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The What, The Why and The How

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The RELIGARE project is symptomatic of a wider trend whereby significant attention has been paid recently to the place of religion in the public sphere. At the dawn of the twenty-first century, politicians, judges and decision-makers have all focused upon questions concerning the extent to which individual and collective religious beliefs ought to be recognised and protected. There have been a number of moral panics concerning religious dress and symbols, the operation of religious courts and tribunals and clashes between religious freedom and other legal rights such as freedom of expression and the need not to discriminate on grounds of sex and sexual orientation. These moral panics have resulted in public debates and in increased academic attention, of which the RELIGARE research forms part. In many respects, this new interest in religious matters was unexpected. It was generally assumed that the social and political influence of religion was declining in modern Westernised societies. And this assumption had been particularly strong in the academy. However, the assumptions of old have not been completely discredited. There is still ample evidence of the social decline of religion as shown not only by the decline in attendance experienced by the historical Christian churches but also by the way in which religiously-derived moral teachings are now no longer seen as the norm. The new focus on religion that has occurred in the shadows of the events of September 11th 2001 raises a number of questions. In this chapter, I draw upon my own research on the changing relationship between religion, law and society in England and Wales (see especially Sandberg 2011 and Sandberg 2014), to suggest some tentative answers to three broad questions: what has occurred, why has this occurred and how can we respond both politically and academically. In short, the purpose of this chapter is to take a step back and reflect upon the what, the why and the how.

The What

On the face of it, the answer to the first question appears to be straightforward. The answer to what has happened is the 'return of religion'. As Linda Woodhead *et al* have noted, 'religion is back on the agenda' (Woodhead *et al,* 2009). This means that 'religion is no longer dismissed as a private pastime, but is taken more seriously as a public and political force'. I have described this shift as resulting from the politicalisation and problematisation of religion (Sandberg, 2014: chapter 5). The term 'politicalisation of religion' refers to the

way in which some religious groups have increased the volume of their voices in the public sphere. This trend has been described by the historian Callum Brown who has observed that in the last decade of the twentieth century 'in the midst of overall decline in popular religiosity, British religion showed signs of increasing seriousness and militancy' (Brown, 2006: 297). He wrote that this was 'an uneven and in some ways imperceptible process and one that only became really noticeable in the early twenty-first century'. Brown gave the example of British Catholicism, observing that the Catholic Church 'showed a radically different approach to its position in British life' after the visit of Pope John Paul II to the UK in 1982: it stopped 'keeping its head down' and 'established a new spirit of political and ecumenical engagement by the Church in Britain', which was 'nurtured through media contact' (Brown, 2006: 309). Indeed, as Brown noted, the growth of technology has been a major factor in enabling religious groups to have their voices heard. The growth of the Internet helped to foster the 'growing opportunities for vigorous minorities' both liberal and conservative to 'argue their cases, achieve success and push forward agendas'.

This increasing 'politicalisation of religion' occurred against a backdrop of increasing religious pluralism. As Grace Davie has noted, the increase in religious pluralism which came as a result of the wave of immigration in the 1990s challenged 'widely held assumptions about the place of religion in European societies' (2006: 33). She commented that, while the notion that faith is a private matter and should be proscribed from public life was widespread in Europe, 'many of those who are currently arriving in this part of the world have markedly different convictions, and offer – simply by their presence – a challenge to the European way of doing things'. This has meant that 'European societies have been obliged to re-open debates about the place of religion in public as well as private life' (Davie, 2006: 32). These population changes, this increase in religious pluralism, changed the context within which religion was discussed. These changes furthered the 'politicalisation of religion' and a further development which I have referred to as 'the problematisation of religion'.

