



**TASA** The Australian  
Sociological Association



University of  
Western Sydney  
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# THE SOCIOLOGY OF RELIGION AND LAW: LEGAL PLURALISM, ANTI-DISCRIMINATION LAWS AND RELIGIOUS DIVERSITY IN LATE MODERNITY

5 December 2013

10:00–15:00

University of Western Sydney

Bankstown Campus

Venue: Building 3 Room 55

This is a free event with lunch provided.  
For catering purposes, RSVP to [e.pearce@uws.edu.au](mailto:e.pearce@uws.edu.au)  
by 28 November (please indicate any special dietary requirements)

A symposium hosted by the Religion and Society Research Centre and School of Social Sciences and Psychology (UWS) and The Australian Sociological Association's Sociology of Religion Thematic Group

This symposium examines the impact of various laws on religions, religious diversity and legal pluralism, and religious conflict. Evaluating the social consequences of legal innovations is critical in the context of on-going concerns about terrorism and ethical conflicts that often overlap with religious identities. They can also facilitate the constructive inclusion of religious groups into civil society. These issues remain active political concerns. For example, the Victorian *Racial and Religious Tolerance Act* is now 12 years old, and the Federal Government's consolidation of anti-discrimination legislation has been delayed after considerable debate and controversy. Sociological analyses on legal pluralism in late modernity will be discussed in light of these tensions. The symposium builds momentum in the sociology of religion and law in order to make a positive contribution to these debates.

The Australian Sociological Association's Sociology of Religion (TASA SoR) Thematic Group was launched in November 2011 and currently has 52 members. Its inaugural Seminar, *2012- End Times or New Beginnings?* was held in May 2012, in partnership with the Centre for Citizenship and Globalisation. The TASA SoR Group aims to continue their track record of running well-received events in partnership with research centres at Australian Universities. Its second Seminar is co-hosted by the Religion and Society Research Centre at the University of Western Sydney.

## 10:00

### **OPENING OF THE EVENT BY PROFESSOR DEBORAH STEVENSON, ASSOCIATE PRO VICE-CHANCELLOR (RESEARCH)**

## 10:20–12:40

### **Session 1: Religion and Legal Diversity**

#### **‘GOOD’ AND ‘BAD’ SHARI’A IN SYDNEY, NEW YORK AND GENEVA**

- Stephane Lathion, GRIS Switzerland
- Adam Possamai, University of Western Sydney
- Joshua Roose, University of Western Sydney

Drawing on methodologies used to analyse the negative portrayals of New Religious Movements in the press, this presentation analyses the way Shari’a has been reported in key newspapers in Sydney, New York, and Geneva over the last 5 years. It differentiates perceptions of Islamic law in the global cities as well as in foreign countries and discovers various ideal-types of negativity. The presentation also investigates the perception of ‘good’ Shari’a (Islamic banking) as opposed to ‘bad’ Shari’a (family and criminal law).

#### **LAW’S PREOCCUPATION WITH THE MUSLIM PSYCHE: HOW MUSLIMS ARE BODIES OUTSIDE THE LAW**

- *Sherene Razack, University of Toronto*

Asked to offer an opinion of Omar Khadr’s “risk of dangerousness as a violent jihadist,” state appointed psychiatrist Welner conducted a seven hour interview with Khadr at Guantanamo. Having no prior experience in assessing “jihadists,” Welner consulted with Danish psychologist Nicolai Sennels. Well known in Europe

for his racist views of Muslims, Sennels believes that “massive inbreeding within the Muslim culture during the last 1,400 years may have done catastrophic damage to their gene pool.” Muslims are genetically unable to integrate into European society and they possess an in born capacity to be violent. As I have shown in *Casting Out*, this biological view of Muslim degeneracy has gained currency in European and North American courts and parliaments, often in as openly racist a form as in Sennels’ opinions, but also disguised as moderate arguments about Muslim cultural incapacity to integrate. In this paper I consider how law’s contemporary preoccupation with the Muslim psyche renders all Muslims as less than human. I explore the logic of this eviction both from law and from humanity.

