



**Cardiff University
School of Law and Politics
Centre for Law and Religion**



Cardiff Festival for Law and Religion

**Celebrating the 25th Anniversary of the
LLM in Canon Law at Cardiff University**

**Including
Law and Religion Scholars Network (LARSN)
Annual Conference 2016**

5th & 6th May 2016

Programme

For further information, please visit:
<http://www.law.cf.ac.uk/clr/>

If you have any queries please email Dr Russell Sandberg at:
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Programme Outline

Thursday 5th May 2016

9.30am onwards	Senior Common Room, School of Law and Politics (First Floor)	Registration, tea and coffee
10.30am-11.30am	Room 1.30	Plenary: Law and Religion – Leading Works
11.30am-13.00pm	Various Rooms	LARSN Panels A, B,C and D
13.00pm-14.00pm	Room 1.28	Lunch
14.00pm-15.30pm	Various Rooms	LARSN Panels E, F and G
15.30pm-16.00pm	Senior Common Room	Tea and Coffee
16.00pm-17.30pm	Various Rooms	LARSN Panels H, I and J, Including Author meets Critics: Y Nehushtan, <i>Intolerant Religion in a Tolerant-Liberal Democracy</i> (Hart, 2015)

Friday 6th May 2016

9.00am onwards	Senior Common Room	Registration, tea and coffee
10.00am-11.00am	Room 0.22	Plenary: Meet the Editors and Bloggers
11.00am-11.30am	Senior Common Room	Tea and Coffee
11.30am-13.00pm	Various Rooms	LARSN Panels K, L, M, and N
13.00pm-14.00pm	Room 1.28	Lunch
14.00pm-15.30pm	Various Rooms	LARSN Panels O, P, Q and R
15.30pm-16.30pm	Senior Common Room	Book Launch and Wine Reception: F Cranmer, M Hill, C Kenny and R Sandberg (ed) <i>The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe</i> (Cambridge University Press, 2016)
16.30pm-17.30pm	Room 0.22	Keynote Address: Professor David Little, ‘Human Rights, Religious Freedom and Peace’
19.00pm for 19.30pm	Glamorgan Building Committee Rooms	Dinner to Celebrate the 25 th Anniversary of the LLM in Canon Law

Detailed Programme

Thursday 5th May 2016

9.30am onwards	Senior Common Room, School of Law and Politics (First Floor)	Registration, tea and coffee
10.30am-11.30am	Room 1.30	Plenary: Law and Religion – Leading Works
<p>Chair: Dr Russell Sandberg</p> <p>This opening plenary session will involve several contributors to the forthcoming edited book <i>Law and Religion – Leading Works</i> in conversation. They will discuss their nominated ‘leading works’ – publications from around the globe and from a variety of disciplines that have or should have been seminal in the development of Law and Religion over the last twenty-five years. They will also chat about what their choices reveal about the development of the study of Law and Religion in the UK and Ireland.</p> <p><i>Law and Religion – Leading Works</i> will be edited by Dr Russell Sandberg and Dr Celia Kenny as part of the ICLARS Series on Law and Religion. It is scheduled to be published in 2018.</p> <p>Contributors will include:</p> <ul style="list-style-type: none"> • Sylvie Bacquet • Professor Anthony Bradney • Frank Cranmer • Dr Celia Kenny 		
11.30am-13.00pm		LARSN Panels A, B,C and D
<p><u>Panel A: Current Issues in Law and Religion</u> (Room 1.30) Chair: Professor Anthony Bradney</p> <ul style="list-style-type: none"> • Ms Méadhbh McIvor, “Do Christians have Rights?": Conservative Evangelical Responses to Christian Legal Activism’ <p>PhD Candidate, Department of Anthropology, LSE</p> <p>The past decade has seen a rise in the number of British Christians asking the courts to protect their human right to freedom of thought, conscience and religion. Often backed by Christian lobby groups, these cases posit socially and theologically conservative Christians as the victims of state-sanctioned intolerance, with rights-based test cases a chance to both expose and slow this perceived anti-Christian trend. However, some Christians worry that high-profile legal activism will not endear them to their non-Christian peers. Based on sixteen months of research at a conservative evangelical church in London, this paper argues that conservative evangelicals have a complex understanding of those who seek to enforce their religious rights through highly publicised legal challenges. Rejecting the perceived individualism of rights-based claims, these Christians encourage one another to demonstrate</p>		

a rights-denying alternative to the atomistic, fallen world they see around them. In this understanding, inviolable legal 'rights' have little persuasive purchase. Rather, what matters is growing the Kingdom of God.

- **Dr David Perfect, 'The EHRC's Evaluation of the Religion or Belief Legal Framework'**

Equality and Human Rights Commission

As part of a three-year programme of work to implement its religion or belief strategy, 'Shared understandings', the EHRC is currently assessing the existing legal framework on religion or belief in Britain. Our work builds on two 2015 EHRC publications: a review of equality and human rights law relating to religion or belief by Peter Edge and Lucy Vickers of Oxford Brookes University and a large-scale call for evidence on religion or belief in the workplace and service delivery. We are also drawing on the insights of a range of legal academics and practitioners with specialist knowledge of religion or belief issues. The report will set out the EHRC's conclusions about the effectiveness of the current legal framework and will present recommendations for the government and other interested parties.

Since the EHRC's report will be published after the conference (probably in June 2016), the paper will focus on the broad topics that the report has covered and the key questions that we have addressed and will not discuss the recommendations. The paper will also reflect on the lessons to be learnt from carrying out an analysis of this kind.

- **Clemens Steinhilber, 'Preventing Religious Fundamentalism through an Academic Formation of Religious Elites – German, French and Italian Perspectives'**

Ph.D. candidate, Faculty of Law, Heidelberg University

The January and November 2015 Paris terrorist attacks as well as this year's attacks in Brussels have made even more acute the challenges modern states are confronted with. These acts of violence, perpetrated by anti-modern – namely Islamic – religious extremists, call for an effective reaction. According to the model of liberal democracy, the Other has to be integrated first and foremost. Exclusion can only be seen as a last resort. Therefore, the paper discusses how liberal democracies are trying to respond the Islamist threat by training Muslim religious leaders and other disseminators through modern academic education. This is supposed to result in a positive attitude towards secular ideology, considered as the foundation stone of liberal democracies. National approaches to this issue differ significantly, regarding to their national constitutional and legislative tradition on the relationship between Church and State. Several state-run universities set up chairs of confessional Islamic theology in Germany. In France, university degrees have been created at several Catholic universities to train imams. In Italy again, an academic civic education of Muslim disseminators is considered. The paper overviews the various approaches to religious integration, their legal frameworks as well as their structural similarities and concludes by discussing their prospect of success.

Panel B: Theoretical Approaches to Law and Religion I

(Room 0.25)

Chair: Dr Celia Kenny

- **Dr Yossi Nehushtan, 'Religious Conscientious Objections in UK Case-Law: Why the Content of the Conscience Matters'**

The School of Law, Keele University

In recent cases of religious conscientious objection UK courts consistently applied a neutral approach to the issue which completely ignores the content of the relevant conscience. In all cases (involving, for example, refusal to sell a 'gay marriage' cake; refusal to take part in abortion procedures; refusal to provide services to same-sex couples; and refusal to refrain from wearing religious symbols in the workplace) the courts avoided making any normative judgement about the content of the relevant conscience.

In this paper it is argued that the state must take a moral stand in cases of conscientious objection, and to differentiate between three main cases:

Case 1: claims for exemption or accommodation which are directly based on repugnant, intolerant and anti-liberal values.

Case 2: claims which indirectly express intolerant, yet morally acceptable views.

Case 3: claims which are based on values that may be irrational or morally misguided but are not necessarily intolerant or morally repugnant.