The term 'the problematisation of religion' refers to the way in which religion became seen as a social problem. It denotes a shift whereby the notion that religions were an invariably benign force for good became questioned and the fact that religious believers were loyal to forms of authority other than the State became to be seen as a problem. The Al-Qaeda terrorist attacks in New York on 11 September 2001 and in London on 7 July 2007 provided an important trigger. Although seeing such atrocities as the turning point whereby religion

became placed back on the agenda is too simple an answer (Woodhead, 2012: 8), such events clearly had a major impact. The fear of religiously inflicted terrorism was not new. As Woodhead (2012: 9) observed, 'religiously-inflicted terrorism by the IRA had ... been a much more serious threat in Britain for much longer than anything done in the name of Islam – yet this did not shake secular certainties'. The Al-Qaeda terrorist attacks marked a turning point because now fears of religious terrorism and extremism occurred against a backdrop of wider uncertainty; the motivations behind the terror were largely unknown and the fear of terrorism became indistinguishable from wider notions distrusting 'otherness'. The events of September 2001 changed the way in which the West thought and spoke about not only Islam but religion *per se*. This new context shaped the way in which religions operated in public life. Religion became seen as a social problem and attention was afforded to it.

These social changes, summarised as the politicalisation and problematisation of religion, have had an important legal dimension. The identification of religion as a problem has led to the enactment of new laws at both domestic and international level. This is shown by the increase in attention on religious matters by European Union institutions as documented by the RELIGARE project.[1] In England and Wales, the legal framework concerning religion has been transformed by a wave of legislation and a tide of litigation. I have referred to these legal changes as representing the 'juridification of religion' (Sandberg, 2011: chapter 10). Three dimensions of juridification may be identified. The first dimension is 'legal explosion' (Teubner, 1987), a process 'through which law comes to regulate an increasing number of different activities' (Blicher and Molander, 2008). This includes what Habermas (1987: 359) referred to as the 'expansion of law, that is, the legal regulation of new, hitherto informally regulated social matters'. This has clearly occurred in relation to religion. English law now explicitly recognises a right to religious freedom and expressly forbids discrimination on grounds of religion or belief. The last decade has seen a great deal of legislation concerning religion and a great deal of litigation. This has meant that it is now possible in England and Wales to talk of a category of law called 'religion law' in the same way that it is possible to talk of 'family law' or 'sports law' (Sandberg, 2011). A second and related dimension of juridification is the 'process whereby conflicts increasingly are being solved by or with reference to law' (Blicher and Molander, 2008: 39). The increase in the amount of litigation concerning religion is shown clearly by the Case Database maintained by

[1] See also McCrea, 2010 and Doe, 2011: chapter 10.

the Law and Religion Scholars Network (LARSN).[2] There has been a dramatic increase in the number of cases concerning religion both in domestic courts and in the European Court of Human Rights. And, although a number of these cases have concerned the interpretation of the new laws concerning religion, a number have questioned the interpretation of older laws in the new post-September 11th context (Rivers, 2011). This aspect of the juridification of religion is shown further in the way in which bodies that regulate religion are increasingly adopting a juridical approach.[3] The third dimension of juridification refers to 'legal framing', that is the process 'by which people increasingly tend to think of themselves and others as legal subjects' (Blicher and Molander, 2008: 39). 'Legal framing' denotes the way in which reference to law is used outside the courtroom both as a way of solving conflict and also to shape policy (Blicher and Molander, 2008: 44). This is clear from the way in which the language of religious rights has begun to enter into the public discourse, as a result of the new legal obligations and the media reporting of litigation. This is shown by the number of courses, guidelines and policies which employers and public authorities now have concerning religion.

It is ironic that, although the juridification of religion has increased the amount and reach of law concerning religion, there is a feeling amongst many religious believers that legal protection has decreased rather than increased.[4] This feeling has been perpetuated by a number of 'pressure points' that have arisen in the interpretation of the new religion law by the judiciary. The conservative approach taken in many judicial judgments and the simplified reporting of these judgments in the media have stroked fears that English law now disadvantages religious groups. Three particular 'pressure points' may be identified (Sandberg, 2011: chapter 10). The first is the way in which the judiciary seem reluctant to recognise that religious rights have been interfered with. Domestic religious freedom claims under Article 9 of the European Convention on Human Rights tend to be dismissed on the grounds that there is no interference with the right rather than because the interference was justified.[5] And indirect discrimination claims concerning religion tend to be dismissed on