#### **“I DID IT BECAUSE I LOVE YOU”: SHARI’A, (UN)CIVILISED VIOLENCE AND JUSTICE**

- Selda Dagistanli, University of Western Sydney

In a recent Sydney court trial, defence counsel and prosecutors spent some time deliberating on whether consent was present in the assault of a 32 year-old man who knew and befriended two of his four attackers. The complainant, Cristian Martinez, who was lashed forty times with an electric cord, had recently converted to a conservative sect of Islam which observed Sharia law. On the night of the attack, Martinez telephoned his spiritual mentor Wassim Fayad to request assistance after his relapse into the drug and alcohol abuse that had motivated the complainant’s religious conversion in the first place. Fayad warned Martinez that he would need to be tied up and whipped ‘brother, because that’s what you need’. Throughout the whipping Fayad and his collaborators embraced the complainant between segments of his punishment, told

him they loved him, and offered him relief through the application of wet towels and words of consolation. The complainant later telephoned police and on trial claimed that he had consented to some but not all of the lashes for the sake of religious purification. Drawing on these facts garnered through my own intermittent courtroom observations of the trial, trial transcripts and judgments, this paper will reflect on the legal arguments raised in relation to cultural contexts where violence is consensual. More broadly, it will consider the association of punishment with civilisation in comparing the motives for violent sanction in the current case, to what some scholars have called the current revenge driven demands of Western punitiveness.

#### **FOUCAULT AND BUDDHISM: A RECONSIDERATION OF THE APPROACH OF ‘BUDDHIST VINAYA AS LAW’ AND AS NORMATIVE FORM OF ETHICS.**

- Malcolm Voyce, Macquarie University.

This paper considers the recent debate over the nature of Buddhist ethics largely conducted by European scholars such as Keown, Goodman and Olson. These scholars have argued in different ways that Buddhist ethics may be assimilated or may correspond with different forms of western ethical theory.

I show this approach to Buddhist ethics and law makes presumptions about the universal nature of rationality that offer a universal criterion of moral judgment. My approach follows Foucault’s argument and his skepticism with regard to the notions of a universal nature or universal rationality. I argue that there are no generalized standards to regard ethics as a system of transformation in that ethical considerations create a space

for the ethical, not in a normative sense but one arising from critical practice.

To expand on this claim I examine offences in the Vinaya as regards sexual activities, theft and rules as regard etiquette and deportment. As regards sexual activities I conclude that the Buddha was not so much concerned about the acts itself but more the state of mind. Other offense such as theft show that the Buddha was concerned with the impact upon Hindu communities such might occur through masturbation. At the same time the offences of etiquette were offences as upset laity. At face value appears thus Buddha offered a form of *consequentialism*.

Should we follow the usual approach by scholars and see the vinaya as a form of law and ethics, the issues arise as to how the ethical content in the vinaya as law ought to be regarded. I argue that the imposition of these forms of western theory on to the Vinaya and Buddhist texts in general creates a form of misunderstanding as in each case of a supposed ethical dilemma Buddhist ethics should be seen as empirical as the ultimate point of reference lies in the purity and wholesomeness of each individual action.

## 13:15 – 15:00

### Session 2: Anti-Discrimination Laws and Religious Diversity

#### FREEDOM OF SPEECH V. FREEDOM FROM VILIFICATION: A QUESTION OF BOUNDARIES

■ Hanifa Deen, Author

*Our lives begin to end the day we become silent about the things that matter.*

Martin Luther King.

*Whichever God you support, may He be with you.*

Dave Allen, comedian.

*The Victorian Racial and Religious Tolerance Act (2001)* has been covered in controversy right from its inception in 2000. Thirteen years on the debate continues amongst diverse groups as to whether this is a 'good act' or a 'bad act' and whether or not this State law undermines freedom of expression.

In early 2002, the Islamic Council of Victoria (ICV) initiated a complaint of religious vilification against two Pentecostal pastors and their para-church organisation, Catch the Fire Inc. (CTF). The Islamic Council of Victoria v. Catch the Fire Ministries Inc. (the first religious vilification case lodged under the new law) is still viewed as an important test case that decides certain boundaries affecting free speech.

The original decision, handed down by the Victorian Civil and Administrative Tribunal (VCAT), in December 2005, found in favour of the ICV complainants. Nevertheless, almost a year later, the Victorian Court of Appeal reversed the decision, allowed CTF's application and referred the case back to VCAT to begin again. However,

in June 2007, the Victorian Equal Opportunities Commission conciliated the case; the details remain confidential.

This paper is based on Hanifa Deen's book *The Jihad Seminar* (UWA Press 2006). The author discusses the views of the pro and anti legislation groups facing each other across the barricades, the fall out in terms of community relations and the fine line separating freedom of speech from hate speech. Can religious hate speech legislation set boundaries of tolerance and respect or do these laws exacerbate conflict? Why did this nightmare of a case, expected to be over in three days, take almost six years to resolve? What lessons were learnt?

