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# Law at the Backbone: The Christian Legal Ecumenism of Norman Doe

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*Welsh jurist and Anglican theologian Norman Doe has pioneered the modern study of comparative 'Christian law', analysing the wide variety of internal religious legal systems governing Catholic, Orthodox and Protestant churches worldwide. For Doe, religious law is the backbone of Christian ecclesiology and ecumenism. Despite the deep theological differences that have long divided Christian churches and denominations, he argues, every church–whether an individual congregation or a global denomination–uses law to balance its spiritual and structural dimensions and to keep it straight and strong, especially in times of crisis. This makes church law a fundamental but under-utilised instrument of Christian identity and denominationalism, but also unity and collaboration on many matters of public and private spiritual life, both clerical and lay. Doe has developed this thesis in a series of impressive scholarly projects and books–first on Anglican law, then comparative Anglican-Catholic canon law, then all Christian laws and other Abrahamic laws, and their interaction with secular legal systems. This article offers an appreciative analysis of the development of Professor Doe's scholarship, and situates his work within the broader global field of law and religion studies.*

**Keywords:** Anglican Church, canon law, Cardiff, Church in Wales, church law, communion, covenant, Evangelical Churches, law and religion, Norman Doe, Protestantism, Roman Catholic Church

## INTRODUCTION

Welsh law professor and Anglican theologian Norman Doe is a global leader in the interdisciplinary study of law and religion. The Centre for Law and Religion that he founded and directs at Cardiff University is the foremost such academic institution in Europe, with an impressive record of pedagogy, projects and publications, particularly on issues of comparative church law. Doe has long

* Parts of this article first appeared as the foreword to N Doe (ed), *Juridical Ecumenism* (London, 2020) and as a chapter titled 'Norman Doe, Master Comparativist in the Field of Law and Religion', in F Cranmer, M Hill, R Sandberg and C Kenny (eds), *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge, 2016), pp 247–261. See further J Witte Jr, *Faith, Freedom, and Family: New Essays on Law and Religion* (Tübingen, 2021), pp 247–262.



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been one of the leaders of the European Consortium of Church-State Relations[1] and its successor, the International Consortium of Law and Religion Scholars, with several hundred members worldwide.

Since 1990, Doe has issued a steady flow of monographs, anthologies and articles that have helped to map and expand this field. His writings are at once mines of information and fonts of inspiration – prodigiously researched, thickly documented, lucidly argued, relentlessly systematic, exquisitely wrought, but always moderate and measured in tone. To read Norman Doe is to stand on a solid granite rock of scholarship and to gain a new view of the world.

The distinct and abiding message of much of Doe's work is that law is at the backbone of Christian ecclesiology and ecumenism. Despite the deep theological differences that have long divided Christian churches and denominations – over the Bible, the Trinity, the sacraments, justification by faith, clerical celibacy, women's ordination, natural law, and so much more – the church universal has always been united in its devotion to and need for church law. From the earliest instructions of St Paul and the *Didache* for the new churches to the elaborate codes of canon law and books of church discipline in place today, the Christian church has been structured as a legal entity. The church depends upon rules, regulations and procedures to maintain its order, organisation and orthodoxy; its clergy, polity and property; its worship, liturgy and sacraments; its discipline, missions and diaconal work; its charity, education and catechesis; its publications, foundations and religious life; its property, governance, and interactions with the state and other social institutions. Still today, every church, whether an individual congregation or a global denomination, has law at its backbone, balancing its spiritual and structural dimensions, and keeping it straight and strong especially in times of crisis.

The church laws themselves, of course, vary greatly in form and function over time and across the denominations and regions of the world. Some church laws are written, others are customary. Some are codified, others more loosely collected. Some are mandatory, others probative or facilitative. Some are universal canons, others are local and variant. Some are drawn from the Bible, others go back to ancient Roman law and the Talmud. Some church laws deal with the essentials of the faith, others with the adiaphora. Some are internally created by the church's own government, others are externally imposed or induced by the state. Some church laws are declared by ecclesiastical hierarchies, others are democratically selected. Some churches maintain elaborate tribunals and formal procedures, others use informal and

1 See, for example, N Doe and R Sandberg (eds), *Law and Religion: New Horizons* (Leuven, 2010); N Doe and R Puza (eds), *Religion and Law in Dialogue: Covenantal and Non-Covenantal Cooperation Between Religion and State in Europe* (Leuven, 2006); N Doe (ed), *The Portrayal of Religion in Europe: The Media and the Arts* (Leuven, 2004); N Doe and M Kotiranta (eds), *Religion and Criminal Law* (Leuven, 2013).

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conversational methods of enforcement. But, for all this variety, church law is a common and necessary feature of church life, and an essential dimension of ecclesiology and theology.

Given its universality, church law is therefore a powerful foundation not only for comparative ecclesiology, but also for principled ecumenism. 'Though dogmas may divide', Professor Doe writes in his signature 2013 monograph on *Christian Law*, 'laws link Christians across traditions' and around the world today. Indeed, 'all denominations of the faith share common principles in spite of their doctrinal divisions'.[2] Doe has worked assiduously over the years to collect and distil hundreds of such principles of church law, and he has worked with denominational leaders, and with ecumenical bodies like the World Council of Churches, to gain assent, if not consent, to these principles. This project of legal ecumenism holds great promise to promote global ecumenism and unity for the two billion plus Christians around the world today.