[2] See <http://www.law.cf.ac.uk/clr/networks/lrsn>
[3] This is particularly true of the Charity Commission, on which see Edge and Loughrey 2001.
[4] A national opinion poll carried out by the *Sunday Telegraph* in May 2009 found that three quarters of Christians polled felt there was less religious freedom than twenty years ago: <http://www.telegraph.co.uk/news/religion/5413311/Christians-risk-rejection-and-discrimination-for-their-faith-a-study-claims.html>. See also the 'Clearing the Ground Inquiry' published by Christians in Parliament <http://www.eauk.org/clearingtheground/> and Carey and Carey, 2012.
[5] See Sandberg, 2011: chapter 5. The turning point in his regard was the decision of the House of Lords in *R (on the application of Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15.

grounds that there was no disadvantage rather than by examining whether the disadvantage was justified.[6] This is unfortunate since the question of justification allows consideration of the full merits of the claim within its social context (see further Pearson, 2012). This is not to say that the 'religion or belief' argument always needs to be successful. However, the 'religion or belief' argument needs to be considered seriously and treated as being as important as other rights. This would occur if the focus in such disputes was the question of justification rather than the question of interference. Telling claimants that there has not been any interference with their religious rights because they could have resigned their job or because that practice does not appear to be obliged by the religion in question has furthered fears that the law is unreceptive to religion. English law has adapted an approach to religious freedom which the RELIGARE Report terms 'questionable': it has taken an approach which functions to 'relegate religion to the private domain or hold that an employee can always resign from a "voluntary position" in the event of a conflict between professional and religious commitments' (Foblets and Alidadi, 2013: 15). Although the European Court of Human Rights has recently clarified the approach which ought to be taken to Article 9,[7] focussing on the Article 9 (2) question of justification as the battle ground, it remains to be seen whether domestic courts will correct their conservative and narrow approach.

The second, and related, pressure point has been the increasing tendency of the courts to examine questions of religious doctrine. In some judgments, courts have applied objective criteria to hold that the claimant was under no obligation by reason of their faith's doctrine to manifest her religion in the way they claimed.[8] This contravenes the general principle of English law 'that it is not the business of the courts to intervene in matters of religion'[9] and that 'it is not for the court to embark on an inquiry into the asserted belief' because 'freedom of religion protects the subjective belief of an individual'.[10] Although the European Court of Human Rights has recently reaffirmed that religious freedom protections are not limited only to manifestations of religious belief which are found to be 'central' or 'obligatory' according

[6] See Sandberg, 2011: chapter 6 and in particular the judgment in *Eweida v British Airways* [2010] EWCA Civ 80.
[7] See *Eweida and Others v United Kingdom* (2013) 57 EHRR 8, as discussed by Sandberg, 2014: chapter 5 and Hill, 2013.
[8] See, especially, *R (on the Application ofPlayfoot (A Child) v Millais School Governing Body* [2007] EWHC Admin 1698 and *Eweida v British Airways* [2010] EWCA Civ 80.
[9] Unless 'the parties to the dispute have deliberately left the sphere of matters spiritual over which the religious body has exclusive jurisdiction and engaged in matters that are regulated by the civil courts': *R (on the application of E) (Respondent) v Governing Body of JFS* [2009] UKSC 15, paras 157-158
[10] *R v Secretary of State for Education and Employment and others ex parte Williamson* [2005] UKHL 15, para 22.

to doctrinal texts, [11] it remains to be seen what effect this will have upon the domestic jurisprudence.[12] At present, the conservative approach taken by the judiciary has assumed that all adherents to a certain faith share the same beliefs and has excluded religious adherents who have formed beliefs that are not shared by co-religionists or who do not belong to a religious group which has clear religious doctrines. It is not surprising that this unprincipled approach has caused alarm.