It is argued that normative evaluation of the content of the conscience provides a weighty reason (though not necessarily a conclusive one) for:

1. Not tolerating case 1.
2. Tolerating case 2 and 3, under certain conditions.

- **Dawid Bunikowski, ‘Religion-state Relations in Finland: A Cross-Disciplinary Analysis’**

Doctor of Laws, University of Eastern Finland Law School, Joensuu; Distinguished Academic Associate in the Centre for Law and Religion, Cardiff

The paper explains Finnish religion-state relations from the legal, sociological, political, and historical perspectives. The paper aim is to explore all relevant important contemporary legal-political and social-cultural issues with the historical background in the field. The most important thesis is that the current state of things between the State and the Church is based on the idea of a “friendly relationship”. By “the Church”, I mean the Evangelical Lutheran Church of Finland and the Orthodox Church of Finland. I refer also to the idea of a "folk church" by MattiKotiranta. Paradoxically, the Catholic Church or other Christian churches are not churches in terms of the Finnish law, but they only enjoy the status of a registered religious organisation. To understand Finnish way of thinking, I analyse the phenomenon of Finnish Cultural Protestantism (FCP) at many levels: of the law, of the society, of the history and politics. The methodology used in the research is also sophisticated and comprehensive. It consist of the analyses of: legal acts and doctrine, research on public opinion, the history and politics, interviews, and observation.

- **Professor Zachary R. Calo, ‘Law, Religion, and Secular Meaning’**

Hamad bin Khalifa University Law School, Qatar Foundation

This paper addresses the changing nature of secular meaning, as revealed through jurisprudential developments in the United States and Europe. First, the paper will consider the changing structure of secular meaning within modernity. Second, the paper will explore the changing meaning of the secular through an analysis of recent law and religious jurisprudence. It will survey different areas of law – individual religious freedom, religion and state relations, and institutional religious freedom. This section will look primarily to recent developments in European and American law as the basis for developing broader normative claims about the trajectory of secular meaning. It is argued that law is advancing a post-ideological secular order in which persons and communities are given space to engage in moral meaning-making and self-fulfillment. This has advanced religious freedom in certain respects, but undermined it in others. Third, the paper considers recent attention to questions of law and the secular within constructive religious thought. Both Christian and Muslim thinkers have sought to warrant space for religion within modern secular order by recovering it as a fundamentally theological category.

Panel C: Legal Status of Religious Groups I

(Room 1.29)

Chair: Dr Paul Colton

- **Tuomas Äystö, ‘Religious Insult and Legal Personality of Religious Organizations in Contemporary Finland’**

PhD Student, Department of Comparative Religion, University of Turku

The paper examines the contemporary Finnish religious insult (and blasphemy) legislation and the related legal scholarship and practice from an empirical and non-normative perspective, focusing especially on the category of "religious community" - a legal personality tailored for groups perceived as religious. It is argued, first, that the official Finnish understanding of the category of religion is constructed mainly in Christian terms, despite the stated aim to accommodate the religious diversity. Second, the religious insult law is an illustrative example of how the category of religion is used in the organization of society, as the category enables one to distinguish between groups of people and practices in a desired way. Third, the examples demonstrate how the Finnish governance of religions is particularly dependant on registered associations.

- **Mr Hugh McFaul, ‘Legal Personality and Minority Religions’**

The Open University

The accommodation of religion can depend upon law and policy makers choosing to recognise certain beliefs and practices as *religious* beliefs and practices and, in certain contexts, this recognition is contingent upon religious groups acquiring legal personality. The Organization for Security and Co-operation in Europe (2014) have reported that ‘[O]bstacles to acquiring legal personality continues to negatively affect the rights of a wide range of religious or belief communities.’

This paper will engage in a review of responses to minority religious belief and practice in the European context. It will compare responses to minority religions, including new religious movements, by examining how these religions have been understood by European jurisdictions in the recent case law of the European Convention on Human Rights. It will pay particular attention to the extent to which state approaches to the definition of religion and the acquisition of legal personality for religious groups may restrict or undermine religious freedom and accommodation.

- **Dr Mary Synge, ‘Signs of a Schism between Charity Law and Religion?’**

Exeter University

Statute recognises the advancement of religion as a charitable purpose and charities with religious purposes comprise a substantial proportion of the entries on the public Register of Charities. Many more have been excepted from the need to register with the Charity Commission, principally those registered under the Places of Worship Registration Act 1855 and a number of (broadly) Christian denominations.

Reforms instigated by the Charities Act 2006, however, mean that potentially thousands of religious excepted charities must apply for registration by March 2021. Given the central place of religion in the history of charity law, together with the courts’ reluctance, or refusal, to scrutinise the doctrines and practices of any individual religion, one might expect such a process to be straightforward. The recent application by part of the Plymouth Brethren Christian Church suggests otherwise. Although the initial refusal of the application was later reversed, on the basis of an amended trust deed, the Commission’s approach to determining charitable status and its willingness to disregard judicial precedent raises difficult questions. It is suggested that the Commission’s legal interpretation remains fundamentally flawed and presents significant obstacles to new and existing religious institutions which are required to apply for registration in the coming years.

Panel D: Comparative Legal Studies

(Room 0.26)

Chair: Professor Peter Edge

- **Professor Victor M. Muñiz-Fraticelli, ‘Public Prayers in Canada and the US’**

McGill University

In the span of a year, the Supreme Court of the United States and the Supreme Court of Canada both had occasion to consider the constitutionality of sectarian prayer at the opening of municipal legislative and council sessions. The American court, interpreting a constitution conspicuously silent on theological matters, ruled that such prayers were permissible, as they conformed to the traditions and lent ‘gravity’ to the business of governing. The Canadian court, interpreting a constitution that opens with an invocation of the ‘supremacy of God and the rule of law’ deemed such prayer impermissible, given the state’s obligation to religious neutrality.

This divergence once again reveals the difficulty that ostensibly secular liberal-democracies have in acknowledging their theological antecedents under conditions of increasing religious and cultural diversity. Where the constitutional text does not support religious endorsement, the court invokes tradition to authorize prayer. Where demographic and political changes have displaced the centrality of Christianity (as is most evident with Roman Catholicism in Québec), the court gives no weight to the constitutional text. In both cases, however, religion is rendered trivial or banal, and effectively reduced to ceremonial hand-waving. Lacking is a sincere engagement with religion, which faces the difficult disputes over authority implied by religious clauses or calls for public expression of faith.

- **Gabe Rusk, ‘A Tale of Two Towns: Public Prayer and the New Secular Rules of Engagement’**

Oxford University – Postgraduate student

This paper surveys the legal challenges to public prayer in council meetings of two towns: Greece, NY and Bideford, UK. Between 2012 and 2013 both municipalities met judicial conclusions to prayer challenges that were brought by non-religious town members. While the ban on prayer was upheld in the case of Bideford the opposite was true for the town of Greece. A jurisprudential comparative between the cases offers acute insight into the gradients of legal secularization between the United States and the UK. In the case of Greece, the new rules of engagement require ecumenical dilution and pluralistic embracement. Public religious engagement is permissible if and only if it is devoid of specific denominational language and allows an equal space for any other religious or non-religious belief. In the case of Bideford, the rules of engagement succinctly remove religious action and content from the public domain. This paper concludes that the defence of the Bideford ban and the Greece Supreme Court affirmation are both manifestations of secular jurisprudence despite their differing outcomes. Despite first appearances, this paper has found both precedents have begun to hinder rather than sanction non-sectarian religious conduct.

- **Associate Professor Neil Foster, ‘The Bathurst Diocese Decision and its Implications for The Civil Liability in Contract and Tort of Church Institutions’**

Newcastle Law School, University of Newcastle, NSW, Australia

In the NSW Supreme Court decision of *Anglican Development Fund Diocese of Bathurst v Palmer* [2015] NSWSC 1856 (10 Dec 2015) (the Bathurst Diocese case), a single judge of the Court held that a large amount of money which had been lent to institutions in the Anglican Diocese of Bathurst, and guaranteed by a “Letter of Comfort” issued by the then Bishop of the Diocese, had to be repaid by the Bishop-in-Council, including if necessary by that body “promoting an ordinance to levy the necessary funds from the parishes”. The lengthy judgment contains a number of interesting comments on the legal personality of church entities and may have long-term implications for unincorporated, mainstream denominations and their contractual and tortious liability to meet orders for payment of damages. The paper discusses the decision and some of those implications.