This article sketches briefly the development of Norman Doe's distinctive teaching of legal ecumenism in his writings from 1990 onward and then briefly explores the controverted place of faith-based legal systems in modern liberal democracies that his work helps navigate.

## LAW AND RELIGION THEMES IN NORMAN DOE'S SCHOLARSHIP

Doe's first major monograph, *Fundamental Authority in Late Medieval English Law* (1990)[3] put him squarely in the middle of sophisticated medieval discussions of law and religion among theologians, philosophers, moralists and canonists. Here, in a way that foreshadowed work to come, he grappled with some of the fundamental dialectics of this interdisciplinary field – natural law and positivism, statute and equity, conscience and custom, crime and punishment, authority and liberty, rights and wrongs, theocracy and democracy, church and state, canon law and civil law, and more. Already here he showed his trademark patience with texts – squeezing out of Year Book cases and obscure sages like Reginald Pecock remarkably prescient and provocative ideas about law and religion.

Since that first major law and religion title, Doe has contributed a number of definitive essays, book chapters and anthologies on general law and religion themes,[4] including notably issues of natural law,[5] criminal law,[6] constitutional

2 N Doe, *Christian Law: Contemporary Principles* (Cambridge, 2013), pp 1–10, 384–387 and dust jacket.
3 N Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge, 1990).
4 See N Doe and R Sandberg (eds), *Law and Religion*, 4 vols (London, 2017); N Doe and R Sandberg (eds), *Law and Religion: New Horizons* (Leuven, 2010); R Sandberg, N Doe, B Kane and C Roberts (eds), *Research Handbook on Interdisciplinary Approaches to Law and Religion* (Cheltenham, 2019).
5 N Doe (ed), *Christianity and Natural Law* (Cambridge, 2017).
6 N Doe and M Kotiranta (eds), *Religion and Criminal Law* (Leuven, 2013); M Hill, R Helmholz, N Doe and J Witte Jr (eds), *Christianity and Criminal Law* (London, 2020).

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law[7] and legal history.[8] He also sketched several portraits of historical law and religion scholars, including recent essays on Richard Hooker[9] and William Beveridge.[10] His leadership in the law and religion field has been further confirmed by his appointment as series editor of the Routledge Series on Law and Religion and the Brill Research Perspectives in Law and Religion and his service as dissertation supervisor and advisor to a number of law and religion students at Cardiff, Oxford, Cambridge and King's College London.

## ANGLICAN CHURCH LAW

While this work on general law and religion themes is impressive enough, Doe's most enduring contributions have come in the area of comparative church law, a topic he has mastered in a way that no other modern scholar has done. His work on church law has proceeded in layers, each building logically and methodologically on the one before. His first focus, in 1992, was on the law of his own Church in Wales,[11] a topic to which he returned several times,[12] each time with new insights into how the Welsh model of separation of church and state produced a distinct system of church law, derivative of and still dependent in part on English ecclesiastical law, but also increasingly self-generated and self-sustaining.

These early studies on the Church in Wales proved to be but a prelude to his two massive Oxford University Press monographs – *The Legal Framework of the Church of England: A Critical Study in a Comparative Context* (1996) and *Canon Law in the Anglican Communion: A Worldwide Perspective* (1998).[13] Both works take the full measure of the law of the Anglican Communion worldwide, an ancient and intricate legal system that, through colonisation and missionary work over the centuries, has become transnational, multicultural and multilingual in reach. Here Doe laid out in exquisite detail

7 See N Doe, *Law and Religion in Europe* (Oxford, 2011); M Hill, R Sandberg and N Doe, *Religion and Law in the United Kingdom* (Alphen aan den Rijn, 2011); Norman Doe, 'The State From the Perspectives of Religious Laws: A Global Approach with Particular Reference to Christianity', in S. Balzs (ed), *Religious Understandings of the State in Europe, Proceedings of the European Consortium for Church and State Research*. (Trier, 2014), pp 261–300.

8 N Doe and R Sandberg (eds), *Law and History: Critical Concepts in Law*, 4 vols (Abingdon, 2017); N Doe, M Hill and R Ombres (eds), *English Canon Law: Essays in Honour of Bishop Eric Kemp* (Cardiff, 2000).

9 N Doe, 'Richard Hooker: Priest and Jurist', in M Hill and R Helmholz (eds), *Great Christian Jurists in English History* (Cambridge, 2017), pp 115–138.

10 N Doe and D Nikiforos, 'William Beveridge (1637–1708)' (2021) 23 Ecc LJ 82–99.

11 N Doe (ed), *Essays in Canon Law: A Study of the Law of the Church in Wales* (Cardiff, 1992);

12 See N Doe, *The Law of the Church in Wales* (Cardiff, 2002); N Doe (ed), *A New History of the Church in Wales: Governance and Ministry, Theology and Society* (Cambridge, 2020).

