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• Farrah Ahmed, ‘Religious Arbitration and Personal Autonomy’

Where private arbitration takes place under religious auspices and according to religious doctrine, the effects on autonomy, although frequently asserted, have not been adequately explored. This paper contributes to the burgeoning debate on religious arbitration by asking whether the autonomy-based justification for the state recognition of private arbitration holds as good for religious arbitration as it does for arbitration simpliciter, that is, arbitration not based on religion.

In §1 we consider the argument that the autonomy of certain vulnerable persons is affected by religious arbitration – more so than private arbitration simpliciter. In §2 we consider whether religious arbitration in fact has the potential for positive effects on the autonomy of at least some of these vulnerable persons. Finally, §3 considers whether the expertise that religious arbitration can provide enhances autonomy.

• Pasquale Annicchino, ‘Lautsi Overturned: Winning a Battle by Losing the War’

The compulsory display of crucifixes in Italian public schools does not violate the European Convention on Human Rights. The victory before the Grand Chamber of the European Court of Human Rights in the Lautsi judgment of a variegated coalition of actors ranging from the strong alliance between the Vatican and the Italian Government to the Russia of the New Orthodoxy as well as to American Conservative Evangelical Protestants, promises to change our understanding of church-state relationship in Europe.

Nevertheless, as I will argue, the compulsory display of the crucifix results not only in a violation of the Convention, but it also endangers the health of Italian Catholicism. As Benjamin Franklin has argued, when a religion cannot support itself and its ministers are obliged to call on the help of civil powers, the road to irrelevance is paved. Moreover as, recent research has shown, fighting culture wars through legal tools doesn’t achieve the aim pursued by most religious groups, the aim of real societal change.

Hearts and minds cannot be changed by courts. This is, I argue, the war that Catholics are losing in Italy.

• Sylvie Bacquet, ‘Religious Freedom in a Secular Society: An Analysis of the French Approach to Manifestation of Beliefs in the Public Sphere’

While France is a secular country par excellence, protection of human rights including freedom of thought, conscience and religion has been a constant preoccupation of the state since the revolution of 1789. Freedom to display religious symbols in public however is restricted by laïcité which is enforced through the legislation as permissible by article 9(2) of the ECHR. Yet, the French ban on religious symbols in the public domain, at schools or otherwise has often been accused of breaching human rights, exacerbating religious and ethnic differences or resulting in indirect discrimination. One may indeed legitimately question the extent to which freedom of religion may be successfully protected in a country that prides itself on republicanism and laïcité. Can one legitimately assume that the minority of Muslim women who choose to wear the burqa are free to practice their religion while being excluded from public life unless they are prepared to give up on their religious attire? This paper seeks to examine how, if at all, France has tackled the challenge of reconciling freedom of religion with secularism, two values that may seem incompatible. It looks at the
protection afforded to freedom of religion in the French constitution as well as the country’s core values of republicanism and secularism. It also considers the socio-political context leading to the adoption of both the 2004 law banning religious symbols at school and the most recent law which bans full face covers in the public sphere. This paper attempts to provide an understanding of how both laws came to be seen as a necessity for the enforcement of the notion of laïcité, a cornerstone of French Republicanism and provides a starting point for the debate on whether those laws and more generally secularism are compatible with freedom of religion.

- Irene Briones, ‘Homeschooling in the USA and Spain’

The revival of religiosity is fast becoming a serious area of research, as it relates to the natural movements of communities seeking to express their convictions entirely independently of current political attitudes.

Debate and disagreement among sociologists, legal experts and politicians is particularly prevalent in the difficult area of child education, where the demands of religion, law and society come into conflict.

Every International Convention recognises the right of parents to educate their children in accordance with their own beliefs, and some families prefer not to expose their children to values foreign to their beliefs, choosing instead to raise the children at home.

This article considers homeschooling cases and judicial decisions of High Courts in Spain and the United States – respectively hell and heaven for homeschoolers – and offers conclusions regarding this area of conflict of conscience, where private and public interests collide.

These cases are rooted in the phenomenon of religious conscience. Parental freedom of conscience operates against certain public or state attitudes, or simply opposes the education system. In any case, home education involves conflicts regarding rights and issues which are difficult to resolve: the best interest of the child, compelling interests such as compulsory education, and the parent’s right to educate their child according to their own beliefs.

- Esin Caliskan, ‘Alevi within the Dichotomy of the Religious and Secular’

Alevi constitute the largest ‘religious’ minority in Turkey, despite the lack of state recognition. In their struggle for legal recognition, the Alevi could not comply with the dichotomy of the religious and the secular (hereinafter, the dichotomy). Instead, whenever they attempted to step into either of these two realms, they were pushed back to the other realm or given the ‘protection’ of Islam. Instead of being predicated on the dichotomy, I propose a framework, which addresses a triad of: the ‘secular’; ‘true religion’; and ‘false religion’. I argue that secular law couching on the dichotomy is founded in a specific theology rather than a theory. The theoretical background of my research leans upon Balagangadhara’s (2005) analysis in The Heathen in His Blindness. In order to discuss the problematic of secular law, I examined four court cases [1] at national-local level In Turkey and ECtHR where the Alevi tradition is conceptualized. My research illustrates that the Alevi try to manoeuvre within the dichotomy and yet barely succeed due to the religious language of secular law and the inability of the Alevi to appeal to this language precisely because of the nature of the Alevi tradition.
• Georges Cavalier, ‘The Evolution of Interest Rate Prohibition in a Loan Contract’

This paper investigates historical, philosophical, and economic aspects of Western law tradition regarding the evolution of interest rate prohibition in a loan contract. The study is part of a global project that compares French and Islamic laws, with the aim to propose solutions to interest rate issues often raised in international finance.

