Law and Religion in the Classroom: Teaching Church-State Relationships

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The theory explaining different types of state–religion or state–church relationships is a fundamental part of the study of law and religion. At the tertiary level this is typically taught via the use of models which present a relationship between the different types of state–religion or state–church relationships and freedom of religion. These models have a number of shortcomings and tend to be used as a taxonomy rather than as an aid to understanding. In 2021, I piloted a new approach to teaching this model in a Law and Religion unit. This paper outlines the inspiration behind my approach in 2021, the steps involved in the activity, my reflections on the success of the activity, and my proposed refinements for 2022.

I INTRODUCTION

The study of law and religion was once a niche elective, available at only a handful of Australian law schools. While Australia still has a long way to go to catch up with jurisdictions such as the United States, where law and religion courses are regularly taught in law schools, the number of Australian law schools teaching a unit on law and religion and related topics[1] is growing.[2]

Writing in 2009 Babie outlined four key reasons why the study of law and religion is important:

> First, while political liberalism confers choice, and liberal law protects it, it is at least arguable that liberalism, alone, may not always differentiate good from bad choices. … Second, religion and faith influence values and behaviour — the value and behaviour that are part of making decisions when faced with liberal choices — and those values and behaviours ultimately become law. … The third … is that by overlooking the societal importance of religion, we miss something central to what law is and what it is becoming. ... Finally, by failing to recognise the place of religion in these debates, those in the academy and beyond it who study legal, political, and social structures, fail to address an increasing important part of contemporary social life …[3]

The urgency for a deeper understanding of law and religion amongst Australian law graduates has only increased since. This has been highlighted by recent public and political debates about religious discrimination, same-sex marriage, abortion and euthanasia to name just a few. The

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[1] In addition to units on law and religion some law schools offer electives on religious law such as sharia, canon, or rabbinical law.

[2] The author is aware of courses taught at the following Australian law schools: University of Western Australia, University of Adelaide, University of Newcastle, University of Notre Dame Australia, Macquarie University, University of Southern Queensland, and University of Queensland. For some examples of the teaching of courses on or related to law and religion in the American context, see Samuel J Levine, 'Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion' (1999) 26(4) *Fordham Urban Law Journal* 1041. See also John Witte, 'The Study of Law and Religion in the United States: An Interim Report' (2012) 14(3) *Ecclesiastical Law Journal* 327.

[3] Paul Babie, 'The Study of Law and Religion in Australia: It Matters' (2009) 30(1) *Adelaide Law Review* 7, 8–9.

problems caused by a lack of awareness of the level and nature of interactions between law and religion in Australia was highlighted following the leaking of the Religious Freedom Review recommendations in late 2018. As the Senate Legal and Constitutional Affairs Committee noted in their report *Legislative Exemptions that Allow Faith-based Educational Institutions to Discriminate against Students, Teachers and Staff*:

> The leak of the recommendations of the Religious Freedom Review caused great concern in much of the community, not least because it appears many Australians were unaware of the broader exemptions to discrimination laws provided to faith-based educational institutions.[4]

While the importance of teaching law and religion may be evident, how to go about it in a modern law school is not necessarily so. One of the barriers to the incorporation of law and religion courses in more Australian law schools is a lack of scholarship on teaching and learning related to law and religion. This article begins to address that gap. It outlines one approach adopted at an Australian law school to teaching state–religion relationships and their interaction with freedom of religion.

Teaching law and religion at the tertiary level revolves around two interrelated, yet independent concepts. The first is the relationship between the state and religion in terms of the level of identification between the state and religion/religious institutions operating within that state. The second is the level of religious freedom experienced by both individuals and religious institutions in a given jurisdiction.[5] These two fundamental, yet largely abstract concepts, need to be understood by students before they can fully grapple with specific issues in law and religion or examine specific case studies.

The activity outlined in this paper was conducted, over two weeks, as part of the teaching of a unit on Law and Religion. The unit is a third-year elective in the Law and Society Major in the undergraduate Arts Degree at an Australian University. The Major is not a qualifying degree for legal practice, but is often taken by students intending to go on to study a *Juris Doctor* degree. The unit has been taught in its present format by the current unit coordinator since 2014. A similar unit was previously offered as part of a qualifying undergraduate law degree.[6]

The paper is divided into five parts. Part I introduces the context of the teaching of law and religion and sets out the structure of the paper. Part II outlines the model used to teach the relationship between the state and religion and outlines the key reasons this model was selected. Part III outlines the key teaching and learning methods employed to present the model while Part IV outlines in detail the steps involved in the activities used over two weeks of the course. Finally, Part V provides some reflections on the teaching and student learning experience.

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[4] Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Legislative Exemptions That Allow Faith-based Educational Institutions to Discriminate against Students, Teachers and Staff* (Report, 28 November 2018) 50 [2.121].

[5] See George R Ryskamp, 'The Spanish Experience in Church–State Relations: A Comparative Study of the Interrelationship between Church–State Identification and Religious Liberty' [1980] *Brigham Young University Law Review* 616, 616–617.

[6] The unit was first introduced in 2001. The current unit coordinator has been involved in teaching law and religion at the tertiary level since 2008.

