

Cambridge University Press
978-1-107-02743-5 - Religion, Law and Society
Russell Sandberg
Frontmatter
[More information](#)

RELIGION, LAW AND SOCIETY

Issues concerning religion in the public sphere are rarely far from the headlines. As a result, scholars have paid increasing attention to religion. These scholars, however, have generally stayed within the confines of their own respective disciplines. To date there has been little contact between lawyers and sociologists. *Religion, Law and Society* explores whether, how and why law and religion should interact with the sociology of religion. It examines sociological and legal materials concerning religion in order to find out what lawyers and sociologists can learn from each other. A ground-breaking, provocative and thought-provoking book, it is essential reading for lawyers, sociologists and all who are interested in the relationship between religion, law and society in the twenty-first century.

RUSSELL SANDBERG is a senior lecturer in law at the Centre for Law and Religion, Cardiff University.

Cambridge University Press
978-1-107-02743-5 - Religion, Law and Society
Russell Sandberg
Frontmatter
[More information](#)

CAMBRIDGE STUDIES IN LAW AND SOCIETY

Cambridge Studies in Law and Society aims to publish the best scholarly work on legal discourse and practice in its social and institutional contexts, combining theoretical insights and empirical research.

The fields that it covers are: studies of law in action; the sociology of law; the anthropology of law; cultural studies of law, including the role of legal discourses in social formations; law and economics; law and politics; and studies of governance. The books consider all forms of legal discourse across societies, rather than being limited to lawyers' discourses alone.

The series editors come from a range of disciplines: academic law; socio-legal studies; sociology; and anthropology. All have been actively involved in teaching and writing about law in context.

Series Editors

Chris Arup *Monash University, Victoria*

Martin Chanock *La Trobe University, Melbourne*

Sally Engle Merry *New York University*

Susan Silbey *Massachusetts Institute of Technology*

A list of books in the series can be found at the back of this book.

Cambridge University Press
978-1-107-02743-5 - Religion, Law and Society
Russell Sandberg
Frontmatter
[More information](#)

RELIGION, LAW AND SOCIETY

Russell Sandberg



Cambridge University Press
978-1-107-02743-5 - Religion, Law and Society
Russell Sandberg
Frontmatter
[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107003798

© Russell Sandberg 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library

ISBN 978-1-107-02743-5 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

CONTENTS

<i>Preface</i>	page vii
<i>Acknowledgments</i>	x
1 The new world	1
Everything changes	1
Towards an interdisciplinary approach	10
Constructed histories	11
Beyond academic isolationism	23
Case study: defining religion or belief	28
The problem of defining religion or belief	30
The effect of defining religion or belief	38
Reflection	48
2 The secularisation thesis	53
A premature obituary	53
Secularisation at the societal level	58
The three core processes	63
The secularisation paradigm	72
Secularisation at the individual level	75
Individualism	78
Compartmentalisation	80
Reflection	83
3 Secularisation within religious groups	86
<i>The Canterbury tales</i>	86
Internal secularisation	89
The five phases	90
The role of law	96
Case study: the employment status of ministers of religion	103
The twentieth-century case law	105
The twenty-first-century case law	108
Reflection	119
4 Questioning the secularisation thesis	121
Coupling	121
Questioning secularisation in the West	124
The big mistake	125

Cambridge University Press
978-1-107-02743-5 - Religion, Law and Society
Russell Sandberg
Frontmatter
[More information](#)

CONTENTS

General revisions	131
Questioning secularisation in England and Wales	137
Vicariousness	140
Associated declines	149
Reflection	154
5 Beyond secularisation	158
The war games	158
The ‘subjective turn’	161
The death of deference	167
The crises of trust	181
Case study: <i>Eweida and Others v. United Kingdom</i>	195
The domestic decisions	198
The Strasbourg judgment	204
Reflection	213
6 A new dawn	217
Religion law rises	217
Questioning a sociology of law and religion	224
The power of three	227
The role of the sociology of law	237
Beyond a sociology of law and religion	242
The distinct contribution of sociology	252
The distinct contribution of law	255
Journey’s end	263
<i>Index</i>	271

PREFACE

At the dawn of the twenty-first century, something rather unexpected happened: religion became significant again. Since the time of the Enlightenment, great thinkers had been quick to predict that religion would vanish in modern rational society and throughout the twentieth century this broadly became the case. However, the events of the late twentieth and twenty-first centuries have questioned these long-held expectations about the social decline of religion. From September 11th onwards, talk of religious resurgence and religious fundamentalism have rarely been far from the glare of the headlines. Greater levels of immigration and lingering doubts about 'otherness' have meant that questions concerning the recognition of religion are now of concern to the population at large as senior politicians race to critique notions of multiculturalism that were previously deeply ingrained.