13 N Doe, *Canon Law in the Anglican Communion: A Worldwide Perspective* (Oxford, 1998); N Doe, *The Legal Framework of the Church of England: A Critical Study in a Comparative Context* (Oxford, 1996).

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the lattice-work of executive, legislative and judicial forms and functions of the Anglican Church and its bishops, deacons and parish priests; the rules and regulations governing the polity, property and finances of the local, national and global church as well as the laws and procedures governing doctrine, liturgy, worship, mission, baptism, catechesis, education, confirmation, confession, marriage, divorce, and more.

Part of this lengthy effort was to take the full measure of this complex legal system, with its many centuries-old laws that not only 'command' and 'prohibit' conduct but also 'facilitate' and 'encourage' the behaviour considered becoming of Anglican clergy and laity in any place or circumstance.[14] Part of the effort was to impress on religious and political authorities how important a well-functioning system of church law is for protecting corporate religious freedom and autonomy and harmonious church-state relationships. Part of this effort, too, was to map the areas in need of reform and adjustment as the global Anglican Communion faced various state systems of hard and soft religious establishment and separation, and various forms of accommodation and cooperation with political authorities, and sometimes discrimination and repression as well.[15] No other book, besides Mark Hill's comprehensive *Ecclesiastical Law*,[16] has done more to help the global Anglican Church get its legal house in full order. Indeed, Doe and Hill have long appeared regularly together at seminaries, denominational and ecumenical gatherings, as well as at major gatherings of bishops and chancellors in the Anglican Communion offering instruction and counsel on Anglican Church law.

Doe has continued to write on discrete topics of Anglican Church law since publication of these twin volumes – including issues of marriage and sexuality,[17] clerical ordination and discipline,[18] and a book on the specialised church laws governing those glorious Anglican cathedrals that still attract tourists and BBC viewers by the millions, albeit rather too few local parishioners today.[19] In addition, he has contributed to ongoing conversations on important church questions with timely speeches and articles for the Ecclesiastical Law Society and its flagship journal, the *Ecclesiastical Law Journal*, whose editorial board he has long graced.

14 See N Doe, 'Ecclesiastical Quasi-Legislation', in N Doe, M Hill and R Ombres (eds), *English Canon Law* (Cardiff, 1998), pp 93–103.

15 See church-state models in N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford, 2011); N Doe, 'The Concordat Concept as Constitutional Convention in Church-State Relations in the United Kingdom', in N Doe and R Puza (eds), *Religion and Law in Dialogue* (Oxford, 2006), pp 237–250.

16 M Hill, *Ecclesiastical Law* (4th edn) (Oxford, 2018).

17 N Doe (ed), *Marriage in Anglican and Roman Catholic Canon Law* (Cardiff, 2009).

18 J Conn, N Doe and J Fox (eds), *Initiation, Membership, and Authority in Anglican and Roman Catholic Canon Law* (Cardiff and Rome, 2005); N Doe (ed), *The Formation and Ordination of Clergy in Anglican and Roman Catholic Canon Law* (Cardiff, 2009).

19 N Doe, *The Legal Architecture of English Cathedrals* (London, 2020).

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Doe has also applied his immense learning directly to Anglican Church law reforms and promotion of Anglican unity around common legal principles. In 2001, he presented his *Canon Law in the Anglican Communion* (1998) to the Primates of the Anglican Communion, generating ample discussion. In 2002, a consultation at Canterbury agreed to the category principles of Anglican canon law that he had set out. That same year the Anglican Communion Legal Advisers' Network was set up, and Doe as consultant drafted the candidate legal principles for the Network's deliberation. That effort eventually yielded *The Principles of Canon Law Common to the Churches of the Anglican Communion* (2008),[20] which was launched at the Lambeth Conference 2008. Under the leadership of Mark Hill and the Ecclesiastical Law Society, Doe is now working on a second iteration of the 2008 statement of principles. Working groups across the globe met in 2021 to discuss and to propose revisions of the principles. Doe is now revising the 2008 statement of principles in preparation for meetings of the Lambeth Conference in July 2022.

An exemplary product of Doe's church leadership was his clarion call for principled reform and covenantal unity of the 44 autonomous provinces of the worldwide Anglican Communion, which he set forth in *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (2008).[21] Like every church, the Anglican Church has always faced dissent and debate over fundamentals of the faith, including, in recent years, deep angst over women's ordination and changes to *The Book of Common Prayer*. But the divisions that have emerged over homosexuality–whether gays, lesbians, bisexuals and transsexuals should be admitted to baptism, communion, marriage, ordination and/or episcopal succession–have rent worldwide Anglicanism asunder, creating sharp schisms among English, African and North American Anglican churches.

Doe has used the venerable biblical principle of covenant to call the church back to its classic *via media* and traditional global unity As a member of the Lambeth Commission 2003–2004, he suggested using this covenant idea as a point of unity for global Anglicanism, and he drafted the outline of that idea in the official Commission's Windsor Report of 2004. He was then put on the Covenant Design Group which finalised the proposed Anglican Communion Covenant five years later.[22] The idea of covenant captures the heart of a Christian communion in word and sacrament that holds worldwide Anglicans together. It underscores the biblical reality that a covenanted people

20 The Anglican Communion Legal Advisers' Network, *The Principles of Canon Law Common to the Churches of the Anglican Communion* (London, 2008).