II THE MODEL

Numerous models (variously called typologies and taxonomies) of state–religion relationships have been proposed to explain the various interactions between states and the religions, religious institutions, and religious individuals operating within a given state.[7] Traditionally the models of state–religion relationships have been presented as a straight-line continuum moving from non-identification on the left of the model through to complete identification on the right (and vice versa). Similarly, the degree of religious freedom in any given jurisdiction has been presented on a straight-line continuum from total religious freedom to the complete absence of religious freedom as shown in Figure 1 below.
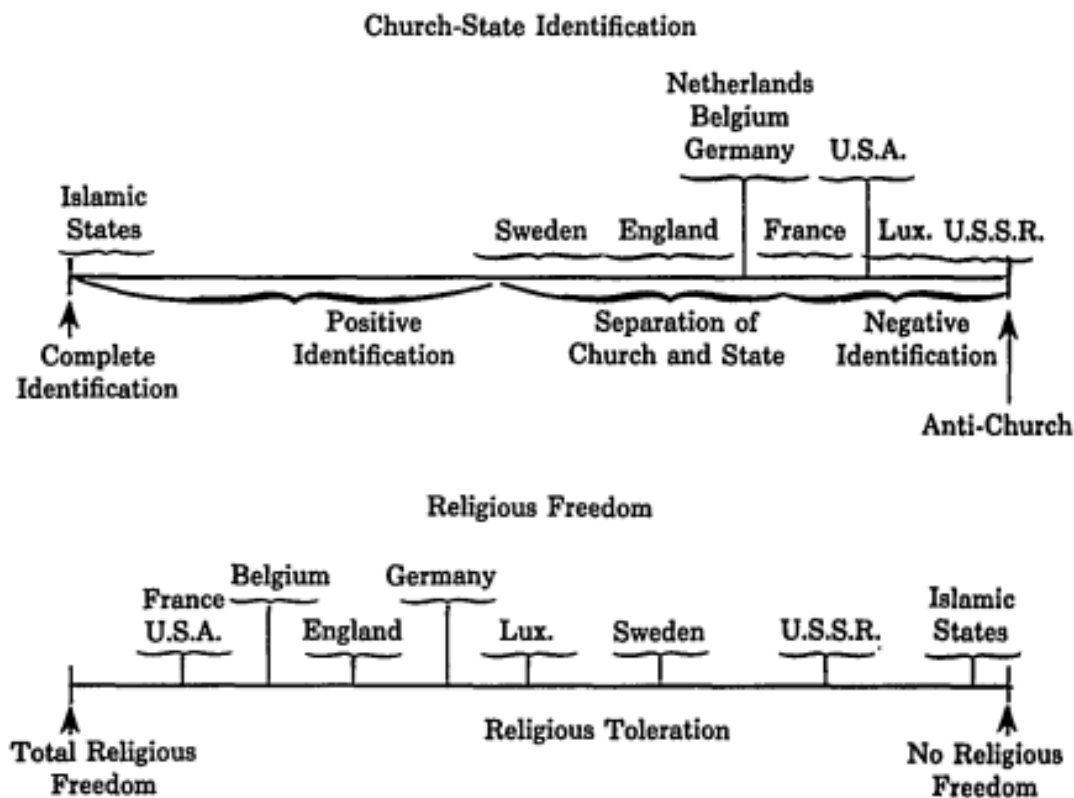
Figure 1: Continuum of religious freedom.[8]
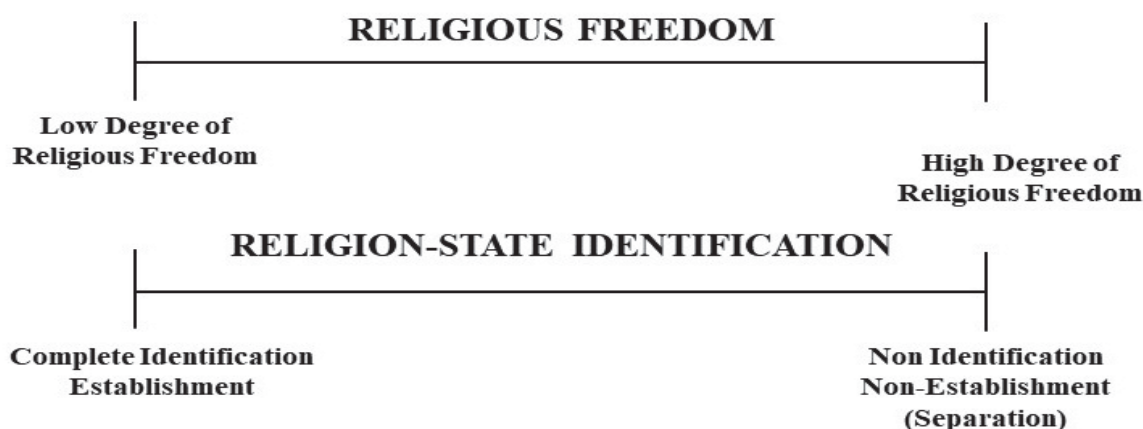
[7] See, eg, Shimon Shetreet, 'The Model of State and Church Relations and Its Impact on the Protection of Freedom of Conscience and Religion: A Comparative Analysis and a Case Study of Israel' in Winfried Brugger and Michael Karayanni (eds), *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law* (Springer, 2007) 87, 87–93; Winfried Brugger, 'On the Relationship Between Structural Norms and Constitutional Rights in Church–State Relations' in Winfried Brugger and Michael Karayanni (eds) *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law* (Springer, 2007) 21, 31–48; Viet Bader, 'Religions and States A New Typology and a Plea for Non-Constitutional Pluralism' (2003) 6(1) *Ethical Theory and Moral Practice* 55, 65–72; Carl Esbeck, 'A Typology of Church-State Relations in Current American Thought' (1998) 15(1) *Religion & Public Education* 43; Jeroen Temperman, *State-Religion Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance* (Brill, 2010) 118–119; W Cole Durham, 'Perspectives on Religious Liberty: A Comparative Framework' in John Witte Jr and Johan D van der Vyver (eds), *Religious Human Rights in Global Perspective* (Martinus Nijhoff Publishers, 1996) bk 2, 1, 20–3; Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2013) 88–124; Michel Rosenfeld, 'Introduction: Can Constitutionalism, Secularism and Religion be Reconciled in an Era of Globalisation and Religion Revival' (2009) 30(6) *Cardozo Law Review* 2349–2351; Cécile Laborede, 'Political Liberalism and Religion: On Separation and Establishment' (2013) 21(1) *Journal of Political Philosophy* 67, 68; Richard Albert, 'The Separation of Higher Powers' (2012) 65(1) *Southern Methodist University Law Review* 3, 3–69; Renae Barker, *State and Religion: The Australian Story* (Routledge, 2019) 21–29 ('*State and Religion*'); Darryn Jensen, 'Classifying Church-State Arrangements: Beyond Religious Versus Secular' in Nadirsyah Hosen and Richard Mohr (eds), *Law and Religion in Public Life: The Contemporary Debate* (Routledge, 2011) 15; Julian Rivers, 'Irretrievable Breakdown? Disestablishment and the Church of England' (1994) 3 *Cambridge Papers* 2–4; Adrian Hastings, *The Faces of God Reflections on Church and Society* (Orbis Books, 1976) 47–67; Renae Barker, 'Pluralism versus Separation: Tension in the Australian Church-State Relationship' (2021) 16(1) *Religion and Human Rights* 1, 1–40 ('*Pluralism Versus Separation*').

[8] W C Durham Jr and B G Scarffs, *Law and Religion: National, International, and Comparative Perspectives* (Wolters Kluwer, 2nd ed, 2019) 122.

Using this model, the authors have designated states to specific places, or in some cases ranges, along the two continuums as shown in Figure 2.[9]

Figure 2: Allocation of states.[10]

Church-State Identification

Netherlands
Belgium
Germany   U.S.A.

Islamic States   Sweden   England | France | Lux. U.S.S.R.

Complete Identification   Positive Identification   Separation of Church and State   Negative Identification

Anti-Church

Religious Freedom

Belgium   Germany
France
U.S.A.   England   Lux.   Sweden   U.S.S.R.   Islamic States

Total Religious Freedom   Religious Toleration   No Religious Freedom

However, as first identified by Ryskamp, '[e]xamination of the relationship between a country's position on the identification line versus its position on the religious freedom line yields no clear pattern.'[11] The two continuums are two separate models of two different phenomenon. While they are usually drawn together, doing so is not necessary, and does not reveal any link between the two phenomenon they depict. As a result, while these models are useful to demonstrate the range of potential state–religion relationships they do not adequately grapple with the relationship between state and religion models and freedom of religion which, as identified above, is at the heart of law and religion scholarship and teaching at the tertiary level. The solution, first posited by Ryskamp in 1980,[12] refined by Durham in 1996,[13] and later Durham and Scarffs in 2010,[14] is to redraw the state–religion identification continuum as a loop. (See Figure 3)

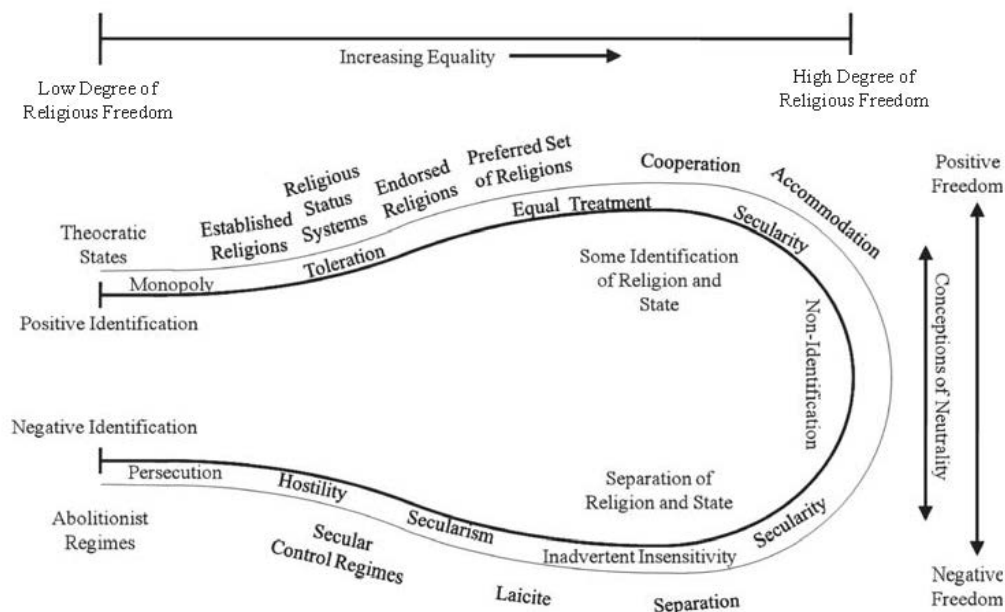[9] See also Ahdar and Leigh (n 7) 88–89; Barker, *State and Religion* (n 7) 23.
[10] Ryskamp (n 5) 620.
[11] Ibid.
[12] Ibid 652–653.
[13] Durham (n 7) 1–44.
[14] Durham and Scarffs (n 8) 122-129.

Figure 3: State–religion identification as a loop.[15]

As Durham and Scharffs explain:

> The answer to this … lies in reconceptualizing the religious–state identification continuum in two respects. First, it is important to recognize that the range of possible relationships run not merely from complete identification to non-identification. In fact, the possibilities run from complete (and positive) identification through non-identification to outright hostility and persecution (ie negative identification). Second, in order for the correlations between institutional configurations and the religious freedom continuum to become clear, the identification continuum needs to be laid out as a loop, …[w]hat this schematization suggests is that a lack of religious freedom correlates with a high degree of *either* positive *or* negative identification of the state with religion.[16]

This model is, of course, not the only one which could be used to teach the twin concepts of the interaction between state and religion and freedom of religion. Ahdar and Leigh, for example, have proposed an alternative model based on a grid.[17] Nor is the Loop model without its faults. As will be discussed below, part of the exercise with the students involved identifying strengths and weaknesses of the model. For now, two important weaknesses of the model need to be highlighted. First it is based largely on descriptive categories. As a result, there is a certain element of subjectivity in determining where a particular jurisdiction fits into the model. Secondly, the model assumes that the laws within a given jurisdiction will be relatively

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[15] Ibid 123.