13.00pm-14.00pm	Room 1.28	Lunch
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14.00pm-15.30pm		LARSN Panels E, F and G
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Panel E: Religion and Freedom of Expression

(Room 1.30)

Chair: Professor Lucy Vickers

- **Dr Erica Howard, ‘Geert Wilders: Freedom of Speech or Gratuitously Offensive to Believers?’**

Middlesex University

Freedom of expression applies not only to expressions that are favourably received but also to those that offend, shock or disturb. The right includes criticising beliefs and those who manifest their beliefs cannot expect to be exempt from all criticism. On the other hand, the exercise of this freedom brings with it duties and responsibilities and these include an obligation to avoid as far as possible expressions that are gratuitously offensive to others and which do not contribute to any form of public debate.

Geert Wilders is a Dutch politician who has made – according to some quite outrageous - comments about Islam, always invoking his right to free speech and defending himself by arguing that he is criticising the belief and not insulting the believers. But, the question can be asked whether the comments made by Geert Wilders contribute to any form of public debate or whether they are gratuitously offensive, and not only that, but whether they go even further and are deliberately provocative. The right to free speech is seen as especially important for politicians, but does this mean that they also have special duties and responsibilities?

- **Professor Peter W Edge, ‘The Problem with Religious Hate Law’**

School of Law, Oxford Brookes University

The problem with religious hate law: The problem is that we don’t have any. In 1998 the then Home Secretary rejected attempts to address religious hatred by adding “or religion” to provisions dealing with racial hatred moving through Parliament. This was not because religious hatred law was seen as wrong in principle, but because “we need to give such offences the same careful consideration that we have given to these [racial] offences”. Successive legislation has not given the matter this careful consideration, and as a result has developed religious hatred law as a subset of racial hatred law. In doing so it neglects, inter alia, (a) religion as a complex, but genuine, category; (b) religion as (im)mutable; (c) religion as a symbolic realm; (d) religion as a message; (e) religion as a subversive intellectual system; and (f) hateful religious practice as a fundamental human right. The paper ends with a call to create a religious hatred law which is attentive to these special characteristics.

- **Dr Carys Moseley, ‘British Media Reporting on responses to the British Government’s Counter-Extremism Strategy’**

Eglwys Bresbyteraidd Cymru / Presbyterian Church of Wales

This presentation puts forward a critical assessment of reporting and media comment on responses to the UK government’s ‘Counter-Extremism Strategy’. Briefly tabulated are those questions journalists did and did not ask about the CES, which topics in the CES were covered or not and why. On the philosophical level several fundamental problems arise. Is the UK government attempting to define ‘true religion’, and should it? Representative responses from religious bodies are assessed critically. Going beyond conventional wisdom about the roots of the CES in the New Labour government’s Prevent Strategy, the academic origins of the concept of ‘extremism’, religious or not, in the social sciences, is shown here, and then its appearance in policy and legislation. The question is asked whether the CES is a new Clarendon Code for England and Wales, or whether it represents a

new incarnation of an Enlightenment approach to relations between religion and the state. In conclusion the level of religious literacy in the British media on this subject is assessed, and the implications thereof for public understanding of religion/s, religious freedom and freedom of speech.

Panel F: Theoretical Approaches to Law and Religion II

(Room 0.25)

Chair: Frank Cranmer

- **Dr Stéphanie Wattier, ‘Public Funding of Religions as a way to ensure Religious Freedom? Proposition for an Analysis of Legal Theory’**

Université catholique de Louvain (Belgium)

Most of the time in Europe – and it is especially true in Belgium, Spain, Italy, Luxembourg and Alsace-Moselle –, public funding of religions is justified by two reasons. On the one hand, this funding “compensates” the confiscations and nationalisations of Church properties that took place in the XVII-XVIIIth centuries (historical justification). On the other hand, religions are funded because of the “social service” they bring to the population (in particular: spiritual support of ministers of worship at different stages of life – birth, marriage, death, etc.). The aim of the paper is to propose a new analysis of the justifications of public funding of religions, based on legal theory. More precisely, my paper will explain that the division between the first, second and third generations of rights must be abandoned, and that every human right must be respected, protected and guaranteed by the three powers (legislative, executive and judicial). As regards ‘Law and religions’ matters, my paper will show that public funding of religions can be analysed as a way to ensure religious freedom. In other words, ensuring effective religious freedom can be seen as a third – and more contemporary – justification to maintain the public funding of religions.

- **Dr Celia Kenny, ‘Post-Secular Religious Voices’**

Centre for Law and Religion, Cardiff University

Conceptualizations of religion and theology – for the purposes of law – require to be interpreted through a post-secular framework. This implies an understanding of religious belief premised on the following: 1) the first is the fact that the origin and purpose of human life are now widely and variously understood without necessary reference to an external authority (the secular age); 2) the second is a philosophical shift based on the acceptance that all knowledge is ‘situated knowledge’ (the age of interpretation); 3) and the third is an acknowledgment that, while majoritarian patterns of belief might continue to hold the balance of power in particular contexts, their ‘truth’ is must be openly defended in ways which go beyond the exclusive vocabularies associated with any one, particular world-view (the age of pluralism). Scholars of Law and Religion should not imagine that the resurgence of religion is the reappearance of ancient patterns of belief, recognizable by their a-historical, a-cultural essences. On the contrary, contemporary religion – and theological reflection – require to be recalibrated, not in binary opposition to secularism, but as hybrid phenomena: a mixture of tradition and innovation not fully comprehensible, perhaps not even conceivable, outside the landscape of secularity.

- **Dr Ioana Cismas, ‘In Search of Explanations for the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability’**

Stirling Law School

Evidence suggests that religious non-state actors have been active in transitional justice (TJ) projects in numerous countries. This participation is curious in so far as one assumes that TJ is built on the same pillars as one of its sister disciplines, international law (IL)—namely, secularism and state-centrism. To probe this curiosity, this paper relies on a parallel between IL and TJ and their relation to religion and non-state actors, respectively, and is guided by three research questions. First, we ask why religious non-state actors are called upon to participate in state-sanctioned TJ processes, and submit that it is their potential to lend their ‘special’ legitimacy to the latter that makes them particularly valuable allies in post-authoritarian and post-conflict contexts. Second, the analysis explores why

religious entities are absent from TJ initiatives in situations where otherwise they are societally relevant and visible, and why at other times they act as spoilers, or on the contrary as enablers of TJ. A number of interrelated elements may explain a religious actor's silent, spoiling, or indeed enabling attitudes towards TJ: past conduct, past treatment, and the variable of accountability. Accountability can refer to whether a religious actor has been held accountable for its own conduct during the period of authoritarianism or conflict, or whether other actors have been held accountable for the treatment to which they subjected a religious actor during such periods. The third question is whether religious actors should be involved in state-led TJ initiatives—a reply will be offered by means of a critical assessment of legality, neutrality, and denial/distortion of justice arguments.

Panel G: Religious Freedom and International Law I

(Room 1.29)

Chair: Dr Anicee Van Engeland

- **Ahmed Balto, 'International Human Rights Law and Islam: Exploring the Role of Religion and Public Morality in Restricting Human Rights'**

Trinity College Dublin

The fact that international human rights declarations emphasise that protecting public morality is a valid ground for restricting human rights makes it more appealing to investigate how morality can restrict rights in practice. The paper argues that while the West considers the individual and his or her freedom as a sacred norm, Islam considers the law of God as sacred and inviolable.

