

## Chapter 1

# Conscience and Equality: Negotiating Emerging Tensions

Russell Sandberg

### A New Dawn

The present volume represents a new stage in the relationship between the International Consortium for Law and Religion Studies (ICLARS) and Ashgate publishing. Although collections based on papers from previous ICLARS conferences have been published by Ashgate,<sup>1</sup> this is the first collection of such papers to be published as part of ICLARS' own book series at Ashgate, the ICLARS Series on Law and Religion.

The establishment of this new series is entirely appropriate. In the 21st century, issues around the globe concerning law and religion are never far from the news headlines. Acts of terrorism committed in the name of religion; moral panics concerning the operation of religious courts; controversies about the relationship between freedom of expression and freedom of religion; disputes about the wearing of religious dress and symbols; the role of religion in marriage law and in the education system; and questions about the autonomy of religious groups are just some of the issues that continue to excite controversy in society at large. Thoroughly different and often entrenched views exist as to the role of religion in the public sphere.

These controversies often have a legal dimension. Lawyers – both practitioners and academics – are increasingly focusing upon law and religion matters. In some jurisdictions, law and religion is becoming regarded as an academic subject for the first time, studied and researched like family law or employment law. Elsewhere, where aspects of law and religion have long been studied and taught, there has also been a significant change: the focus has mutated to increasingly include the study of religious freedom as a human right and the religious laws of religious minorities.

The academic study of law and religion has become more visible and more important in recent years as a result of the same changes that have made the role of religion in the public sphere controversial. The ICLARS initiative has played an important role in this development. ICLARS was organized in 2007 as an international network of scholars and experts of law and religion, with the aim to provide a place where information, data, and opinions could easily be exchanged among members and made available to the broader scientific community. Its work so far has been prolific, hosting impressive conferences, maintaining an excellent website, and having a number of first-class specialist journals.<sup>2</sup>

The new ICLARS Series on Law and Religion takes this activity a stage further, providing a forum for the rapidly expanding field of research in law and religion with the intention of becoming a principal source for students and scholars while presenting authors with a valuable means to reach a wide and growing readership. It will be a home not only for edited collections resulting from ICLARS conferences and other ICLARS events but also for the very best law and religion scholarship from across the globe. The term 'law and religion' will be widely defined<sup>3</sup> and the Series will include both edited collections arising from

---

1. Silvio Ferrari & Rinaldo Cristofori, eds., *Law and Religion in the 21st Century: Relations between States and Religious Communities* (Ashgate 2010); and W. Cole Durham, Jr., Silvio Ferrari, Cristiana Cianitto & Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment and the Law* (Ashgate 2013).

2. Further information can be found on the website: <http://www.iclars.org/>.

3. For discussion of the definition of the term see Russell Sandberg, *Law and Religion* (Cambridge University Press 2011), 6, which proposes that 'the study of law and religion is *at least* the study of religion law and

important events and cutting-edge monographs by both established names and by new voices. The ICLARS Series on Law and Religion Series will include interdisciplinary works, comparative examinations and detailed studies of particular jurisdictions. In short, it will be home to the wide ranging and dynamic scholarship produced by academics with an interest in and passion for law and religion around the globe, reflecting the increasing societal, political and legal interest in religion.<sup>4</sup>

It is fitting that the Series is published by Ashgate, who have already printed edited works resulting from the first two ICLARS conferences and who have a reputation for producing outstanding cutting-edge work in this field, as shown by their very successful ‘Cultural Diversity and Law’ book series including those published under the framework of the EU RELIGARE project on ‘Religious Diversity and Secular Models in Europe’.

### **Taking the Temperature**

It might appear, therefore, that the emergence of the ICLARS Series on Law and Religion Series published by Ashgate was inevitable. However, the fact that religion is receiving more scholarly attention in the 21st century than the 20th and that this is especially the case in relation to legal scholarship is actually rather surprising.