[16] Ibid (emphasis in original). A full explanation of the model is beyond the scope of this paper. For more details of the model and how it operates including definitions of the various state–religion relationship categories see Durham and Scarffs (n 8) 122–129.

[17] Ahdar and Leigh (n 7) 87–124.

consistent with just one or a small range of state–religion relationships. As a result, federations and states where the state–religion relationship is in tension or transition can be difficult to plot.[18]

Despite the model's shortcomings and the numerous alternatives available, this model was selected to teach students in this Law and Religion unit for a number of reasons. First, it is a model the lecturer / unit coordinator has worked with extensively, having used and refined it in their own research.[19] Further, in 2019, they were part of the second cohort for the 'Young Scholars Fellowship on Religion and the Rule of Law' run by the International Centre for Law and Religion Studies at Brigham Young University.[20] During this Fellowship they took part in a masterclass on the model presented by Professor Cole Durham. As a result, they are familiar with the model and confident in presenting it and assisting students to work with it in class. Second Durham and Scarffs included the model in their text *Law and Religion: National, International and Comparative Perspectives*.[21] As explained in the preface to the first edition '[t]he guiding philosophy of this case book is that less is more and more is more. We have attempted to cover the subject matter of law and religion in about half the pages of most law and religion casebooks: that's the less. We also address at least three times the subject matter, focusing a majority of the book on international and comparative law material: that's the more ...'[22] This approach makes the relevant chapter on state–religion models well-suited to undergraduate students studying in an Australian university. There is currently a paucity of textbooks suited to the study of law and religion in Australia.[23] As a result, rather than assigning a specific text, a series of readings from a range of sources including journal articles, book chapters, textbooks, and online news sources were assigned. Finally, the Loop model is presented in both text and visual form, as outlined above, making it more accessible to undergraduate students as well as allowing for easier facilitation in the in-class activities outlined below.[24]

III TEACHING AND LEARNING STRATEGIES

While the Loop model outlined above resolves the problem of relating the relationship between the state and religion to freedom of religion, it is complex. While it is this complexity that makes the model so useful, it can also overwhelm students. The challenge therefore, from a teaching and learning perspective, is to find a method of teaching which simplifies the model and enables students to engage with it. Simply teaching the students the various categories on the model and where they are positioned is not enough. As Ramsden explains, such an approach only enables students to 'focus on passing [the] course or completing [the] particular learning assignment as an end in itself.'[25] Such an approach would reduce the teaching of the

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[18] See Barker, 'Pluralism Versus Separation' (n 7) 1–40.

[19] See Barker, *State and Religion* (n 7) 21–29; Barker, 'Pluralism Versus Separation' (n 7).

[20] The Fellowship itself takes place in Oxford. The first Fellowship program took place in 2018. The third intake of the Fellowship was due to take place in 2020 but has been postponed to 2022 due to COVID-related travel restrictions.

[21] Durham and Scarffs (n 8).

[22] Ibid xxxi.

[23] Australia specific texts available include: Paul Babie et al, *Religion and Law in Australia* (Wolters Kluwer Law International, 2nd ed, 2018); Carolyn Evans, *Legal Protection of Religious Freedom in Australia* (Federation Press, 2012); Barker, *State and Religion* (n 7).

[24] The use of visual learning is well established at the Law School. See Carruthers et al, 'Enhancing Student Learning and Engagement in the Juris Doctor Through the Rich Tapestry of Legal Story-Telling' (2017) 10 *Journal of the Australasian Law Teachers Association* 26; Camilla Baasch Andersen, 'Teaching Comic Book Contracting' in Emily Allbon and Amanda Perry-Kessaris (eds), *Design in Legal Education* (Routledge, forthcoming).

[25] Paul Ramsden, *Learning to Teach in Higher Education* (Taylor and Francis Group, 2nd ed, 2003) 46.

model to a mere taxonomy, rather than a model to be applied and understood as an approximation of the real world.

Further, the aim of this Law and Religion unit is not to simply teach law about religion. As a unit in a Law and Society Major, where the interaction between the law and societal phenomenon is pivotal, student learning needs to go further. It needs to enable students to engage with the 'meaning the course or assignment has in relation [to] the subject matter and the world that the subject matter tries to explain.'[26] Two of the three Learning Outcomes for the unit speak directly to the need to do more than simply teach law that relates to religion. Specifically, Objective One requires students to be able to 'explain the relationship between law and religion in Australia in a global context' while Objective Two requires students to 'demonstrate basic knowledge of the breadth and complexity of issues in the discipline of law and religion.'[27]

The activity set out below drew on a number of different learning and teaching strategies and philosophies to move students from surface learning to a deeper form of learning.[28] This included Montessori, visual learning, active learning, peer-led learning and, consequently, problem-based learning.

The first challenge in developing this activity was to simplify and make accessible a complex model. As outlined above, part of the rationale for selecting this model was that it has been represented both visually and in text form. The use of and success of incorporating visual elements into teaching is well-established in the Law School, having been incorporated into teaching in both the Business Law Major[29] and *Juris Doctor* programs.[30] The next challenge therefore was how best to use the existing visual representation of the model effectively. The answer lay in inspiration drawn from Montessori.

Montessori was developed by Dr Maria Montessori, working in Italy in the early 1900s.[31] While Montessori principles were primarily designed for early childhood, many of the fundamentals, such as allowing the learner to take responsibility for their own learning, observing the learner, and adapting teaching according to those observations,[32] can be transferred to adult learning environments.[33] Another key principle is that learning moves from the concrete to the abstract. Therefore, in a Montessori classroom or learning environment 'the sequence in which the Montessori materials are introduced is structured to move children to increasingly abstract representations over time.'[34] This can take many forms, but one way this can manifest is via the creation and manipulation of physical materials to represent abstract ideas. Well-known examples of this from Montessori classrooms and educational settings

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[26] Ibid.

[27] The third learning objective is for students to 'develop their skills in undertaking scholarly research of primary and secondary sources utilising legal and social sciences databases'.

[28] Ramsden (n 24) 46–49.

[29] See Baasch Andersen (n 23).

[30] See Carruthers et al (n 23).

[31] Maria Montessori, *The Montessori's Method: The Origins of an Educational Innovation: Including an Abridged and Annotated Edition of Maria Montessori's The Montessori Method*, ed Gerald Lee Gutek (Rowman & Littlefield Publishers, 2004) 1–42.

[32] Carol Garhart Mooney, *Theories of Childhood: An Introduction to Dewey, Montessori, Erikson, Paiget & Vygotsky* (Redleaf Press, 2nd ed, 2013) ch 2.

[33] See, eg, Josef Brozek et al, 'Application of the Montessori Method in Tertiary Education of a Computer 3D Graphics' (2016) *ELEKTRO* 655–659.

[34] Elida V. Laski et al, 'What Makes Mathematics Manipulatives Effective? Lessons from Cognitive Science and Montessori Education' (2015) 5(2) *SAGE Open* 1, 4.

include: the pink tower, golden beads, and moveable alphabet. The activity outlined below adapted this principle by the use of a large A0 printed version of the model. As outlined in Step 3 below, students manipulated the material by placing assigned countries onto the physical model. This introduced a kinaesthetic element alongside the visual, thus reinforcing learning. In her writings and lectures Montessori emphasised the use of the hands as essential to the learning process. As Montessori explained:

> [the child] becomes a man [sic] by means of his [sic] hands, by means of his [sic] experience, first through play, then through work. The hands are the instrument of the human intelligence.[35]

While Montessori was focusing on children and early childhood, the use of one's hands to facilitate learning, arguably, should not be limited to childhood. In the activity outlined below, the physical manipulation of the material enabled students to work in a more concrete form before moving onto working with the model in more abstract forms in subsequent in-class activities and their group research projects.

