

The contribution of law to interdisciplinary conversations on law and religion.

by

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“The very expression "law and" paradoxically signifies both law's welcoming of other disciplines and its continued separation from them” (Balkin, 1996 at 950).

Introduction.

John Witte has recently surveyed the field of law and religion within the United States (Witte, 2012). His “interim report” makes essential reading for anyone interested in scholarship from this globally significant set of jurisdictions. My focus in this chapter is partly on contemporary European scholarship, albeit only that part available in English, but also more specifically on the contribution that legal scholarship can make to interdisciplinary work on the interaction of law and religion. I begin by discussing what sort of discipline law is, and how it can interact with other disciplines. I then attempt to consider the contours of legal scholarship as they may appear to an outsider, seeking to bring out the key characteristics which need to be considered when placing a piece of legal scholarship on law and religion in its disciplinary context. I conclude by a brief consideration on what to expect from a legal scholar during interdisciplinary dialogue on law and religion.

What sort of discipline is law?

Posner argued, in a provocatively titled article, for “[t]he decline of law as an autonomous discipline, 1962-1987” (Posner, 1987; see also Posner, 1988). Schlag expressed the same scepticism by a lively comparison of the discipline to law to that of phrenology (Schlag, 1997). One may be sceptical about the autonomy of legal scholarship without thereby invalidating the existence of a community of legal scholars (van Zandt, 2003), or necessarily concluding that there is *nothing* distinctive about the work of such scholars (Bix, 2003). Nonetheless, the standing of law as a distinctive discipline is not uncontested. That said, I follow Vick in seeing a core to the academic study of law which “broadly corresponds with a doctrinal approach involving the use of particular interpretative tools and critical techniques in order to systematise and evaluate legal rules and generate recommendations as to what legal rules should be” (Vick, 2004 at 165). Using the United States terminology, this will be termed Langdellian, after the influential Dean of Harvard Law School, although scholars within this tradition frequently do not identify themselves explicitly (Posner, 1988).

Within this tradition, especially in the common law, Anglophone, world, the legal scholar begins with the study of authoritative (typically public domain) legal texts, and then moves from knowledge of those texts to apply “the power of logical discrimination and argumentation that came from close and critical study of them” (Posner, 1987 at 763). The latter is crucial to understanding even that Langdellian scholarship which focuses on authoritative texts very closely. Such scholars rarely simply aim to summarise the current state of play in the authoritative sources. Rather “the Langdellian scholar [aims] to discover

and articulate high-level principles, to deduce more specific legal rules, and to criticize judicial decisions that had failed to follow this abstract doctrine” (Feldman, 2004 at 476-7). With tremendous variations depending upon the legal system under consideration, personal style, and intellectual commitments, this type of scholarly work in law remains very common (see for instance Rivers, 2010).

Any departure from pure positivism – that is to say, treating law as authoritatively contained within legal sources so that law is what the legal sources say it is – raises the question of where Langdellians derive these principles from.

“Like Jonah - or perhaps more accurately Geppetto - we are inside the legal beast. We are both its slaves and its masters, having learned the professional techniques to tickle its soft belly from within to make it move in the directions we select. But ironically, we remain masters only so long as we also remain slaves. When we are disgorged and adrift - both free and naked of the manipulative and commanding power of our professional identity - we begin to see and sense the shape, power, and position of the legal whale and its course in the greater sea of society.” (Kandel, 1993 at 9-10).

Kandel’s powerful metaphor would suggest that legal scholars must either be within the belly of the beast – Langdellians of a particularly pure type – or expelled from it entirely. In practice, our relationship with the beast is more likely to fall on a spectrum. At one end of the spectrum, our discovery of unstated legal rules, and critique of established ones, is derived entirely from legal sources analysed using legal techniques. Samuel sees this as being the clear centre of gravity for legal scholarship in the civil law world, more so even than in the common-law world (Samuel, 2009). Further along the spectrum, our discovery draws upon insights – fishes - from the broader sea of human knowledge which have joined us in the belly of the whale. These insights may, alarmingly, be gained “without recourse to the appropriate material available from elsewhere in the academy“(Bradney, 1998 at 71), but are increasingly likely to be derived from other academic disciplines. Many of these are colonising disciplines which have succeeded in becoming part of the mainstream of legal scholarship without thereby changing what it is to be part of the discipline of law (Balkin, 1996). For our field, much important colonisation has taken place by sociology, but also anthropology, history, and theology. Only when we seek to fish for ourselves do we leave the belly of the whale; and not all scholars leave the whale to become “disgorged and adrift”. For law and religion in particular, three important movements are based on the partial colonisation of law by other disciplines.

