



**DECOLONIZING THE INTERSECTIONS OF RELIGION,  
RACE AND LAW**

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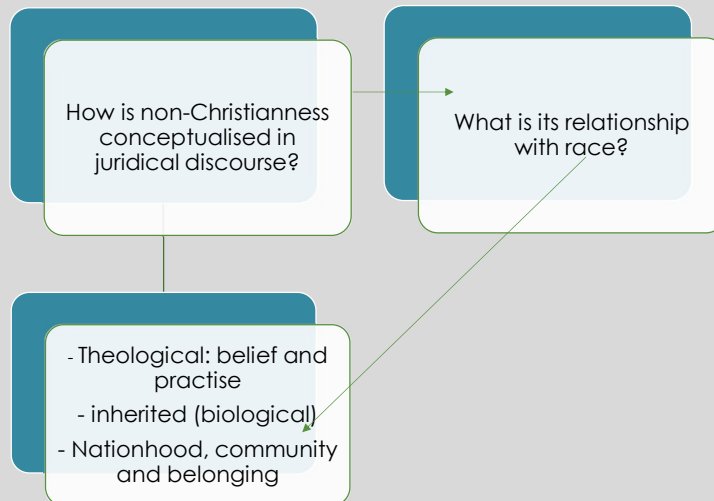
**Decolonizing the Intersections of Religion, Race and Law**

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## Key questions I:



In order to understand why I argue that it is a conceptual and legal deceit, to position secularism as the precondition for non-discrimination and equity we first need to test the notion that is posited here in the manifesto and elsewhere that religion is in fact the corollary to secularism. As we know the emergence of secularism as the safe public space and place free of meddling from the church and ecclesiastical law in Enlightenment Europe is an idea that has come to circulate as a key signifier of 'modernity' and mark the modern from the unmodern including in relation to legal systems. Those laws and judiciaries that are secular – namely objective and neutral on matters of religion - and practise the rule of law, are routinely categorised by European states, as modern. That is the theory at least but what is the juridical reality? How are matters adjudicated from a position of secularity- supposed neutrality- and what do judicial and policy pronouncements tell us about what religion is?

Which brings me to my first key question: How is religion juridically understood in relation to non-Christian ethnic minorities? I specifically addressed this question in cases and policy discourse in my book: *The Religion of Law: Race, Citizenship and Children's Belonging* (2013, Palgrave Macmillan) Here I examine two areas of law – firstly, child welfare law; and secondly, education law and policy around the teaching of religious education in state funded schools as well as the issue of state funding and support for non-Christian faith schools.

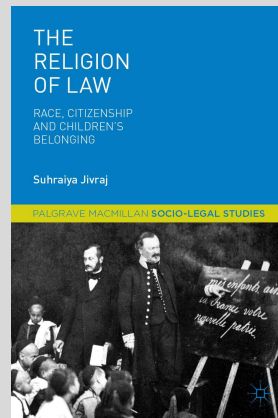
These case studies gave me ample opportunity to examine a second key question, namely: what is the relationship between race and religion within juridical understandings of non-christianness; and indeed whiteness? In taking these two questions together we can better understand the complexity of phenomena that is being reduced under the umbrella terms of religion/race and indeed secularity. We see from law and policy that religion is not just the theistic belief in a transcendent God which one can freely choose and embed into one's life through ritual practices. It is also a racialised concept where judges routinely believe for example, children inherit their parent's religion and of course there is a palpable anxiety that arises in cases where biological parents are from different backgrounds/faiths and judges are required to decide between parents for example, in relation to custody proceedings; as a non-white child in white majority Europe.

As the critical theory scholarship on the Muslim headscarf /veil and other gender and religion issues reminds us, religion can circulate in juridical discourse on the one hand as neutral, secular and universal when associated with Western de-theologised Christian values and citizenship, and on the other hand, through race-thinking in relation to non-Christian others (Asad, 2003; Razack, 2008; Brown, 2006; Jakobsen and Pelligrini, 2008). To address question two then - the relationship between race and religion is one that is, and always has been I would argue, interdependent. After all the so-called religious other being understood in racialised terms is a process which goes back to the very emergence of the concept of religion within eighteenth and nineteenth century orientalist European academic scholarship which I discuss in detail in my book. (Jivraj, 2013). Yet this history – that continues to inform and shape our present and futures – remains largely hidden, certainly in the mainstream of legal studies, even socio-legal studies including on religious freedom (see chapter 1, Jivraj (2013).

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## Non-Christianness: The invention of religion & race

- Religion as historically 'invented' (Masuzawa, 2005) to understand non-Christianness
- Therefore socio-politically and juridically contingent (Asad, 2003)
- Where 'world religions' came to be understood from a Christian (Protestant) epistemological viewpoint - largely orientalist and racialised
- De-theologised 'secular' universal values signifies modernity



My work addresses this lacuna drawing on critical religion perspectives which foreground how religion was 'invented' in 17<sup>th</sup>/18<sup>th</sup> century academia to understand non-Christianness in the context of (colonial) encounters with Europe's non-white others (Masuzawa, 2005). This process occurred predominantly from a Christian epistemic viewpoint of itself - as belief in a transcendent or distinctly divine being *as* the very essence or ontological status of Christianity - and therefore all other phenomena that manifest through belief systems coupled with ritual practice (De Vries, 2008:12).