Speaking in 1888 as part of a course of lectures on ‘The Constitutional History of England’, Frederic Maitland suggested that ‘religious liberty and religious equality is complete.’<sup>5</sup> The extent to which lawyers in the 21st century are concerned with matters of ‘religious liberty and religious equality’ both in Maitland’s home country and around the world would have clearly surprised England’s greatest legal historian.

In many respects, it is important not to be too critical of Maitland’s assertion. His understanding of ‘religious liberty and religious equality’ was narrowly related to the toleration of the right of religious groups to worship and of adherents of all faiths to hold public offices. In these respects, his statement remains broadly accurate. And Maitland’s account of the historical development of religion under English law continues to be the starting point for the subject.<sup>6</sup> However, what Maitland failed to see is that the question of religious freedom – both at a collective and an individual level – would not only continue to be important and irresolvable but would grow in significance, giving rise to a large body of law.

It is perfectly understandable that Maitland would not have predicted this situation. A number of complex political, religious, and sociological changes have affected the place of religion within society since 1888. These include not only the increased religious pluralism and diversity that has come about as a result in part of increased mobility and immigration but also consequences of new ways of thinking. Modern technology has made the world a much smaller place and has put information at our finger tips. These changes have all impacted what we believe and what we consider the role of the law ought to be in terms of accommodating freedom of thought, conscience, and religion.

---

religious law’: that is, ‘religion law’, the ‘external’ temporal laws made by the state, international bodies and sub-state institutions that affect religious individuals and groups and ‘religious law; the ‘internal’ spiritual laws or regulations made by religious groups themselves which affect the members of those groups and how that group interacts with the secular legal regime.

4. See the Foreword to this volume.

5. Frederic W. Maitland, *Constitutional History of England* (Cambridge University Press 1908), 520.

6. In particular, Frederic W. Maitland, *Roman Canon Law in the Church of England* (Methuen 1898). For appraisal see, for example, James R. Cameron, *Frederick William Maitland and the History of English Law* (University of Oklahoma Press 1961), Chapter IV; and H. Edith Bell, *Maitland: A Critical Examination and Assessment* (Adam & Charles Black 1965), Chapter VIII.

There have also been significant changes in terms of religious beliefs and practices. The picture is complex, and there is significant variation from place to place as a result of a myriad of factors that are historical, geographical, sociological, cultural, political, economical and theological. Any single attempt to explain the picture is bound to be over-simplistic, whether it is Enlightenment era inspired prophecies about the social decline of religion or 21st century statements that religion has returned.<sup>7</sup> Predictions about the death of God and the demise of the secularization thesis are both premature.<sup>8</sup> However, both also have elements of truth about them. Most societies are no longer mono-creedal, and several societies, especially those in Europe, are clearly more secular than they once were, though, of course, the meaning and consequence of the term 'secular' is open to much debate. Moreover, sophisticated versions of the secularization thesis, which provide a more nuanced assessment than simply stating that God is dead in modern society, have not been debunked by the so-called 'return of religion'.<sup>9</sup> Secularization theories are limited: they can only provide a limited account of the role of religion in society because they are what Charles Taylor has called 'subtraction stories' in that they only explain the fortunes of those forms of religiosity which were previously dominant.<sup>10</sup> However, such theories can provide part of the picture, provided it is remembered that patterns of religious change are historically and geographically specific and operate at different levels affecting social institutions, religious institutions, and individuals in different ways.<sup>11</sup>

One explanation is to suggest that two waves of secularization have occurred in the Western world.<sup>12</sup> The first wave consisted of the (on-going) battles of modernity which began with the Enlightenment. The key process was that of differentiation.<sup>13</sup> Rather than one institution (the Church) performing a myriad of social functions, a range of specialist institutions developed (the state, the education system, the media, the family, the churches, etc.) each performing specific functions. The result of this was that the Church moved away from the center of social life: it was no longer the main or unique educator, discipliner, instiller of societal values). The second wave can be said to have affected the individual rather than societal level and to have occurred following the Second World War and in the sixties in particular, provided 'the hinge moment, at least symbolically', ushering in 'an individuating revolution'.<sup>14</sup> This led to what has been referred to as the 'subjective turn',<sup>15</sup> the way in which the 'subjectivities of each individual became a, if not the, unique source of significance, meaning and authority'.<sup>16</sup> This describes the increased focus people placed upon

---

7. See, further, Russell Sandberg, *Religion, Law and Society*, (Cambridge University Press 2014).

8. See, by way of comparison, Steve Bruce, *God is Dead* (Blackwell 2002), and Rodney Stark, 'Secularisation RIP', (1999) 60 *Sociology of Religion* (3) 249.

