


EDITORIAL

## Law and Religion: Asia as Critical Ground for Rethinking Existing Frameworks and Dominant Paradigms

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In 2015, the Pew Research Center released a telling report, *The Future of World Religions: Population Growth Projections, 2010–2050*, projecting a reshuffling of the religious profile of the world. Europe and North America, previously the center of Christendom, are likely to become less religious (if one takes religious affiliation as a proxy for religiosity) by 2050 while the rest of the world will remain as or become more religious. This projection that about a quarter in Europe and North America would have no religious affiliation<sup>1</sup> contrasts starkly with projections in the other regions. Most notably, Asia Pacific is projected to see a significant increase in the proportion of religiously affiliated persons; from 78.8 percent to 83 percent of the population by 2050.<sup>2</sup> This growth is centered on major traditional religions, with Muslims and Hindus projected to increase most starkly to form almost 60 percent of the population in the Asia-Pacific region, up from 45.5 percent in aggregate, while folk religions and other smaller religions are projected to decline comparatively.<sup>3</sup>

With some circumspection, these projections can be useful. Specifically, they point to the need to rethink what a changing religious demography and the shifting centers of religiosity may require of law and religion scholarship, and the relevance and suitability of dominant paradigms within this scholarship for this projected *new* religious world. In this search for new and more relevant paradigms, it bears shifting our gaze toward regions beyond the conventional geographical areas that have, for some time now, helped to construct the philosophical foundations of law and religion scholarship. As a region with growing religiosity, and more, Asia stands as one of the potential key incubators for rethinking, reconfiguring, and reframing theories within law and religion. This is particularly true for those who wish to study the role of law in more pluralistic religious contexts. Compared to other regions around the world, there is a greater spread of the major religious groups in the Asia Pacific.

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<sup>1</sup> The religiously unaffiliated would increase from 17.1 percent in 2010 to 25.6 percent in 2050 in North America, and from 18.8 percent in 2010 to 23.3 percent in 2050 in Europe. Pew Research Center, *The Future of World Religions: Population Growth Projections, 2010–2050* (2015), 158, 147, [https://assets.pewresearch.org/wp-content/uploads/sites/11/2015/03/PF\\_15.04.02\\_ProjectionsFullReport.pdf](https://assets.pewresearch.org/wp-content/uploads/sites/11/2015/03/PF_15.04.02_ProjectionsFullReport.pdf).

<sup>2</sup> In the Asia Pacific region, those without religious affiliation are projected to decrease from 21.2 percent of the population in 2010 to 17 percent in 2050. Pew Research Center, *The Future of World Religions*, 143.

<sup>3</sup> Hindus are projected to increase from 25.3 percent of the population in 2010 to 27.7 percent in 2050. Muslims are projected to increase from 24.3 percent of the population in 2010 to 29.5 percent in 2050. Pew Research Center, 143.



In this editorial, I posit three research orientations that emerge from the study of Asian jurisdictions that could offer particularly important insights for law and religion scholarship. The first is illustrated by Benjamin Lawrence's article in this issue of the *Journal of Law and Religion*: framing the starting point of any constitutional-state relations as entangled, rather than as separated.<sup>4</sup> His account of Buddhist monks in Cambodia seeking exemption from universal suffrage, as supposedly befits their politically neutral status, and the extent to which this is contested on the ground by a number of monks, suggests that one could not start to understand the complex interactions of Buddhism and the state through the lens of secularism as separation, which grew out of the historical context of a powerful church in competition with a powerful state. In Lawrence's account, the constitutional drafters' refusal to grant an exemption and the imposition of a universal mandate on all citizens to vote suggests a further incongruence that might stem from a misunderstanding or refusal to understand the theological logic of Buddhism, at least in the Cambodian iteration. The close regulation of religion, including Buddhism, by the state is the norm, rather than the exception, in Asia and other regions. Such regulations are not commonly regarded as illegitimate—as they might be perceived in the Anglo-European context—but are seen as part of the state's embedded relationship with religion. Some such regulations take the form of general laws with specific impacts on religion, while others entail far more direct forms of management. The study of such regulations would be critical not only for understanding but also for critiquing their impact on religious practices specifically and on society and politics more generally.<sup>5</sup> The methods and impact of state bureaucratization of religion, a form of direct regulation, was aptly explored in the *JLR* symposium "The Bureaucratization of Religion in Southeast Asia," guest-edited by *JLR* co-editor Mirjam Künkler.<sup>6</sup>

A regulatory or entanglement framework could further surface the multifarious ways in which religion engages the state beyond the usual, though always important, constitutional claims premised upon equality and freedom of religion. The constitutionalization of religion in many jurisdictions in Asia where religion is given a prominent place in the constitutional structure opened the door to religious litigation in more varied forms. Across Asia, cases are filed by individuals and groups to litigate their causes and shape religious boundaries. For instance, Benjamin Schonthal argues that the designation of Buddhism as having a "foremost place" and the imposition of a duty on the state to protect and foster the Buddha Sasana have perpetuated what Gehan Gunatilleke has called the "entitlement complex of Sinhala-Buddhists" and empowered citizens to engage in constitutional litigation to define the boundaries of Buddhism.<sup>7</sup> Relatedly, Tamir Moustafa examines the constitutionalization of religious disagreements arising from the Malaysian

<sup>4</sup> Benjamin Lawrence, "Saffron Suffrage: Buddhist Monks and Constitutional Politics in Cambodia," *Journal of Law and Religion* 37, no. 2 (2022) (this issue).