For many Muslims, religion is indispensable in the conduct of daily life, and God therefore becomes relevant to how many Muslims construct their public morality as a legal restriction on rights and laws. On the other hand, the fact that the West has transferred the source of rights and laws from religion to the human being necessitates considering the implications of this change. Indeed, although Christian teachings are utterly foundational to Western society, their contemporary importance in respect of enacting rights and laws derives from their perceived inherent moral significance by individuals and not their religious roots. Thus, the fact that each ideology deals with religion and morality in its own way entails a difference in perceiving the meaning of morality as a legal justification for restricting human rights.

- **Dr Andrew Davies and Ms Harriet Hoffler, 'Adopting the Orphan: Towards an Appreciation of Freedom of Religion or Belief as a Religious, Political and Legal Imperative'**

The Edward Cadbury Centre for the Public Understanding of Religion, The University of Birmingham

Freedom of Religion or Belief (FORB) – Article 18- has been labelled the “orphaned right” of the Universal Declaration of Human Rights (UDHR). Within the UDHR, FORB is configured in such a way that it both impinges on other rights and is itself shaped and restricted by them, serving at one and the same time as both a sub set and a super set of the other declaration rights. In part, it is this unique nature of Article 18 in both ideological and practical focus that has contributed to the historic abandonment of FORB, further compounded by the lack of an applicable formal UN infrastructure which underpins the other rights within the UDHR. However, there are reasons to doubt that adopting any such legal instrumental approach to FORB would be effective, given the religious and political obstacles it would face.

To be effective globally, therefore, any approach to the extension and enhancement of FORB must encourage its adoption as a broad based religious and political commitment as well as a global legal obligation, and FORB advocates should seek to find common ground between these three spheres to build international, interdisciplinary coalitions for action. We argue that the most effective approach is likely to be to treat FORB fundamentally as an issue of social equality rather than persecution.

- **Mr. Shamsul Falaah,, ‘Interaction of a Theocratic Constitution and International Human Rights Norms: The Case of Maldives’**

PhD Candidate, Faculty of Law, The University of Auckland

Maldives is often hailed as “the paradise on earth”. Yet, despite this fame, before the inception of the current Constitution in 2008, the fundamental rights and freedoms were a pious wish rather than a set of guarantees to all the people under the Constitution. Although the resurgence of Islamic constitutionalism accepted international human rights norms – at least in the constitutions - there has been a dearth of scholarship of empirically examining and analysing the Islamic clauses and its interaction with the international human rights norms.

This paper will examine the status, effect, clashes and compatible interactions of Islamic-clauses and international human rights norms and standards under Islamic theocratic constitutions generally, and under the Maldivian theocratic Constitution. It will explore the interpretative influence of international human rights norms and Islamic Shari’ah and its broader norms on selected cases decided by the Maldivian courts. Identifying the similarities and potential conflicts between the two sources of law, it will discuss how the courts apply the international human rights norms and Islamic Shari’ah, and suggest a model framework for Islamic theocracies that can harmonize the potential conflicts through contemporary Islamic jurisprudence and other techniques.

15.30pm-16.00pm	Senior Common Room	Tea and Coffee
16.00pm-17.30pm		LARSN Panels H, I, and J. Including Author meets Critics: Y Nehushtan, <i>Intolerant Religion in a Tolerant-Liberal Democracy</i> (Hart, 2015)

Panel H: Author meets Critics: Y Nehushtan, *Intolerant Religion in a Tolerant-Liberal Democracy* (Hart, 2015)

(Room 1.30)

Chair: Dawid Bunikowski

Intolerant Religion in a Tolerant-Liberal Democracy aims to examine and critically analyse the role that religion has and should have in the public and legal sphere. The main purpose of the book is to explain why religion, on the whole, should not be tolerated in a tolerant-liberal democracy and to describe exactly how it should not be tolerated – mainly by addressing legal issues.

The main arguments of the book are, first, that as a general rule illiberal intolerance should not be tolerated; secondly, that there are meaningful, unique links between religion and intolerance, and between holding religious beliefs and holding intolerant views (and ultimately acting upon these views); and thirdly, that the religiosity of a legal claim is normally a reason, although not necessarily a prevailing one, not to accept that claim.

Yossi Nehushtan is Senior Lecturer at the School of Law, Keele University, and Co-Director of the MA in Human Rights, Globalization and Justice.

Discussants:

- Professor Julian Rivers, Bristol University
- Professor Anthony Bradney, Keele University
- John Adenitire, Cambridge University

Panel I: Islam and the State I

(Room 1.29)

Chair: Professor Urfan Khaliq

- **Qudsia Mirza, ‘Reconfiguring Islamic Law: Gender Equality and Justice’**

Birkbeck College, University of London

Despite the fact that the notion of justice occupies a central position in the Islamic tradition, reformist Islamic scholars and activists decry the marginal importance accorded to the implementation of justice in many parts of the Muslim world today. This is most notable in the area of gender. Although justice itself has been integral to Islam since its inception, the notion of gender equality has been rendered marginal in the practice of Islamic justice. This is despite the fact that the Qur’an clearly enunciates the principles of justice, human dignity, equality, and equity as essential in Islam. Thus, contemporary reformers criticise the stark disconnect between these elements, and the laws and directives passed in the name of Islam and assert that it is necessary to take a holistic view of justice and equality in order to re-establish the true ideals of Islam. The question that needs to be addressed urgently is: to what extent does the notion of gender incorporated in orthodox interpretations of the Islamic classical tradition reflect the principle of justice intrinsic to Shari’a? Although there is potential in linking justice to gender equality, there are also a number of methodological problems which this paper will investigate.

- **Dr Alice Panepinto, ‘Interpreting Islamic law as a Formant of Contemporary Muslim-majority Legal Systems’**

Centre for Human Rights in Practice, Law School, Warwick University

Islamic law influences contemporary Muslim-majority legal systems in a variety of ways, which include the formal reception and transformation of religious norms by state agents, as well as through the activities of religious institutions and individuals that influence state law. In addition to this, organic understandings of religious norms inform secular uses of law, which are often interpreted according to a given set of principles that stem from the prevailing faith of a given society. This paper will revisit the theories of comparative law proposed by Rodolfo Sacco and evaluate how they may apply in the context of Muslim-majority legal systems. This research is drawn from a wider study on how to accommodate the international legal framework of transitional justice to Muslim-majority settings, and deals with Islamic law not as a universal, static, religiously mandated normative system, akin to an expression of natural law that cannot accommodate internal variations, as demonstrated by the doctrinal diversity within Islamic law. Instead, Islamic law is understood here as a legal formant of Muslim-majority legal systems, informing both human behaviour and lawmaking activities. As such it may manifest itself through a variety of means identifiable through the comparative concepts of formants and cryptotypes introduced by Sacco.

- **Mr. Hajed Abdulhadi S Alotaibi, ‘To what Extent is Juristic Consensus Evidential in Islamic Criminal Law?’**

Bangor University

Islamic juristic consensus has previously been in a state of reformation. The technical definition of an Islamic consensus has mainly led to some gaps between theory and practice. For instance, the appearance of difficulty in applying an Islamic consensus -during the post-Islamic Arabia and the question of what prophetic traditions pertaining to consensus constantly mean? Why might Islamic governments have been likely to interfere in the process of consensus? Why is consensus not institutionalized, especially nowadays when modern technologies exist?

Other crucial points here are what is the basis upon which the Islamic consensus is built? How likely is it to establish a consensus, which is supposed to be a deceptive indictment in Islam upon speculative grounds, such as upon personal reasoning. Consequently, this will analytically lead to an exploration of types of juristic consensus in Islamic law and its reliabilities.

The aim of this paper is that a documentary approach methodology is mainly applied to investigate the impact that a few contemporary scholars have called for, such as Abu Zahrah, Khallaf and Aldahlawi. In addition, the methodology will hopefully include some important applications from criminal, general and juveniles' courts in Riyadh, KSA, as the researcher was officially able to gain this important data.