9. This is true of the work of Steve Bruce despite the sensationalist title of his 2002 book. See, in particular, Steve Bruce, *Secularization: In Defence of an Unfashionable Theory* (Oxford University Press 2011).

10. Charles Taylor, *A Secular Age* (Harvard University Press 2007), 22.

11. Karel Dobbelaere, *Secularization: An Analysis at Three Levels* (Peter Lang 2002).

12. Sandberg, *Religion, Law and Society*, supra note 7 at 171.

13. See further, Sandberg, *Religion, Law and Society*, supra note 7 at 64. The concept of differentiation is also central to the social systems theory of Niklas Luhmann. For a discussion of its potential application in relation to law and religion see Russell Sandberg, 'Religious Law as a Social System', in Russell Sandberg, ed., *Religion and Legal Pluralism* (Ashgate 2015), and Russell Sandberg, 'A Sociological Theory of Law and Religion' in Frank Cranmer, Mark Hill QC, Celia Kenny & Russell Sandberg, eds., *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge University Press forthcoming).

14. Charles Taylor, *Varieties of Religion Today* (Harvard University Press 2002), 80.

15. See, for example, Charles Taylor, *The Ethics of Authenticity* (Harvard University Press 1991), 26; Sandberg, *Religion, Law and Society*, supra note 7 at 161.

16. Paul Heelas & Linda Woodhead, *The Spiritual Revolution* (Blackwell 2005).

the construction and re-construction of personal identities.<sup>17</sup> This has resulted from a lack of trust in public institutions and a death of deference. We are now less deferential to authority than we once were and we tend to define ourselves much more by our achieved status rather than our ascribed positions. Following the end of the Cold War and the collapse of Communism old certainties continued to collapse. And such trends have escalated in recent years. The closing years of the 20th century and start of 21st century have been the era of globalization, 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.

The result of these complex and often contradictory social changes is that the place of religion in the public sphere has become controversial. We are now much more questioning of all forms of authority, including religious authority. Most societies are now much more diverse in terms of life experiences, including religious experiences. In an ever-changing world, older traditional ways of life are misunderstood but newer seemingly different beliefs and practices are also treated with caution if not hostility, since an age of declining certainties provides a climate for increased fears. The traditionalist and the outsider both become the Other. This is affecting the very way in which we talk about religion. Issues concerning law and religion are now inherently divisive and contentious in our post-9/11 age, where the very suggestion that some people may owe a loyalty to a source of authority other than the nation state causes suspicion.

These social changes have resulted in a lack of consensus about the place of religion. This has been partially manifested in a significant increase in legislation and litigation about religious matters in many jurisdictions, while other jurisdictions have seen existing laws affecting religion become increasingly controversial with disputes being reported, simplified, and played out in the media. This trend has been referred to as the ‘juridification of religion’ and can be said to have three dimensions:<sup>18</sup> first, ‘legal explosion’, that is, the process ‘through which law comes to regulate an increasing number of different activities’; second, the increase in litigation whereby ‘conflicts increasingly are being solved by or with reference to law’; and third, ‘legal framing’, that is; the process ‘by which people increasingly tend to think of themselves and others as legal subjects’.<sup>19</sup> ‘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. This is shown by 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 and is evident in the number of courses, guidelines, and policies which employers and public authorities now have concerning religion.