The third pressure point is the implicit tension in which has developed between the new religion law and older laws protecting religion. The new laws protecting religion now exist alongside much older pieces of legislation and the assumptions and principles underlining both sets of laws do not easily sit with one another. The old laws were based upon a different premise. They often sought to protect Christianity in general (or the Church of England in particular) as the norm, while providing some degree of toleration for other faiths. Moreover, the legal regulation of religion was characterised by a lightness of touch. The new religion law is different. It is facilitative, seeking to protect religious freedom mainly as an individual right which needs to be balanced against other rights. No special protection is afforded to any one religion and protection is often afforded to non-religious beliefs. The new legal framework affords utmost importance to the concept of religious equality as the State takes on the role of facilitating the religious market-place. The RELIGARE report points out that this clash between older and newer legislation concerning religion is common throughout Europe. It is noted that 'a number of paradigms inherited from the past regarding (majority) religion remain unquestioned in the case law' (Foblets and Alidadi, 2013: 3). This is particularly true in England and Wales where a number of areas of law were historically shaped by Christianity and where the Church of England continues to enjoy a special legal position which has tangible benefits and burdens both at a constitutional and local level (see, further, Sandberg, 2011: chapters 2 and 4).

Identification of these trends and pressure points provides the answer to the question of 'what has occurred'. The renewed interest in religion - the talk of the 'return of religion'- has arisen as a result of a number of social and legal changes. For convenience these changes may be summarised as being the politicalisation, problematisation and juridification of religion. The

[11] See *Eweida and Others v United Kingdom* (2013) 57 EHRR 8, as discussed by Sandberg, 2014: chapter 5 and Hill, 2013.
[12] The judgment in *MBA v Mayor and Burgresses of the London Borough of Merton* [2013] EWCA Civ 1562 suggests that it will have a significant impact in terms of reasoning.

interplay of these changes, in a context of increased religious pluralism and moral uncertainties, has meant that, although the amount of law protecting religion has increased, the perception has been that the level of protection has actually decreased. Moreover, the interaction between law and religion has become increasingly controversial. The notion that religion is a good thing has become challenged. And the holding of religious beliefs is now seen as being exceptional. This raises our next question of why these changes have occurred.

The Why

There are a number of reasons why the changes described as the politicalisation, problematisation and juridification of religion have occurred. A social and legal historical analysis is required in order to pinpoint and evaluate a variety of possible causes. However, for current purposes, I want to focus on the extent to which theories of secularisation can provide part of the explanation (see further Sandberg, 2014). Both the legal and sociological study of religion has been shaped by the secularisation thesis: the argument that religion, 'seen as a way of thinking, as the performance of particular practices, and as the institutionalization and organization of these patterns of thought and action', has lost its *social* influence in western societies (Wilson, 1966:14; Wilson 1982: 149). Law and religion has largely paid attention to the way in which the Christian[13] influence upon law has broadly declined. And the sociology of religion has largely been concerned with the social decline of religion. The question that preoccupied the founding fathers of sociology, Karl Marx, Emile Durkheim and Max Weber, was 'how society would manage without religion' (Robertson, 1969:12). The events of recent years have challenged this central assumption. And this has often caused sociologists of religion to discard talk of the secularisation thesis, often in haste.

However, the 'return' of religion does not debunk the secularisation thesis or, at least, it does not refute sophisticated versions of the thesis which do not argue starkly that God is dead in modern society. As Karel Dobbelaere's work shows, the secularisation thesis refers to a multi-dimensional group of changes, which affect social institutions, religious institutions and individuals (Dobbelaere, 2002). The thesis is also historically and geographically specific. As Charles Taylor has put it, the secularisation thesis is a 'subtraction story' in that it only

[13] Although law and religion scholars have, of course, been interested in how the law affects other religious groups, nevertheless the focus has been on Christianity, reflecting 'Christianity's enduring force' in the legal discourse: Herman, 2011: 175.

explains the fortunes of those forms of religiosity which were previously dominant (Taylor, 2007: 22). It refers only to what has happened to institutional forms of Christianity. This means that the secularisation thesis cannot provide the entire explanation for how religion, law and society interact today. However, it can still provide part of the explanation.