Panel J: Religious Autonomy - Employment Status of Ministers & Caste Discrimination

(Room 0.25)

Chair: David Harte

- **Frank Cranmer, 'The Employment Status of Clergy: Goodbye to the "Servant of God"?'**

St Chad's College, Durham / Centre for Law and Religion, Cardiff University

The recent cases on clergy employment – culminating in *Sharpe v Worcester DBF* and *Károly Nagy v Hungary*– suggest that the courts are now taking a much more nuanced approach to the employment status of clergy. However, developments in other areas such as tax law suggest that the UK still has a narrowly-focused view of 'ministry' as being entirely synonymous with 'ordained ministry'. So is it time for a rethink?

- **Dr Zábój Horák, 'Religious Ministers and Labour Law in the Czech Republic'**

School of Law, Charles University, Prague

The basic legal norm regulating legal status of religious ministers in the Czech Republic is the Charter of Fundamental Rights and Freedoms from 9 January 1991, which is a part of the constitutional order of the Czech Republic. According to Article 16, section 2 of the Charter "churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independent of state authorities." Similar regulation can be found in the Act on Churches and Religious Societies No. 3/2002 Sb. Religious ministers have the same position as other pastoral workers, such as pastoral assistants. The status of persons who have been taken on by religious communities in accordance with their own internal regulations as their ministers or lay pastoral workers is deemed to be a service relationship, not to be an employment relationship. It is regulated by the internal rules of the religious community.

This presentation will discuss how the legal status of non-pastoral employees of religious communities and their branches is regulated by the Labour Code, Act No. 262/2006 Sb and other acts and regulations of Czech law. Religious communities are considered as private employers in such cases.

- **Prakash Shah, 'Christianity and Caste Law in the UK'**

Queen Mary University of London

The caste system is one of the most prevalent and powerful markers of Indian culture and society. It is most closely associated with Hinduism and seen as hierarchical and oppressive, particularly for those who are considered to be at the bottom of the system. On the assumption that the caste system now exists in the UK's Indian diaspora, parliament inserted a provision against caste discrimination in the Equality Act 2010. While that merely gave a power to the Minister to implement the provision, an amendment to the Act made in 2013 made implementation obligatory. This paper argues that the idea of a caste system is a stereotype founded on Christian theological polemic that saw Indian religion as false, a view that has strongly influenced subsequent debates and scholarship on caste, which in turn has influenced the current UK legislation (and case law). It further argues that law making on caste in the UK serves as a proxy for a wider agenda of Christian proselytising in India.

Friday 6th May 2016

9.00am onwards	Senior Common Room	Registration, tea and coffee
10.00am-11.00am	Room 0.22	Meet the Editors and Bloggers
<p>Chair: Dr Russell Sandberg</p> <p>This plenary session will involve the editors of several Law and Religion-related journals and a leading blog in conversation. They will discuss what they are looking for in terms of contributions (articles, comments and guest blogs), the focus of their journal / blog and how they see the study of Law and Religion developing. The session will include a Question and Answer forum.</p> <p>Contributors:</p> <ul style="list-style-type: none"> • Dr Will Adam, <i>Ecclesiastical Law Journal</i> • John Duddington, <i>Law and Justice</i> • Dr Peter Petkoff, <i>Oxford Journal for Law and Religion</i> • Frank Cranmer and David Pocklington, http://www.lawandreligionuk.com/ 		
11.00am-11.30am	Senior Common Room	Tea and Coffee
11.30am-13.00pm		LARSN Panels K, L, M and N
<p><u>Panel K: Theoretical Approaches to Law and Religion III</u> (Room 3.01) Chair: Dr Matteo Bonotti</p> <ul style="list-style-type: none"> • Dr Hans-Martien ten Napel, ‘The “New Critics of Religious Freedom” and the Inspiration they Unintentionally Provide’ <p>Leiden University</p> <p>The 'New Critics of Religious Freedom' have become increasingly vocal of late. The first part of the proposed paper will summarise their main criticisms, some of which contain a considerable amount of truth, such as that the right to freedom of religion or belief has historically been heavily influenced by Christianity in general and Protestantism in particular.</p> <p>The second part of the paper will argue that at first sight there also appears to be one major downside to the criticisms. As it turns out to be hardly possible to isolate the right to freedom of religion or belief from the general idea of a democratic constitutional state, what the critics are really questioning is the current state of Western liberal democracy as a whole.</p> <p>The third part of the paper will propose that the reason for this close connection between religious freedom and the democratic constitutional state lies in the fact that the latter has clearly been influenced by Christianity as well. Still, the new critics of religious freedom may on closer inspection also serve as a source of inspiration for a necessary, theologically driven reform of the central tenets of liberal democracy as it has developed in recent decades.</p>		

- **Jennifer Brown, ‘What’s Wrong with Marital Establishment? Do Religious and Marital Establishment Share Relevant Wrong-making Features?’**

University College London

The case for the disestablishment of marriage sometimes draws an analogy between marital establishment and religious establishment. The claim is put in various ways: that we should treat marriage like we treat religion (March); that marital establishment is akin to establishing a civil religion, and as absurd as the state administration of other sacraments (Baltzly); and that the disestablishment of marriage is the same as the disestablishment of bar mitzvahs (Metz). Prima facie, this comparison seems appropriate, but it needs to be interrogated. What features do the two types of establishment share that make them analogous?

In this paper, I explore whether religious and marital establishment share the same wrong-making features. I argue that the proximity of marital establishment to religious establishment is a historically contingent fact, and also that there is nothing wrong with establishment per se, so that the wrongness of establishment must inhere in the institutions themselves. I then turn to and question the relevant shared features of marriage and religion that cause them both to fall short on the liberal account, focussing in particular on Tamara Metz’s claims that liberal values preclude the establishment of marriage because, like religion, marriage is a formal, comprehensive social institution.

- **Prof. Antonio Fuccillo, Francesco Sorvillo and LudovicaDecimo ‘Law and Religions in Food Choices’**

Second University of Naples – Department of Law

In our multicultural society is necessary to preserve religious freedom also in food use patterns. The Milan Charter (Expo 2015) focuses especially on this problem. Each person has the right to feed himself according to his lifestyle and his cultural and religious identity. The right to feed oneself according to one’s own religion means enforcing religious freedom. We can talk about a food religious freedom. For this reason, it is necessary to draw attention to the protection of religion food freedom in prisons and hospitals and schools. The same problem arises in relation to workplaces and transport facilities for long-distance journeys. Is the right to feed oneself according to religious dietary restrictions guaranteed also in these contexts? Law has to ensure the exercise of freedom, but it is also necessary to avoid a surfeit of exceptions that hinders the smooth functioning of public and private facilities.

This represents not only a challenge to civilization, but also an economic opportunity for all the companies which might provide services based on dietary restrictions necessities. We must strike a balance in our legal systems between public needs and religious necessities.

Panel L: Religious Freedom and International Law II

(Room 1.29)

Chair: Dr Wendy Kennett

- **Professor Dr Sophie van Bijsterveld, ‘Hard Cases: What Divides the ECtHR in Religion Cases?’**

Radboud University, the Netherlands

As religious liberty has become a contested issue over the last few decades in many European states, the rulings of the European Court of Human Rights in religion cases have become a focal point for the debate on religious liberty at the European level. The appreciation of the ECtHR’s rulings differs widely. But what divides the ECtHR itself in religion cases? Study of dissenting opinions in religion cases of the ECtHR sheds a light on dividing lines within the ECtHR and deepens our understanding of the methods of reasoning of the ECtHR. This paper presents an analysis of dissenting opinions in the rulings of the European Court on Human Rights, both of its chamber and Grand Chamber judgments. The analysis shows certain patterns in the dividing lines. Contrary to the prior expectation, the margin of appreciation as such forms no such dividing line. The paper discusses and evaluates the findings.

- **Caroline Roberts, ‘Is there a Right to be “Free From” Religion under Article 9 of the ECHR?’**

Doctoral Student, Bristol University and Cardiff University

In recent years the European Court of Human Rights (ECtHR) has recognised and protected a number of new rights under Article 9 of the European Convention on Human Rights (ECHR) in response to the changing landscape of religion and belief in contemporary Europe.