On one hand, oil-related sources of cash remain in the Islamic world, and the West must comprehend the Islamic interest prohibition in order to sustain Western development. On the other hand, the financial crisis in the West has fueled a growing debate on interest rates, and one may even ask if stricter regulation makes sense.

The original Christian interpretation of the term *usury* may indeed not be too distant from the Islamic term *Réba* in the Persian language, and *Riba* in Arabic. Having analyzed the prohibition of *usury* in canon law, the paper highlights how Western modern law – in particular French law – has tried to hold this traditional position in check. Today Western law only prohibits “rapacious” interest rates.

Therefore, in this new context, and given the fact that money in both the West and Islamic worlds no longer plays the same role it did in the time of The Old Testament or Koran, should both systems converge? The conclusion is that the distance between the two worlds may not be as remote as it first appears.


The refusals of the Charity Commission for England and Wales to register the Church of Scientology and the Gnostic Centre raise questions about the way in which ‘religion’ is recognised as charitable in domestic law. The recent case-law of the European Court of Human Rights suggests that the margin of appreciation afforded member states in relation to the registration of ‘new’ religious groups is becoming narrower; and the author suggests that this development may possibly have wider implications for the recognition of religious groups as charities in the United Kingdom.

• Rohee Dasgupta, ‘Identities in Transition: Understanding Polish-Jewish Identity Renewal Through the Law’

Contrary to the idea of a state succumbing to historical justice in transition during political transformation, despite its varying legal accountability (Teitel, 2000:102-3), Judaism was founded beyond territoriality, amidst a nomadic, transitional life yet bound in legal obligations and processes of reform, holding profound reflection of the past while ushering about a redemptive projection to the future. Jewish law strongly binds its community members because the ‘doing’ of the law is perceived to be a step on the path to communal perfection (Walzer et al., 2006). While Gilman et al. (1994) may argue that a renewal of minority culture could risk being ultra-religious or in fact the complete opposite - to be obliviously universal, my ethnographic encounters in the Polish-Jewish communities made...
me rethink about the myriad structures through which identity permeates. In this paper, I argue for the need to legally recognise minority identity; through a shift from domination to non-domination in the rights paradigm. There's a perpetual state of contestation surrounding reconstruction of Jewish identity and renewal of Jewish rights in Poland, which I argue needs greater delegating and re-distribution of autonomy. The simple codification of different forms of Polish-Jewishness to 'things Jewish' and as external to that which is Polish, I assert, reiterates exclusion even in the apparently 'corrective' mode of rights giving processes. To interlink and build up this legal discourse of Jewish identity renewal in Poland, the paper 'journeys' through the arguments surrounding identity ascriptions through the Halakhah (Jewish law) then contextualises Polish-Jewish identity and rights through the 1997 Act of the Polish Constitution concerning relations with Jewish religious communes and finally assesses the two broader legal frames of regional and universal rights building processes, namely European Convention of Human Rights (ECHR) and the Committee for the Elimination of Racial Discrimination (CERD) Reports on Poland 1994-2009.

- Elisa Diamantopoulou, ‘Biolaw and Bioethics in the light of Medically Assisted Reproduction: The Case of Contemporary Orthodox Greece’

Within the frame of contemporary bioethics-related issues, in many European countries, but also worldwide, there seems to be a tendency on behalf of institutional actors, when it comes to the point of elaborating and adopting a public policy, in terms of state legislation, to take seriously into consideration the theological/moral aspects of life/reproduction related issues. This tendency finds a particular expression in the process of “auditioning” and associating, more or less directly, the various religious actors to the legislative debates upon certain bioethical issues that bear serious ethical parameters.

This paper aims at investigating the direct or indirect impact of Orthodox bioethical discourses and/or the intervention of the Orthodox Church upon state legislation in the field of medical ethics/bioethics, in contemporary Greece. This problematic will be explored with special attention to the issue of Medically (technologically) Assisted Reproduction, and the Greek legislation in this field (Republic of Greece, 2002). The Bioethics Committee of the Orthodox Church of Greece (established in 1998) intervened, by stating her reserves, commentaries, and counterproposals regarding the draft law on Medically Assisted Reproduction, in an official document, which was addressed to the preparatory legal committee of the Hellenic Parliament. Were the Church’s positions finally taken into account? Was the Church associated to the legislative process? Is there question of an “Orthodox ethos” embedded in the bioethical norms on artificial fertilization? Or, is it rather question of a secularized “legislative ethos”, disconnected from religious narratives and/or morals?