21 N Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (Norwich, 2008).

22 Which was subsequently agreed by 10 churches in the Communion but rejected by the Church of England and so put on hold.

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must be mutually sacrificial and accountable to each other and God, and will be 'blessed and cursed' accordingly. It underscores the biblical reality that God remains faithful and forgiving to God's covenanted people, even when they depart radically from God's law and word. Anglicans of the world can take a hearty lesson from this biblical trope, Doe argues.[23]

Moreover, the Latin term for 'covenant', *foedus*, is the root of the constitutional term 'federalism', which has both political and ecclesiastical implications. Just as a group of semi-autonomous states or provinces can be united into a single nation-state with certain over-arching and pre-emptory commitments and commands, so the 44 provinces of worldwide Anglicanism can remain united under the final authority of the Archbishop of Canterbury and the episcopal structures and pre-emptory norms of the Church of England. All the virtues of federalism are captured in this kind of 'ecclesiastical federalism' – allowing local diversity and experimentation on the adiaphora of the faith without jeopardising unity or membership. There is clever and cogent ecclesiology at work in Doe's formulations on covenant and communion.[24]

## FROM COMPARATIVE CHURCH LAW TO JURIDICAL ECUMENISM

Having mastered the intricacies of the laws of the churches of Wales and England, and the global Anglican communion, Professor Doe gradually widened his scholarship to include Roman Catholic canon law, both in its own right and in rich comparison with Anglican church law. The ancient system of Catholic canon law – adumbrated by the first millennium church fathers and councils, elaborated in Gratian's 1140 *Decretum* and Gregory IX's 1234 *Decretals*, and codified in the modern codes of western and eastern Catholic churches in 1917, 1983 and 2000 – was a constant comparative touchstone for him in his earlier work.[25] In 2000, Doe began a series of writings on what he aptly called 'comparative canon law' – analysing concretely how Catholic and Anglican canon laws deal with parallel issues of clerical ordination, support and discipline; church baptism, initiation and membership; marriage, divorce and sexual morality; and many other topics.[26] Here, too, his work has been deliberately collaborative, through his leadership in the Colloquium of Anglican and Roman Catholic Canon Lawyers and his editorship of several anthologies on comparative canon law as well as the

23 Doe, *An Anglican Covenant* (note 21).
24 Ibid.
25 See N Doe, *The Legal Framework* (note 13).
26 See sources in notes 6 and 12–13 above.

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journals *Nomokonika* and *Annuario di Diritto Comparato delle Religioni* together with the *Ecclesiastical Law Journal*.

Driving this long study of comparative canon law has been Doe's insistence that church law is a common and necessary feature of church life, an essential dimension of ecclesiology and theology, and an important foundation for principled Christian ecumenism. These insights are at the heart of Doe's next great work in this field, *Christian Law: Contemporary Principles* (2013).[27] Here, for the first time, we find a comprehensive comparison of the church laws operating in all the largest Christian denominations in the world today – Catholic, Orthodox, Anglican, Lutheran, Methodist, Reformed, Presbyterian, Congregational, United and Baptist. In this volume, Doe applied the tight topical and analytical grids of his earlier work on the church laws of Wales and England, and of Anglicanism and Catholicism atop all these forms and norms of ecclesiastical discipline and regulation. What he discovered, documented and proved is that common laws and regulations hold the worldwide church together, much as the ancient confessions and creeds still do. Here we have not only a powerful example of the confluence of law and religion but also a strong foundation on which to build a global principled ecumenism. Doe's conclusion to this highly innovative and valuable title is worth quoting a bit:

> Christians are prolific legislators. The laws they make are a meeting place of faith and action. Of the twenty-two world church families, the churches of the ten studied here all have laws and other regulatory instruments. Alongside the Bible and service books for worship, these law books are central to the institutional lives of these churches. A comparison of the juridical instruments of churches, in a global compass, reveals profound similarities between the Christian traditions and their treatment as to both internal and external relations, of church ministry, governance, doctrine, worship, ritual, ecumenism, property and public activity in the State and wider society. From the similarities emerge principles of Christian law common to the churches studied. This is a category which has not hitherto been suggested by scholarship in this area. The existence of these shared principles may be factually established as a result of careful observation. Every Christian tradition and each institutional church within it, contributes to its own legal system and whenever it legislates on a matter, to this store of principles. The principles have the appearance of laws (they may be prescriptive,

27 N Doe, *Christian Law* (note 2). See also his first sketch of this project in N Doe, 'Modern Church Law', in J Witte Jr and F Alexander (eds), *Christianity and Law: An Introduction* (Cambridge, 2008), pp 271–291.

