
Building from his diverse academic background, which began with undergraduate work in religious studies prior to shifting into the area of law, Benjamin Berger’s exemplary interdisciplinary aptitude and intellectual rigour is on full display in Law’s Religion. Indeed, this monograph is sure to become a staple in future research on the topic of Canadian law and religion.

The underlying aim of the book, as Berger explains, is to “knock law from its managerial or curatorial perch, from where it administers and assesses cultural claims, and to understand it, instead, as itself a cultural form – that is, an interpretive horizon composed of sets of commitments, practices, and categories of thought” (17). Berger’s approach involves what he refers to as a “phenomenological turn” (23) in the field, wherein the experiences of Canadian law, rather pure legal forms or theories, form the heuristic for understanding the cross-cultural encounter between law and religion. Approaching the issue in this fashion, Berger also focusses on law as a cultural form, drawing inspiration from Paul Kahn’s The Cultural Study of Law, which scrutinizes a more common approach in legal studies, one that treats law as an unassailable starting point for interpreting various phenomena.

Recognizing that “culture” is a malleable concept, Berger prudentely articulates its place in relation to his project: “Culture is... a marker for a kind of phenomenological turn in the study of law and religion, one that seeks to privilege experience of the law as the analytic starting point, rather than legal concepts or ideal forms of theory” (37). Utilizing this understanding of the term, he proceeds to investigate the way in which the law, as a subject, renders religion as an object. In doing so, however, Berger by no means suggests that the law’s rendering of religion can be boiled down to an entirely cogent and consistent narrative. On the contrary, part of his thesis involves a level of “scepticism about the impulse to use tidy stories about law and religion to hide the abidingly unstable and unruly relationship between religious difference and modern constitutionalism” (20).

Through providing detailed accounts of contemporary jurisprudence, Berger goes on to argue that law’s theory of religion can be seen as a type of triptych, one involving the following elements: religion as essentially individual, religion as centrally addressed to autonomy and choice, and religion as private. Unsurprisingly, these three components accord with the law’s own interpretive horizon. As Berger puts it, “modern Canadian constitutional law casts religion in terms compatible with its own structural assumptions, as well as symbolic and normative commitments, which are themselves informed by the contemporary political culture of liberalism” (63).

Addressing the pros and cons of this realization, Berger notes that the law’s ineluctable appeal to its own interpretive horizon may, on the one hand, not seem problematic on its face, given that the law typically restricts the scope of its claims with respect to religion, and is “merely concerned with the slice of religion necessary to decide the case before it” (103). Such a view implies that law’s account of religion is rather unobtrusive and epistemologically modest. On the other hand, Berger argues that while “it may be that law is saying only that it is making a limited claim about religion for its own purposes...when the courts are called on to adjudicate the relationships among rights and interests, law’s understanding of religion quickly becomes the only game in town”
(103). Put different, this phenomenon is pithily summarized by Berger in terms of the law being “epistemologically colonial” (103).

While *Law’s Religion* is primarily descriptive in character, accounting for the way in which Canadian law experiences – or perhaps rather assimilates – religion, Berger also presents a soft but well-reasoned admonishment. For in recognizing the relationship between law and religion as a cross-cultural encounter, it becomes incumbent on the law, as adjudicator, to retain its “fidelity to the culture of the constitutional rule of law” (170) while simultaneously maintaining a “humility about the universality of law’s culture” (176). Thus, while Berger’s primary objective is to contest “the durability of accounts based on law’s autonomy from culture,” his work also presents a challenge, as he urges the judiciary to remain attentive to the task of balancing this fidelity and humility in the law’s encounters with religion.

In terms of its cogency and persuasiveness, Berger’s work is exceptional, and is clearly the product of his diverse erudition, which enables him to convincingly articulate and empathize with the way in which the law approaches religion, without idealizing or venerating the law – or religion, for that matter. Further, Berger writes with precision and clarity throughout, which makes the work highly accessible. At the same time, *Law’s Religion* includes – necessarily, in my view – nuanced and thorough analyses of jurisprudence, which may seem esoteric to readers having little to no familiarity with Canadian law. Yet to be clear, this is not so much a critique as it is a rather prosaic observation – for as the title of course suggests, it is law’s religion that Berger is concerned with.

One notable gap in the work pertains to the way in which the term religion is understood. Too much should not be made of this, however, given that Berger’s entire work is concerned with the way in which the law constructs its general or overall understanding of religion. And interestingly, the Supreme Court of Canada constructed its own definition of religion in *Syndicat Northcrest v Amselem*, a seminal ruling that Berger references throughout *Law’s Religion*. Yet there remains much more worth investigating, in terms of the way in which religion is deployed, taxonomically, in law. J.Z. Smithians, for example, might find this particularly fertile territory in which to work. Again, however, this comment is by no means intended to point to a shortcoming in Berger’s work; on the contrary, *Law’s Religion* is a compelling and masterful work that both invites and deserves engagement from a variety of academic fields, including religious studies.

*Patrick Hart*
*University of Alberta*