Also key to the activity outlined below is both active and peer-led learning. Both are key elements of problem-based learning. Problem-based learning involves the presentation of a problem followed by a process of learning, guided by a tutor, in order to build upon prior knowledge and answer questions raised by the problem.[36] While it was originally developed for medical students the method has since been applied to a variety of disciplines, including law.[37] There are a variety of approaches to problem-based learning.[38] Which variety is chosen depends largely on the educational objectives of the activity.[39] Barrows, writing in a medical context, identified four educational objectives of problem-based learning: (1) '[s]tructuring of knowledge for use in clinical contexts', (2) '[t]he development of an effective clinical reasoning process', (3) '[t]he developing of effective self-directed learning skills' and (4) '[i]ncreased motivation for learning.'[40] Replacing the word 'clinical' with 'real-world' produces a set of objectives suitable for application in a law and religion unit. While the activity outlined below strives to achieve these objectives it is not a pure problem-based approach. Drawing from problem-based learning, it incorporates the use of prior knowledge, group work, and the teacher as tutor and guide. However, the activity is not self-directed. Students are provided with a model, assigned countries, and set tasks to complete during the workshop. As such it does not fulfil the third objective identified by Barrows.

IV THE ACTIVITY

A *Aims of the Activity and Position in the Unit*

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[35] Maria Montessori, *The Absorbent Mind* (1949) <https://gseuphsdlibrary.files.wordpress.com/2013/06/the-absorbent-mind-montessori.pdf?fbclid=IwAR2sF7yi48IJvvnBpMOAF7mUMyMJBVYNCELJOTEvcPCmuOkIPk8IRwmUToc>

[36] Jos H C Moust, Peter A J Bouhuijs and Henk G Schmidt, *Introduction to Problem-based Learning* (Taylor & Francis Group, 1st ed, 2007) 10.

[37] Ibid 11; Paul Maharg, '"Democracy Begins in Conversation": The Phenomenology of Problem-based Learning and Legal Education' (2015) 24 *Nottingham Trent University Journal* 94, 95, 105–109.

[38] Maggi Savin Baden and Claire Howell, *Foundations of Problem-based Learning* (McGraw-Hill Education, 2004) 4.

[39] H S Barrow, 'A Taxonomy of Problem-based Learning Methods' (1986) 20(6) *Medical Education* 481.

[40] Ibid 481–482.

The aim of the activity outlined in this paper was to introduce students to different types of state–religion relationships and a model for understanding these different relationships.   In previous years this had been taught in a traditional lecture format.   However, this did not provide students with an opportunity to engage with the model, nor did the traditional lecture format sufficiently highlight the strengths and weaknesses of the model. The traditional lecture format also tended to focus on the various categories of state–religion relationship as a mere taxonomy rather than categories within a dynamic model. As part of an overall revision of the unit, the activity outlined in this paper was devised to provide a more interactive peer-led approach.[41]

The activity took place in weeks four and five of the semester (with Steps 1 to 4 in week four and Steps 5 and 6 in week five). Individual steps are outlined below. The previous weeks' content included: the definition of religion and religious demographics in Australia (week one), religious autobiographies and understanding diverse religious perspectives (week two) and freedom of religion (week three). All weeks included some elements of peer to peer and active learning. Weeks one and three also incorporated learning via a more traditional lecture format. Subsequent weeks' content included a research project workshop (week six), field trip to the university library to view religious texts and manuscripts (week seven), and guest panel on the role of religion in politics and political action in secular Australia (week eight). The remaining weeks were dedicated to oral presentations on group research projects (weeks ten and eleven) and a workshop titled, 'Wrapping it up – How does it all Fit Together', in which students developed mind maps of the unit content (week twelve).[42]

The unit assessment was comprised of: a 3,000 word reflection journal (50%) due at the end of semester; a group oral presentation (30%) in weeks ten and eleven; and participation in open space discussions in weeks two, three, four, five, eight, and twelve (20%). The activity outlined below was assessed as part of the reflection journal. For the reflection journal students were required to write four to six entries on topics covered in weeks one through five and week twelve.

The unit was taught using a three-hour workshop which was not recorded. In most weeks this consisted of a two-hour workshop involving a combination of a traditional lecture format together with active and peer to peer learning opportunities, followed by a one-hour open space discussion based on topics proposed by the students.

B *Steps of the Model*

Step 1: Presentation of the Model
The first step of this activity was to present the model to the students. Prior to the class students had been asked to read chapter 4 from *Law and Religion: National, International and Comparative Perspectives,*[43] as well as research applying the model to Australia.[44] However,

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[41] A simpler version, consisting of Steps 1 and 2 only, was used in 2019.
[42] 'A Mind Map is a diagram for representing tasks, words, concepts, or items linked to and arranged around a central concept or subject using a non-linear graphical layout that allows the user to build an intuitive framework around a central concept. A Mind Map can turn a long list of monotonous information into a colorful, memorable and highly organized diagram that works in line with your brain's natural way of doing things.' See 'What is a Mindmap *Mindmapping.com* <https://www.mindmapping.com/mind-map>.
[43] Durham and Scarffs (n 8).
[44] Barker, 'Pluralism Versus Separation' (n 7).

given that it has been estimated that as few as 20 – 30% of students read the set class material,[45] the model was also presented (and the different categories of state and religion relationships explained) using a traditional lecture format during the first 30 minutes of the class. During this portion, the presenter avoided giving specific jurisdictional examples of States that are traditionally ascribed to each category. Where this was unavoidable, often due to student questions, the presenter gave examples that were not included in the second stage of the activity.

Step 2: Small Group Work

After giving the students a basic outline of the various state–religion categories, the presenter laid out a large A0-sized printed version of the model. This was placed on the floor at the front of the class. The room in which the workshops are conducted has the student seating arranged in three semi-circular rows — leaving a large empty space at the front of the class between the lecturer's desk and the front row. This space is ideal for activities of this nature and provided plenty of space to lay out the large form printed version of the model.[46]

The class was then divided into small groups of 2–4 students making a total of 16 groups. Each group was assigned one country (Brazil, India, Belgium, Italy, South Africa, Egypt, Netherlands, Iran, Vietnam, Indonesia, Canada, Saudi Arabia, Malaysia, New Zealand, Germany, and Nigeria). Each group was given a card with the name of their assigned country written on it. The groups were then asked to research their country and, based on this research, determine which category of state–religion relationship they believed their assigned country belonged to.

The 16 countries were not chosen at random. The countries were deliberately selected to represent a wide range of state–religion relationships, regime types, geographical regions, and legal systems. They were also, for the most part, countries whose state–religion relationships or whose main law and religion issues the presenter was familiar with from their own research or projects they had been involved in. The presenter was therefore confident and comfortable speaking about each of these countries during the workshop.

The students had approximately one hour to complete Step 2. Some groups finished relatively quickly — proclaiming that they knew the answer within the first 20 minutes (New Zealand and Saudi Arabia). Others took much longer, and after a full hour still had not reached a conclusion (Nigeria and Belgium). Throughout the hour allocated to the task the presenter circulated amongst the groups, asking questions to prompt further discussion and research as well as answering questions as they arose about both the model and country the group was researching. The presenter's main role during this phase was to act as a guide.

Step 3: Building up a Picture

At the conclusion of Step 2, each group was asked to place their assigned country onto the large A0 printed version of the model as shown in Figure 4. The students' work is also summarised in Figure 5 further below.

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[45] Cynthia S Deale and Seung Hyun (Jenna) Lee, 'To Read or Not to Read? Exploring the Reading Habits of Hospitality Management Students' (2021) *Journal of Hospitality & Tourism Education* 45, 46.

[46] If space was not available, a similar result could be achieved by hanging the model on a wall or using a version projected onto a wall or screen. During Step 1 the presenter used a version of the model projected onto a screen.