This paper will explore the recent emergence of the right to be ‘free from’ religion or belief in literature relating to Article 9. Firstly, it will examine what is meant when reference is made to this right. It will demonstrate that this is not usually used as a synonym for the long established negative Article 9 right not to hold a religion or belief, but to refer to a rather different right, a right not to be ‘exposed’ to religion or belief in the public sphere.

Secondly, this paper will analyse some key cases in which commentators have claimed that such a right has been identified and protected by the ECtHR. It will argue that the existence of a right to be ‘free from’ religion or belief in ECtHR jurisprudence has been overplayed in the literature, and since the reversal of the judgment in *Lautsi v Italy*, there is no longer any support for such a right in Article 9 case law.

- **Dr Rodrigo Cespedes, ‘Religion, Legal Tradition and School Education: ECtHR’s Margin Of Appreciation and Domestic Case Law’**

Law School, Manchester University

In this paper, it is postulated that the interpretative culture of the European Court of Human Rights (ECtHR) and its underlying ethos influence domestic courts’ rulings in the matter of religion and in school education. Religion is part of the cultural tradition of several countries, something acknowledged in their legal systems, for example, Italy and Spain. In the same way, secularism is part of the tradition of France and Turkey. That tradition has its roots in history and it is also taken into account by domestic legislation. Both secular and religious traditions are taken into consideration by national courts and the ECtHR when balancing rights in conflict. It seems that the ECtHR takes into account the national tradition of the country involved under the margin of appreciation. The different ways of balancing of children’s rights, parental authority and state powers according to domestic cultural and legal tradition are analyzed in my paper, trying to give a better understanding of the doctrine of margin of appreciation. I believe that the ECtHR’s case law influences Italian and Spanish jurisdictions and the “cultural tradition variable” is a key element in the delicate exercise of balancing.

Panel M : Islam and the State II

(Room 3.01)

Chair: Professor Julian Rivers

- **Miss Giorgia Baldi, ‘The Hijab between Sovereignty and Power’**

Birkbeck, School of Law, University of London

The debate over the Hijab has become an arena of fervent discussion in Europe as well as in different Muslim majority countries. The aftermath of 9/11 has opened a discussion on the relationship between a ‘secularized’ west and an Islamic world, widely misconstrued without reference to the extreme heterogeneity of Muslim majority societies. In this context, the (Muslim) veil emerges as the symbol of a ‘clash of civilization’ between two legal systems, similar but contingently dissimilar (western canon law and Islamic law).

This paper takes into consideration the political and historical analysis of western and Islamic legal system by recalling some outstanding point of Nancy’s thesis of ‘monotheism model of social organization’. Through this framework, this paper argues that the difficulties between the Islamic and western world are not related to a ‘clash of civilizations’, but rather they express the tensions between two monotheisms. When these monotheisms face each other, they are confronted with their respective legal incompleteness. Therefore, the so called ‘clash of civilization’

is nothing less than the expression of both Eastern and Western anxieties over their own internal legal shortcomings; this developed on both parts a mechanism of defence and attachment to their respective law.

- **Dr Gerhard van der Schyff, ‘Fifth Time Lucky for a Dutch “Burqa Ban”?’ A Critical Analysis of the Recent Attempt in light of Article 9 ECHR’**

Department of Public Law, Jurisprudence and Legal History, Tilburg Law School, The Netherlands

The tension between individuals expressing their religious liberty and the power of parliament to limit such expression has again resurfaced in the Netherlands.

In 2015 the government proposed a ban on face-coverings, widely understood to be a ‘burqa ban’. This is the fifth legislative attempt at such a ban, and the third by a government.

As with previous attempts the Council of State, which advises government and parliament on the legal quality of bills, has heavily criticised the bill arguing that it was unnecessary and in violation of the right to freedom of religion in article 9(1) ECHR.

This contribution will examine the bill and the Council’s opinion in light of the requirements emanating from article 9(1) ECHR, as this provision is directly applicable before Dutch courts and more influential than the Constitution which may not be judicially reviewed.

The current attempt to introduce a ‘burqa ban’ will be contrasted with the previous attempts in arguing that the Council of State was overly strict in its review and that the bill is indeed compatible with article 9 ECHR. Reference will also be made to burqa bans in other jurisdictions and the importance of the separation of powers in this respect.

- **Kaushik Paul, ‘Arguments for and against Legal Restrictions on the Hijab’**

The United Kingdom portrays itself as a successful multicultural society that has positively embraced respect for cultural diversity through a policy of equal opportunity in the atmosphere of mutual tolerance and anti-racism. The wearing of Islamic headscarf- hijab by Muslim women has long been common in the educational institutions and workplaces in the UK. Unlike France and some other European countries, the UK has not enacted any legislation that prohibits or restricts the wearing of hijab. A nationwide debate on the issue of Islamic dress in the UK started to generate after London bombings in 2005. The rise of Islamic State and the recent deadly terror attacks in France have given a new dimension in the controversies regarding the bans on wearing hijab and other forms of Islamic dress. While a number of arguments have been raised to justify a restriction in legal regulation of wearing Islamic dress, some people still argue that there should not be any limitation or ban in wearing a hijab. My paper, from the perspective of international human rights law, will critically analyse the correctness of the existing arguments that have been raised for and against imposing legal restrictions on wearing hijab in the UK.

Panel N: Religion and Family Law

(Room 0.27)

Chair: Dr Helen Hall

- **Tania Pagotto, ‘Saying “No”’: Conscientious Objection of Civil Registrars and the Italian Silent Case**

Ca’ Foscari University, Venice (Italy)

The Strasbourg’s Court is increasingly broadening the confines of the right to marry. The same is occurring as to the protection of conscience freedom.

On one hand, in *Bayatyan v Armenia*, the Court generally recognised the right to conscientious objection linked to Article 9. On the other, in *Oliari v Italy*, it declared Italy in breach of Article 8 because no legal protection was

provided for same-sex unions. Consequently, a draft law is under discussion in the Italian Parliament in order to regulate civil partnerships. Despite the lively debate, the reform does not contemplate the possibility for registrars of any lawful refusal for conscience reasons.

This may be a serious issue: in other European states (England, France, Spain) public officials have already appealed to the right to object. So far, the national courts answered into the negative. The ECtHR reached discouraging conclusions as well, in the case of *Ladele*.

However, two questions should be raised, adopting a comparative law approach: is it true that there is a theoretical lack of the right to conscientious objection to same-sex partnerships for registrars? What may be predicted about a possible challenge before the Italian Constitutional Court as to the lawfulness of the silent law?

- **Professor Gillian Douglas, ‘Regulation of Religious Tribunals in the De-Legalised Space of Family Breakdown: A Tactical Appraisal’**

Cardiff School of Law and Politics, Cardiff University

This paper argues that, at a time when the protection of the state’s family justice system is increasingly being placed out of reach of family members, through the withdrawal of legal aid and the promotion of private ordering and non-court based dispute resolution mechanisms, the attempt to restrict the operation of religious tribunals by the enactment of the Arbitration and Mediation Services (Equality) Bill is a misguided response to the risk of injustice suffered by vulnerable members of faith communities. It suggests that the terms of the Bill will neither address that risk adequately nor safeguard the interests of those for whom religious sanction for marital status is a fundamental requirement of their faith.

- **Dr Russell Sandberg, ‘Relational Autonomy and Religious Tribunals’**

Centre for Law and Religion, Cardiff School of Law and Politics, Cardiff University

Academic writing on the place and status of religious tribunals in western societies has focused upon the ‘minorities within minorities’ debate: the extent to which States should intervene to ensure that the citizenship rights of female group members are protected and that religious tribunals do not discriminate on grounds of sex.

In a number of recent publications following the Cardiff project on [Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts](#), it has been suggested that the concept of consent should be a key focus in determining whether the State should intervene. This paper asks instead whether the focus should be on the question of autonomy rather than consent.