<sup>5</sup> I discuss this briefly in Jaclyn L. Neo, "Let's Talk about (Pluralist) Regulation of Religion," *Religion and Global Society* (blog), April 19, 2021, <https://blogs.lse.ac.uk/religionglobalsociety/2021/04/lets-talk-about-pluralist-regulation-of-religion/>.

<sup>6</sup> "Bureaucratization of Religion in Southeast Asia," ed. Mirjam Künkler, symposium, *Journal of Law and Religion* 33, no. 2 (2018).

<sup>7</sup> Benjamin Schonthal, *Buddhism, Politics and the Limits of the Law: The Pyrrhic Constitutionalism of Sri Lanka* (Cambridge: Cambridge University Press, 2016); see also Benjamin Schonthal, "Constitutionalizing Religion: The Pyrrhic Success of Religious Rights in Postcolonial Sri Lanka," *Journal of Law and Religion* 29, no. 3 (2014): 470–90. On the "entitlement complex of Sinhala-Buddhists," see Gehan Gunatilleke, "The Constitutional Practice of Ethno-Religious Violence in Sri Lanka," *Asian Journal of Comparative Law* 13, no. 2 (2018): 359–87, esp. 370–74.

constitution that designates Islam as the religion of the federation and how that shapes social and political consciousness.<sup>8</sup>

A second important research direction is the need for comparative turns beyond the “usual suspects,”<sup>9</sup> something that we have increasingly encouraged in this journal. Intra-Asia studies could create new paths for theory building to challenge and enrich dominant theories. For instance, the social and political implications of the denunciation by Buddhist hierarchies of voting rights for monks in Cambodia could be further drawn out through a comparative study of Buddhist movements in similar Buddhist-majority countries in the region. One might, for instance, ask why Buddhist monastic movements are more politically charged and prominent in Buddhist majority jurisdictions like Myanmar and Sri Lanka than in Cambodia and even Thailand. Such a comparative study could allow the construction of variants of Buddhist constitutionalism, further enriching by comparison and contrast existing theories of secular constitutionalism and other forms of religious constitutionalism.

Asia is also rich ground for comparative study and theory building on the relationship between religion and nationalism. Islamist nationalists protesting Ahok’s alleged blasphemous statements in Indonesia, Buddhist monks rallying against perceived Muslim infiltration in Myanmar, or Hindu nationalists attacking claimed encroachment by religious minorities in India are just some observed instances of the complex and intimate intertwining of religion and nationalism, which has given rise to political divisiveness and even violence in some instances.<sup>10</sup> The worrying trends of religious nationalism deserve close attention, particularly for their impact on democracy and the protection of rights. Previous issues of *JLR* have included examinations of the intersections of nationalism and religion<sup>11</sup> and its relationship with another global phenomenon, populism.<sup>12</sup> These trends further point to the need to connect the local with the global, as the transnational and supranational activities of religious groups can pose distinctive challenges for domestic legal systems with their typically territorially national jurisdictional limits.

This also connects to another area in which intra-Asian studies could produce interesting insights: the rising use of technology and social media in the practice, spread, and consumption of religious content. The global COVID-19 pandemic accelerated the rise of internet users, including those using social media. Data shows an internet penetration of 62.5 percent of the world’s total population as of January 2022, an increase of 192 million people from January 2021 (or 4 percentage points).<sup>13</sup> The use of social media has also increased with 4.62 billion social media users around the world as of January 2022.<sup>14</sup> While this number does not represent unique individuals, the growth of social media use is no doubt a massively important phenomenon that deserves attention. Asia represents more than half of internet users across the world. This means that the spread of religious content

<sup>8</sup> Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge: Cambridge University Press, 2018).

<sup>9</sup> Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford: Oxford University Press, 2014), 16.

<sup>10</sup> See Jaclyn Neo and Brett G. Scharffs, “Religious Nationalism and Religious Freedom in Asia: Mapping Regional Trends in a Global Phenomenon,” *Asian Journal of Law and Society* 8, no. 1 (2020): 1–18.

<sup>11</sup> See Ratna Kapur, “Gender and the ‘Faith’ in Law: Equality, Secularism, and the Rise of the Hindu Nation,” *Journal of Law and Religion* 35, no. 3 (2020): 407–31.

<sup>12</sup> Giovanni Maltese, “Reproductive Politics and Populism: Pentecostal Religion and Hegemony in the Philippines,” *Journal of Law and Religion* 34, no. 1 (2019): 64–84.