- John Duddington, ‘Ministers of Religion and Employment Status: The Wider Implications’

This paper will first consider the very recent decision in Moore v Methodist Church, where the EAT held that, in the light of the decision of the House of Lords in Percy v Board of National Mission of the Church in Scotland, a minister of the Methodist Church may be employed under a contract of service notwithstanding the conclusion of the Court of Appeal in Methodist Church v Parfitt on materially identical facts.
It seems that the courts are now set on a path of recognising ministers of religion as employees provided that certain tests are met. If this is so then there are the following implications for churches and indeed for the courts:

(a) There will need to be a careful consideration of exactly who is a minister of religion.
(b) The relationship between the minister and his or her own superiors will need radical re-examination.

This paper will draw on legal developments in the USA to illustrate these themes and will finally suggest possible ways forward.


This paper assesses recent controversies that have arisen in domestic discrimination case law concerning accommodation of religion, particularly in circumstances falling outside the scope of express legislative religious exemptions. It will predominately focus on recent judgments in the employment context although developments will be acknowledged in education and goods/services provision where jurisprudence is also beginning to be generated. It will be asked whether more scope for ‘reasonable accommodation’ of religion in these contexts across the various cases should and could have been made. This will be informed through comparative analyses of the doctrine of ‘reasonable accommodation’ in religious discrimination within other jurisdictions, such as Canada and the United States, and in disability discrimination at the domestic level. Suggestions will be made as to how certain domestic religious discrimination cases may have fared with the adoption of such a doctrine.

- Dorota Gozdecka, ‘Headscarves, Crucifixes and Traditions – A Religious “Other” Caught Between Different Legal Pluralisms’

In recent years European Court of Human Rights, Venice Commission for Democracy through Law and the Parliamentary Assembly of the Council of Europe have put increased emphasis on the notion of neutrality of the state, principle of religious pluralism and necessity of fostering religious diversity.

These principles have been applied e.g. in cases dealing with the presence of religious symbols in public institutions. In cases such as the Chamber judgement in the case of Lautsi v. Italy, Dahab v. Switzerland and Sahin v. Turkey the Court underlined that freedom of conscience and belief requires the State to observe denominational and religious neutrality. Therefore the Court allowed the states to eliminate the presence of religious symbols from public institutions. The same legal principles were applied equally to the display of such symbols by public institutions as well as to symbols worn by citizens working in or attending those institutions. This approach has however, stirred up a debate not only on the inclusion of religious adherents or non-religious persons but primarily on the universalistic human rights standards developed by the Court and the problem of their democratic legitimacy.

In the revised case of Lautsi v Italy the Court returned to the wide margin of appreciation doctrine and reinstated a country based approach to the interpretation of principles of neutrality and equality in a multicultural society.

In addition to those developments, the European legal sphere has been affected by growing fragmentisation of the rights standards. The ECJ Kadi judgement concerning relationship
between international law and fundamental rights standards affirmed an autonomous nature of the fundamental rights as not directly connected with international law interpretation but an autonomous order within EU law. The Bosphorus judgment before the ECtHR, on the other hand, established an automatic assumption of equivalency of the fundamental rights protection with the protection granted by the ECHR.

This presentation provides a critical analysis of the application of the rights standard in European legal polities and argues that the rights of a religious ‘other’ are caught in interplay of various forms of legal pluralism: horizontal, vertical and diagonal. In this interplay issues of inclusion often remain secondary.

- Alexis Gwendolyn, ‘Not Christian, but Nonetheless Qualified …’

This paper examines the uneven history of the U.S. as a haven for religious freedom and links it to the challenges being confronted today in incorporating into U.S. society the influx of immigrants from non-Christian, non-Western cultures. Focusing on the workplace, the author argues that non-Christian employees are at a disadvantage in the so-called secular U.S. workplace because it in truth represents a bastion of secularized Christianity; i.e., an institutionalization of Christianity in the civil laws and public institutions of the U.S. has allowed religiously embedded practices to masquerade as secular norms. To overcome the Christian presumption in the U.S. workplace, the author argues for replacing the “accommodation” standard with a “rights” standard in recognition of the fact that, in many non-Christians religious traditions, religious freedom entails being able to adhere to certain modes of dress and personal grooming habits during the workday as well as during leisure time.

- Ismail Latif Hacinebioglu, ‘A Logical Analysis of Epistemic Grounds of Propositions in Current Applications of Thoughts’

Epistemic justification of truth-values is a vital process for producing any rational and reasonable thought to establish judgements. Judgments are the result of complex structures of mind. Decision-making processes of judgements rely on justification processes of one’s own perceptions, intuitions, doxastic beliefs and rationalised belief which all may involve in different degrees in order to reach final stage of justification of any given assertion. Justification of propositions whether they are true or false produce decisions on what is right or wrong that are part of world-views. Demonstration of truth-values of justified belief does not only philosophically grounds theoretical basis but also become a mean of justifying practical outcomes. Relation between law, philosophy and religion occurs on this framework.