This ‘juridification of religion’ has led to an increase in the profile of law and religion, but at a cost. The fact that contentious issues and cases have enjoyed a high media profile has been unfortunate, given that the media reception of the issues has often been informed by a base fear of religious difference.<sup>20</sup> Complex issues have been over-simplified by a media perplexed by the complex social changes that have occurred. And the political

---

17. See, further, Russell Sandberg, ‘The Impossible Compromise’, in Sandberg, ed., *Religion and Legal Pluralism*, supra note 13 at 1.

18. Sandberg, *Law and Religion*, supra note 3, Chapter 10.

19. Lars C. Blicher & Anders Molander, ‘Mapping Juridification’, (2008) 14 *European Law Journal* (1) 36.

20. This has been epitomised by the ill-informed public debate concerning Sharia law and Sharia courts, on which see, for example, Ralph Grillo, *Muslim, Families, Politics and the Law* (Ashgate 2015). For an example of research which has sought to replace this heat with light see the ‘Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts’ Research Project carried out by Gillian Douglas and her colleagues at Cardiff University, funded by the AHRC/ESRC Religion and Society Programme, <http://www.law.cf.ac.uk/clr/research/cohesion.html>.

haste in passing new laws or revising existing laws has often left judges to reach sociological decisions which they are ill-equipped to do.<sup>21</sup> A number of unfortunate shortcuts have been taken: decision-makers have favoured 'binary' solutions where adherents are forced to choose between following their religious beliefs and enjoying the citizenship rights they would otherwise enjoy under state law; and it is often assumed that religious groups are homogenous entities where all believers share identical beliefs and a direct link between creedal assent and behaviour can be assumed.<sup>22</sup>

### **The Same Rain**

It is possible, however, to overestimate the novelty of the situation in which we find ourselves. The number of moral panics concerning religion in recent years suggests that the lack of consensus about how to accommodate religious difference is a new problem. It is not. It is true, of course, that recent years have seen a number of often unexpected storm clouds concerning religion and that even experts in the field have been taken aback by the torrential nature of the downpour. But while the causes of such storms are new, the storms themselves have been experienced before. It is the same rain. Concerns about apparently religiously motivated acts of violence are not new. Moral panics about the otherness of those who practice Islam rehearse fears that were previously reserved for those who practiced non-sanctioned forms of Christianity. We have been here before. The current position is the product of both change and continuity.

However, it is not simply a case of history repeating itself. The storm clouds do differ from place to place. This underlines the need to understand particular downpours in context. Our analysis of any particular storm – say the clash between religious and non-religious views on the nature of marriage – will be enriched if we understand it in the context of other storms across the ages and if we are able to compare the situation across jurisdictions. Explorations of issues concerning law and religion can benefit from the work that has already been done, whether that is historical or comparative in nature.

This is one of the reasons why networks of law and religion scholars such as ICLARS are important. They provide a home for such historical and comparative work, whether that be the product of one academic or the opportunity for scholars to collaborate or to learn from each other's research. Academic networks provide a number of means by which we can ensure that today's scholarship builds upon yesterday's achievements and that we do not simply constantly re-invent the wheel. Conferences and other symposiums, specialist journals, and email updates allow us to be aware of what others are doing. They allow us to draw upon each other's work and to make comparisons across time and place.

The present volume, in line with the work of ICLARS generally, seeks to facilitate this by bringing to a larger audience revised papers from the third ICLARS conference on 'Religion, Democracy and Equality' which was held in the United States, in Virginia, from 21-23 August 2013.

### **A Changing Climate**

This book is the first of two collections of revised papers from the third ICLARS conference. It focuses on religion and equality in two respects: the first is to focus on the development of

---

21. An example of this is the growing emphasis on proportionality on which see Megan Pearson, 'Proportionality: A Way Forward for Resolving Religious Claims?' in Nick Spencer, ed., *Religion and Law* (Theos 2012), 35.

22. See, further, Russell Sandberg, 'The Impossible Compromise', in Sandberg, *Religion and Legal Pluralism* supra note 13 at 1.

religion as an anti-discrimination norm generally; the second is to focus on religion within the context of the recognition same-sex marriage. These focuses are connected.