Firstly, socio-legal studies. There is perhaps an over-emphasis on the methodological approaches of socio-legal studies as providing a distinctive identity. Certainly much socio-legal work draws on qualitative and quantitative methodologies drawn from the social sciences (for a wide-ranging review, see Banaker and Travers, 2005). Socio-legal studies is more than simply a tool-kit for data collection and data analysis however. The intellectual centre of socio-legal studies is the consideration of law in the context of broader social and political theories.

Secondly, critical legal studies. This broad movement shares a “concern with the politics of law, with the stress on law as significant precisely because it is not immunised from the realm of politics and thus has definite effects and consequences for the multitudes of arguments, battles and struggles which produce the human condition” (Fitzpatrick and Hunt, 1997 at 1). This starting point frequently leads scholars in this movement to be sceptical of the resolution of legal disputes as a technical parsing of legal materials, of the reinforcing of dominance and subordination by legal structures, and of the fundamental assumptions of law as to the human condition (see further Ward, 2004). Within this however, there is a tremendous diversity. To quote from the principal legal journal in the field, *Law and Critique*, critical legal studies can include “a variety of schools of thought, such as postmodernism; feminism; queer theory; critical race theory; literary approaches to law; psychoanalysis; law and the humanities; law and aesthetics and post-colonialism” (Law and Critique, 2013 at 1).

Thirdly, legal history. To a very limited extent, law always involves a historical aspect. The most traditional of Langdellians when citing a source which has represented the law since, say, the 1850s, will have some regard to the context of the law when it was formulated, and to events since. Legal history, whether conducted by historians, lawyers, or both, emphasises the historical over the contemporary, and does not simply use the historical to frame the contemporary (see Tomlins and Comaroff, 2011). A recent call for papers catches the range of interests this can engage: ““New Worlds of Faith” will explore the ways that religion and law have functioned in the Americas, from colonial periods through 2000. Although we do not intend to limit proposals by such examples, we would be interested in papers on witchcraft prosecutions, citizenship and religious identity, protections (or not) for religious speech and worship, legal repression of indigenous faiths, and so on” (PennLaw, 2013).

What are the contours of the scholarship in law and religion?

In approaching law and religion scholarship, it is worth being aware of a number of ways of categorising the literature. The importance of these categories is not necessarily patent to those encountering the sources from outside the discipline of law. They provide, however, a useful taxonomy to consider when evaluating the reach and limitations of a particular writing (rather than, say, defining the properties of the genre, as in von Benda-Beckmann, 2008). In considering a piece of legal scholarship, it is important to be attentive to its sphere of operation, its orientation, and its relationship to the central concerns of law and religion viewed from a legal perspective.

Sphere of operation.

Law, perhaps more obviously than some other fields of human knowledge, has specific spheres. It may make some sense to speak of “German physics” and “French physics” in relation to the national characteristics of the academy, but to most scholars rather less so in relation to that which is studied itself. There is much less consensus that the laws of physics change across that national boundary than that the laws of the land do. So a key feature in legal literature on law and religion is the sphere of operation which it addresses.

A common, and fruitful, focus is upon the national sphere. Here, the focus of the work is upon the situation with a particular legal system, or group of legal systems which coexist within a national sphere (e.g. Robbers, 2013, now in its second edition). The modes of data collection, data analysis and argumentation in relation to the law seek to be compatible with, or knowingly challenge, the established modes within that sphere. Because it can appear self-evident to writers on national law publishing within a national legal press, or within a scholarly journal explicitly or implicitly based in the jurisdiction, there may be no acknowledgement that the work is nationally bound. There is, however, nothing inconsistent with two articles purporting to deal with the law on financing of religious organisations, for instance, sharing neither sources nor method when dealing with, say, English law and Spanish law. The globalisation, and for Europeans in particular, regionalisation of law however means that discussions of the national sphere may intrinsically require discussion of regional and international law. A recent example is Daly's *Religion, Law and the Irish State*, which while drawing on a range of sources, is centrally concerned with the constitutional framework governing church/state relations in Ireland (Daly, 2012).