Philosophical and religious thought has a long history to have elaborate and intricate discussions on processes of thoughts and their various aspects of epistemic values for theoretical and practical applications. In this presentation I will try to be demonstrating some problems on theoretical aspects of thought processes in terms of epistemic logic. Epistemic logic searches for truth-values in truth claims in order to seek what are the grounds of the certain propositions that form the structure of thoughts. As it can be seen Islam, various cultures and civilisations produce their own way of thinking about the life. Those ideas are expressed in various propositions either they can be called philosophical, religious or legal. In every cases propositions are extracted from certain ideas and thoughts. In order to analyse these propositions logically, mental processes can be studied through epistemic justifications.
Helen Hall, ‘The Employment Rights of Religious Ministers and the Article 9 rights of Faith Communities’

The decisions in *Percy v Church of Scotland Board of National Mission* and *New Testament Church of God v Stewart* demonstrated a shift from the widely perceived orthodoxy that ministers did not enter into legally binding agreements with faith communities. However caution was expressed obiter about the risk of infringing the Article 9 rights of faith communities.

This concern is overstated. In most cases, either: i) the specific situation rule would apply; and/ or ii) An intention to create legally enforceable relations existed. If there was a demonstrable intention on the part of the faith community to enter into legal relations with its ministers, it could not consistently argue that such conduct was incompatible with its doctrine.

Both the historic and recent cases have turned on genuine intention of the parties, and *recognising* rather than *imposing* an intention. Recognition of an agreement freely entered into is not an infringement of Article 9 or other rights.

Andrew Hambler, ‘Homophobes, Hypocrites or Conscientious Objectors? Different Constructions of Those who Wish to “Opt Out” of Aspects of their Employment on Grounds of Religion or Belief’

There have been a number of recent employment tribunal claims brought by religious employees wishing to assert a right to ‘opt out’ of an aspect of their work role because of a perceived conflict with their faith. In the most recent high profile cases this conflict has been generated by an objection to promoting same-sex relationships. These claims have not been successful but have generated considerable public, academic and legal comment, such that it is possible to distinguish three constructions of such claimants – as ‘homophobic’ discriminators, as hypocrites, or as conscientious objectors. This paper draws inter alia on *McClintock, Ladele* and *MacFarlane* to examine these three constructs. It is argued that the ‘conscientious objector’ construct is the most satisfying as it emerges from both ‘internal’ and ‘external’ perspectives, and gives full regard to the significance of obligation as well as choice in individual religious expression.


Examining the ‘resurgence’ of religion, Graham Ward points to three forms of visibility: first, contemporary fundamentalisms; second, a contesting of civil society by ecclesial groups; and third, the commodification of religion. This presentation will engage with the third form of resurgence, pointing to the modern individual as a spiritual consumer in which traditional religious motifs and the products of the market more generally are interchangeable. This conception will be related to the centrality of ‘choice’ in current religious freedom and discrimination jurisprudence (for example, in *Eweida*). ‘Choice’ as the central rationale for religious freedom or non-discrimination, it will be contended, gives rise to the potential exhaustion of religion as a distinct category of understanding (or good). Within such a framework, what is consumed does not matter. Viewed in this light, *Grainger v Nicholson* is unsurprising, but the contention that ‘Jedi’ would not be a belief or religion is surprising. The presentation will conclude, however, by suggesting that the framing of religion as simply
another good to choose risks collapsing social endeavour with individual consumption and is heavily weighted towards advancing state interests.

- Ryan Hill, ‘Ambiguity over the Scope of the Child’s Right to Freedom of Religion under International Law’

Article 18(1) of the UN International Covenant on Civil and Political Rights grants “everyone” the freedom to have or adopt a religion of their choice. Article 18(2) prohibits coercion that would impair this freedom. Article 18(4) grants parents the liberty to ensure that their child’s education on religion is in conformity with the parent’s convictions. But what if a child wants to utilise their 18(1) right in a way that does not match the convictions of the parent by, for example, opting out of a particular religious education that conforms to the parent’s religion but that is at odds with the religion or belief being adopted by the child. Could the child rely on article 18(2) and, if so, what has happened to the parent’s article 18(4) right? The paper brings in the UN Convention on the Rights of the Child to investigate whether human rights law has developed to the degree that the child would be able to exercise an article 18(1) right in this sense. It concludes that, in theory, the answer can be yes, yet, in practice, this is far from clear.

- Myriam Hunter-Henin, “‘Clashing Rights’: A Sign of Increased Conflicts or New Convergence for Law and Religion in Europe?”

Despite stark diverging traditions and approaches, European countries unite around article 9 of the European Convention on Human Rights. Once litigants have proven that there has been an interference with the manifestation of their religion or belief under article 9(1) ECHR, the onus is then on the State to demonstrate that the interference was justified under article 9(2). The emphasis that is gradually (and we would argue rightly) being placed on the justification stage under article 9(2) is likely to prompt Member state judges to pay more attention to conflicting rights. In order to assess whether a given interference with a claimant’s right to religious freedom was indeed legitimate and proportionate under article 9(2), judges will thus often (despite some remaining reluctance at times) have to balance on the facts of the case competing individual rights such as rights to religious freedom and freedom of expression or conflicting rights to freedom of religion and freedom from religion.

In this paper, I will seek to show that far from being a sign of increased conflicts, the growing focus in Europe on “clashing rights” may prove to be a welcome path to greater convergence across Europe on law and religion issues.