The development of religion as an anti-discrimination norm has occurred as a result of the impact of international and national laws dealing with equality upon religious groups and believers. On the one hand, the tension between the law of the state and the autonomy of belief communities is not new.<sup>23</sup> Yet, on the other hand, the issue has become markedly more important in recent years not only as a result of the social changes discussed above but also because of changes in the legal regulation. The major change has been the development of international legal human rights standards following the Second World War. Although provisions protecting religious freedom were commonplace in many national constitutions before this time, the development of religious freedom as a human right in an international framework provided a watershed moment. The post-War period has seen the development of human rights instruments at global and regional levels, with provisions being interpreted and refined by the creation of soft law and judicial decisions. These judicial decisions have furthered the ‘juridification of religion’. Recourse to arguments based on constitutional or international human rights law and equality provisions have become commonplace in disputes concerning religion. International standards have influenced in several respects the interpretation of religious freedom and equality provisions at a state and sub-state level.

Moreover, religious equality is not the only protected ground under the plethora of international, national, and sub-national legal instruments. Laws protecting equality based on race, sex, and sexual orientation in particular have had an impact upon religious freedom. There has been much talk of the ‘clash of rights’. The question of to what extent, if any, religious groups and individuals should be able to apply different standards as to religious, race, sex, and sexual orientation discrimination has been asked in several different contexts. Should religious groups be able to insist that their leaders and representatives follow doctrinal teachings in terms of both what they preach and what they practice? Should religious institutions be able to reserve certain offices to members of one sex only? Should religious courts be able to make rulings that breach state law standards as to gender equality? Should a religious registrar be able to refuse to conduct same-sex marriages? Should religious organizations be obliged to provide services for such couples?

These last two questions refer to a particular tension that has emerged in many states in recent years: the clash between the right to religious freedom and the right not to be discriminated against on grounds of sexual orientation. In most jurisdictions, the legal regulations of religious and sexual identities have taken a similar trajectory.<sup>24</sup> Historically, the law discriminated against people of certain religions and sexual orientations, often by the criminalization of activities on grounds of the sex of participants.<sup>25</sup> Over time, however, many but not all of these disadvantages and criminal offences were removed. The previously illegal forms of religiosity and sexual identity became tolerated but they were still seen as being unusual. This toleration was achieved on an *ad hoc* and piecemeal basis. This stance of non-discrimination was then gradually superseded by the active promotion of anti-discrimination. This involved the promulgation of laws forbidding discrimination on grounds of religion and sexual orientation and the development of the notion that these forms of identity were protected as subjective constitutional and / or human rights. This stance of anti-discrimination has led to the revisiting of laws and practices which explicitly or implicitly discriminate against minorities by normalizing majority practices and assumptions. This has

---

23. The underlying tension can be seen New Testament instruction to ‘render unto Caesar the things that are Caesar’s and unto God, the things that are God’s’: Matthew 22:21.

24. Russell Sandberg, ‘The Right to Discriminate’, (2011) 13 *Ecclesiastical Law Journal* (2) 157-181.

25. For an examination of the historical development of laws protecting sexual orientation, see Stephen Cretney, *Same Sex Relationships: From Odious Crime to ‘Gay Marriage’* (Oxford University Press 2006).

meant changes, for instance, to how the law defines terms such as religion, the family, and marriage.

Although the journeys of the legal regulation of religion and sexual orientation have been similar, the journey began much later in relation to sexual orientation than religion and has been far quicker. The move from the law discriminating against homosexuality to the law prohibiting such discrimination has occurred over decades rather than centuries. Much has changed in the early years of the 21st century. Many jurisdictions created legal relationships and institutions that are functionally equivalent to marriage and then many states have now gone further in their quest for equality to recognize same-sex marriages. These rapid social changes have posed particular problems for some religious groups and believers. Opinions and stances which were the norm just a few decades ago are now regarded as being discriminatory, prejudiced, and even bigoted. Changing societal understandings of marriage in particular have proved challenging given the role that religious groups have traditionally played with marriages often taking place in religious settings using religious rites.<sup>26</sup>

This book falls into two sections. The first, ‘Religion and Anti-Discrimination Norms’, explores how religion has developed as an anti-discrimination norm, examining the developing law on equality and human rights and how it operates at international and national levels. The second section, ‘Religion and Same Sex Marriage’, then provides a case study, exploring the contemporary issue of same-sex marriage and how it affects religious groups and believers.