For Asad and critical religion scholars understanding the contingency of non-Christian 'religion' in this way highlights its socio-political and juridical productions in understanding, categorising, adjudicating upon and regulating and non-Christianness. Key to this process of creating the phenomena of 'world religions' is racialization that embeds Christian values as superior, establishing white Christian supremacy in the legal system (Jivraj, 2013). This develops over time through the guise of secularity or disestablishment - separation of church and state - in some European countries. Although, in some countries like the UK, where there is no such separation, the same claim for a secular legal system is still made by deploying notions of universal values (rule of law guaranteeing judicial objectivity/state neutrality).

## Key questions II:

How do these conceptualisations circulate and what work do they do?

What is the role of secularism?

What can a decolonizing lens bring to the analysis?

In looking at that history we can both understand the term religion in relation to non-christianness better, how it's come to be understood in racialized ways that are then deployed through law and policy. But of course, we must also ask what socio-political work this racializing does.

As the critical theory scholarship argues, in relation to european controversies over the muslim headscarf and women's rights, what we see is that religion can circulate in juridical discourse on the one hand as neutral, secular and universal when associated with western de-theologised christian values and citizenship, and on the other hand, through race-thinking in relation to non-christian others (asad, 2003; razack, 2008; brown, 2006; jakobsen and pelligrini, 2008). This hides the epistemic, ontological and material violence of secular racialization – which is not a neutral and objective arbiter – there can never be such a thing.

If anything what we are left with it what de vries others refer to as the post-secular and even attempts by e.G. Homi bhaba to re-formulate a conception of secularism – what he calls subaltern secularism - that would be relevant to and address contemporary diasporic realities (on subaltern secularism *journal no.6* 1995. Pp5-7).

But i would like to turn to my final question: what can a decolonizing lens bring to the

analysis of the intersections of religion, race and law?

# Decolonizing the Intersections of Religion, Race and Law



Expose the **colonial matrix of power** /modernity which obfuscates:

- the work of **Muslim feminist scholars**
  - Ziba Mir-Hosseini, Amina Wadud, Huma Dar etc.
- and of **grassroots organisations** e.g.
  - Inclusive Mosque Initiative
  - Musawah (a global movement for equality and justice in the Muslim family)
  - Decolonising Sexualities: Transnational Perspectives, Critical Interventions (2016)

Critical theory scholars have for decades now attended to how gender, race and other social relations - including religion - can come to be produced through law (Fitzpatrick (1987); Bhandar (2009) and Herman (2011)). The late Peter Fitzpatrick, my former teacher and mentor, and founder of UK critical legal studies penned *Modernism and the Grounds of Law* in 1997. Yet it's taken twenty more years for socio-legal scholars to engage with issues of coloniality – or what Mignolo () refers to as the CMP - embedded within state law, policy and practice. So for me, step one is the task of continuing to expose that in all areas possible, especially where there are notable gaps – for example in the UK around criminal law, and property law. There is comparatively much more established work in relation to International Law including international economic and development law with the field of studies known as *Third World Approaches to Law* (TWAIL).

One beautiful thing we have seen emerge from bodies of scholarship like TWAIL is that the knowledge that exists – but not recognised by the canon – becomes more available to us as scholars and then also our students. My own encounter with the work of Muslim feminist scholars such as Ziba Mir-Hosseini, also a former teacher of mine, and many others was like sap to my dehydrated soul and intellect which has enabled me to work on a number of law reform projects for Muslim women both in the diaspora and Muslim majority countries. Musawah is one organisation that is currently doing amazing work.



I am very fortunate to have been able to work with many of these phenomenal scholars and organisations like the Inclusive Mosque Initiative. In 2018 I jointly organised with IMI the conference – Beyond the Promise of Secularism – as a way to make sense of and discuss the complexities of lived realities within diasporas without having to reinforce Islamophobia or racialisation. To be able to think about and imagine the possibilities beyond the alluring but false promises of modern secularism and secular law. IMI itself is an amazing manifestation of what is possible when we can collectively sit with difficult contradictions and yet also co-create alternatives.

If I had time, I would also talk about my work with the Decolonizing Sexualities Network (DSN) but if you are interested please ask in discussion time or look us up online ([www.decolonizingsexualities.com](http://www.decolonizingsexualities.com)) and download our book : Decolonizing Sexualities: Transnational Perspectives, Critical Interventions (<https://counterpress.org.uk/publications/decolonizing-sexualities/>) available on a pay-what-you-can basis.

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