- Amy Jackson, ‘Muslim Women and Veiling: A Study in Legal Pluralism’

This paper presents an analysis of narrative accounts recounted by Muslim women in Britain who wear a veil (in its many forms, such as, a hijab, a jilbab, a niqab, or a burqa). It examines whether Muslim women who live in Britain experience the practice of veiling as having normative quality. Consideration of these narratives is left out of discussion by certain liberal feminists who, in order to protect women from sexist practices, are against accommodating the practice of veiling in liberal society. This paper provides an argument against the liberal feminist contention.

The empirical study presented draws on Kleinhans and Macdonald’s radical critique of legal pluralism (what they call ‘critical legal pluralism’), shifting analytical focus from the
traditional legal pluralist acknowledgment of the operation, interaction and conflicts between multiple homogenous normative orders to the heterogeneous imaginations and creative capacities of legal subjects. A critical legal pluralist account of veiling in Britain overcomes essentialising the experience of normative orders and cultural communities. What is law, in a particular situation is found by questioning the narrative account of legal subjects.

A sample of Muslim women, between 18 to 36 years of age and from a range of socio-economic backgrounds, voluntarily participated in four focus group interview sessions. The participants were asked a range of questions relating to their experience of the practice of veiling and the ideas of identity, normativity, autonomy, and rights. The narrative accounts of Muslim women who wear a veil in Britain indicate the need to navigate between cultural commitments, religious obligations, and familial responsibilities while following the latest fashions and being trendy young women. The study points to the existence of hybrid identities and asks the crucial question: can such an identity be captured by law’s narrative(s)?


Building upon recent work examining the emergence of Islamic legal tribunals in the UK and the norms by which they operate, this paper offers an account of intra-Muslim debates about the current relationship between Islamic and civil law and the possibility of reforming that relationship in future. It draws upon research conducted with religious scholars and activists in the London area, looking at the opinions not only of religious scholars based at the existing tribunals, but also individuals who have campaigned for alterations to the way that Islamic law is understood in Britain. The paper examines the contrasting ways in which Islamic law is interpreted by different figures, highlighting in particular the ways in which Islamic legal norms are sometimes used to legitimate aspects of the English law, particularly relating to marriage and divorce. It argues that much of the debate about formally recognising Islamic law—even in some academic publications—neglects the nuanced ways in which the Islamic legal tradition relates to the civil system in England, and reflects upon the role of public deliberation in altering the status quo and avoiding coercive practices.

- Urfan Khaliq, ‘Freedom of Religion and Belief in International Law: A Comparative Analysis’

This paper examines the evolution of religious liberty provisions in international law through a historical prism and examines the interpretation of provisions such as Article 18 ICCPR and Article 9 ECHR in the context of the challenges posed by multi religious societies. The paper seeks to argue that the limitations of the provisions should be recognised and that religious liberty would be better served by accepting legal and political realities and by seeking to reopen debates, such as a global religious liberty covenant, which most commentators consider to be detrimental to the protection they (mistakenly) feel currently exists in international law.

In this paper, I explore the normative backgrounds of the French law, dated October 11, 2010, banning the burqa or other face coverings in public places. By using analyses relying on primary sources that all bear features of state action (juridical and political date), my research reveals how the role of affect in public debates about burqa crucially challenged the role of the “neutral state” which juggled among various normative repertoires during the controversy, alternatively referring to the notions of “public order”, “secularism”, “human rights”, “citizenship”, “national identity”, “public values”... before passing the law dated October 11, 2010. In this way, by determining a sort of republican orthopraxis, the French law becomes a rather accurate reflection of the dominant narrative of secularism that is sensitive to a perceived threat, whether this threat is external (i.e. Muslim terrorists) or internal (i.e. Muslim communitarianisms). The banning of burqa in public places is therefore revealing of the contemporary deployment of regulation of religious diversity that involves a political conception that upholds a representation of secularism as a founding myth of French modernity.


For the minority Muslims in Mauritius, the institution of inheritance is, in principle, governed by two diverse sets of (written) rules in the form of official secular civil law which is gender-neutral in the allocation of shares and unofficial religious Islamic law which grants a woman half the share of her male counterpart. In addition, there are various ‘unwritten rules’ pertaining to family structures, relationships and family ‘conventions’, social norms and moral principles that affect inheritance operation in practice. Based on Muslim women’s accounts of their lived experiences and viewpoints, this paper aims to demonstrate how rules of different nature and orientation interweave at ground level, within the family milieu, in regulating inheritance dealings. It explains the fusion and dynamic workings of rules in generating what can be described as the ‘family-woven law’ which represents a practical, although not (always) a neat or ‘conflict-free’, product of ‘deep’ or ‘strong’ legal pluralism. It evolves through people’s own perceptions and interpretations of and ‘negotiations’ with law, the way they rationalise and ascribe meanings to particular rules and notions of law (for example ‘fairness’ and ‘equality’), which are revealed in their practices, preferences and reasons for using and combining elements of different laws in dealing with inheritance and related matrimonial property matters.