An emerging focus is upon the regional sphere. We see this particularly clearly in relation to the European Union and the Council of Europe, where a distinct body of regional law, including regional law bearing on law and religion, has emerged. In contrast to, say, a comparative study of Arab states (e.g. Welchman, 2007), this is not simply the law of states within the region, nor is it simply international law – rather it is a distinct sphere, with complex relationships with the national spheres of the states within the regionalisation project. Doe's *Law and Religion in Europe: A Comparative Introduction*, for instance includes not only an ambitious comparative introduction to a range of national approaches by European states, but also to the emergent European Union law on religion (Doe, 2011), while Zucca develops a model of secularism within the spheres of both the European Union and the Council of Europe (Zucca, 2012).

Another possible sphere of operation is that of international law. Traditionally, this refers to the body of law which primarily binds states in their relations with one another. From the twentieth century on, however, it has increasingly become a legal order which also seeks to control the actions of states in relation to individuals within their territories and, even more radically, the actions of individuals in relation to other individuals, as we can see for instance in the work of the International Criminal Court. Studies have considered both global international law, and regional instruments (e.g. Taylor, 2005; Evans, 2008).

Within our field, however, there are another set of spheres to be considered, that of the law of religious communities themselves. At the margins, there are interesting discussions to be had as to whether a religious community which lacks coercive mechanisms for enforcing findings can be said to have law, and whether communities which reject the idea of an internal law for themselves may nonetheless, through their development of norms and expectations as to belief and behaviour, be said to have one (see for instance Bradney and Cownie, 2009). Nonetheless, there are clearly religious communities which act as if they have laws of their own. In the past these laws were sometimes referred to without regard to the community's traditions as "ecclesiastical law", but Sandberg's distinction between religion law and

religious law, with the law of a religious community being the latter, provides us with a better nomenclature (Sandberg, 2011a). Within this sphere of operation we might find for instance studies of Church of England ecclesiastical law, Roman Catholic canon law, or Shariah law (cf. the separate descriptions of Doe and Ombres of canon law as “a discipline” in Ombres, 2012; Doe, 2013). As with the national spheres, the discussions here will draw upon, or contest, the sources and methodology developed within the sphere; and, as with the national spheres, different findings as to the law within different spheres are not incompatible. A discussion of the marital status of clergy may well, for instance, come to different conclusions depending upon whether the sphere being discussed is Church of England ecclesiastical law or Roman Catholic canon law. Examples of this sort of religious law work can be found in the work of John Witte, who combines the expertise in law and religion in the US context alluded to in my introduction with equal expertise in the law and legal thinking of major Protestant communities (for instance Witte, 2002; Witte, 2008).

Finally, and perhaps most contentiously from a Langdellian perspective, there are the works of scholarship which do not locate themselves within any of these spheres at all, and which may be broadly categorised as legal theory. It should be stressed that this is very different from scholarship which combines one or more spheres. In a practical sense, as noted above, scholars wishing to engage with, for instance, some areas of UK law, will need to engage with European Union and ECHR law in order to properly understand UK law. Thus, they combine the national, regional and international spheres (e.g Sandberg and Doe, 2007). Similarly, there is a very strong tradition of comparative law in law and religion, where scholars work in two or more spheres simultaneously to develop their thinking and arguments (see for instance Hafner, Kroissenbrunner and Potz, 2010). This music of the spheres is tremendously varied, and of growing importance in the literature. An important example of work combining multiple national spheres, now in its second edition, is Ahdar and Leigh’s study of religious freedom in liberal states, which studies the US, Canada, New Zealand, Australia, and the EU (Ahdar and Leigh, 2013). There is also a large, and growing, body of work which seeks to compare different spheres, particularly a religious law sphere and the international law sphere (from a considerable body on Islam and international law, see for instance Baderin, 2005; Abiad and Mansoor, 2011), and of course analysis of the compatibility with law in a national sphere with the international obligations of that country (e.g. Hallinan, 2012).