#### RELIGIOUS CONFLICT AND ANTI-DISCRIMINATION LEGISLATION IN AUSTRALIA

■ Douglas Ezzy, University of Tasmania, Australia.

This paper argues that anti-discrimination legislation constructively facilitates the nonviolent resolution of religious conflict through legislation and litigation. The religious anti-discrimination legislation in Victoria, Australia is examined to demonstrate this argument. I provide two detailed case studies of the 2002 complaint by the Islamic Council of Victoria against Catch the Fire Ministries, an evangelical Christian group, and the 2003 complaints by the Pagan Awareness Network and Olivia Watts, an Australian Witch. I draw on Judith Butler's Levinasian analysis of policy responses to conflict to argue that the ethical moment of discourse is inherently violent as the other both threatens me and potentially transforms me. Anti-discrimination legislation encourages people to live with the discomfort created by apparently threatening religious others. Anti-discrimination

legislation contains religious tensions and reduces the likelihood of violence.

### **AITKEN & ORS VS. STATE OF VICTORIA: EDUCATION AND RELIGIOUS DIVERSITY IN AUSTRALIA**

■ Anna Halafoff, Deakin University

This paper focusses on the recent Victorian Civil and Administrative Tribunal (VCAT) case, *Aitken and Others vs. State of Victoria - Department of Education and Early Childhood Development*, which reignited the 'religion in schools debate' in Victoria. Parents claimed that their children, who had been opted out of Special Religious Instruction (SRI) programs, experienced direct and ongoing discrimination as a result of being segregated from their classmates, given that they weren't provided with adequate alternative instruction. While VCAT rejected this claim, the controversy surrounding *Aitken and Ors vs. State of Victoria* led to widespread media debate and a number of significant policy changes pertaining to the way religion is taught in Victorian schools. Despite numerous previous calls for reforms to SRI programs, it took a 'court case' to bring these issues to the public mind, and to the attention of state actors. This paper examines the significance of this VCAT case in assisting the State of Victoria to meet the needs of an increasingly multifaith and secular society, and identifies several issues with SRI programs that remain to be resolved.

## **BIOS**

**Selda Dagistanli's** research explores the intersections of Western multicultural politics, criminal justice and law. Her overarching research priority is to interrogate the ways in which unpopular minorities are morally, politically and culturally marginalised in legal and broader community arenas. Specific interests include how the politics of exclusion, especially through both overt anti-Muslim racism and the liberal premises of law, can lead to punitive criminal justice practices and the appropriation of victims' and womens' rights movements by conservative agendas. She is currently working on a manuscript entitled 'Trialling Culture, Protecting Women: Racialising Sexual Violence in Legal and Political Discourses' with Ashgate Publishing, UK, due for publication in 2014. She is also a chief investigator, alongside Associate Professor Adam Possamai (University of Western Sydney), Professor Malcolm Voyce (Macquarie University) and Professor Bryan Turner (University of Western Sydney/City University of New York), on an ARC Discovery project exploring Shari'a in the everyday life of Muslim communities in Sydney and New York.

**Hanifa Deen** is an award-winning author who writes narrative non-fiction and lives in Melbourne. Her books include: *Caravanserai: A Journey Among Australian Muslims*, for which she won a NSW Premier's Literary Award; *Broken Bangles*, short listed for a WA Premier's Award, *The Jihad Seminar* (UWA Press) short listed for the Australian Human Rights Commission, Literature Non-Fiction Award; *Ali Abdul vs. The King*, (UWA Publishers, 2011). Her latest book *On the Trail of Taslima* was released in June 2013. Deen has also served as a Hearing Commissioner, Human

Rights and Equal Opportunity Commission of Australia, and also on the Board of Directors, Special Broadcasting Services (SBS). She was the Director of Community Education at the Victorian Ethnic Affairs Commission as well as the Deputy Director at the Multicultural Affairs Commission WA. Currently she is Chair of the Institute of Cultural Diversity and is also the Editor of *Sultana's Dream*, an online magazine written and produced by Australian Muslim women which she founded in 2011.

**Douglas Ezzy** is an Associate Professor of Sociology at the University of Tasmania. His research is driven by a fascination with how people make meaningful and dignified lives. His books include *Qualitative Analysis* (2002) and *Teenage Witches* (2007, with Helen Berger).