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> prohibitive or permissive), but they are not themselves laws: they are principles of law–as such they have a strong dimension of weight and are fundamental to the self-understanding of Christianity. The principles also have a living force and contain in themselves the possibility for further development through the continuing legislative activity of each church in an exercise of its own autonomy. Moreover, the existence of the principles both demonstrates and promotes juridical unity in Christianity in terms of its identity and global witness. The principles seem to rest on three fundamental maxims: law is the servant of the church; laws should reflect faith in the revealed will of God; and dogmas divide but laws link Christians in common action. Flowing from these maxims of juridical Christianity worldwide–about service, faith, and action–the principles themselves are capable of articulation as general normative propositions which operate in relation to a very wide range of subjects directly related to the visible lives of Christians.[28]

Doe ultimately distilled 50 principles from this granular empirical work on each denomination's laws, each principle further subdivided into subprinciples. Let me just quote the first three of these principles to give readers a sense of the richness and novelty of this material.

> **Principle 1: Ecclesiality.** An institutional church: (1) defines itself by reference to its territory, polity, and objectives; (2) is a community with a defined geographical compass (international, national, regional, or local); (3) has a distinct membership organised in ecclesiastical units (such as provinces, districts, or congregations); (4) is autonomous in polity and its system of governance; (5) has objects to advance mission which include proclaiming the Gospel, administering the sacraments and serving the wider community.
> **Principle 2: The forms of ecclesiastical regulation**. (1) An institutional church must employ the term 'law' to describe its regulatory instruments; (2) The presence of law in an institutional church does not mark out its doctrinal posture; (3) Laws are found in a variety of formal sources, including codes of canon law, charters and statutes, constitutions and bylaws, and books of church order; (4) Ecclesiastical customs may have juridical force to the extent permitted by the law of a church; (5) Ecclesiastical quasi-legislation, which includes guidelines and codes of practice, is designed to complement law and consists of informal rules that are nevertheless prescriptive in force and generate the expectation of compliance.

28 N Doe, *Christian Law* (note 2), p 384.

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> **Principle 3: The servant law.** (1) Law exists to serve the church in its mission and witness to Christ. (2) Laws are necessary to constitute the institutional organisation of a church and facilitate and order its public activities but cannot encompass all facets and experiences of the Christian faith and life; (3) Laws are the servant of the church, and must promote the mission of the church universal; (4) Theology shapes law, and law implements theological propositions in the form of norms of conduct; (5) Church laws should conform and are subject ultimately to the law of God, as revealed in Holy Scripture and by the Holy Spirit.[29]

Not content to rest on the immense scholarly achievement of his landmark title on *Christian Law*, Doe has led focused efforts to foster deliberative ecumenism based on these principles of church law. In a series of symposia and conversations in the 2010s, he drew together representatives from major Christian denominations to see how much confluence of opinion there might be on a set of common principles of church law. The group included distinguished scholars from the Roman Catholic, Eastern Catholic, Orthodox, Anglican, Lutheran, Methodist, Reformed, Presbyterian, Pentecostal and United Churches, together with leadership from the World Council of Churches. In exemplary ecumenical earnest, the group sat together several times for many days, quietly presenting, listening and learning about the legal culture of each denomination, with an eye to seeing the points of conflict, convergence and creative tension in how each conceived and constructed their church law. From this inductive exercise, they slowly worked out 'A Statement of Principles of Christian Law Common to the Component Churches'. Some 230 common legal principles ultimately won common assent from this group of scholars and the church leaders whom they consulted.

Doe harvested the fruit of those ecumenical labours in his 2020 anthology on *Church Laws and Ecumenism: A New Path for Christian Unity*.[30] The major scholars involved in the deliberations presented a crisp overview of the origin, range and current uses of church law within their denominations and analysed how their denominations reflect and sometimes refract or reject the 230 common principles articulated in the book (revised from the principles in Doe's *Christian Law*). Readers are treated to authoritative chapters on more familiar Roman Catholic, Anglican, Methodist and Presbyterian church laws, but also less familiar Eastern Orthodox, Eastern Catholic and Pentecostal church laws. Together, these chapters provide fascinating insights into the inner legal working and thinking of these denominations. Professor Doe's

29 Ibid, p 388.
30 N Doe (ed), *Church Laws and Ecumenism: A New Path for Christian Unity* (London, 2020).

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own magisterial introduction sets this modern ecumenical project into a two-millennium context and ably defends the concept of *regulae*, maxims or principles as a suitable trope for building a new 'concordance of discordant canons' across the denominations.

All these church laws that have occupied Doe so deeply in the past 30 years are not merely arcane dusty documents for legal specialists to ponder. They are front-page news these days. The Roman Catholic Church has been shaken by revelations of widespread paedophilia by delinquent priests and cover-ups by complicit bishops. Mainline Protestants and Evangelicals alike face instances of sexual, physical and financial abuses by their clergy. Both Methodist and Anglican communities worldwide are divided over questions of same-sex liberty, marriage and adoption. Pentecostal churches in the Global South face massive resistance from local authorities. Orthodox churches have been decimated by Middle Eastern wars and a return to Soviet-style controls of their clergy. In Western liberal lands, religious freedom is threatened by withering academic and political attacks. All these challenges test the faith of the church and its capacity to repent, reconcile, renew and reform itself. These new challenges also test the law of the church and its capacity to hold the local and global church to its most fundamental mission of preaching the Word, administering the sacraments, catechising the young, and caring for the poor and needy in imitation of Christ. In both his scholarship and his active engagement with the church in his native Wales and abroad, Norman Doe has shown the way for the church to move into this redemptive work through church law.