Figure 4: Student work applying model and categories to their assigned country.
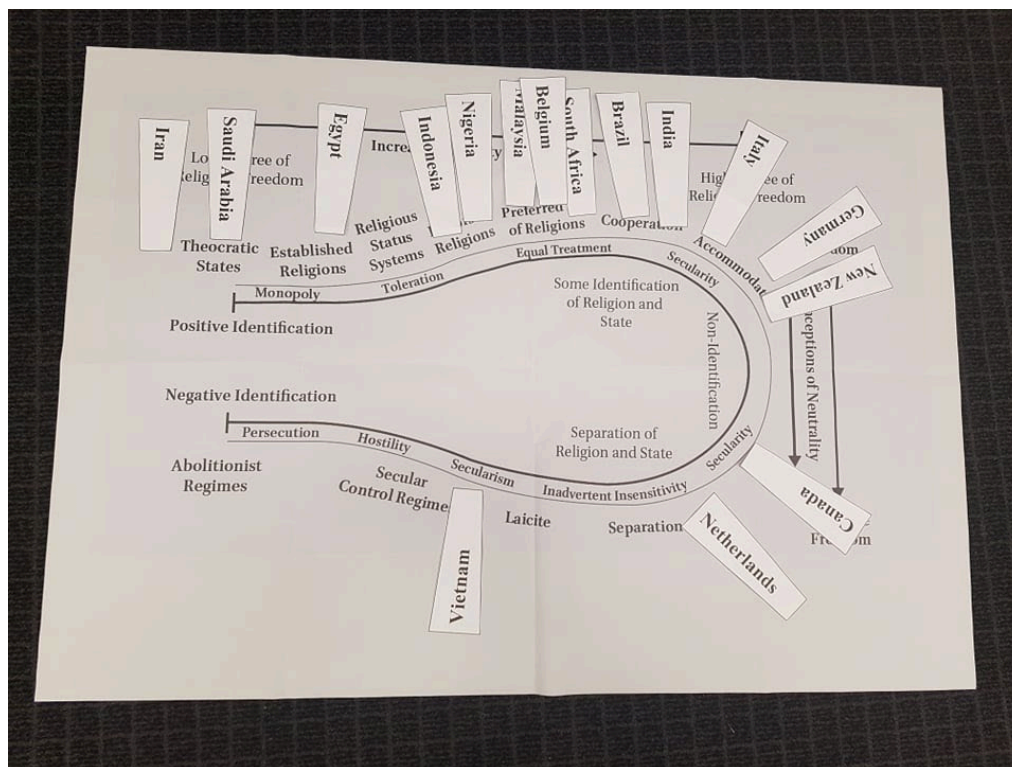
Each group was asked to explain where they had placed their assigned country. As will be discussed in more detail below, the students' decisions were relatively consistent with the generally accepted positions in the literature for each country. The only country for which there was a significant difference between the position on the model chosen by the students and the literature was India. Durham and Scarffs assigned India to the 'religious status systems'[47] category while the students assigned it to 'accommodationist regimes.' This was the only country which the presenter moved (after the picture in Figure 4 was taken) as the difference was significant in terms of both the actual position of India on the Loop model and the implications for freedom of religion.

While the students had been asked to read chapter 4 of *Law and Religion: National, International and Comparative Perspectives* and had been presented with the various types of state–religion relationships at the beginning of the class; they were not instructed to consider any specific laws or policies in determining the appropriate category for their assigned country. During Step 3, it became apparent that different groups had focused on very different aspects of the state–religion relationship. The relationship between the state and religion in any given jurisdiction is influenced by a range of factors. In his 1976 typology, The *Faces of God: Reflecting on Church and Society*, Hastings identified six factors:

> The first is the various basic patterns of relationship possible; the second, an
> analysis of types of church in relation to the state; the third, types of state in

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[47] Durham and Scarffs (n 8) 126.

relation to the church; the fourth, deeper elements in the shape of society which can influence both state and church; the fifth, the grounds of cooperation; the sixth, the grounds of conflict.[48]

Applying Hastings' six factors to the students' conclusions reveals the different levels at which the student groups engaged with the activity. All groups engaged to a greater or lesser extent with the first factor via the set readings and in-class presentation of the model. However, very few groups engaged with the second element: 'an analysis of types of church in relation to the state'. This would have required consideration of factors such as the '(i) size, (ii) a this worldly as against another worldly emphasis, (iii) attitudes towards other churches and religion, [and] (iv) ecclesiastical organisation'[49] of the religions in their assigned jurisdiction. Most groups engaged to some extent with the third element via considerations of their assigned country's constitution and other formal documents of state. Several groups also considered the regime type and governmental structures.

A significant number of groups focused on the lived experience of freedom of religion and religion generally within their assigned jurisdiction. This fits within Hasting's fourth factor. This factor requires consideration of the extent to which 'religious belief and practice are a manifest and unquestionable part of ordinary life' as opposed to 'societies in which there is a recognised divorce between the religion and the secular' as well as where 'there is a clear chasm between a small elite and the vast mass of the people' and 'societies in which the gap is much less'. It also considered factors such as 'the difference between societies in which the decisive bonds and influences in most people's lives are on a small scale'[50] and 'societies in which bonds tend to be on a large scale',[51] as well as, societies which are 'fairly stable' and 'those in which massive and rapid social change is going on'.[52] Finally almost all groups considered factors five and six, 'grounds of cooperation' and 'grounds of conflict', to various degrees via the laws in place in each jurisdiction which manifest conflict or cooperation between state and religion. Laws considered by the students included those relating to taxation, education, discrimination, criminal law, and family law.

As outlined above, there are numerous models of state–religion relationships. Part of the explanation for this is that different models focus on different aspects of the relationship depending on the purpose of the model.[53] For example Temperman's model, outlined in *State–Religion Relationships and Human Rights Law: Towards A Right to Religiously Neutral Government,* focuses on the formal state–religion relationship outlined in a country's constitution and other formal documents of state.[54] To apply Hasting's analysis to Temperman's typology focuses on the third factor 'types of state in relation to the [religion].'[55] This approach works well when considering a very large number of jurisdictions, as Temperman does in his seminal work on the subject, but does not allow for a more nuanced understanding of the way in which the constitutional provisions have been interpreted by national courts nor of the ways in which different laws operating at a lower level than the constitution may impact the state–religion relationship. It also does not account for the lived

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[48] Hastings (n 7) 49.   The author, writing in 1976, used the older language of church and state.
[49] Ibid 51.
[50] Hastings (n 7) 60.
[51] Ibid.
[52] Hastings (n 7) 60-61.
[53] Barker, *State and Religion* (n 7) 21-22.
[54] Temperman (n 7).
[55] Hastings (n 7) 49.

experience of majority and minority faiths within a given jurisdiction. The students' differing approaches therefore echoed the differing approaches taken by scholars working in the field.

As Figure 5 below demonstrates, in most cases the students' decisions for their assigned countries closely matched that outlined by Durham and Scarffs (where applicable). The table also includes Temperman's classifications, as it is more comprehensive, along with those from Ahdar and Leigh discussed above; although the class did not discuss these alternative models. As Figure 5 demonstrates, significant discrepancies in both terminology and classification exist in the literature. The variance between the students' choice of category and the category assigned by Durham and Scarffs is therefore not as problematic as it first appears given that scholars who work in this field also disagree.

Figure 5: Comparison of student categorisation decisions with three models.

Country	Students	Durham and Scarffs[56]	Temperman[57]	Ahdar and Leigh[58]
Brazil	Cooperation	N/A	Non-establishment	N/A
India	Accommodation	Religious status systems	Separation of State and Religion	N/A
Belgium	Preferred set of Religions	N/A	Accommodation of Religion	State Religion: Establishment
Italy	Cooperation / Accommodation	Cooperation	State support and Acknowledgment of Religion / Separation of State and religion	N/A
South Africa	Cooperation	N/A	Accommodation of Religion	N/A
Egypt	Established Religion	Positive Identification	Islam as State Religion	N/A
Netherlands	Separation	N/A	Accommodation of Religion	Principled Pluralism
Iran	Theocratic State	Extreme Positive Identification	Islam as State Religion	Theocracy
Vietnam	Secular Control Regime	N/A	Secular State Ideology	N/A
Indonesia	Endorsed Religions	N/A	(mono)theist State / State Religion	N/A
Canada	Separation	N/A	State support and acknowledgment of Religion	State Religion: Establishment
Saudi Arabia	Theocratic State	Extreme Positive Identification	Islam as State Religion	N/A

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[56] Durham and Scarffs (n 8).
[57] Temperman (n 7).
[58] Ahadr and Leigh (n 7).

Malaysia	Preferred set of Religions	N/A	Islam as State Religion	N/A
New Zealand	Accommodation	N/A	Non-identification	N/A
Germany	Accommodation	Cooperation	Accommodation of Religion / non-establishment	State Religion: Establishment
Nigeria	Endorsed Religions	N/A	Non-establishment	N/A

In future presentations, the activity will be adjusted to include an additional step between Steps 1 and 2. After being presented with the model students will also be presented with Hastings' six factors. Students will then be asked to identify a list of laws and social, governmental, and legal structures as well as religious and societal demographics which, based on the pre-reading and models presented in Step 1, they believe are relevant in determining the correct category for their assigned jurisdiction. Involving the students in this additional step will maintain the integrity of the problem-based and peer-led learning approaches while providing additional scaffolding.

