section (religious sciences), has also published widely including *Sociologie Historique du Droit* (2001) and *Marriage in the Western World: Morals and the Law* (2001). A number of Italian scholars have contributed works in this area such as Silvio Ferrari, Cristiana Cianitto of the University of Milan, Edorado Dieni and Letizia Mancini. In the United Kingdom, Javier Oliva, now of Bangor University, has published in Spanish a book entitled, *El Reino Unido: un Estado de Naciones, una pluralidad de Naciones* (‘The United Kingdom: A State of Nations, a Plurality of Churches’) (2004b). This examines the relationships between the State and religious groups using a range of legal, sociological and historical materials. Anthony Bradney has also contributed to the field in a number of ways. His current research programme includes a study of the relationship between religion and law in

contemporary Britain to be published by Routledge under the title *Law and Faith in a Secular Age*. Together with Cownie, he undertook an empirical study of Quaker-decision-making, published in 2000. In addition to Cardiff's *Legal Responses to Religious Pluralism in European Society* project (described above), a similar empirical study was carried out by Peter Edge and Augur Pearce into the role the Bishop in the constitution of the Isle of Man. Although there are examples of socio-legal work which touches upon the regulation of religion (such as Menski and Shah (1999)), such work is comparatively rare: such an empirical approach is strongly based on the legacy of American legal realism and has traditionally been alien to European scholarship which is based on legal positivism and doctrinal analysis.

4. As Doe and Bradney have made clear, a 'sociology of law on religion' requires not only that academic lawyers study religion using social science theories and methods but also requires sociologists of religion to consider the juridical evidence. The scholarship of the twentieth century indicates that it is rare that one academic has fused these specialisms in their work. Although there are exceptions such as the French Canonist Gabriel le Bras who was in equal parts a lawyer, a historian and a sociologist. Le Bras is often regarded as 'the prince' or 'the Master' of the history of the canonical right (right of the Church) and the founder of religious sociology in France. However, the transdisciplinary character of Le Bras' work was very much in common with the nineteenth century academics rather than the twentieth century, though Le Bras himself lived between 1891 and 1970. More typically, twentieth century academics were located in one discipline, occasionally venturing into other parts of the academy. Thus, as we have seen, there are a number of 'law and religion' academics that have ventured into sociology. So too, a number of sociologists of religion have ventured into the legal domain.

- 4.1 A number of international and national organisations dedicated to the sociology of religion or religious studies have included papers on legal aspects at their conferences and in the pages of their journal. The Association of Sociologists of Religions (SISR) and its journal *Sociology of Religion A Quarterly Review*, the Society for the Scientific Study of Religion and its

periodical the *Journal for the Scientific Study of Religion*, the Law and Society Association, the *Interdisciplinary Journal of Research on Religion*, the British Sociological Association and its Sociology of Religion Study Group and the British Association for the Study of Religion and its journal entitled *DISKUS* have all featured legal pieces. There are also a number of multidisciplinary journals such as *Social Compass*, *Religion Compass* and *Archives de Sciences Sociales de Religions*. The Numen Book Series on Studies in the History of Religions, edited by Kippenberg and Lawson, have produced a number of multidisciplinary collections of essays which include the legal dimension. This series includes two seminal collections on the definition of religion: *What is Religion?: Origins, Definitions & Explanations*, edited by Idinopulos and Wilson (1998) and *The Pragmatics of Defining Religion: Contexts, Concepts & Contests*, edited by Platvoet and Molendijk (1999). Over the last few years, a number of pieces on Islamic law have appeared in these multidisciplinary forums. Furthermore, other juridical work has appeared some written by academic lawyers with other pieces written by sociologists of religion or religious studies academics.

- 4.2 A number of sociologists of religion have contributed to ‘sociology of law on religion’ literature in a sporadic and often unwitting manner. The American academic James T Richardson, notably edited *Regulating Religion: Case Studies from Around the Globe* (2004a), a collection of 33 essays, 10 of which were updated versions of papers that had first appeared in a special edition of *Social Justice Research* edited by Richardson in 1999. The papers, from around the globe, aim to shed some light upon the interaction between religion and governments ‘using a blend of important ideas from the sociology of law and the sociology of religion’. Of particular note, is the first essay by Richardson himself entitled ‘Regulating Religion: A Sociological and Historical Introduction’ (2004b) which takes what he calls a ‘historically informed sociological perspective’. Such a perspective, according to Richardson is preferable to a legal analysis since it can apply ‘key variables from sociology – particularly the sociology of law - to the area of minority religions’. Richardson’s contribution to the ‘sociology of law on religion’ is



ongoing as his 'The Sociology of Religious Freedom: A Structural and Socio-Legal Analysis', published in *Sociology of Religion* in 2006 indicates.