As I have suggested elsewhere (Sandberg, 2014), sociological differences in opinion about secularisation thesis are often overplayed. Accounts of secularisation in England and Wales largely agree over the basic evidence and largely disagree only in terms of predictions about the future. Reference to legal change provides support for a number of processes of secularisation which began at the time of the Enlightenment and which remain on-going.[14] The impact of these processes is that England and Wales has become a secularised country but not a secular one. This is not only because the processes of secularisation are incomplete but also because there are a number of a number of exceptions, counter-trends and nuances. For example, reference to law shows that the establishment of the Church of England continues to have an important role at both a constitutional and local level. It is incontestable, however, that social and legal changes have taken place which have reduced the social role formerly played by the Christian churches.

The RELIGARE findings suggest that 'the majority of national legislators have made the – historic – decision to secularise State law' by 'detaching the State and its institutions from religion' (Foblets and Alidadi, 2013: 5). Though I would question whether an actual decision was ever made to this effect by English legislators, I agree that this process has taken place. Sociologists of religion have referred to this process as 'social differentiation' (see, e.g., Tschannen, 1991; Wallis and Bruce, 1992). This can be defined as the process by which specialist institutions develop which take on functions which were previously carried out by one institution. Rather than one specific institution discharging a plethora of functions, a plethora of institutions now discharge specific functions. In relation to religion, social differentiation can therefore be understood as 'the process by which religion and religious institutions become differentiated from other spheres' (Hamilton, 2001: 188). It refers to the way in which the Church went from being at the centre of social life to becoming just one social institution amongst others (Dobbelaere, 2002: 33). However, although social

[14] These processes included differentiation, societalisation, rationalisation, individualism and compartmentalisation. See further Sandberg, 2014.

differentiation is an important process of secularisation, it is just one of several processes. And even this process is not complete.

Social differentiation can be seen as being an important process of what I have referred to as the first wave of secularisation (Sandberg, 2014). This refers to the (on-going) battles of modernity which began with the Enlightenment, and which affected mainly the societal level, moving the Church away from the centre of social life. However, reference to these developments does not provide the full story of secularisation. Callum Brown has argued that secularisation only really occurred in Britain in the 1960s when the changing role of women meant that the 'the cycle of inter-generational renewal of Christian affiliation ... was permanently disrupted' (Brown, 2009: 1). For Brown it was the sixties that saw the drop in attendance and membership of the churches and of rites of passage such as marriage and burial. And, crucially, it was during this decade that the passing down of Christianity to the young through Sunday Schools and the like declined. Brown's work questioned not the extent but the timing of secularisation (Bruce, 2010: 209). However, Brown's thesis does not have to be read in a way which is incompatible with sociological theorists which date secularisation back to the Enlightenment. Rather, Brown's argument can be seen as describing a second wave of secularisation. Secularisation can be seen as a long-term process which includes both the trends that began in the aftermath of the Enlightenment and those of more recent origin which can be traced to the 1960s. The first wave of secularisation can be seen as primarily affecting religious institutions (secularisation at the societal level to use Dobbelaere's distinction: Dobbelaere, 2002). By contrast, the second wave can be seen as primarily affecting individuals (secularisation at the individual level in Dobbelaere's terms).

This analysis suggests that the social changes which began in the 1960s are an important factor in understanding why the relationship between religion, law and society has developed in the way that it has. As Charles Taylor has pointed out, the sixties provided 'the hinge moment, at least symbolically,' ushering in 'an individuating revolution' (2002: 80). In England and Wales, the Labour Party's victory in the 1945 General Election had reflected a common desire that things would be different after the War and this questioning of the *status quo* escalated following the Suez crisis of 1956. This period witnessed the decline of certainty regarding gender roles, class distinctions and Britain's place in the world; it saw the opening up of the world via the rise of television, the satire boom and the questioning of authority. In short, the 'swinging sixties' experienced the death of deference (Carpenter,

2000: 238). And these shifts have escalated in recent decades. Following the end of the Cold War and the collapse of Communism old certainties continued to collapse. The closing years of the twentieth century and start of twenty-first century has been the era of globalisation, the fragmentation of politics, the rise of the Internet and a number of scandals concerning the financial industries, the political classes, the media and the historical churches. These changes have resulted in what Charles Taylor (1991: 26) and others have referred to as the 'subjective turn'. This refers to the way in which the 'subjectivities of each individual became a, if not the, unique source of significance, meaning and authority' (Heelas and Woodhead, 2005: 3-4). It describes the increased focus people placed upon the construction and re-construction of personal identities.