• Ian Leigh, ‘Balancing Religious Autonomy and Other Human Rights under the European Convention’

In this paper the question of the conflict between religious autonomy and other human rights is discussed with reference to the European Convention on Human Rights. After a brief consideration of the status of religious organisations the treatment of collective religious liberty under the Convention is analysed, together with the implications for the state, before attention turns to various ways in which conflict with individual rights may occur and the main approaches to dealing with them. Three main areas are discussed: internal disputes within religious organisations, the applicability of procedural human rights standards to religious adjudication and private life cases. Recent private life cases before the European Court of Human Rights represent a new departure in adopting an ad hoc balancing approach,
rather than the definitional balancing approach manifest in earlier rights clashes decisions. The conclusion argues that ad hoc balancing is indeed preferable and that, it followed, it will have important consequences in other contemporary areas of dispute that have yet to reach the Court.

- Bob Morris, ‘The Future of the Coronation Oath’

At the Coronation, the sovereign is required by law to swear a tripartite oath originally stipulated in 1689 and marginally adjusted (without legislative authority) since. The sovereign promises to govern according to the law; to uphold law and justice in mercy; and to preserve the Protestant reformed religion together with the rights and privileges of Anglican bishops and clergy.

It will be the argument of the paper that the oath needs revisiting more thoughtfully and more radically than in the hurried and superficial way it has been previously considered. Whereas past adjustments reflected intra and extra UK constitutional changes – for example, the union with Scotland and the arrival of self-governing Commonwealth monarchies – it seems necessary and desirable to face up to more profound changes that have occurred since 1689. These include the fact that sovereigns have ceased long ago to be the heads of their own governments and can no longer swear personally to deliver or guarantee anything. Then there is the whole question of how the place of religion – both pluralised and diminished – should be recognised.

The paper will present and attempt to analyse the relevant considerations and look at some options.

- Madhu Mukherjee, ‘Adya Shakti and the Irrational Woman in Indian Criminal Law’

Indian criminal law, a colonial legacy, constructs women as heteronomous and irrational, while the defining characteristics of the liberal legal person are autonomy and rationality. The idea of irrationality and heteronomy of the woman in liberal law has early Christian roots. The first ancestress was created from her male counterpart to serve his purpose, and proved herself irrational and gullible when acting alone. Luce Irigray writes – ‘The only diabolical thing about women is their lack of a God …deprived of God, they are forced to comply with models that do not match them, that exile, double, mask them, cut them off from themselves and from one another’ (Irigaray, 1996: 477). In this paper, I investigate the alternative notions of a woman drawn from the ancient Shakta tradition of Hinduism and her relationship with the irrational woman of criminal law. Adya Shakti (primal power/energy) is the wise, all-powerful, all-encompassing creatress of the universe, including all other gods. Revered in large parts of India as the dark-skinned, naked, terrible and loving Mother Kali, can she promise women what Irigaray thinks they ‘need to become free, autonomous [and] sovereign’? Where are her daughters in modern socio-legal constructions in India?

- Mohammed Nayyeri, ‘Islamic Law: Rights of Human Beings or Muslims’

During the last decades, there was a challenge between the West and the world of Islam, revolving around Human Rights, which was centred on Human Being. In pre-Modern era the prevailing paradigm was of superiority of belief over human being. That is, every person valued according to his beliefs. Not only in Islamic rules, but also in other religions, if anyone changed his beliefs, as a result, he would be considered as apostate and would be
murdered or repudiated; because he was not valuable by virtue of his humanity. During Modernity era and through developing and spreading the notion of human rights, and finally after ratification of Universal Declaration of Human Rights in 1946, the new paradigm was emerged according to it the right to freedom of thought was recognized and Human was honored on the basis of his inherent humanity. But, insistence of Islamic Shari’ a on traditional paradigm of superiority of belief over human being was not changed and made the battlefield of Islam and human rights. The influence of this paradigm is noticeable in many rules and resulted in discrimination against non-Muslims who were living in Muslim territories. It is clear now. that, the Muslim-based paradigm of traditional Shari’a cannot be continued and must be replaced by the paradigm of human beings rights.

- David Pollock, ‘A Human Rights Approach to Secularism’

The principle of secularism is widely accepted in the European institutions as a condition of freedom of religion or belief and non-discrimination. It is therefore founded squarely on human rights - but it is widely recognised that human rights can and do clash, not least when religion or belief is involved. With the steady fall not only in religious belief but also the little recognised fall in its importance even to believers, traditional privileges are increasingly under threat. Religious spokesmen claim that secularists seek to drive them from the public square and to “privatise” their religion. Numerous legal cases have been brought and their failure has been used to argue that, so far from being privileged, Christians are now increasingly denied the freedom to manifest their religion. In this paper I shall examine the demands secularism in fact places on believers, distinguishing between the freedoms they should enjoy in their individual capacities and restrictions that are justifiable when they play other roles, noting in passing the less recognised demands secularism places on others. I shall argue the necessity of distinguishing different types of space - public, private and virtual - and examine as a special case the public space of publicly funded schools.

- Russell Sandberg, ‘Three Cases, an Ex-Archbishop and the Downgrading of Religious Freedom?’

It used to be the case that judges were wary of dealing with religion. The courts were reluctant to determine questions of religious doctrine and when cases concerning religious rights occurred, judges rushed to deal with the case as quickly as possible by saying that there had not really been an interference with the claimant’s religious rights. In short, judges were squeamish in matters of religion: they often emphasised their limited knowledge over religious matters and were cautious of making general remarks.