Understood as “the theoretical part of law as a discipline” (Twining, 1986), legal theory may, in contrast, draw upon the other spheres only for illustrative examples of the point being made, or not at all. In relation to comparative study of national spheres, for instance, Fletcher put forward one agenda for a comparative contribution to jurisprudence: “to move the discourse to a higher plane of trans-cultural unity. The search for structural features of the law, the elaboration of distinctions common to all legal cultures, the clarification of the basic units of legal analysis - all of these are intellectual pursuits that unite scholars from diverse traditions in a common pursuit” (Fletcher, 1998 at 693-4). A good sense of the range of writing on legal theory in relation to law and religion can be gauged from two recent collections. The first, edited by Cane, Evans and Robinson, includes contributions on equality

and tolerance and public reason (Cane et al, 2011). The second, edited by Zucca and Ungureanu, includes contributions on the idea of toleration, the public sphere, and religious pluralism (Zucca and Ungureanu, 2011).

Orientation.

Another feature to consider is the principal orientation of the scholarly piece.

A not uncommon orientation is that of legal source. It is not unusual to find scholarly work which orientates itself primarily around for instance a key provision in national legislation, an international legal instrument, or a decision of a national court (particularly in those jurisdictions which place considerable weight on such decisions, for instance the US or Canada). This is an area where a scholar who does not primarily identify as a law and religion specialist is perhaps particularly likely to make a powerful contribution to the field. Scholars of the European Convention on Human Rights, for instance, may bring this specialism to bear on the principal religious rights clause of the ECHR, Article 9 (e.g. White and Ovey, 2010); a scholar of the US Constitution onto an aspect of the religious test clause of the US Constitution, Article VI (e.g. Dunn, 2013); or a specialist in charity law onto religious charities (Luxton and Evans, 2011). The strength of this orientation is that it is likely to provide a powerful account of a particular source; a limitation is that it may not draw explicit connections with sources and arguments which are factually or theoretically significant to the reader.

A similarly successful orientation is that of an area of law – an established field of study which is neither exclusively concerned with law and religion, nor a single set of legal sources. A good example here is the area of employment law. Vickers has a substantial body of work focussed around the protection of human rights in the workplace, which includes not only exploration of issues around equality and diversity (e.g. Vickers, 2011), but also the exercise of freedom of speech in employment (Vickers, 2002), and freedom of religion in that context (e.g. Vickers, 2008). The strength of this orientation is the embeddedness within the context in which the interaction of law/religion operates, which can avoid inaccurate exceptionalism being ascribed to that interaction; the limitation that this very embeddedness can set the parameters for discussion.

An alternative orientation is around that of a topic, or particular difficulty. Here the scholarly focus is on a particular issue, which may implicate a very wide range of different areas of law and legal sources. This sort of work differs from the orientation around a field in that existing legal divisions, or sub-fields, are not the basis for the selection of the topic. To use an example from my own work, my study of sacred places in English law did not draw upon existing disciplinary understandings of “place law”, nor did it draw upon an existing consensus of the sorts of legal doctrines and sources that were implicated in understanding sacred places. Instead it sought to construct a category for study around a broad understanding of the sacred and of place derived from other disciplines, and then sought to identify legal doctrines and sources which were relevant to this category (Edge, 2002). The strength of this approach is that it facilitates investigation across a wide range of legal doctrines and concerns, which may open up interesting avenues for enquiry; the limitation

that the scholar risks being a visitor to a number of areas, rather than a resident in any – in the words of Solum, a wanderer (Solum, 2007).