Reference to the 'subjective turn' provides both a diagnosis and a cure for the current tensions concerning religion, law and society. It explains that the forms of religiosity which are prospering are those which have accepted the effects of societial secularisation and the importance of the 'subjective turn' (see Sandberg, 2014: chapter 5). It also provides an explanation for the 'pressure points' that have emerged surrounding the accommodation of religious difference by State actors. These tensions have been perpetuated by a slowness on the part of State actors to recognise the importance of the 'subjective turn'. The new legal framework concerning religion is a product of the 'subjective turn' in that it protects religious freedom as an individual subjective right. The objective binary approaches adopted by judges in the majority of the domestic cases have failed to appreciate this. Judges have required claimants to choose between their religion and their citizenship rights by holding that there was no interference with their religious rights where the claimant could have resigned their job. Judges have assumed a direct, causal link from creedal assent to behaviour by dismissing religious rights claims on the basis that the practice claimed does not appear to be obliged by the religion in question. The 'subjective turn' therefore provides not only the diagnosis but also the cure: the need to recognise religious freedom as a subjective right. This brings us onto our third question.

The How

The RELIGARE project proposes two yardsticks against which the way in which countries accommodate religion or belief ought to be measured: 'inclusive state neutrality' and 'justice as even-handedness' (Foblets and Alidadi, 2013: 8-9). Although I agree with this, I think there is an important precursor to these two standards. There is a need for all parties

concerned (the State, religious groups, those who are religious and those who are not) to appreciate the effects of the 'subjective turn', to appreciate that people are constantly constructing and re-constructing their identities and performing those identities in different ways according to differing stimuli and in different social situations. This includes people's religious identities. People will draw upon aspects of their religious identities, constantly re-constructing them, in various aspects of social life. This means that their 'religion' is not something that can be consigned to the private sphere; rather it is something which can and will be drawn upon in different contexts in different ways that differ from person to person. Even where someone identifies themselves with a particular religious tradition, the way in which they draw upon their religious identity is likely to differ from co-religionists. They are likely to make (and re-make) their own interpretations, shaped by their own experiences.

These ideas are not new. They are well expressed in one of the leading (but now often forgotten) leading British judgments on religious rights, Lord Nicholl's speech in *Williamson,*[15] in which his Lordship stated that 'freedom of religion protects the subjective belief of an individual' since 'religious belief is intensely personal and can easily vary from one individual to another'.[16] This insight has also been reached in the growing literature on legal pluralism. Most notably, Martha-Marie Kleinhans and Roderick A Macdonald (1997) have argued that any traditional accounts of legal pluralism tend to 'view the legal subject only as an abstract "individual", failing 'to discuss fundamental questions about how legal subjects understand themselves and the law' (1997: 36). They therefore advocate the adoption of 'a critical legal pluralism' where the emphasis 'is on the constructive capacity of the constructed self' (1997: 39). Adopting their work Codling has gone further to suggest the need for a 'subjective legal pluralism' which would focus upon 'privileging the narrative account of legal subjects' (Codling, 2012: 244). These approaches have much in common with the work of Charles Taylor, particularly his work relating to 'identity politics' (Taylor, 1994) and his understanding of the 'age of authenticity' in which people constantly negotiate and re-negotiate our identities, what is means to be human, through both internal and external dialogue (Taylor, 1991). Indeed, Pascale Fournier's wok has made his link explicit, referring to 'liberal-legal pluralism' (2011: 65).

[15] *R v Secretary of State for Education and Employment and others ex parte Williamson* [2005] UKHL 15.
[16] Para 22.

