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EDITORIAL

In a 2012 issue of the *Ecclesiastical Law Journal*, prominent law and religion scholar John Witte, Jr. published a survey of the field of law and religion in the United States. In that article, Witte described the emergence of an "interdisciplinary movement . . . dedicated to the study of the religious dimensions of law, the legal dimensions of religion and the interaction of legal and religious ideas and institutions, norms and practices."[1] In two recent essays, Russell Sandberg, another prominent scholar of law and religion, has questioned whether—despite the growth of scholarship on law and religion globally—the interdisciplinary experience in the United States holds in other parts of the world, and in the United Kingdom specifically. Law and religion scholarship, Sandberg argues, has focused principally on "a very narrow understanding of the 'legal dimensions on religion.'" In particular, Sandberg continues, "[a]ttention has tended to be afforded to understanding how national and international laws regulate religion" and the challenge that religion "poses for the State."[2] Unlike Witte, Sandberg sees law and religion scholarship as, more often than not, manifesting the disciplinary concerns and methods of law.

It is the case that Witte and Sandberg can both be right about law and religion as a scholarly community, and not only because they are discussing different national contexts that continue, even in the globalized academy, to influence how scholarship is performed. Rather, the study of law and religion is both a growing interdisciplinary movement and always subject to disciplinary capture. When law and religion is understood as a subdiscipline of law, it will tend to focus on the law about religion (what Sandberg calls *religion law*[3]); law and religion as a subdiscipline of theology will tend to focus on religious law; law and religion as a subdiscipline of religious studies will tend to focus on religious actors' encounter with law. These are generalizations, of course, but such tendencies are the nature of disciplinarity. To discipline, after all, is to instruct in a particular order[4]: disciplines have expectations, priorities, and boundaries. Law and religion as a subdiscipline or set of subdisciplines inherits those expectations, priorities, and boundaries.

This being the case, are subdisciplines the best way to think about law and religion? From 2015 to 2018, I taught a course at Emory University School of Law titled "Law and Religion: Theories, Methods, and Approaches."[5] I wanted my students to appreciate the diversity of disciplinary approaches and methods that are brought to the study of law and religion, and thereby, to prepare to students to think critically about and beyond their own disciplinary boundaries as they developed research agendas. In pursuit of this objective, I opened the course with a discussion of the

1 John Witte, Jr., "The Study of Law and Religion in the United States: An Interim Report," *Ecclesiastical Law Journal* 14, no. 3 (2012): 327–54, at 327.

2 Russell Sandberg, "Snakepits & Sandpits," in *Research Handbook on Interdisciplinary Approaches to Law and Religion*, ed. Russell Sandberg et al. (Cheltenham: Edward Elgar Publishing, 2019), 2–36, at 3–4; see also Russell Sandberg, "Prologue," in *Leading Works in Law and Religion*, ed. Russell Sandberg (London: Routledge, 2018), 1–19.

3 Russell Sandberg, *Law and Religion* (Cambridge: Cambridge University Press, 2011), 10–12.

4 Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), chapter 4, especially pp. 135–39.

5 The course remains part of the curriculum at Emory and is now taught by my colleague Dr. Shlomo Pill.

difference between a discipline and a field of study to make the case that law and religion operates as the latter: a gathering place for many scholars from many disciplines. A field of study is not without boundaries, but the boundaries are differently organized and, arguably, more fluid.

Sandberg writes that the formation of a field of study is "always an exercise in power." Establishing the contours of the field "is a means of inclusion and exclusion, deciding what is analysed and what is not and the margins of the intellectual pursuit."[6] By drawing attention to field formation as an "exercise of power," Sandberg makes clear that a field of study is constructed, not given or found. The construction of the field is better understood as "a dynamic process that is ongoing," and therefore, "the current construction of the field is neither fixed nor the end point."[7] Field construction is a process of negotiation; it is less a matter of setting boundaries than it is a matter of boundary consciousness.[8] Field construction requires attending to the boundaries of the field as it is currently constructed, why the boundaries are drawn where they are, and whether/when the boundaries should be redrawn.

This issue of the *Journal of Law and Religion* offers a lens onto the rich interdisciplinarity of the field and an opportunity to consider our boundary consciousness by examining multiple disciplinary perspectives on a central concern of law and religion scholarship: the family. In his 2012 survey, Witte identified the "perennially contested issues of law, religion and family life,"[9] as one of the core concerns of scholarship in law and religion. This issue of *JLR* brings new research and analysis from a variety of disciplinary perspectives and methodologies to bear on this historically long-standing and globally pervasive subject of our field. As such, it is an invitation to our readers to expand their boundary consciousness by reference to one of law and religion's thematic pillars.