A related, but distinct, orientation is around that of a particular religious community. This orientation is more demanding than might be anticipated by scholars outside the discipline of law. Take for instance an orientation around the Islamic community in the UK national sphere. Inevitably, such an orientation requires considerable discernment, particularly as much of UK law concerning religion is of general application, rather than there existing a large corpus of law relating to Muslims. Ideally, this sort of work is attentive to the legal issues of particular significance to that community, as we see in Fournier's study of *mahr* for instance (Fournier, 2013), although how that judgment is to be made itself is appropriately contentious. Alternatively, it may be driven mainly by legal disputes and the involvement of legal actors – producing an image of law and religion which overemphasises conflict and dispute resolution, and risks representing, or shaping, law as “a discipline of crisis” (Charlesworth, 2002). In either case, because the orientation is around a community, rather than a sub-field within law, the expertise required may naturally lead to collaborative work or collections of essays (such as Griffith-Jones, 2013).

A final orientation is around a principle, or theoretical doctrine. In his consideration of Dworkin's theoretical underpinnings for religious freedom, for instance, Domingo concludes that the basis for religious freedom should be ethical autonomy, rather than ethical independence (Domingo, 2013). Similarly, Chaplin's consideration of state neutrality is orientated around a consideration of the nature of public reason (Chaplin, 2012).

Concerns.

Scholars whose contribution to law and religion is primarily *en passant* in relation to a different research project are likely to be informed by the concerns of that other research project. So a scholar whose fundamental interest is employment law may contribute to our understanding of religious discrimination, but their fundamental concerns are likely to be drawn from that field (e.g. Pitt, 2011). A scholar whose abiding concerns are taxation, will similarly draw concerns from that field into a discussion of taxation of a particular Church (Mastellone, 2013). In relation to contributions which are squarely within law and religion, are there abiding concerns which may be identified?

In such a rapidly emerging and diverse field, such a summary should be approached with trepidation by the author, and caution by the reader. That said, it feels to me that there are four significant, but of course overlapping and interwoven concerns, which are frequently found in contemporary work in the field.

Firstly, religious rights. In particular, I mean their justification, distinctiveness, appropriate reach and application, legitimate restriction, and enforcement. Partaking of two much broader bodies of work – constitutional rights law and international human rights law – this area of work has a long history, and indeed can easily be seen as implicated in the origin of both sets of positive law. Important examples within particular spheres include Evans' work on

international law (Evans, 2008), and McCrea's on the European Union (McCrea, 2010), but it should be noted that this is an area particularly rich for comparative work (see for instance Lock, 2013).

Secondly, equality and religion. I choose this term, rather than religious equality, with care. There is an established body of work on discrimination on the grounds of religion, particularly to be found in relation to spheres and topics where there are legal non-discrimination regimes (e.g. Christoffersen and Vinding, 2013), but also in relation to issues such as equality and the sentencing of a religious defendant (Bakalis, 2013), and broader constitutional issues (for a wide-ranging survey, see Hill, 2012). Additionally, there is a growing body of work which considers religion from the other direction. By this I mean not as a ground upon which an individual may be discriminated against, but as a ground which may motivate, or be used to justify, discrimination on either religious or other grounds (e.g. McCrudden, 2011; Malik, 2011; Hertogh, 2009). Contemporary work has, for instance, particularly focussed on tensions between sexual orientation equality and discrimination (e.g. Sandberg, 2011).

Thirdly, autonomy and religion. Again, I choose this term rather than religious autonomy. An abiding concern of legal scholars has been the autonomy, or otherwise, of religious organisations and communities against the state. Conversely, another set of concerns are raised concerning the autonomy of the state against religious organisations (see for instance Temperman, 2010). Bodies of US and French scholarship, in particular, have engaged with the latter (e.g. Barras, 2013; for an important contrast between the two, see Baehr and Gordon, 2013), but it is by no means a concern alien to scholars working in spheres with an intimate relationship between the state and a historically dominant religious organisation (see e.g. Cumper and Lewis, 2012). The issue of the place of religion, and religious arguments, in the public sphere is a good example of contemporary concerns (see for instance Zimmermann and Weinberger, 2012).