However, as I have argued elsewhere (Sandberg *et al*, 2013), this argument is most clearly articulated in the work of Ayelet Shachar, particularly her monograph book *Multicultural Jurisdictions*. (Shachar, 2001). Shachar's notion of 'joint governance' recognises how people 'jointly belong to more than one community, and will accordingly bear rights and obligations that derive from more than one source of legal authority' (Shachar, 2001:13). He work recognises how people of faith are both 'culture-bearers *and* rights-bearers' (Shachar, 2008: 593). Although this notion of 'joint governance' is supported by recent empirical research (Sandberg *et al*, 2013),[17] it goes against the grain since, as Anne Phillips has pointed out, reference to minority cultures is now 'widely employed in a discourse that denies human agency' (Phillips, 2007: 9). Shachar's approach innovates in that it recognises that people are 'cultural beings' rather than being 'of a culture' (Phillips, 2007: 52). Shachar's notion of 'joint governance' rests upon the acceptance of 'the complex and multi-layered nature of multicultural identity' (Shachar, 2001: 15). She asserts that we cannot 'remain blind to the web of complex and overlapping affiliations which exist between these competing entities' (Shachar, 2001: 5). Shachar makes a convincing case that this requires activity on the part of the State. She contended that a stance of '"non-intervention" may effectively translate into immunizing wrongful behaviour by more powerful parties' and that turning a 'blind eye' to what occurs within religious groups relegates 'these religious traditions to the margins, labelled as unofficial, exotic, or even dangerous (unrecognized) law' (Shachar, 2008: 593). The concept of 'joint governance' requires an 'ongoing interaction between different sources of authority, as a means of improving the situation of traditionally vulnerable insiders without forcing them to adhere to an either/or choice between their culture and their rights' (Shachar, 2001: 88). This argument ties in very neatly with the yardstick of 'justice as even-handedness' proposed by the RELIGARE project which states that 'what guarantees appropriate protection is not so much justice in the sense of a "hands-off" stance but as seeking "even-handedness" between competing interpretations' (Foblets and Alidadi, 2013: 4).

Regardless of the terminology involved, it is possible to identify particular practical effects which would result from taking an approach based on 'joint governance' (or recognising 'religious freedom as a subjective right', adopting a 'subjective legal pluralist' perspective or

[17] This draws upon the findings of Cardiff University's 'Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts' Research Project. See the Project Report (Douglas *et al*, 2011) and subsequent publications listed at <http://www.law.cf.ac.uk/clr/research/cohesion.html>

recognising the nature of 'multicultural identities'). In terms of the three 'pressure points' referred to earlier, this approach would encourage courts and tribunals to decide cases according to the question of justification as opposed to the question of interference. It would be accepted that people can hold beliefs and place emphasis upon practices which are not shared by co-religionists. And it would be understood that the fact that a believer can resign their job should not be sufficient to defeat any religious freedom claim. The role of the State in the twenty-first century is to facilitate religious freedom, without favouring any particular form of religion. The detailed proposals in the RELIGARE report provide examples of how this can be achieved (Foblets and Alidadi, 2013). The details and implications of the proposals made clearly merit careful consideration by policy-makers and others who seek practical ways forward.

Moreover, the methodology underlining the RELIGARE report prompts one final reflection. The fusion of legal and sociological methods and approaches by the RELIGARE team underlines the need for interdisciplinary approaches. As I have argued elsewhere (Sandberg, 2014) legal or sociological approaches alone cannot adequately understand the relationship between religion, law and society. An interdisciplinary approach is required, fusing insights from both legal and sociological perspectives. Such an approach is, however, risky. There is a fear that the fusion of different disciplinary approaches will lead to one to becoming the master of the other. And the risks of interdisciplinary work increase depending upon how advanced the interdisciplinary process is. Yet, these risks do not mean that interdisciplinary work should not be undertaken. Rather than being fatal to the enterprise, the identification of these risks should inform it. The concerns about interdisciplinary work need to be taken into account in order to improve the enquiry. This will mean that it is vital that the interdisciplinary endeavour builds upon rather than replaces the distinct methodological contributions made by each discipline.[18] The RELIGARE research should therefore provide an important inspiration, not only to those grappling with the practical questions concerning the what, the why and the how, but also for the academic study of religion, law and society.

[18] This requires an instrumental and critical approach to interdisciplinarity whereby the quality of interdisciplinary work is to be determined by the standards usually expected by the disciplines (Compare Huutoniemi, 2010).

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