The first section begins with a chapter by Romanian scholar Nicolae Dură that sets the scene by providing a tour de force of how religion is protected by international laws at both a global and regional level. The chapter introduces and analyzes the legal framework concerning freedom of religion at the International level before exploring the instruments and institutions at a pan-European level. The chapter distinguishes the separate but increasingly connected protections afforded by the Council of Europe and the European Union, a theme which is developed in the chapter that follows by Mark Hill QC. While the European Court of Human Rights at Strasbourg – a product of the Council of Europe – has spent the last two decades generating an increasingly complex case law concerning religious freedom, the Court of Justice of the European Union in Luxembourg – an institution of the European Union – has only started to deal with religious matters in enforcing EU directives forbidding discrimination on grounds of religion. Hill’s chapter compares the two courts and their interrelationship, an issue that is likely to become increasingly important. The next chapter, by María J. Valero Estarellas, furthers this analysis by focusing on the jurisprudence of the European Court of Human Rights, looking in particular at the recent controversial case law concerning religion in the workplace. The chapter explores not only the decisions themselves

---

26. There is considerable variation, however, in the extent to which state law recognizes religious marriages. For example, in his study of the laws of European states, Norman Doe noted that, it is a principle of religion law common to the states of Europe that ‘The State must permit the celebration of marriage in a religious context following a civil marriage’ and ‘may recognize a marriage conducted in accordance with a religious rite as having a civil effect either from the moment of its ritual celebration or from the moment of its civil registration provided the conditions set down by law are met’. Doe pointed out that, although all states permitted the celebration of a religious marriage following a civil marriage, there are three models in terms of the formation and recognition of religious marriages. The first model consists of ‘States which recognize the validity and public effects of certain religious marriages formed at the time of their ritual celebration, provided the conditions of civil law are met’. The second comprises ‘States which recognize Catholic marriages as religious marriage with civil effect from the time of their ritual celebration’ The third consists of ‘States which do not recognize religious marriages at all, but may permit a religious ceremony subsequent to a civil marriage, or indeed penalize their solemnization under criminal law if conducted prior to a civil marriage’: Norman Doe, *Law and Religion in Europe* (Oxford University Press 2011), 264, 216.

but also the changes in the interpretation of Article 9, identifying new principles being developed by the Strasbourg Court. The chapter underscores how, although the text of instruments protecting religious freedom remain unchanged, the interpretation of such provisions evolve in light of changing social tensions and also as a result of a growing confidence by court actors. The jurisprudence of the European Court of Human Rights on religion is no longer in its infancy; it has now entered a period of adolescence and the growing pains are often all too evident.

Similar experiences can be found at the national level in both Europe and elsewhere. This is underscored in the last two chapters in this first section. The chapter by Rodrigo Alves chapter provides an examination of how anti-discrimination law concerning religion has developed and is developing in Brazil. The Brazilian experience should be of much wider interest since the chapter reveals how the country is peacefully undergoing one of the most dramatic religious shifts in the world today. It is important, however, not to simply focus upon developments at a constitutional level, be that internationally or nationally. And so the final chapter in this section, by Greg Walsh, zooms in to a particular issue: the employment decisions of religious schools under anti-discrimination legislation in the Australian State of New South Wales. This provides a concrete case study of many of the themes explored in the section as a whole. The chapter also raises the issue of exceptions or exemptions afforded in the name of religion: should religious schools be exempt from generally applicable laws forbidding discrimination? This issue concerning what may be referred to as ‘the right to discriminate’ has led to a significant literature by scholars interested in law and religion in recent years which has explored the interplay between laws protecting freedom of religion and forbidding discriminating on grounds of sexual orientation.