However, this appears to be changing. In three recent cases, judges have felt the need to make wide ranging remarks as to the interaction between law and religion. Lord Carey’s witness statement in McFarlane v Relate [2010] EWCA Civ 880, which contended that the effect of recent decisions were ‘to undermine the religious liberties that have existed in the United Kingdom for centuries’, provoked Lord Justice Laws to deliver a significant judgment which elucidated the relationship between Christianity and the law.

This has been followed by two recent decisions, both of which concerned the clash between religious freedom and other protected equality strands: Hall and Preddy v Bull and Bull Bristol County Court Case No 9BC02095/6 (4th January 2011) and R (Eunice Johns and Owen Johns) v Derby City Council [2011] EWHC Admin 375. And the judges in these cases also made wide-ranging comments about the relationship between religion and the law.
The fact that these judges felt obliged and able to make these general comments is itself noteworthy. This paper explores what was said in these three judgments, focussing upon what they suggest about the protection of religious freedom. Is religious freedom now protected to a lesser extent that other equality strands?

- Prakash Shah, ‘Judging Muslims’

The current discussion of Muslim law and its relevance in British jurisdictions has largely bypassed the activity of the official courts. Whatever accommodation occurs for Muslim law within British legal systems will mean that judges in British courts and tribunals will have a continued need to ensure that a greater level of attention be paid to the religion and mores of Muslim communities. Indeed, there is already evidence that British judges have had to reckon, and increasingly so, with issues of cultural specificity and expertise when cases involving Muslims come before them. This presentation outlines some of the tensions between legal traditions arising when British judges have to deal with such cases. The focus is chiefly on issues of marriage and divorce, and the argument mainly centres on the need for a greater flexibility in judicial decision making when Muslim cases come before courts.

- Yvonne Sherwood, ‘The Philosophical Heritage and Shape of “Religion” as Suggested in Media Reports of Anti-Discrimination Legislation in the UK’

This paper is offered by a religion scholar and a non-legal specialist, keen to open up ideas for discussion and clarification and create new interdisciplinary conversations with colleagues in Law. As a non-specialist I am accessing legal texts through media reports—which in themselves mediate the space of religion in the public realm—albeit with an indirect relation to the primary texts of law. According to media accounts of the case reported as ‘Judge Rules Activists Beliefs in Climate Change Akin to Religion’ (The Guardian, 3.11.2009) and ‘Tim Nicholson: A Green Martyr’ (The Independent 19.03.2009) [1] the key point at issue was whether environmental commitments are (merely?) political and a ‘lifestyle choice’, or whether belief in climate change was equivalent to ‘religion or philosophy’. Mr Justice Michael Burton ruled that the case should be heard before an industrial tribunal on the grounds that ‘A belief in man-made climate change, and the alleged resulting moral imperatives, is capable if genuinely held, of being a philosophical belief for the purpose of the 2003 Religion and Belief Regulations.’ He then invoked five tests of whether a philosophical belief could come under employment regulations on religious discrimination, namely:

- The belief must be genuinely held.
- It must be a belief and not an opinion or view based on the present state of information available.
- It must be a belief as to a weighty and substantial aspect of human life.
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

‘In my judgment, his belief goes beyond a mere opinion’, he said. I find these criteria, and this ruling, provocative for at least three reasons:

1) They seem to reflect a profoundly Kantian (i.e. three hundred year old) model of religion based on distinctions between believing (glauben) opining (meinen) and knowing (wissen)—and the notion of religious belief as a ‘holding something to be true’ or Fürwahrhalten that is not open to verification.
2) They open up space for ‘philosophy’ as a secular cognate of religion, but circumscribe ‘philosophy’ in terms borrowed from a highly circumscribed notion of ‘religion’
3) They insist on astringent criteria (e.g. human rights compliance) which ‘religions’ must meet in order to qualify for recognition in the public/legal realm.


• Stijn Smet, ‘Freedom of Religion versus Freedom from Religion’

My proposed paper will address the role of secular ethics in the legal resolution of conflicts between one person’s freedom of religion and other persons’ freedom from religion. The paper will take the form of a critical analysis of selected jurisprudence of the European Court of Human Rights (ECtHR) on proselytism [1] and religious symbols in educational institutions [2].

The paper will analyse the selected cases of the ECtHR from the angle of conflicts of rights, determining (i) whether a conflict was present in the case, (ii) how the (apparent) conflict was resolved, (iii) which ethical principles the Court relied on in its judgment to resolve the (apparent) conflict and (iv) whether or not that resolution is defensible.

The paper will demonstrate that the ECtHR relies on a strong liberal conception of autonomy and neutrality to resolve conflicts between different persons’ freedom of religion. I will argue that, in doing so, the Court has stumbled into two important pitfalls of secularism. In order to ensure that both conflicts of freedom of religion and the freedom to manifest one’s religion are taken seriously, I will conclude by advocating a move from closed neutrality to open neutrality, coupled with a limitation for the protection of the autonomy of others in cases of conflicts of rights.