In particular, this paper examines the concept of ‘relational autonomy’ as discussed by Jonathan Herring in the context of Family Law. It develops a concept of autonomy based on the forming of relationships rather than the usual focus on the autonomy of the religious group or the individualised autonomy of those who use religious tribunals. It asks what light, if any, this approach would shed upon religious tribunals and the ‘minorities within minorities’ debate.

13.00pm-14.00pm	Room 1.28	Lunch
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14.00pm-15.30pm

LARSN Panels O, P, Q and R

Panel O: Religion and Discrimination

(Room 1.30)

Chair: Pauline Roberts

- **Professor Gwyneth Pitt, ‘The Great Irish Bake Off’**

In May 2015, the NI County Court held that a bakery discriminated against a gay man by refusing to supply him with a cake iced with, “Support Gay Marriage”. The owners of the bakery, committed Christians, refused because they believe that marriage must be heterosexual. An appeal to NICA, backed by the Christian Institute, was adjourned in early February to May 2016.

How should NICA decide this case? It is the most recent in a line of cases where the right to freedom of religion, has come into conflict with the law which prohibits discrimination on grounds of sexual orientation, including *Ladele*, *McFarlane*, *Bull v Hall* and *Black v Wilkinson*. However, the issue is not just about potential clashes between religious beliefs and the right not to be discriminated against on grounds of sexual orientation. The battleground could be between religious belief and sex, or disability (remember Glenn Hoddle). The added ingredient in the Ashers Bakery case is the right to freedom of expression. Additional questions arise: – should customers be allowed to discriminate? – can companies have religious beliefs? – what is meant by comparing like with like? This paper aims to consider the issues and to suggest how they might be resolved.

- **Professor Diana Ginn, ‘Freedom of Religion and Gender Equality in Canada: Conflict, Complementarity and Complexity’**

Schulich School of Law, Dalhousie University, Nova Scotia, Canada

In Canada, rights are protected primarily through the Canadian Charter of Rights and Freedoms, which since 1982 has formed part of the Canadian constitution, and through human rights legislation, which exists in every province and territory, as well as at the federal level. The Charter protects both freedom of religion and equality rights; similarly, human rights codes prohibit discrimination on the grounds of both gender and religion. I am interested in exploring the relationship between religious freedom and equality rights.

(a) Where is there true conflict, such that increased legal protection for one will mean diminished legal protection on the other? And where such conflict exists, what principles should courts and tribunals apply to resolve the matter?

(b) In what contexts might religious freedom claims be buttressed by gender-based arguments or vice versa?

(c) Where is the relationship between protection of gender equality and religious freedom sufficiently complex that judges, academics and even the individuals involved may disagree as to whether the legal protections are in conflict or actually work in tandem?

In each of these three contexts, the overarching question is: how can the law most appropriately respond when both categories of rights are implicated?

- **Professor Neville Rochow SC, ‘Finding Balance: An Ethical and Reasoned Response to the Proposed EU Equal Treatment Directive and Other Discrimination Legislation’**

Notre Dame Law School Sydney; University of Adelaide Law School; EU Office of the Church of Jesus Christ of Latter-day Saints

The recent trend in legislation and jurisprudence has been to treat religiously informed consciences as an

inconvenience on the road to a more equitable society. More like a speed hump than a warning sign. The balance has been lost and there is a need to re-examine concepts of equality and equity as part of the necessary recalibration if everyone is to be treated with dignity. The Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation illustrates the need for this type of re-examination. So too do recent moves by Cameron government to invigilate religious activity. There is a lack of guiding principle. Rather political ideology is used, wrongly, as a guiding light down the path toward equitable society. This causes an imbalance that needs to be addressed.

Panel P: Religion, the State and Education

(Room 1.29)

Chair: Dr Javier Oliva

- **Sylvie Bacquet, ‘Non-Religious Views in the RE School Curriculum: What Can We Learn from *R (Fox) v Secretary of State for Education*?’**

University of Westminster

This paper comments on the recent decision of the High Court in *Fox v Secretary of State for Education* where the court was asked to judicially review the lawfulness of the Secretary of State for Education’s decision to issue new GCSE subject content for religious studies. The Secretary of State for Education had claimed that the new subject content as specified, would be ‘consistent with the requirement for the provision of religious education in current legislation.’ The claimants, non-religious beliefs holders who were supported by the British Humanist Association argued that the new subject content as presented, gave more importance to religious beliefs in comparison to more secular denominations and as such, the state had failed in its duty to ensure that educational provisions for Religious Education treat religious and non-religious views on an equal footing.

The case raises important issues in relation to schools’ duties to comply with article 9 and Article 2 of Additional Protocol 1 of the ECHR. It also raises issues in relation to the content of the religious education curriculum and the extent to which non-religious denominations/secular orientations should be given equal weight to religion itself. Finally, the case calls into question the nature of more traditional religious studies and more generally the teaching of Religious Education in England.

- **David Pollock, ‘Heads in the Sand - the Department for Education, Humanism and Religious Education’**

British Humanist Association

On 25 November 2015 the High Court ruled against the Secretary of State for Education in a judicial review (*Fox v Secretary of State for Education*[2015] EWHC 3404 (Admin)) backed by the British Humanist Association that was widely reported as requiring Humanism to be taught alongside world religions in religious education in non-faith schools. From the start, however, the Department for Education downplayed the importance of the judgement and two days after Christmas issued guidance to local authorities maintaining that the case had changed nothing. In this paper I shall explain the political and legal background to the case, how it used a new specification for GCSE Religious Studies to obtain a court ruling on the legal scope of statutory religious education, and how the Department for Education’s current position is based on a narrow technicality, ignoring the thrust of the judicial review.

- **Meryl Dickinson, ‘Constitutional Review and the Legal Framework of the Church of England’**

Brunel University

One of the most dynamic relationships historically has been that of the state with religion. Having been blamed for many wars and rebellions it comes as no surprise that those states continuing to model close relationships with an individual religion come under high scrutiny, especially now religious freedom plays such an important part in

today's society. Furthermore, sociological theories have developed beyond metaphysical explanations of state authority and no longer depend on spiritual or religious explanations. The UK, with two established churches, is one such state with its relationship with the Church of England especially being subjected to criticism from a number of different groups.

Whether this constant criticism is justified is questionable and often, when such discussions are undertaken there are lots of arguments made as to why the Church of England should, or should not, be disestablished but ultimately very little said about how disestablishment may occur if this was chosen as the way forward.

The following paper aims to delve into the constitutional complexities in order to discover how disestablishment can be initiated, and the effect this would have on both the state and the Church of England as well as the potential impact on other religions and the general populace of the UK at a grass root level. Ultimately, the result will be the uncovering of the complexities of disestablishment and who, if anyone, will benefit from the process.

Panel Q: Comparative Approaches to Religious Freedom

(Room 1.01)

Chair: Dr David Pocklington

- **Mr. Eugenio Velasco Ibarra Arguelles, 'Is There Really a Human Right to Freedom of Thought, Conscience and Religion?'**

University College London

The jurisprudence of the ECtHR regarding the right to freedom of thought, conscience and religion is at odds with human rights theory. Applicants must spell out their beliefs before the Court in order to justify their interest. They can't simply refer to the act which they deem to be at odds with their right. Rights-bearers don't normally need to justify their interests because the existence of the right already assumes that there is an interest deemed worthy of protection. The current adjudicatory practice of the ECtHR denaturalises this right by ill-advisedly conditioning its protection by way of this unfitting understanding. In so doing, the ECtHR subjects applicants' beliefs to an objective scrutiny which commits it to engaging in a task that it is ill-suited to perform. Furthermore, this analysis runs afoul of the ECtHR's own jurisprudence which forbids any authority from requiring the disclosure of any person's beliefs, as well as from evaluating the legitimacy of their beliefs or the legitimacy of the means of manifesting said beliefs. This adjudicatory practice should be substituted by another way of proceeding which is able to treat freedom of thought, conscience and religion as a human right, independent of judicial discretion.