## COMPARATIVE RELIGIOUS LAW: JUDAISM, CHRISTIANITY AND ISLAM

Having copiously studied comparative Christian law in three decades of study and scholarship, Doe has taken the next natural step in this intellectual pilgrimage – namely, analysing the operation of religious legal systems altogether, especially the role of faith-based laws in Western liberal democracies. In 2008, Archbishop of Canterbury Rowan Williams gave this topic urgency with his (in)famous comment that some accommodation of Islamic law was 'unavoidable' in the United Kingdom.[31] What this comment exposed, to the surprise of many, was the reality that not only Christian churches but Jewish, Islamic and other religious and cultural groups have been quietly using their own internal religious legal systems to govern large portions of the lives of their voluntary faithful – not only religious worship,

31 See R Griffith-Jones (ed), *Islam and English Law: Rights, Responsibilities and the Place of Shari'a* (Cambridge, 2013).

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group membership and moral life, but also marriage and family, charity and education, property and inheritance, even crimes and torts and other legal topics. These internal religious legal systems are administered and enforced by an array of religious tribunals, operating alongside the laws of the secular state, sometimes with arbitration and other state licenses, sometimes without.[32]

Joining an ample queue of others who have weighed in, Doe and his colleagues wrote several trenchant pieces on the important and necessary role of religious laws and tribunals in modern democracies.[33] They also warned that failure to accommodate Islamic tribunals, albeit with tight regulations and state supervision, would soon jeopardise Christian canon law too, and drive many religious legal systems underground, which might ultimately prove worse for all parties. Doe and his colleagues called instead for religious autonomy over core matters of the faith, polity and voluntary faith community, and shared jurisdiction over the classic *res mixta* – marriage and family life, charity and social welfare, education and schooling, and other areas of life that feature spiritual and temporal dimensions.[34]

As his readers have now come to expect, Doe has brought these insights together in yet another hefty Cambridge monograph, *Comparative Religious Law: Judaism, Christianity and Islam* (2018).[35] Here again, he used his trademark method of studying closely the legal instruments of Halacha, Canon Law and Shari'a on the books in modern Abrahamic communities, comparing them with each other, with historical sources, and with close attention to regional and denominational variations. Successive chapters in this volume lined up the norms governing the status, duties and rights of the faithful; the appointment and functions of faith leaders; the institutions and officers of governance in these communities; the courts and tribunals used to resolve disputes among their voluntary faithful; the rules and procedures governing faith, worship and education; the rites of passage and initiation into the faith and faith community; sex, marriage, family and children; and the property and finances of these faith communities. From this close comparative study, Doe again distilled a proposed 'charter of principles of religious law' that Jews, Christians and Muslims might hold in common or at least in creative tension. Along the way, he pointed to deep common urtexts, various productive periods of legal trialogues among these three traditions,

32 See sources and discussion in J Witte Jr, *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties* (Cambridge, 2019), pp 300–335; M Broyde, *Sharia Tribunals, Rabbinical Courts, and Christian Panels: Religious Arbitration in America and the West* (Oxford, 2017).

33 See, for example, G Douglas et al, 'Religious Divorce in England and Wales: Religious Tribunals in Action', in P Shah et al (eds), *Family, Religion, and Law: Cultural Encounters in Europe* (London, 2014), pp 195–208; R Sandberg et al, 'Britain's Religious Tribunals: "Joint Governance" in Practice' (2013) 33 *Oxford Journal of Legal Studies* 263–291.

34 N Doe, *Comparative Religious Law: Judaism, Christianity and Islam* (Cambridge, 2018).

35 Ibid.

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comparable hermeneutical and forensic methods of parsing and applying legal norms and procedures, comparable devotion to natural laws and modern scientific methods. In our restive modern day, when Jews, Christians and Muslims have been slandering if not slaughtering each other with a vengeance, and where each of these faith communities is subject to massive state and communal persecution in the majority of the countries of the world, Doe's emphasis on inter-religious cooperation and mutual understanding around basic matters of religion and law holds high promise.

In this new work and in earlier work with his former student and now protégé and partner, Russell Sandberg, Doe drew a distinction between 'religious law' (the internal laws governing the church and other religious bodies) and 'religion law' (the law of the state and international community that has to do with religion). Religion law, he writes,

> may be considered analogous to family law: rather than corresponding to a certain legal action, like tort law, it relates to an entity that has meaning outside the legal domain, is impacted by a number of different areas of law, is seen largely as a 'problem' to be tackled and has a goal, the achievement of which is increasingly seen as a universal human right.[36]

Doe's earlier book on *Law and Religion in Europe* offered a crisp and clear overview of how the national and transnational *religion laws* of Western European secular authorities have affected the *religious laws* and lives of Christians, Jews, Muslims and other religious communities living in Europe. *Religion law*, he shows, includes not only the classic norms of individual and group religious freedom set out in national statutes (like the 1998 Human Rights Act in the United Kingdom), regional instruments (like Article 9 of the European Convention on Human Rights), or international human rights documents (like Article 18 of the International Covenant on Civil and Political Rights) – all of which, for better or worse, have become very active in governing and sometimes restricting European religious communities.[37] It also covers the intricate rules and regulations governing corporate religious life (religious property, polity, registration, labour, workplace, contracts, finance, taxation, exemption, discipline, governance, land use, historic preservation, zoning); and private religious life (freedom of conscience, religious equality and non-discrimination, and freedom of worship, assembly, association, publication, interaction, parenting, travel); and the *res mixta*

36 N Doe and R Sandberg, *Law and Religion* (note 4), pp 11–12.
37 N Doe, *Law and Religion in Europe* (note 7); see also N Doe and R Puza, *Religion and Law in Dialogue*; M Hill, N Doe and R Sandberg, *Religion and Law in the United Kingdom* (Alphen aan den Rijn, 2011).