However, the evidence is by no means all one way. There are still ample signs of the secularisation spoken of by Enlightenment thinkers. For many people and in many contexts, religion is less important than it once was. The congregations of mainstream Christian churches continue to dwindle and hallmarks of a Christian past, such as the presence of Bishops in the House of Lords, are now routinely questioned and seen as being out of line with twenty-first-century values. We live in an age where celebrities are idolised more often than gods and where people follow lifestyle choices rather than religious doctrines. It is important that we do not simply replace the grand narrative of secularisation with a new grand narrative of religious resurgence. The relationship between religion and society in the twenty-first century is complex and changing.

One of the most noteworthy, but often overlooked, changes relates to law. The early years of the twenty-first century saw the enactment of a number of new laws concerning religion. Religious freedom is now recognised as a human right and discrimination on grounds of religion or belief has become explicitly prohibited. These new laws have led to a significant increase in litigation. Employment Tribunal hearings

PREFACE

and court cases concerning religion have become commonplace, often attracting significant media attention. Long-standing assumptions and values have been questioned. The relationship between law and religion has become increasingly important and increasingly controversial.

The opening years of the twenty-first century have witnessed numerous social and legal developments that have affected the relationship between religion, law and society, and this has led to an increase in attention to religion by scholars. However, the academics who have addressed this relationship have largely stayed within the confines of their own respective disciplines: law and religion academics have studied the relationship between religion and law while sociologists of religion have studied the relationship between religion and society. To date there has been only limited contact between these sub-disciplines. Legal works rarely make reference to sociological research and sociological works seldom make reference to law and legal literature. Despite the growth in interest in both the legal and sociological dimensions of religion, the literature to date remains characterised by academic isolationism.

Religion, Law and Society explores the interface between the legal and sociological study of religion in order to examine whether and how an interdisciplinary interface between the two can inform our understanding of the place of religion in the twenty-first century. It addresses three broad research questions:

1. What are the benefits of combining insights from the legal and sociological studies of religion?
2. How can such an approach inform our understanding of the place of religion in the twenty-first century?
3. What are the risks, if any, of such an approach?

In answering these questions, *Religion, Law and Society* focuses upon the potential interaction between law and religion and the sociology of religion as academic sub-disciplines in England and Wales. Although general conclusions will be reached, particularly in the final chapter, this territorial focus is required because England and Wales are unique legally and sociologically. Both are common law countries without a codified constitution where the legal relationship between religion and the State is a complex mix of historical symbolism and pragmatism. The legal framework concerning religion is shaped by the existence of the Church of England as a Church established by law and certain vestiges of establishment remain in respect of the disestablished Church in

PREFACE

Wales. While other religions and denominations have long been tolerated by English law, it is only in recent years that religious freedom has been explicitly recognised as a human right enforceable in English courts and that discrimination on grounds of religion or belief has been expressly forbidden. England and Wales are also unique sociologically. The period following the Second World War has seen both countries come to terms with the legacy of colonialism, the declining importance of social class and an increased individualism coupled with the neoliberal rollback of the State. In terms of religion, the notion of secularisation has held great sway but this has been challenged in recent years by a number of moral panics concerning the role of religion in the public sphere.

This territorial spotlight is required in order to understand the two sub-disciplines of law and religion and the sociology of religion as social phenomena, to appreciate how they have been and are being developed by thinkers in each field. The chapters that follow will focus upon the main works and voices that shape each sub-discipline today. Work produced outside England and Wales will be cited and discussed because it has influenced domestic scholarship, but the focus will be upon domestic debates. Sociological and legal materials will be examined alongside one another, seeking to draw out tangible conclusions about the place of religion in England and Wales in the twenty-first century. This book takes the form of an extended essay, each chapter building upon the preceding one. Taken as a whole, the book documents a research journey which seeks to understand how an interdisciplinary synthesis of legal and sociological approaches can help to understand today's complex interplay between religion, law and society.