**Dr Anna Halafoff** is a Lecturer in Sociology and a member of the Centre for Citizenship and Globalisation, at Deakin University. Previously, Anna was a lecturer at the School of Political and Social Inquiry, and a researcher for the UNESCO Chair in Interreligious and Intercultural Relations – Asia Pacific, at Monash University. In 2011, Anna was named a United Nations Alliance of Civilizations' Global Expert in the fields of multifaith relations, and religion and peacebuilding. Her book on *The Multifaith Movement: Global Risks and Cosmopolitan Solutions*, was published by Springer in 2013.

**Stéphane Lathion** was a lecturer at the University of Fribourg in Switzerland and is the coordinator of the Research Group on Islam in Switzerland, (GRIS). GRIS has strong links with the Religions Observatory in Switzerland (ORS) and Lausanne University. GRIS/ORS conducts research and analysis on Islam in Switzerland, proposes training courses for social workers and professionals dealing with

Muslim populations on topics associated with their day-to-day experiences. His recent publications are *Muslims, a threat to the Republic ?* with O. Bobineau (DDB, Paris, 2011), *Islam and Modernity, Identities between City Hall and Mosque* (DDB, Paris, 2010) and *The Swiss Minaret Ban : Islam in Question*, with P. Haenni (Religioscope, Fribourg, 2011).

**Adam Possamai** is Associate Professor in Sociology. He is the current President of Research Committee 22 on the Sociology of Religion from the International Sociological Association and the co-Director of the Centre for the Study of Contemporary Muslim Societies at the University of Western Sydney. He has recently published as an editor, the *Handbook of Hyper-Real Religions* (2012, Brill) and with H. Onnuddottir and B. Turner, *Religious Change and Indigenous Peoples* (2013, Ashgate). He is also the author of *Sociology of Religion for Generations X and Y* (2009, Equinox) and the fiction book, *Le XXIe Siècle de Dickerson et Ferra* (2011, Asgard).

**Sherene Razack** is a full professor in the Department of Humanities, Social Sciences and Social Justice Education, the Ontario Institute for Studies in Education of the University of Toronto. Her research and teaching interests lie in the area of race and gender issues in the law. Her courses include: 'Race, Space and Citizenship,' 'Race and Knowledge Production' and 'Racial Violence and the Law.' Her most recent book is an edited collection with Malinda Smith and Sunera Thobani entitled *States of Race: Critical Race Feminism for the 21st Century* (Toronto: Between the Lines, 2010). She has also published *Casting Out: The Eviction of Muslims From Western Law and Politics*. (University of Toronto Press, 2008), *Dark Threats and White Knights: The Somalia Affair*,

*Peacekeeping and the New Imperialism* (University of Toronto Press, 2004), an edited collection *Race, Space and the Law: Unmapping A White Settler Society* (Toronto: Between the Lines, 2002), *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998,1999, 2000) and *Canadian Feminism and the Law: The Women's Legal and Education Fund and the Pursuit of Equality* (Toronto: Second Story Press, 1991). Dr. Razack is a founding member of the feminist and anti-racist network of scholars *Researchers and Academics of Colour for Equality (R.A.C.E.)*

**Dr Joshua M. Roose** is the Senior Research Officer at the Religion and Society Research Centre at the University of Western Sydney, Australia. He is also a co-convenor of the Migration, Ethnicity and Multiculturalism thematic group at The Australian Sociological Association (2013-2014) and a visiting scholar at the Graduate Centre, City University of New York. His two most recent publications are 'The Special Broadcasting Service and the Future of Multiculturalism: An *Insight* into contemporary challenges and future directions', *Journal of Politics, Culture and Communication*, Vol.41, No.1, 2013 (with Shahram Akbarzadeh) and 'Young Muslims of Australia: Anatomy of a Multicultural Success Story', *The Latrobe Journal*, No.89, 2012, pp.151-163.

**Dr Malcolm Voyce** (LLB (Auck), MA, PhD (Lond), PhD (Macq)) is an Associate Professor of Law at Macquarie University involved in teaching succession law and law and religion. He completed a Doctorate at the School of African and Oriental Studies, London University in 1982 and a second Doctorate from Macquarie University in 2001. Dr. Voyce has published widely on law and religion.

He recently published in *Law & Critique*, *The Journal of Legal Pluralism*, *Journal of Law and Religion* and *The Australian Review of Religious Studies*. Currently he is working on *Foucault and Buddhism* (forthcoming June with Ashgate Press).



## BOOK LAUNCH

Following the Symposium, the Religion and Society Research Centre will celebrate the recent publication of books by staff and members. The event will be launched by Professor Gary Trompf, University of Sydney.

RSVP to  
[e.pearce@uws.edu.au](mailto:e.pearce@uws.edu.au)  
by 28 November.