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(education, social welfare and family, as well as the individual rights and institutional structures that attend them).

Doe and many others have shown that the internal *religious laws* and the external *religion laws* together help shape the religious lives of individuals and groups. In nations dedicated to religious freedom for all, the inevitable tensions and conflicts between these internal and external laws governing religion are worked out through judicial and regulatory exemptions, statutory accommodations, national or regional concordats and covenants, and sometimes monumental cases before constitutional courts or human rights tribunals.[38] In nations with religious establishments, the established faith often can depend on favourable external religion laws, while non-established faiths need to depend more on their own internal religious laws. In nations less hospitable to religion and religious freedom, or bent on establishing secularism or laïcité as some European countries now are, many religious communities, especially new, unpopular or minority faiths, often must contort or camouflage themselves to gain the basic legal right to exist, let alone to flourish. In these less hospitable legal environments, and even more in nations that are actively hostile to religion altogether, the internal religious legal systems are essential to the resilience and fortitude of these faith communities.[39]

## SUMMARY AND CONCLUSIONS

From its biblical beginnings, the Christian church has always struggled with the dialectics of law and Gospel, structure and spirit, order and faith. Christianity was born into an intensely legal culture governed by the two great legal systems of Judaism and the Roman Empire. Some of Jesus' early followers saw in his message of faith and love not only salvation from the bondage of sin and death, but also liberation from the strictures of law and order. Some saw in his repeated rebukes of the lawyers and scribes of his day, a call to antinomianism, a licence to 'sin that grace may abound'.[40] Jesus had to

38 N Doe, *Law and Religion in Europe* (note 7); see also N Doe and R Puza, *Religion and Law in Dialogue*; M Hill, N Doe and R Sandberg, *Religion and Law in the United Kingdom* (Alphen aan den Rijn, 2011). See updated overview of the work on the European Court of Human Rights and the Court of Justice on the European Union in J Witte Jr, *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition* (Cambridge, 2021), pp 227–303, and of the American courts in J Witte Jr, J Nichols and R Garnett, *Religion and the American Constitutional Experiment* (5th edn) (Oxford, 2022).

39 See sources in D Philpott and T Shah, *Under Caesar's Sword: How Christians Respond to Persecution* (Cambridge, 2019); Pew Forum, 'Globally, Social Restrictions Related to Religion Decline in 2019, While Government Restrictions Remain at High Levels' (30 September 2021), available at <https://www.pewforum.org/2021/09/30/globally-social-hostilities-related-to-religion-decline-in-2019-while-government-restrictions-remain-at-highest-levels/>, accessed 3 February 2022.

40 Romans 6:1.

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remind his followers several times that 'the law', including the Mosaic law, remained critical to Christian life:

> Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfill them. For truly, I say to you, till heaven and earth pass away, not an iota, not a dot, will pass from the law until all is accomplished. Whoever then relaxes one of the least of these commandments and teaches men so, shall be called least in the kingdom of heaven; but he who does them and teaches them shall be called great in the kingdom of heaven.[41]

When further questioned about whether Roman law still bound them, Jesus instructed his followers: 'Render to Caesar, the things that are Caesar's the things that are God's'.[42]

St Paul repeated this instruction for individual Christians, and, together with other early apostles, established the first rules of order and organisation, polity and property, education and charity, morality and discipline for the early churches. Various apostolic canons and constitutions soon followed, beginning with the *Didache* in *ca* 90, and a growing body of church laws created by individual church fathers, bishops and early synods. These church laws were consolidated and expanded by the canons of the great ecumenical church councils from the fourth to the sixth centuries, and they also penetrated the imperial laws of the Roman Emperors and the later Germanic kings. Norman Doe has full command of these earlier legal sources, and they have figured in his analysis of comparative church law.

While church laws continued to develop in the later first millennium,[43] the High Middle Ages was a much higher watermark for the expansion of church law. From the twelfth to the sixteenth centuries, the Catholic Church was the universal legal ruler of Western Christendom. The church claimed exclusive personal jurisdiction over clerics, pilgrims, students, the poor, heretics, Jews and Muslims. It claimed exclusive subject matter jurisdiction over doctrine and liturgy; ecclesiastical property, polity and patronage; sex, marriage and family life; education, charity and inheritance; oral promises, oaths and various contracts; and all manner of moral, ideological and sexual crimes. The church also exercised concurrent jurisdiction with the secular authorities over all matters that required church discipline or Christian equity. It predicated these jurisdictional claims in part on its authority over the seven sacraments,

41 Matthew 5:17–19.
42 Matthew 22:21.
43 P Reynolds, *Great Christian Jurists and Legal Collections in the First Millennium* (Cambridge, 2019).