Step 4: Exploring the Complexity
Students began to identify some of the weaknesses and complexities of the Loop model during the presentations of their conclusion in Step 3 and during discussions between the presenter and individual groups in Step 2. Following the presentations by the groups the class engaged in a whole-of-class discussion about the challenges they faced in deciding which category to assign their country to as well as some of the weaknesses of the model.

A number of groups identified that they had difficulty choosing which category to assign their country to, due to discrepancies between the constitutionally mandated relationship between state and religion in their assigned country and the lived experiences of people from that country (Nigeria, Malaysia, and India). The class was fortunate to have students with personal experiences of living in a number of the countries considered which added to the richness of the discussion and further highlighted the difference between law and lived experience.

A number of the assigned countries are federations (India, Malaysia, Brazil, Germany, Belgium, Canada, and Nigeria). Several groups identified that in these countries there may be a discrepancy between the state–religion relationship at the central (federal, national, unitary) level and that which exists at the local (state, province, regional) level. Further the state–religion relationship may vary between different provinces or states depending on the allocation of legislative power and competence as between the central government and the local governments.

As a consequence of these student-identified complexities of the Loop model, several groups also identified that most if not all of the countries considered had laws which could fit into more than one of the state–religion categories. Models of the state–religion relationship are, like all other models of the real world, oversimplifications.[59] They inevitably stereotype the real world relationships[60] and erase complexity and nuance. In week one of the semester, the class discussed the use of statistics of religious affiliation (in particular, those from the

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[59] Barker, 'Pluralism Versus Separation' (n 7) 7.
[60] Esbeck (n 7); Bader (n 7).

Australian census) along with the limitations of such data. Mainly, the class focused on what such statistics cannot or do not tell us about religious belief and practice.[61] Students were therefore able to apply this previous knowledge to critically analyse the use of the Loop model as a description of real-world conditions.

As the discussion progressed, a small number of groups who had particular difficulties determining where to place their allocated country on the Loop model noted that the two potential categories they had considered were often opposite (or effectively) opposite each other on the model. This is consistent with the model when used at a more advanced level. For example, Durham and Scharffs have observed that Spain oscillates between 'regimes strongly supportive of an established church to secularist, anti-clerical regimes.'[62] Similarly, Barker has argued that Australia currently exists in a state of tension between cooperation/pluralism and separation as demonstrated in Figure 6.[63]

Figure 6: Australia in Oscillation.[64]
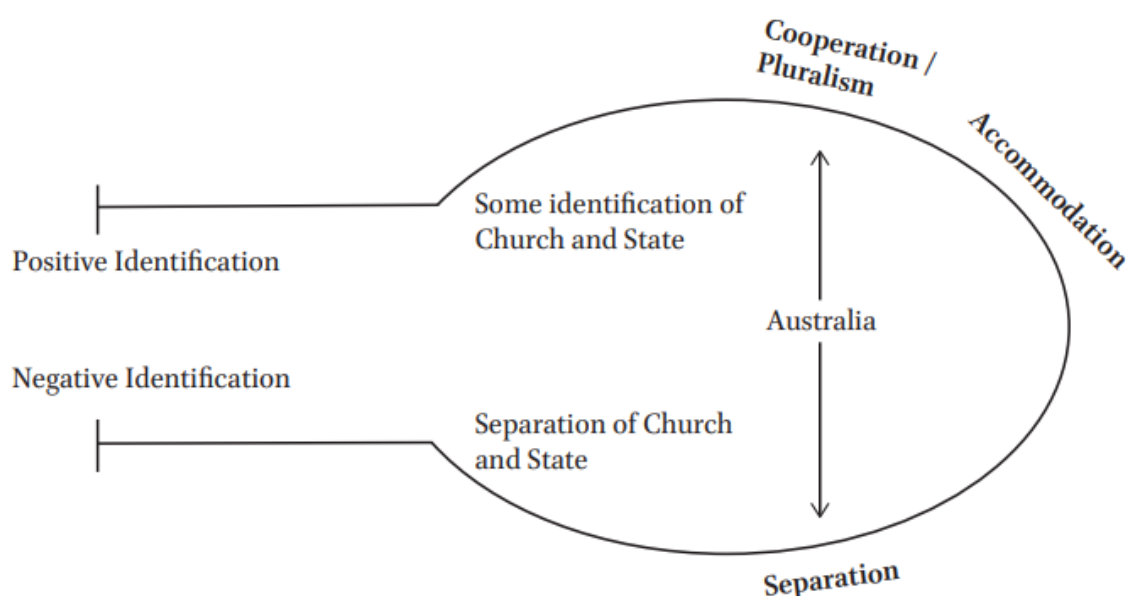
Rather than existing at one point on the Loop model, state–religion relationships exist within a range. This range may be very narrow or it may be very wide depending on factors such as the stability and flexibility of the legal mechanism on which the state–religion relationships are based.[65] The students were able to identify this complexity and therefore build on the initial presentation of the Loop model to better fit the real world data uncovered during Step 2.

Step 5: Applying the Model to Australia
As outlined above, Steps 1 through 4 were completed during the first two hours of a three-hour workshop in week four of the semester. Week five of the semester was dedicated to the topic

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[61] For a discussion of the religion question in the Australian census see Tom Frame, *Losing My Religion: Unbelief in Australia* (University of New South Wales Press, 2009) 86–104.
[62] Durham and Scharffs (n 8) 131.
[63] See Barker 'Pluralism Versus Separation' (n 7); See also Durham and Scharffs (n 8).
[64] Barker 'Pluralism Versus Separation' (n 7) 34.
[65] Barker, 'Pluralism versus Separation' (n 7) 38–40.

'Law and Religion in the Australian Context / Law and Religion in a Global Context.' This provided an opportunity to further apply the Loop model and develop a more explicit link between the state and religion relationship and freedom of religion.

The first hour of the three-hour class in week five focused on the Australian experience and applying the Loop model to Australia. In particular, the class analysed s 116 of the *Australian Constitution*[66] and associated case law.[67] The class also considered other laws and policies which influence the Australian state–religion relationship.[68] Finally the class considered the role Australia's federal nature plays in the state–religion relationship. As discussed above, during Steps 2 and 3 the students had identified federations as posing a particular challenge when determining how to categorise their assigned country. Examining Australia in more detail provided an opportunity for the students to build upon prior learning to analyse why federations posed such a challenge in the preceding week.

As a third-year elective unit, 'Law and Religion' prerequisites include content on Australia's federal structure and constitutional division of powers. Students were therefore able to draw upon their previous learning, identifying that many of the areas of interaction between the state and religion in Australia (education, health, criminal law, etc.) occur at individual state or territory level. This has two consequences. Firstly, s 116 of the *Australian Constitution* does not apply, as its application is limited to Commonwealth law.[69] Secondly, given that each state and territory has separate legislation, significant inconsistences can occur. Students were then able to hypothesise that similar issues may explain the difficulty they had with assigning other federations during Step 2.

Step 6: Links to Freedom of Religion
While the Loop model explicitly links freedom of religion and the level of separation between the state and religion, this link had not been drawn out during the preceding five steps of the activity. Step 6 made this link via the use of data from the Pew Research Centre.

The Pew Research Centre regularly publishes a Government Restriction Index ('GRI') and Social Hostility Index ('SHI') for freedom of religion. The GRI 'measures government laws, policies and actions that restrict religious beliefs and practices' while the SHI 'measures acts of religious hostility by private individuals, organizations or groups in society'.[70] As well as a formal report the Centre also publishes an online, interactive summary of their findings. Users are able to search for specific countries and view the GRI and SHI index plotted over time

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[66] Section 116 states:
> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

[67] *Krygger v Williams* (1912) 15 CLR 336; *Adelaide Company of Jehovah's Witnesses v Commonwealth* (1943) 67 CLR 116; *Attorney General (Vic); ex rel Black v The Commonwealth* (1981) 146 CLR 559; *Kruger v Commonwealth* (1997) 190 CLR 1; *Williams v The Commonwealth* (2012) 248 CLR 156.

[68] These included: prayers in parliament; federal funding of religious schools; religious welfare services; religious politicians; religiously-based moral laws; religious exemptions in anti-discrimination laws; religious marriages; tax exemptions; charity status; religious chaplains in public schools; religious chaplains in the military and police etc; and use of religious oaths.

[69] For the issue about whether s 116 applies to the Australian self-governing territories (ACT and Northern Territory) see H T Gibbs, 'Section 116 of the Constitution and the Territories of the Commonwealth' (1947) 20 *Australian Law Journal* 375.