ACKNOWLEDGMENTS

This book started life as a doctoral thesis, supervised by Professor Norman Doe, and defended at Cardiff University in 2010. However, the book that you hold in your hands is rather different from that doctoral thesis. While writing the doctoral thesis it became increasingly clear to me that there were two competing stories battling for attention. The first was the story of how law and religion had grown as a legal sub-discipline and how the legal framework concerning religion in England and Wales had changed dramatically towards the end of the twentieth century. The second was the story which the doctoral thesis was supposed to be about: mapping the potential interaction between law and religion and the sociology of religion. It became increasingly clear that both stories needed to be told and that the first story had to be articulated in order for the second one to make any sense. In the doctoral thesis a compromise was reached whereby attention was given first to mapping law and religion as a sub-discipline before the question of the interaction with the sociology of religion was addressed. However, even while polishing the final draft of the thesis, I still felt that the two stories needed more room and that if I were starting again a different approach would be required.

Therefore, after being awarded my doctorate, I decided to take a different approach and opted to split the two stories into two separate books. The first book, *Law and Religion*,¹ focused on the first story; it explored how law and religion had developed as an academic sub-discipline in England and Wales and how a period of intensive legislating on religious matters had affected this. This book focuses on the second story; it explores whether, how and why law and religion should interact with the sociology of religion. It examines sociological and legal materials concerning religion to ask what sociologists and lawyers can learn from each other and what they may find out if they do. This book therefore builds upon *Law and Religion*. Whereas that book

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

ACKNOWLEDGMENTS

examined when and how the new legal framework concerning religion had developed, this book asks why. This means that this book does not repeat the detailed analysis of primary materials or the references to academic writings found in *Law and Religion* but instead provides cross-references to that earlier discussion. A wide range of materials are also available via the Law and Religion Scholars Network (LARSN) website to enable readers to keep up to date.²

Writing this book has required the substantial reworking of parts of my doctoral thesis. This has involved a number of arguments with my younger self (mostly non-verbal, usually non-violent). Many of the ideas found here were first developed a number of years ago and both my younger self and I have a number of people to thank. We are grateful to Cardiff Law School, the James Pantyfedwen Foundation and the Sidney Perry Foundation for funding the original doctoral research. Special thanks are also due to Cardiff Law School under its then head, Professor Nigel Lowe, for granting study leave in the academic year 2012–13 to write. Particular thanks are due to Professor Norman Doe who has served as supervisor of the original thesis, colleague and friend and to Professor Peter Edge and David Harte, who examined the doctoral thesis. Gratitude is also due to Honorary Professor Mark Hill QC with whom I have collaborated on a number of publications exploring the changing legal framework affecting religious rights, to Frank Cranmer for keeping me informed of updates in the field and to Dr Rebecca Catto with whom I co-wrote a chapter on the interaction between legal and sociological approaches, which informed both the doctoral thesis and this book.³ Thanks are also due to Professor Gillian Douglas, Professor Norman Doe, Dr Sophie Gilliat-Ray and Asma Khan with whom I worked on the ‘Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts’ Research Project, funded by the AHRC/ESRC Religion and Society Programme, the findings of which are drawn upon in the text.⁴

This book also develops many arguments and ideas which were originally formed through teaching on the postgraduate masters degree in Canon Law and the undergraduate module on Law and Religion at Cardiff University as well as through supervising a number of undergraduate and postgraduate dissertations. I am grateful for the

² See www.law.cf.ac.uk/clr/lrsn.

³ R Sandberg and R Catto, ‘Law and Sociology: Toward a Greater Understanding of Religion’ in N Doe and R Sandberg (eds.), *Law and Religion: New Horizons* (Peeters, 2010) 275.

⁴ See www.law.cf.ac.uk/clr/research/cohesion.html.

ACKNOWLEDGMENTS

patience and stimulation of the undergraduate and postgraduate students involved. Particular thanks are due to Amina Hussain, Anna Mahoney and Thomas Jones who provided research assistance while undergraduates on projects that have fed into this book. The support of colleagues at Cardiff Law School and its Centre for Law and Religion at Cardiff has also been important to me. I am especially indebted to Dr Rebecca Catto, Frank Cranmer and Roseanne Russell for reading and commenting upon drafts. Thanks must also be expressed to members of the LARSN and the Interfaith Legal Advisers Network. I am also very thankful for the administrative support provided by Sharron Alldred, Sarah Kennedy and Helen Calvert at the Law School's Postgraduate Office and to the staff at the Law Library. I also wish to thank the staff at Cambridge University Press, particularly Finola O'Sullivan, Richard Woodham, Samantha Richter and Carolyn Fox for their professional commitment to the text. My greatest debt, however, is to my family. This book is dedicated to them for their support, which has been indomitable.