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in part on the papal power of the 'keys' that Christ had bequeathed to St Peter and through him to all succeeding apostles and clerical authorities.[44]

The medieval church developed an elaborate body of canon law to support these jurisdictional claims. Thousands of legal teachings from the first millennium were collated and synthesised in the famous *Decretum Gratiani* (*ca* 1140) and then in the *Decretales Gregorii IX* (1234). These anchor texts and later collections of papal and conciliar legislation, including that of the Lateran Councils and the Council of Trent, eventually came together in the massive *Corpus Iuris Canonici* (1586). Alongside these legal compilations, new university law faculties developed a sophisticated jurisprudence to study and teach this canon law, addressing many aspects of public, private, procedural and penal law with ever greater sophistication. An intricate hierarchy of church courts and clerical officials administered the canon law in accordance with sophisticated new rules of procedure and evidence. A bureaucratic network of ecclesiastical officials presided over the church's executive and administrative functions. This 'classical canon law', as Richard Helmholz has aptly named it,[45] still lies at the heart of the Catholic canon law codes of the twentieth century. It was this rich body of Catholic church law that attracted Norman Doe's first major book in 1990, and it has remained a touchstone in his work ever since.

More central to Professor Doe's work has been the law of the Anglican communion born of the sixteenth century Protestant Reformation. Unlike the Lutheran and Calvinist Reformations of the Continent that jettisoned a good deal of medieval canon in favour of strong new secular legislation, the English reformation struck a more subtle via media between church and state, Convocation and Parliament, canon law and common law, church courts and temporal courts. Particularly after the sixteenth century Elizabethan Settlement and the seventeenth century Restoration, the authorities in Wales, England and other parts of the British Commonwealth developed a vast and sophisticated ecclesiastical law system that synthesised medieval canon law and the new Anglican theology. English church courts dealt with a range of questions not only of church polity, property, doctrine and liturgy, but also subjects like marriage, charity, education, defamation and probate. Even though the later nineteenth century reforms diminished its reach, ecclesiastical law has remained at the backbone of the global Anglican church.

Comparable religious laws form the backbone of many other Christian denominations around the world, Professor Doe has shown, and indeed they are at the core of Judaism, Islam, and many other world religions, too. These laws are part of the legal dimensions of religion – the necessary principles,

44 Matthew 16:18–19.
45 R Helmholz, *The Spirit of the Classical Canon Law*, repr edn (Athens, GA, 2010).

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precepts, procedures and practices of law that give churches and other religious communities their order and organisation, their structure and form. While these laws vary greatly in detail, they are an essential part of the life of the church and the Christian faith. Without law at their backbone, churches crumble into amorphous spiritualism.

Over the centuries, great Christian jurists have helped to form and reform the many systems of church law in place around the world today.[46] Every few generations, a great Christian jurist or church council has emerged to provide a new 'concordance of discordant canons', a new code of church law, a new summa of legal principles. Today, that jurist is Norman Doe.

46 Norman Doe has been a vital part of the series of new books on 'Great Christian Jurists in World History', commissioned by the Emory Center for the Study of Law and Religion with the cooperation of the Cardiff Centre for Law and Religion, and the Routledge Law and Religion Series which Doe edits, and the Cambridge Studies in Christianity and Law on whose editorial board Doe sits. The Series titles so far include: P Reynolds, *Great Christian Jurists and Legal Collections in the First Millennium* (note 43); M Hill and R Helmholz, *Great Christian Jurists in English History* (note 9); R Domingo and J Martínez-Torrón (eds), *Great Christian Jurists in Spanish History* (Cambridge, 2018); O Descamps and R Domingo (eds), *Great Christian Jurists in French History* (Cambridge, 2019); D Dreisbach and M Hall (eds), *Great Christian Jurists in American History* (Cambridge, 2019); M Schmoeckel and J Witte Jr (eds), *Great Christian Jurists in German History* (Tübingen, 2020); O Condorelli and R Domingo (eds), *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists* (London, 2020); K Modéer and H Vogt (eds), *Law and the Christian Tradition in Scandinavia: The Writings of Great Nordic Jurists* (London, 2020); W Decock and J Oosterhuis (eds), *Great Christian Jurists in the Low Countries* (Cambridge, 2021); P Valliere and R Poole (eds), *Law and the Christian Tradition in Modern Russia* (London, 2021); M Mirow and R Domingo (eds), *Law and Christianity in Latin America: The Work of Great Jurists* (London, 2021); G Lindsay and W Hudson (eds), *Great Christian Jurists in Australian History* (Alexandria, Australia, 2021); F Longchamps de Bérier and R Domingo (eds), *Law and Christianity in Poland: The Legacy of the Great Jurists* (London, 2022). See also the inaugural volumes for this series in J Witte Jr and F Alexander (eds), *The Teachings of Modern Christianity on Law, Politics, and Human Nature*, 3 vols, paperback edn (New York, 2007).

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