[70] Samirah Majumdar and Virginia Villa, 'Globally, Social Hostilities Related to Religion Decline in 2019, While Government Restrictions Remain at High Levels' (Annual Report No 12, Pew Research Centre, 30 September 2021) 3.

(2007 – 2019).[71] Students were therefore asked to search for their assigned country and record both the GRI and SHI and compare this to the category they had assigned their country to the previous week. These were then recorded and added to a photograph of the outcome from week four presented on a PowerPoint slide as shown in Figure 7. These results have been summarised for convenience in Figure 8. As Figure 7 below demonstrates, there is a high degree of correlation between the location of the countries on the Loop model and their GRI and SHI. Broadly speaking countries with a high GRI and SHI are located towards the left while those with a low or moderate GRI and SHI are located towards the right.

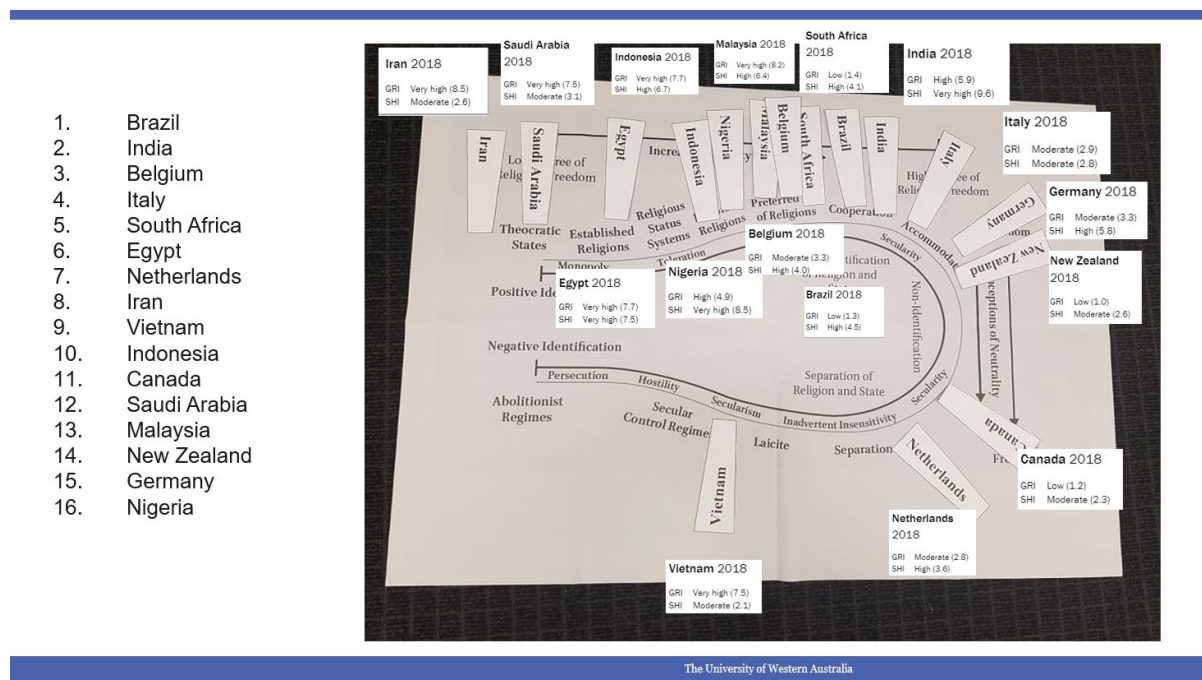*Figure 7: Loop model combining student work with Pew Research Centre GRI and SHI.*

*Figure 8: Tabular summary of Loop model depicted in Figure 7.*

Country	Students Categorisation	GRI	SHI	Country	Students Categorisation	GRI	SHI
Brazil	Cooperation	1.3	4.5	Vietnam	Secular Control Regime	7.5	2.1
India	Accommodation	5.9	9.6	Indonesia	Endorsed Religions	7.7	6.7
Belgium	Preferred set of religions	3.3	4.0	Canada	Separation	1.2	2.3
Italy	Cooperation / Accommodation	2.9	2.8	Saudi Arabia	Theocratic State	7.5	3.1
South Africa	Cooperation	1.4	4.1	Malaysia	Preferred set of religions	8.2	6.4

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[71] Chris Baronavski, Samirah Majumdar, Virginia Villa and Bill Webster, 'Religious restrictions around the world', *Pew Research Centre* <https://www.pewresearch.org/religion/interactives/religious-restrictions-around-the-world/>.

Egypt	Established Religion	7.7	7.5	New Zealand	Accommodation	1.0	2.6
Netherlands	Separation	2.8	3.6	Germany	Accommodation	3.3	5.8
Iran	Theocratic State	8.5	2.6	Nigeria	Endorsed Religions	4.9	8.5

As Durham and Scarffs explain 'a lack of religious freedom correlates with a high degree of *either* positive *or* negative identification of the state with religion.'[72] However the relationship between the level of identification between the state and religion and freedom of religion is not perfectly explained by the Loop model. As Figures 9 and 10 demonstrate, the GRI and SHI data in the order plotted by the students in Figure 7 does not perfectly fit the expected pattern. If there was a perfect relationship between the type of state–religion relationship and freedom of religion as predicted by the Loop model as outlined by Durham and Scarffs, one would see a 'U' shape for the GRI and, arguably, an 'M' shape for the SHI.[73] While the graphs do show this trend, it is far from perfect, indicating that either the students did not assign their countries to the correct place on the model or that the model in not a perfect representation of the real world. Given, as outlined above, the variation in allocation of states to specific categories in the literature and the relative consistency of the student's work with the literature, the latter explanation is just as probable. This outcome, in fact, should be expected given that, as outlined above, any model is by necessity a simplification of the real world. When tested against real world data some variation from the expected trend is inevitable. It is also worth noting that, as outlined above, the one instance where the student's choice did not align with the literature was in relation to India. When India is moved to better align with the literature (Figure 11), the GRI more closely resembles a 'U' shape.

Figure 9: GRI data plotted against student categorisation.
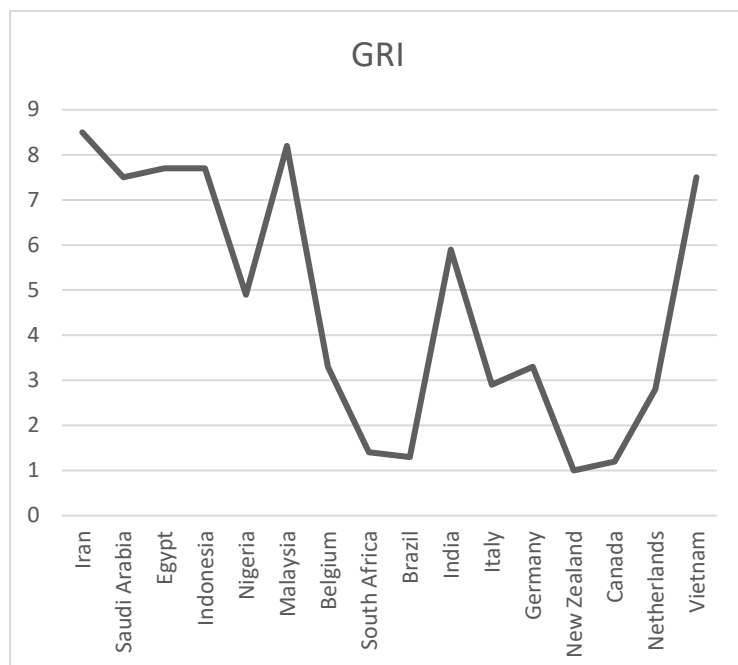
[73] The SHI is more likely to exhibit an 'M' shape as social hostility would, arguable, decrease where there is either homogeneity of belief, as on the far left-hand side of the Loop model, and where freedom of religion in maximised via plurality, as on the far right-hand side of the Loop model.