- **Professor Dr. Richard Amesbury, 'Who Has a Religion? Islam in the Liberal Imagination'**

University of Zurich

Taking as its point of departure *Estes v. Rutherford County*, a Tennessee case in which the plaintiffs sought to cast doubt on Islam's status as a religion, this paper argues that ongoing debates over the meaning and status of "Islam" in the United States point up a curious feature of the contemporary discourse of "religion" — namely, its fundamental ambivalence. Religion is simultaneously imagined as threatening to and necessary for public order — as, on the one hand, inherently divisive and potentially violent and, on the other, a basis for collective identity and reservoir of public virtue. The resulting distinction between "good" religion(s) and "bad" religion(s) frequently pivots on an imagined difference between rational persons capable of drawing selectively upon religion for moral guidance and those incapable of this kind of autonomy, whose very subjectivity is enveloped by religion. Given the dual function of this rhetoric, Islam can be portrayed both as religious (hence, as a potential threat to the liberal state) and as something less than a (proper) religion (and therefore alien to the American nation).

- **John Duddington, ‘Catholic and Protestant Approaches to Law: Convergence or Divergence?’**

Editor, *Law and Justice, the Christian Law Review*

With what is generally considered to be the 500th anniversary of the start of the Reformation approaching in 2017 this paper sketches some differences and also some similarities between Catholic and Protestant approaches to both law and to thinking about the place of law in society.

The paper will consider such areas as the relationship between church and state, natural law, human rights and the extent to which the law should recognise rights of individual conscience. At the same time it will look at the extent to which Catholic and Protestant approaches have converged and diverged. Implicit in all this is the extent to which there can be said to be a Catholic and a Protestant approach to law at all.

These are all large topics and of course it will not be possible to consider them in all in detail. What this paper will aim to do is to get us all thinking about this area and suggest some lines for further investigation.

Panel R: The Ecclesiastical Law Society Panel on Comparative Religious Law

(Room 0.27)

Chair: Dr Will Adam

- **Mrs Charlotte Wright, ‘The English Canon Law relating to Suicide Victims: Its Development, the Current Laws and Proposed Reforms’**

Cardiff University

Society has historically viewed suicide with hostility and fear. For centuries this hostility was reflected in the English civil law, which condemned suicide as homicide. It was also apparent in the Church’s position towards suicide victims, which historically considered suicide to be a mortal sin. Under the current Canon law, set out in Canon B38, it is the duty of the minister to bury all parishioners or those who are entered on the electoral roll of the parish according to the rites of the Church of England, except (amongst others) those who ‘being of sound mind have laid violent hands upon themselves’. This Canon has come under increasing scrutiny in recent years as society’s attitudes towards suicide have become more tolerant. A recent motion passed in General Synod, proposed that this Canon should be amended.

This paper explores the development of the Secular and Ecclesiastical Law relating to suicide in order to understand the current position of the Church towards suicide victims. It considers the implications and shortcomings of the current Canon Law and examines the proposal for changing the Canon Law before recommending an alternative.

- **Sarah Hayes, ‘Worshipping another God in the Religious Precinct: Lawful or Not?’**

Oxford Brookes

Where worship space is part of a multi-purpose complex, or just open and so easily accessible, Birmingham case studies suggest that members of one faith community worship in the religious space of another in a wide range of circumstances. In addition to the laws of the host and visiting religious communities, the practice draws different areas of secular law into the religious precinct.

Using the experiences of host Christian communities in Birmingham as my starting point I will explore the interaction between religious and secular laws firstly where a Muslim employee working in a Christian religious precinct complies with their religious duty to pray; secondly where prayer which is ancillary to another activity takes place; and thirdly where it is feared, but unclear, whether an activity in the host community’s sacred space involves worship of another’s deity. Finally I will consider who, if anyone, has a right to deny access to an individual entering a worship space to pray.

- **Dr Firas Kasassbeh, ‘Gathering between Diyyah and Compensation: A Comparative Study among Islamic, Jordanian and UAE Laws’**

UAE University

This study treats the issue of gathering between Diyyah, which is a fixed amount of money payable in case of tort, and the compensation. This issue is controversial under Islamic law, where the Muslim scholars have long debate over the nature of Diyyah whether it is penalty or compensation.

This controversy has reflected on the laws which stemmed their provisions from Islamic law, such as UAE and Jordanian laws. In these countries, the courts have different attitudes towards the mentioned issue. The Jordanian law allows gathering between Diyyah and compensation, and the Islamic courts took the same route, while the civil courts refused it.

In UAE, the problem is much more complicated, especially because there are federal courts besides local courts. Although the law made it clear that, unless there is an agreement to the contrary, it is not allowed to gather between Diyyah and compensation, the Court of Discretion in Dubai, and unlike the Supreme Federal Court and Abu Dhabi Court of Cassation, allowed gathering between Diyyah and physical compensation.

This paper focuses on this divergence and tries to find solutions in the hope of achieving unity in judgments in UAE and Jordan.

15.30pm-16.30pm

Senior Common Room

Book Launch and Wine Reception:
F Cranmer, M Hill, C Kenny and R Sandberg (ed) *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge University Press, 2016)

Since the early 1990s, politicians, policymakers, the media and academics have increasingly focused on religion, noting the significant increase in the number of cases involving religion. As a result, law and religion has become a specific area of study. The work of Professor Norman Doe at Cardiff University has served as a catalyst for this change, especially through the creation of the LLM in Canon Law in 1991 (the first degree of its type since the time of the Reformation) and the Centre for Law and Religion in 1998 (the first of its kind in the UK).

Published to mark the twenty-fifth anniversary of the LLM in Canon Law and to pay tribute to Professor Doe’s achievements so far, *The Confluence of Law and Religion* reflects upon the interdisciplinary development of law and religion.

16.30pm-17.30pm

Room 0.22

Keynote Address: Professor David Little, ‘Human Rights, Religious Freedom and Peace’

Chair: Professor Mark Hill QC

As an example of the interconnection of law, religion, and social stability, the thesis of the lecture is that the legal protection of human rights, and in particular of religious freedom, contributes demonstrably to peace, both within and among nations. It is argued that recent objections to the contrary, while offering food for thought, do not successfully refute the thesis.

David Little is retired Professor of the Practice in Religion, Ethnicity, and International Conflict at Harvard Divinity School, and was an Associate at the Weatherhead Center for International Affairs at Harvard University. He is now a fellow at the Berkley Center for Religion, Peace, and International Affairs at Georgetown University. Until summer of 1999, he was Senior Scholar in Religion, Ethics and Human Rights at the United States Institute of Peace in Washington, DC. Before that, he taught at the University of Virginia and Yale Divinity School. From 1996-1998, he was member of the State Department Committee on Religious Freedom Abroad. Little is co-author with Scott W. Hibbard of the, *Islamic Activism and U.S. Foreign Policy*, and also author of publications on Ukraine, Sri Lanka, and Tibet (with Hibbard) in the USIP series on religion, nationalism, and intolerance. In 2007 he published two edited volumes: *Peacemakers in Action: Profiles of Religion in Conflict Resolution*, and *Religion and Nationalism in Iraq: A Comparative Perspective* with (Donald K. Swearer). Little has authored a number of articles on religion and human rights, the history of rights and constitutionalism, and religion and peace. Cambridge University Press has recently published a book of his writings, *Essays on Religion and Human Rights: Ground To Stand On*, and a book of responses to his work by colleagues and former students: *Religion and Public Policy: Human Rights, Conflict, and Ethics*, ed. by Sumner B. Twiss, Marian Gh. Simion, and Rodney L. Petersen.

19.00pm for 19.30pm	Glamorgan Building Committee Rooms	Dinner to Celebrate the 25th Anniversary of the LLM in Canon Law
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Hosted by Professor Mark Hill QC

Booking has closed for the dinner.

Formal dress (lounge suits). The meal will be served at 19.30pm.