• Ruth Soetendorp, ‘Intellectual Property in Jewish Law and Practice’

Biblical sources underpin the position rabbis have taken when called upon to resolve disputes concerning intellectual property concepts. Rabbis of the 3rd – 6th century developed ‘aggada’ (law based on folklore and tradition) and ‘halakha’ (the application of biblical Torah law) to resolve disputes that involved ownership, theft, use, restitution and competition. They established Talmudic legal principles that survive to be applied to contemporary intellectual property disputes. The printing press meant 17th and 18th century rabbis dealt with issues of copyright and unfair competition arising from production of texts that had hitherto only been handwritten. Jews were barred from membership of trade guilds and therefore had less of a tradition of patenting inventions. In the 20th and 21st centuries there is evidence of Jewish engagement with the intellectual property regimes of the countries in which they live. US Patent & Trademark Office catalogues inventions designed to assist observance of e.g. Jewish Sabbath and dietary laws. Early 21st century disputes concerning patenting gene therapy and protection of original translations of ancient prayers brought ‘Jewish’ disputes to the jurisdiction of secular, rather than rabbinic, courts. Whilst rabbinic courts today apply Jewish concepts to issues involving ethics and secular intellectual property law, to what extent do
their decisions (usually delivered in confidence) affect commercial decision making in the secular world?

- Haluk Songur, ‘A Comparison on Common Law and Islamic Law: In the Case of the Assize of Novel Disseisin / Istihkak’

Comparative law is one of the important branches of law studies. It is impossible to gain a deep understanding of law systems without knowing their historical backdrop and influences of law systems to each other. This paper aims to compare Common Law and Islamic Law in general at the legal system level. Claims on the cross-pollination between two systems will be examined through a particular sample at the institutional level. The possibility of this interaction/transplant will be traced historically for this kind of comparison/interactions. Henry II. created common law in 12th century, which resulted in revolutionary changes in English legal system, mainly, the action of debt, the assize of novel disseisin, and trial by jury. The source of these three institutions has long been ascribed to influences from other legal systems such as Roman law. But some recent studies have discovered new evidences which suggest that these institutions may be traced their origins directly into Islamic legal institutions. There is a historic possibility for legal transplantations from Islam through Sicily. Demonstrating this possible transplantation, interaction and connections amongst legal theories and their applications in history through comparing factual evidences will contribute into current debates on the legal pluralism from historical perspective.


The idea of neutrality is a keyword in the history of freedom of religion and conscience. Without State neutrality, the full recognition of these liberties is not possible. The main task will be to construct a definition of the concept of neutrality, from historical experience and a Comparative Law perspective. The jurisprudence of the European Court of Human Rights shows a possible way of understanding the principle of neutrality. It is not the only one possible. After centuries of religious wars, Europe wants to find a harmonic framework of coexistence between different religions, beliefs and ways of thinking. The idea of tolerance and neutrality of public authorities is a necessary first step, but it does not mean the end of the way.

- Sophie-Helene Trigeaud and Jeremy Carrette, ‘Religious NGOs at the UN and International Law: The Contribution to the Construction of the Convention of the Child’

Contemporary Western societies often assume the separation between State and Religion and as a result the question of the role played by religions in international legal systems tends to be under-debated. In order to examine an aspect of this problem, this paper intends to explore the religious non-governmental organizations contribution to the construction of international human rights instruments in the UN context. Based on an AHRC/ESRC University of Kent fieldwork research project on religious NGO activities at the Human Rights Council and in Human Rights Treaty Bodies at the UN in Geneva, this analysis will refer to case-studies on a reduce sample of religious NGOs (Baha’i International, the International Catholic Child Bureau – BICE, Quaker UN Office or Friends World Committee for Consultation – and the International Federation of Jewish Women – IFJW) to examine the nature of their participation in the drafting work of the Convention of the Rights of the Child. The paper will
show the “processes of participation” and the effective impact of religion within the international legal context.


The contract of sale and wider commercial agreement represent a fundamental part of both English and Islamic law. This paper will examine the legal principles underpinning a sharī’a compliant contract of sale (‘aqd al-bay’) as extrapolated from explicit statements (nusūs) of the Qur’ān by classical Muslim jurists (fuqahā’), and how these principles manifest themselves in today’s Anglo-MENA commercial agreements. The final consideration of the paper will be comparison of the ethical and pietistic origins of the Islamic and English-law contracts of sale. The objective of my research will be to highlight the centrality of religious scripture in contractual law and jurisprudence.

- Patrick Wall, ‘What to do with Clerics’ Medical Records from Treatment Facilities? Balancing the Right to a Good Name with the need to be Transparent and Protect the Common Good’

The paper would discuss recent past and current practices regarding medical records of Clerics who have been accused of the sexual abuse of minors. Specific areas to be discussed are the following:

1. What does a Bishop or their staff do upon discovering a Cleric has been sent to a medical facility and those records are in his personnel file.

2. When a Bishop or his staff come to the conclusion that a cleric would benefit from psychological assessment or a leave of absence to attend an in house treatment program, how do you get them to go?

3. After a Cleric has been sent for assessment and or residential treatment, what do we now do with their medical records? Who records are they?

4. What are the issues to consider before litigation to balance the right to protect the good name of individuals and the need to protect the diocese/religious institute?

5. Current case law in the United States, Canada, Australia and Great Britain.