Fourthly, the interaction of different bodies of law, and the influence they have upon one another. I have already suggested that comparative study of law in different spheres of operation is an area of growing importance within law and religion. It may perhaps even be said that we are all comparativists now, so the point bears repetition. This study of law in different spheres can, however, go beyond comparison and instead seek to focus on interaction (e.g. Kennedy, 2012). A good example is international human rights, and its relationship, both historical and contemporary, with different religious laws (see Witte and Green, 2011). Another is scholarship on the interaction of, in particular, Islamic law and national and international laws. The latter has been given particular focus by the post-9/11 security agenda of many states, which sees some forms of Islam as contrary to their national interest, although the significance of an 'anti-extremism agenda' to the consideration of law and religion can go further (e.g. Cliteur, 2012).

Concluding thoughts: Seven things to expect when talking to legal scholars about law and religion.

Much legal scholarship is not intended for a multidisciplinary audience. There are bodies of work quite clearly aimed at providing resources for legal professionals (e.g. Knights, 2007; Ventura, 2013), but even outside this, legal scholars within the Langdellian tradition in particular, write and have written, “to reform and to improve the law. [t]hrough our scholarship we directly participated in the legal system, in legal and judicial practices, by advising lawyers and judges, or at least so we imagined” (Feldman, 2004 at 472-3). One substantial imagined audience for legal scholars, then, has been the legal profession. This still remains an important target for legal writing, particularly for those with an agenda informed by ideas of action research, knowledge exchange, co-production of research, or impact. There is also a body of work aimed not at legal professionals, but at students undertaking legal study as part of preparation for the legal professions (e.g. McConnell et al, 2011). Given the role, across a wide range of different countries, of law schools in teaching students law as part of professional and vocational training, this is unlikely to disappear (Feldman, 2004). As well as their professional and law student audiences, legal scholars write, not always compatibly with these audiences, for other legal scholars.

Turning to interdisciplinary conversation, specific topics within law and religion will be of immediate significance to students of other disciplines, and these topics may be addressed by texts aimed at them, typically as an additional audience to law students. We see this in Howard’s discussion of banning of religious symbols in education, which aims to address an audience including students in education (Howard, 2013). Legal scholars may also seek to write for an interdisciplinary audience of other scholars.

On occasion, this may have been a relatively minor theme in legal scholarship, and not always because of the limits of legal scholars. Posner attributed the survival of law as a distinct discipline in the US towards the end of the nineteenth century in part to the fact that “the economist and the statistician - not to mention the philosopher, the sociologist, the political scientist, the historian, the psychologist, the linguist, and the anthropologist (notably excepting Henry Maine) - were not much interested in law” (Posner, 1987 at 762). Nonetheless, legal scholars have sought to engage in interdisciplinary work, not simply as the “colonised” of interdisciplinarity (Balkin, 1996), but as scholars emerging from an intellectual community with something to add as a “conversation partner” (Witte, 2012 at 329). Within law and religion, this type of interdisciplinary conversation can take the form of an internal dialogue (e.g. Jivraj, 2013), but can also draw in scholars from a range of disciplines – as we see for instance in the recent comparative study of reactions to the burqa across Europe (Ferrari and Pastorelli, 2013). What contribution to such a conversation might a lawyer be expected to make?

Firstly, a partner might expect the lawyer’s contribution to be primarily technical. One mode in which legal scholars, particularly of a Langdellian turn, can be seen as useful by other disciplines is providing accurate, appropriately detailed, and well-supported statements of the law relevant to a particular area of study. This view reduces legal scholarship to “little different from a glorified appellate brief: it specified an issue, identified and parsed the relevant cases, and recommended a solution” (Feldman, 2004 at 483). The partner should expect that the legal scholar will not only have information to bring to the conversation, but particular concerns “proper to the law” (Jenkins, 1966 at 176). An interdisciplinary conversation should not assume that the lawyer constitutes a form of in-house counsel for the

other scholars, any more than it assumes that non-lawyers provide expert information on the context for a legal discussion.

Secondly, the partner should expect the contribution of a lawyer to be constrained by the lawyer's internal demarcations of expertise. This is particularly significant in relation to the spheres of operation discussed above. Bearing in mind that Langdellian discussion in particular can use tremendously different methodologies in different spheres – each of which is apposite for that sphere but may be positively misleading in another – this goes beyond simple knowledge to methodology, and the underlying assumptions of lawyers in that sphere. So the partner should not only recognise that (say) an Irish lawyer may not be *au fait* with Swedish law, but also that an Irish lawyer and a Swedish lawyer may make very different conversationalists, because of this intellectual context.