- 4.3 A number of sociologists of religion have published articles that have legal dimensions though more often than not this reflects an occasional interest rather than a long-term research strategy. Examples include Steve Bruce and Chris Wright's 'Law, Social Change and Religious Toleration' published in the *Journal for Church and State* (1995) which sought to verify and explain from a sociological perspective their contention that the State's gradual abandonment of its role as arbiter of religious truth by means of piecemeal laws on religious liberty was motivated by 'necessity rather than principle'. Steve Bruce, a Professor of Sociology, has written extensively on the nature of religion in the modern world and on the links between religion and politics, especially in Northern Ireland. Some of this work (see, for example, Bruce, 2003) touches upon legal issues but does not constitute an integrated socio-legal analysis. Bruce's work can be compared with that of Brian J Grim, whose doctoral thesis, entitled *Religious Regulation's Impact on Religious Persecution: The Effects of De Facto and De Jure Religious Regulation* investigated whether religious regulation, which he styled as being composed of 'socio-religious hegemony' (*de facto* regulation) and 'inequitable legal/policy restrictions' (*de jure* regulation), offers a strong, significant, and direct explanation for variation in the level of religious persecution. Together with Roger Finke, Professor of Sociology and Religious Studies at Penn State University, Grim has also written on 'International Religion Indexes: Government Regulation, Government Favoritism and Social Regulation of Religion' (2006). John Wybraniec has collaborated with Finke in a study of the judiciary's changing role in protecting minority religions (2001). Amy Wybraniec has also written on this topic with Finke and Wybraniec (2004).
- 4.4 The English sociologist James Beckford has also made a number of important contributions to this area. His research has focused on the theoretical and empirical aspects of religious organisations, new religious movements, church-state problems, civic religion, religion in prisons and religious controversies in several different countries. His work on new religious

movements often made reference to their legal position (see, for example, Beckford 1983, 1993, 1998, 2004) whilst he has also written on English religious education (1998) and religious organisations (2001). Together with Sophie Gillat, Beckford has examined the position of the Church of England vis-à-vis other faith communities (1995) and co-authored an in-depth examination of the relations between the Church of England and other faiths in the Prison Service Chaplaincy (1998). Beckford has also authored a number of works on prison-chaplaincy, prisons and religion-State relations and race relations and discrimination in prisons (1999, 2000, 2004, 2006). An article entitled 'Banal discrimination: equality of respect for beliefs and worldviews in the UK' (2002), used the work of Billig (1995) to contend that English law was characterised by the existence of 'low-level, unthinking, but sometimes institutional discrimination' in favour of 'mainstream Christian churches and against the more marginal' religious communities and organisations.

- 4.5 Other leading sociologists of religion have contributed to a sociological understanding of the law on religion. Grace Davie, a leading sociologist of Religion, has included reference to legal evidence in her works. Her sociological description of the religious situation in Britain since the Second World War contains, somewhat uniquely, a chapter on Church-State relations (1994). In *Religion in Modern Europe: A Memory Mutates* (2000), she dedicated a chapter to legal pluralism whilst in *Europe: the Exceptional Case. Parameters of Faith in the Modern World* (2002), she briefly examined European Church-State relations concluding that the existence of a constitutional connection between Church and State is a 'common thread within West Europe' but that 'contrasts lie in the specificities of these relationships'. Davie showed that the broad contrast between the Protestant North and the Catholic South that she draws in relation to the sociological and historical evidence is also borne out by the legal evidence. The work of Paul Chambers provides a further example of a sociological approach to religion which includes a legal insight. Chambers has researched the relationship between faith groups and the National Assembly for Wales as well as religious diversity and tolerance in Wales and the relationship between

religious ideology and human rights (Chambers 2003, 2005, 2006, Chamber and Thompson, 2005). Examples of European Sociologists of religion include Jean-Paul Willaime's work (1986, 1992) which uses juridical notions (such as *Laïcité*) to found his sociological ideas of temperate secularism and also the works of Marcel Gauchet (1999, 2001) and Jean Baubérot (1978, 1988). The work of Paul Weller, Professor of Inter-Religious Studies at the University of Derby, also deserves comment. Weller was Project Director of the 'Religious Discrimination in England and Wales Research Project' commissioned by the UK Government. In 2005, he published *Time for a Change*, a work which pulls together many of the themes in his earlier writings and contends that perspectives drawn from the Baptist Christian theology and ecclesiology offers more adequate resources than what is perceived to be the theologically and politically inadequate reasons for the establishment of the Church of England. He has also written on human rights and Islamophobia (2006a, 2006b). His work analyses the subject-matter known to law and religion specialists but uses methods, theories and approaches from outside the Law School.

6. The twentieth century witnessed the decline of the general theorist and the rise of academic specialisation. The compartmentalisation of academic knowledge into discrete disciplines and subdisciplines effectively fettered any prospects of multidisciplinary study. However, as the century wore on, it witnessed the slow growth in such studies as specialists in certain parts of the academy sought to expand their knowledge using methods and theories from outside their subject area. In the Law Schools, the doctrinal study of law became buttressed by the use of social scientific theories and methods. Although this led to discreet subdisciplines such as the sociology of law and socio-legal studies, this spirit infused other legal areas. In addition to the sporadic and rare references to religion made by academics working in the sociology of law, law and religion specialists also became increasingly interested in a sociological approach through the means of research clusters. Doe and Bradney separately came to the same conclusion that the law on religion could be enriched by a sociological perspective and the sociology of religion could be enriched by a legal perspective. In the latter years of the century,

sociologists of religion too paid more interest to the legal dimensions of their work and reflections upon the law became common in many sociological journals and conferences. That said, a truly integrated socio-legal understanding of religion has not been achieved. Since it was not until the final years of the century that academics rediscovered the benefits of a multidisciplinary study of religion, it may be expected that the twenty-first century will witness the development of this endeavour. The task being not simply to return to the breadth and depth of work common in nineteenth century but to transcend it, combining the rigour typical of the work of the twentieth century academics with the imagination of their nineteenth century counterparts.

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