In her article in this issue, Rawia Aburabia engages a close reading of materials from the Israeli State Archives to examine how Israeli legislators and Palestinian religious leaders constructed idealized identities for Muslim Palestinian women during debates around the Women's Equal Rights Law of 1951.[10] Drawing on work in postcolonial theory, Aburabia sets as her goal "to unearth these transfiguring colonial categories as they have permeated Israeli family laws to show how these complex colonial legacies affect the legal status of Muslim women."[11] While Israeli and Palestinian leaders were pursuing different national projects, Aburabia finds that each side of the debate constructed Muslim Palestinian women's experience in national-patriarchal terms to advance their separate goals. Aburabia's postcolonial frame and archival research expands the triumvirate of law, religion, and family with an important fourth category: nation.

In the symposium in this issue, "Child Law in Muslim Jurisdictions," guest editors Dörthe Engelcke and Nadjma Yassari have collected four articles written as contributions to a workshop

6 Sandberg, "Snakepits & Sandpits," 6.

7 Sandberg, 8.

8 I adapt the term *boundary consciousness* from Devaka Premawardhana's discussion of "border consciousness." Devaka Premawardhana, *Faith in Flux: Pentecostalism and Mobility in Rural Mozambique* (Philadelphia: University of Pennsylvania Press, 2018), 90.

9 Witte, "The Study of Law and Religion in the United States," 344. Witte is not alone in making this assessment, nor is the United States unique as a site of contestation on these issues. See, for example, the presence of family law matters in several prominent survey works in the field: Silvio Ferrari, ed., *Routledge Handbook of Law and Religion* (London: Routledge, 2015); Rex Ahdar, ed., *Research Handbook on Law and Religion* (Cheltenham: Edward Elgar Publishing, 2018); Sandberg, ed., *Leading Works in Law and Religion*; Sandberg et al., eds., *Research Handbook on Interdisciplinary Approaches to Law and Religion*.

10 Rawia Aburabia, "Family, Nation Building, and Citizenship: The Legal Representation of Muslim Women in the Ban against Bigamy Clause of 1951," *Journal of Law and Religion* 34, no. 3 (2019) (this issue).

11 Aburabia, "Family, Nation Building, and Citizenship."

convened under the auspices of the Max Planck Institute for Comparative and International Private Law. The authors of these articles employ ethnography, qualitative interviews, archival research, and legal analysis (or, more accurately, varying combinations of these methods) to unpack how state law and Islamic law interact in establishing filiation and protecting parentless children.[12] Collectively, the articles in this symposium address a number of interrelated questions:

> What effects do different manifestations of normative and institutional pluralism have on the development of *nasab* [filiation] and adoption schemes? To what extent can states reshape religious law and how do they attempt to do so? What is the effect of a system of concurrent jurisdiction that has increased citizens' ability to forum shop on the development of children's rights?[13]

While the focus here remains, in significant part, on the role of the state, the questions posed and the frames of analysis extend well beyond state law to religious law and the boundary consciousness of the people living within and between these sometimes separate, sometimes conjoined, often blurred legal frameworks. The ethnographic, qualitative, and archival methods the authors employ alongside their legal analysis offer a multidimensional and multihued perspective on this legally and religiously complex topic.[14]

The tour of approaches to the family in law and religion concludes with a book review symposium on John Witte, Jr.'s *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties*. As Witte notes in his "Response to the Reviewers," his first article on the subject appeared in the pages of this journal in 1987.[15] *Church, State, and Family* is a capstone on Witte's work in this area, what he describes as "my final major work on these themes."[16] In the intervening thirty years, Witte has been instrumental in leading interdisciplinary engagement on law, religion, and family, particularly between legal scholars, historians, and theologians. This is reflected in the five review essays from a mix of legal scholars and theologians.[17] As the essay authors engage,

12 Jean-Philippe Dequen, "Filiation and Adoption among Muslims in India: The Quagmires of a Religious Minority Law," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Euis Nurlaelawati and Stijn Cornelis van Huis, "The Status of Children Born Out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, *Adat*, and Human Rights Norms," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Shaheen Sardar Ali, "A Step Too Far? The Journey from 'Biological' to 'Societal' Filiation in the Child's Right to Name and Identity in Islamic and International Law," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Dörthe Engelcke, "Establishing Filiation (*Nasab*) and the Placement of Destitute Children into New Families: What Role Does the State Play?" *Journal of Law and Religion* 34, no. 3 (2019) (this issue).