<sup>13</sup> Simon Kemp, “Digital 2022: Global Overview Report,” Datareportal, January 26, 2022, <https://datareportal.com/reports/digital-2022-global-overview-report>.

<sup>14</sup> Kemp, “Digital 2022.”

may be simultaneously more rapid and wide, yet also more easily influenced and controlled. What this means for the sociopolitical contexts in which religious groups operate and how law might shape those contexts would very much depend on the degree of regulation and control over the spread of digital information, including laws controlling the dissemination of disinformation.

Third, contextualization should be a primary orientation for law and religion scholarship: lived experiences and thick description enrich our understanding of law. As the religious world shifts eastward from the Anglo-European centers, new theoretical frames developed contextually and reflexively are needed. This also means recognizing that existing theoretical frames were contextually developed. The Asian experience could bring nuance to or even challenge dominant concepts employed in the study of law and religion. For instance, to the extent that existing scholarship has employed a Judeo-Christian framework for the study of law and religion—a perspective that tends to emphasize textual authority, voluntary inner faith, and individual rights—the viability of such scholarship requires rethinking. This is not to say that existing frameworks should be entirely jettisoned in a bid to ‘decolonize’ law and religion scholarship. This would presume a too static vision of law, for legal frameworks do change the way in which those who practice them think about law and religion, and vice versa. However, there is a need for reframing paradigms, for instance, in examinations of how ideas about religion shaped by conceptual categories developed under a Judeo-Christian frame may produce both incongruent understandings and problematic constitutional and legal outcomes. We see this critique among scholars who examine how Hinduism in India has been constructed, recreated, and modernized to fit into colonial (Judeo-Christian-based) categories of religion, and how this creates dissonances and reproduces problematic structures of authority not previously present under traditional forms. Scholars point to the tendency to locate the core of Indian religiosity in certain Sanskrit texts modeled after the centrality of texts and doctrines within Abrahamic or Semitic religions—such as God, holy books, founders, and doctrines<sup>15</sup>—that do not cohere with the lived experiences of adherents. Furthermore, false equivalences drawn between different traditions as phenomena of the same kind could also result in an overemphasis on theological conflicts more commonly found between and within monotheistic religions, namely issues of rivalry, truth doctrines, proselytization, and conversion.<sup>16</sup>

In all, this issue of the *Journal of Law and Religion* reflects our commitment to pushing new frameworks and boundaries for law and religion research, and to embracing a multidisciplinary and interdisciplinary orientation that draws upon the experience of a variety of religious traditions. The historical account in Rabiati Akande’s article points to the transnational production of knowledge,<sup>17</sup> an area worthy of closer attention in which a further focus on Asian practices could enrich the discussion. Zalman Rothschild’s article, reflecting on similarities in the intellectual projects of Carl Schmitt and Shneur Zalman of Lyady employs legal and political philosophy to elucidate currents of thought within Jewish legal

<sup>15</sup> Ronojoy Sen, “Defining Religion: The Indian Supreme Court and Hinduism” (working paper no. 29, Heidelberg Papers in South Asian and Comparative Politics, South Asia Institute, Heidelberg University, 2006), [https://archiv.ub.uni-heidelberg.de/volltextserver/6936/1/Ronojoy\\_Sen\\_Defining\\_Religion\\_final\\_version.pdf](https://archiv.ub.uni-heidelberg.de/volltextserver/6936/1/Ronojoy_Sen_Defining_Religion_final_version.pdf).

<sup>16</sup> See generally, S. N. Balagangadhara and Jakob De Roover, “The Secular State and Religious Conflict: Liberal Neutrality and the Indian Case of Pluralism,” *Journal of Political Philosophy* 15, no. 1 (2007): 67–92; Prakash Shah, “The Difference That Religion Makes: Transplanting Legal Ideas from the West to Japan and India,” *Asian Journal of Comparative Law* 10, no. 1 (2015): 81–97.

<sup>17</sup> Rabiati Akande, “Neutralizing Secularism: Religious Antiliberalism and the Twentieth-Century Global Ecumenical Project,” *Journal of Law and Religion* 37, no. 2 (2022) (this issue).

philosophy.<sup>18</sup> Emine Yakar's article on women's leadership points to the need to contextualize what seems like a global religion, examining how subsidiary law making in the form of *fatwās* cannot be fully and independently evaluated apart from their social contexts.<sup>19</sup> These are timely analyses that demonstrate that *JLR* stands ready as a platform to explore emergent and emerging scholarly innovations. We would welcome even more Asian-centred enquiries, situated as they would be within the region's diversity of religious traditions, constitutional arrangements, and practices, which could contribute further to innovative analytical, comparative, and theoretical insights in law and religion scholarship.

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<sup>18</sup> Zalman Rothschild, "Sovereignty, Reason, and Will: Carl Schmitt and Hasidic Legal Thought," *Journal of Law and Religion* 37, no. 2 (2022) (this issue).

<sup>19</sup> Emine Enise Yakar, "Women's Political Leadership: One Question and Two Divergent *Fatwās*," *Journal of Law and Religion* 37, no. 2 (2022) (this issue).

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