The second section, ‘Religion and Same Sex Marriage’, focuses on these concerns. The section begins with another tour de force, this time by Rex Ahdar, which explores how laws on same-sex marriage in New Zealand, Canada, and the United Kingdom interact with religious freedom. In particular, the chapter explores the extent to which exemptions have been provided for celebrants (that is, religious ministers, clergy, marriage celebrants, commissioners, and registrars) to enable them to refuse to conduct same-sex marriages. In all three jurisdictions studied by Ahdar, the reformulation of marriage law has been fairly recent, though Canada provides a significantly earlier experience, and has been shaped by the aim to provide equality on grounds of sexual orientation. In contrast, in other jurisdictions there has been a much longer experience of reformulating marriage laws for other purposes. Pieter Coertzen’s chapter provides a detailed exploration of the development of the law relating to marriage in South Africa, exploring the earlier and much more wide-ranging re-definition of marriage that has occurred there.

The issues present in both Ahdar and Coertzen’s chapters are then revisited in a chapter by Argentine family law scholar Ursula Basset, who not only takes a step back to explore the redefinition of marriage in Europe but provides not-often-seen information about these issues as developed in the Americas, through General Assembly resolutions of the Organization of American States, provisions of the American Convention on Human Rights, and relevant opinions of the Inter-American Court of Human Rights. This section concludes with two chapters by U.S. scholars, the first by Helen Alvaré, who provides a detailed view of the Catholic understanding of marriage, in light of imputations of animus in all opposition to same-sex marriage, made in the majority opinion of the Supreme Court case *United States v. Windsor*.<sup>27</sup> Such concerns as Alvaré raises about potential threats to religious autonomy, arising from such a high-level imputation of malign motives for holding a traditional religious belief, have been amplified for many by the Court’s subsequent decision in

---

27. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

*Obergefell v. Hodges*,<sup>28</sup> which found a federal constitutional right to same-sex marriage. These issues are developed in the final chapter in this section, by Thomas Berg and Douglas Laycock, which adopts a synoptic approach, to explore the current state of U.S. law in relation to same-sex marriage and the protection of religious autonomy. The book then closes with a chapter by W. Cole Durham that explores the themes of the book as a whole, examining amongst other things the role of exemptions and the concept of reasonable accommodation to engage with the work of Heiner Bielefeldt, who kindly provided the preface to this volume and a keynote address at the third ICLARS conference.

The issue of same-sex marriage and the wider tensions between religious and sexual identities is just one of the ways in which religion is interacting with equality laws in the 21st century. Other interactions will be explored not only in the second collection of chapters originally presented at the third ICLARS conference but also in other books which will be published under the auspices of ICLARS Series on Law and Religion. The chapters that appear here, together with those published in the earlier volumes by Ashgate,<sup>29</sup> underscore how dynamic, controversial, and important interactions between law and religion can be. However, the work published to date is just the tip of the iceberg. The ambition of the Series is to reflect the wide-ranging ambit and ambition of scholarship in this and related fields and to stimulate and encourage its further growth. The early years of the 21st century have seen storm clouds gather as social and political tensions have erupted in a downpour of issues, laws, and decisions that have affected religious freedoms. It would be foolish to speculate as to what weather is likely to lie ahead. But even if calmer or sunnier times are to come, there will remain the need for scholars to address the short- and long-term effects of the storm in a calm and erudite manner away from the glare and sensationalism of the media. There will need to be a place whereby increasingly ambitious analyses can be disseminated to the scholars around the world, who, although they experience local variations invariably share experiences of common issues. ICLARS in general and the ICLARS Series on Law and Religion are designed to provide that place for formulating, sharing, and discussing insights, ideas and speculations. It is hoped that this volume provides the start of a new stage of increased collaboration not only between ICLARS and Ashgate but among those around the world who have an interest and passion for the study of law and religion.

---

28. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

29. Ferrari & Cristofori, *Law and Religion in the 21st Century*, supra note 1; and Durham et al., eds., *Law, Religion, Constitution*, supra note 1.