13 Dörthe Engelcke and Nadjma Yassari, "Child Law in Muslim Jurisdictions: The Role of the State in Establishing Filiation (*Nasab*) and Protecting Parentless Children," *Journal of Law and Religion* 34, no. 3 (2019) (this issue).

14 *JLR* has been fortunate to publish two other symposia in the past five years that have likewise employed ethnographic, qualitative, and archival methods to offer rich analysis of lived experience. See Elizabeth Shakman Hurd and Winnifred Fallers Sullivan, ed., "Re-Thinking Religious Freedom," symposium, *Journal of Law and Religion* 29, no. 3 (2014): 358–509; Mirjam Künkler, ed., "The Bureaucratization of Religion in Southeast Asia," symposium, *Journal of Law and Religion* 33, no. 2 (2018): 192–309.

15 John Witte, Jr., "Response to the Reviewers," *Journal of Law and Religion* 34, no. 3 (2019) (this issue), citing John Witte, Jr., "The Reformation of Marriage Law in Martin Luther's Germany: Its Significance Then and Now," *Journal of Law and Religion* 4, no. 2 (1987): 293–352.

16 Witte, "Response to the Reviewers."

17 Mark D. Jordan, "Pedagogies of Natural Law," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Robin Fretwell Wilson, "Family Law Isolationism and *Church, State, and Family*," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Michael J. Broyde, "Religious Edicts, Secular Law, and the Family," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Brian H. Bix, "Default Rules and Private Alterations," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Jonathan Chaplin, "The Role of the State in Regulating the Marital Family," *Journal of Law and Religion* 34, no. 3 (2019) (this issue).

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expand, and challenge Witte's final major work in this area, it becomes increasingly clear that Witte's approach is a cloth woven of historical, legal, and theological arguments. Witte's interdisciplinary synthesis of law, theology, and history has surely inspired many of those who will continue working on these themes.[18]

In the preface to the first issue of *JLR*, the founding editors, Michael Scherschligt and Wilson Yates, wrote, "In undertaking this venture, we seek to provide a forum, a place to hear and be heard for *all those interested* in exploring how law and religion are related."[19] As a scholarly journal and an outlet for scholarship in the field of law and religion, we have particular power in constructing the field. It is our sincere hope that this and every issue of *JLR* continues to be a forum for all those interested in exploring law and religion, as well as an opportunity for our scholarly community to raise our boundary consciousness as we continue to construct and reconstruct the field together.

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18 While I have focused on this issues' interdisciplinary approaches to law, religion, and family, the other content in the issue also expands the border consciousness of the field in other directions. The essay by Tova Hartman and Chaim Zicherman on gender segregated higher education in Israel reminds us of the close connection between political theory and law and religion. Tova Hartman and Chaim Zicherman, "Higher Education for Haredim in Israel," *Journal of Law and Religion* 34, no. 3 (2019) (this issue). In his article on the creation of dharma, Mark McClish upends established understandings of the relationship between law and religion in ancient India and, in the process, complicates long-standing theories in the sociology of law. Mark McClish, "From Law to Dharma: State Law and Sacred Duty in Ancient India," *Journal of Law and Religion* 34, no. 3 (2019) (this issue). The second book review symposium in this issue focuses on the recent work of Cathleen Kaveny, one of law and religion's most interdisciplinary scholars. One of the characteristics of Kaveny's recent work, highlighted throughout the essays collected here, is her concern for what the disciplines of religious ethics and law can teach each other methodologically and normatively. See M. Christian Green, "Paths and Pedagogies in Law and Ethics: On Cathleen Kaveny, *Ethics at the Edges of Law: Christian Moralists and American Legal Thought*," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Ted A. Smith, "On Covenant, Irony, Providence, and the Stance of the Prophet: Thoughts in Light of Cathleen Kaveny's *Prophecy without Contempt*," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Jonathan Rothchild, "Talking Controversies: Why Dialogue Matters for Law, Religion, and Morality," *Journal of Law and Religion* 34, no. 3 (2019) (this issue); Kevin P. Lee, "Teaching Balance, Autonomy, and Solidarity in Law: Cathleen Kaveny, *Law's Virtues: Fostering Autonomy and Solidarity in American Society*," *Journal of Law and Religion* 34, no. 3 (2019) (this issue).

19 Michael Scherschligt and Wilson Yates, "Editors' Preface," *Journal of Law and Religion* 1, no. 1 (1983): 1–2, 1 (emphasis added).

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