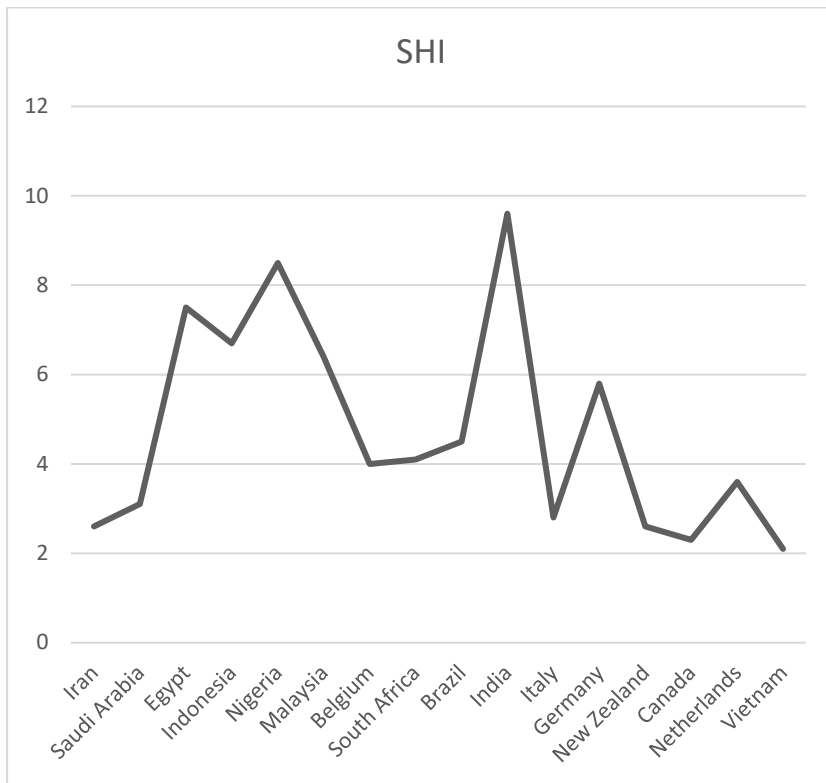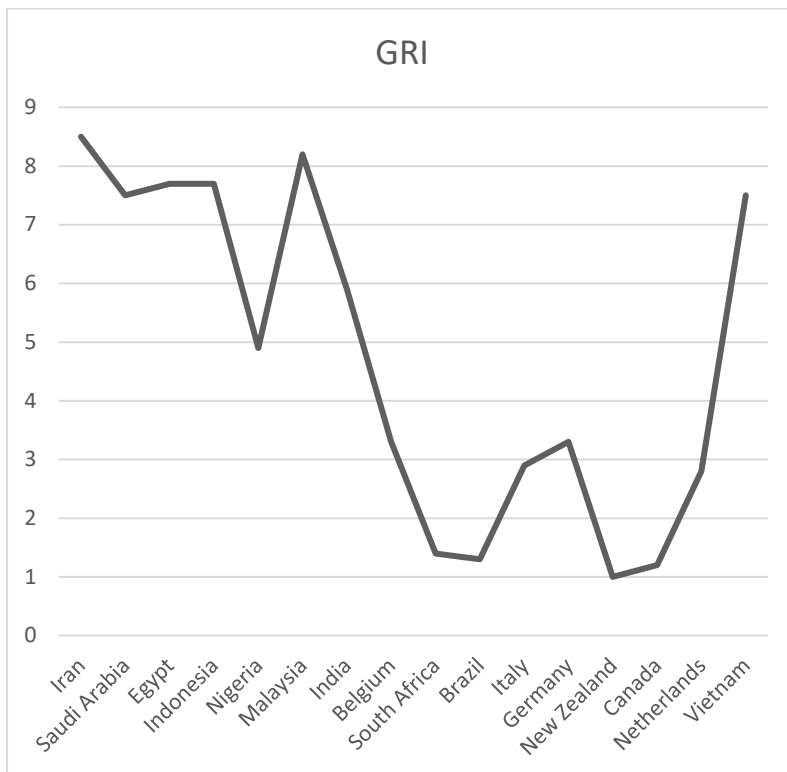*Figure 10: SHI data plotted against student categorisation.*

Figure 11: GRI data plotted against student categorisation with corrections for India.

Given that the comparative data in Figures 9 and 10 is derived from the work of undergraduate students completing an in-class exercise under time constraints, the level of consistency with the expected outcome of the Loop model suggests the efficacy of this approach to teaching both state and religion models, and the relationship between those models and freedom of religion.

V REFLECTION ON STUDENT LEARNING AND CONCLUSION

As outlined at the beginning, an essential element of a tertiary-level law and religion course is an understanding of the relationship between the state and religion. The primary aim of the activity outlined in this article was to introduce students to different types of state–religion relationships and a model for understanding these different relationships. In the context of the course in which this activity was presented, its success in achieving this aim was able to be measured via reference to the models and categories within the Loop model through subsequent class discussion (open space discussions), assessments (group oral presentation and reflection journal), and the final week twelve workshop ('Wrapping It Up — How Does It All Fit Together').

As outlined, students participated in online and in-class open space discussions in weeks, two, three, four, five, eight and twelve. These discussions were assessed and worth 20% of the final mark in the unit. An open space is a form of self-directed learning guided by five key principles.[74] A full discussion of the benefits and structure of open spaces in tertiary education is beyond the scope of this paper. In the context of a law and religion unit taught at an undergraduate level, open space learning allowed students to select the topics of discussion and analysis making student-directed choices of case studies. The format is also informal and in the first iterations in a course appear 'unorganised'. However, as Van Woezik et al identified:

> A second phase will involve the emergence of a sense of community, as participants discover common interests. People will start to group around shared interests and viewpoints. In the end, conclusions and decisions can be made by way of convergence of ideas, interests and personal relationships.[75]

In this unit, this 'second phase' also coincided with greater understanding of the theory underpinning the law and religion issues being discussed in the open space. Following the activities outlined in this article, the open space discussion increasingly referred to the relationship between the state and religion inherent in the case studies and issues selected by the students as well as the implications for freedom of religion.

The model and categories of state and religion relationships also featured in the other two formal assessment items in the unit. Two groups referred specifically to the model during their oral presentations. The majority of reflective journals also focussed reflections on the model or some aspect of the activities outlined above. The reflections were split between those that reflected on the model and its implications at a macro level and those that focused on the country their group was assigned. Those that took a more macro approach often reproduced

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[74] These are: (1) whoever comes is the right person, (2) whenever it starts is the right time, (3) wherever it happens is the right place, (4) whatever happens is the only thing that could have happened, and (5) when it is over, it is over. In the context of tertiary education, which is inevitably governed by timetables and assessment imperatives, some of these key principles need to be modified.

[75] Tamara Von Woezik, Rob Reuzel, and Jur Koksma, 'Exploring Open Space: A Self-Directed Learning Approach for Higher Education' (2019) 6(1) *Cogent Education* Art. No. 1615766.

the model or a version of it in their final reflection. While most students took a traditional approach to writing the reflective journals, students were permitted to incorporate more creative elements into their reflections. This took a variety of forms including visual diaries, poetry, cartoons, and artistic interpretations of the content. While the creative elements of the reflective journals tended to focus on content from other weeks of the unit, a small number of students did attempt creative elements reflecting on the state–religion relationship — including one which simplified the model to a haiku.

Finally, students had an opportunity to demonstrate the incorporation of the model into their learning during the final workshop in week twelve. As described, during this workshop students worked in groups to create a mind map of their learning in the unit. The majority of mind maps incorporated the content from the activity in some way, with a number reproducing versions of the model in visual form.

The repeated reproduction of the model in visual form reinforced the utility of presenting learning using visual elements. As Andersen has identified in the context of legal education, 'a combination of many different forms of communication come together to form effective frameworks for legal understanding.'[76] While not all aspects of law and religion will be able to be presented in multiple formats, models of state and religion relationships are one area where this is possible; and as demonstrated by the effectiveness of this outlined activity, should be used when possible.

However, as discussed above and as should be expected in the first iteration, the activity was not perfect. Further refinement will be needed for future presentations. In particular, greater scaffolding is needed to enable students to more easily and consistently identify those aspects of the state–religion relationship which are relevant to determining where their assigned country fits on the Loop model. Hastings' six factors were not taught directly in 2021. Incorporating these into the pre-reading as well as between steps 1 and 2, and the whole of class discussions in step 4, in 2022 will add to the richness of the presentation of the activity. Finally, no formal survey was undertaken of the student learning experience related to this activity. This was in part due to time constraints and due to the fact that the activitity presentation in 2021 was a pilot which would inevitably be refined in future years. Such a survey will need to be undertaken, with appropriate ethics approvals, following a future presentation of the activity.

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[76] See Baasch Andersen (n 23); See also Jojappa Chowder, 'The Nonverbal Dimensions of Presentation' (2013) 1(4) *Research Journal of English Language and Literature* 1; Peter Andersen, *Nonverbal Communication: Forms and Functions* (Waveland Press, 2nd ed, 2007).