Thirdly, the partner can anticipate a potential groundedness in legal scholarship, particularly that focussed on understanding and informing formal legal moments, such as the giving of a judgment in a case. Feldman would not necessarily agree, believing that “Judges must, for the most part, resolve disputes, no matter how complex the case, so that one litigant wins and the other loses, but scholars need not reach such reductive solutions”. (Feldman, 2004 at 492). Recognising the increasing diversity of approach within law, however, it is probably still common for lawyers to have a concern with the ramifications of their studies, and with operationalization (Lopez and Lunau, 2012). As Balkin and Levinson put it, “the demand that legal scholarship be cashed out in policy prescriptions deeply circumscribes the legal imagination” (Balkin and Levinson, 2006 at 175).

Fourthly, the partner should be prepared for a distinct approach to data, and in particular to arguments from authority. The tremendous variety of contemporary legal scholarship, much of which is informed by and partakes of the values of other disciplines, means that this generalisation is no longer as true as it once was (see more generally Bix, 2009). However, Samuel has argued cogently that “both law and theology are founded, as disciplines, on the authority of given texts” (Samuel, 2009 at 441; for a fuller exploration of this comparison, see Kwak, 2009) and that shifts in the foundation of discipline have been shifts on the basis of the source of the authority, not a rejection of authority itself. Samuel concludes: “The problem with the legal scholarly work being pursued within the authority paradigm is that it is not really telling us much about the world. It is, like astrology or numerology, telling us about formalism, coherence, and philosophy in a world constructed by consenting insiders” (Samuel, 2009 at 459; see also Samuel, 2008).

Fifthly, and a related point, the partner may find the emphasis on the particular, at times seeming to amount to pedantry, a source of tension in conversation. Langdellian legal education can give tremendous emphasis to the particular and the specific. Bradney argues that this sort of emphasis on doctrine emphasises close reasoning and the utmost attention to textual context, but at the expense of “the making of the connections with the wider questions which lie at the root of human enquiry” (Bradney, 1998 at 76). He goes further, arguing that “[d]octrinal concepts, like the techniques of doctrinal argument, by their form, forbid all serious political, ethical or personal thought and not just some kinds of such thought” (Bradney, 1988 at 78). To quote a non-legal source, there is a danger that “[t]he lawyer's world is entire to itself, the human pared away” (Mantel, 2012 at 369).

Sixthly, the partner should be aware of the emphasis that lawyers give to “the argument”. One possible weakness of legal scholarship on law and religion is the background in

advocacy that many academic lawyers have. Legal scholars are not so patently advocates as legal practitioners of course (van Zandt, 2003). It is not unusual, however, for active advocates, representing clients in court, to also be active contributors through scholarly work. Perhaps as commonly, legal scholars will have moved into the academy from a professional, client-orientated, background with an emphasis on advocacy. Even those scholars who have never been involved in legal practice will frequently have an academic education which they shared with those being prepared for advocacy, and a working life which involves preparing others in this way. The link between legal scholars and legal professions is a strong one, and brings with it what may be described as the problem of advocacy (Tushnet, 1981). As Cramton puts it: “[m]uch legal scholarship pretends to an objectivity it does not deliver; it fails to state or to examine the premises on which it is based; and it conveys a hubris of truth and righteousness (and sometimes even moral indignation directed at those holding opposing views) that is inconsistent with the humility of the true scholar” (Cramton, 1987 at 7-8).

Finally, a partner might approach the conversation envisaging “law as a dry, technical, ‘applied’ subject” (Twining, 2009 at xii). This would be a profound error. Bradney is sceptical of the sort of Langdellian work which I have focussed on in this chapter, and his words need to be understood in a context which identifies law much more closely with socio-legal studies than I do. Nonetheless, he makes a valuable point when he argues that: “Law, far from being an abstruse, technical discipline marginal to the university, is intricately involved in all that study in the university which involves either humanity, society or the state” (Bradney, 1998 at 83). Partners should anticipate being stimulated, informed, entertained, and occasionally enraged, but not bored.

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