Is the concept of religion universalisable?

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I am not speaking here today as an expert on religious studies or Indology. Rather I am speaking as a legal academic with an interest in cultural diversity who has been compelled to reckon with this question because it remains at the presuppositional level in so much of our discussions. What I have to say comes out of the perception that we have different ways of being different (Sen). That view is constantly in tension with notions which assume a universality, which incidentally powerfully inform our legal thinking today, and the application of familiar yardsticks by which the other and his values can be measured. As Edward Said mentions is his *Orientalism* (p. 62):

> [T]he Orient and the Oriental, Arab, Islamic, Indian, Chinese, or whatever, become repetitious pseudo-incarnations of some great original (Christ, Europe, the West) they were supposed to have been imitating.

This implies that 'Orientalism is constrained to describe non-Western cultures not merely in terms of Western culture. It is also forced to do so in a way that effaces the differences between the two' (Balagangadhara 1998: 104). Put another way, we seem to be constructing the other in our own image. For the purpose of this seminar I want to focus on the idea of 'religion' but the underlying problem is found in almost any field of modern intellectual endeavour, especially law. In so doing it is also an effort to challenge the 'intellectual ethnocentrism' (Spickard 1998) which ought to be of vital concern to modern scholarship.

An entry point to the problem I am trying to highlight in this paper can alternatively be located in the context of the problem of 'legal transplants' (Watson). So this is an effort to understand the problem of legal transplants traced through the export and import of the concept of religion. I am arguing thereby the category of religion had been transported from its place of nurture i.e. the West, a culture which has been fundamentally constituted by a Christian consciousness, and transmitted to non-Western cultures, and is now encoded in them with its corollary, the 'secular'. Not only that; we need to be able to extend the concept of legal transplant so as to treat the presence of diaspora non-Western communities within the West as also being involved in receiving the notion of religion and using or manipulating it in their own ways. In fact the two processes are not separate but intermingled with each other in complex ways.

In so arguing, I am indebted to a number of scholars such as Frits Staal, Timothy Fitzgerald, S.N. Balagangadhara, and Jakob de Roover who have explained the same terrain in much more expert ways than I could. I am especially shaken and delightfully disturbed right now after my recent contact with academics from Ghent, Jakob de Roover and S.N. Balagangadhara who have brought new insights into the whole question of religion and secularism, and their claimed universality. Their work is not much referred to in academic writing, and I have only belatedly encountered it

myself, but I am sure that we will soon all be challenged, to the extent that we are willing of course, by the immensity of their scholarship and conviction.

There are several layers to the problematic that I want to discuss. Why is it that in our discussions we focus attention on a few select entities like Judaism, Christianity and Islam, and a few others like Hinduism, Sikhism and Buddhism? These entities are often brought under the title of 'world religions' or 'big traditions' which are worthy of being represented on intellectual maps, and in textbooks and syllabi on religion. In fact, if one examines the Census categories since 2001, only these few are listed as religions, and are now indeed used as standard in ethnic monitoring forms in different contexts. We know also that the religion question in the British Census was created specifically in response to the need to know about the demographic situation of *South Asian* minorities (Aspinall). It seems that we care little for Chinese, Japanese and African traditional religions, except in so far as we could satisfy ourselves that some Chinese and Japanese people would be content with ticking the 'Buddhist' box, and if they did not, they would not in any case make a fuss out of it. Africans are also not expected to make claims for recognition about their traditions and are, in fact, generally assumed to be either Christian or Muslim, ignoring the fact, for example, that the debate on so-called 'traditional religions' is quite alive in Nigeria.

At one level, it would not really matter if we consider that not all categories in the Census are applicable to all groups of people or to all cultures equally and nor should we try to squeeze square pegs into round holes – since people are after all different in different ways. But I do not wish to defend the idea that non-recognised traditions ought to be treated as religions, although the case for studying and thinking about them must be made. Rather, I want to argue that an exercise like the Census and the whole concept of having a category like religion as analytically valid can and should be looked at with some serious concern and should be tackled at a more fundamental level of questioning. Indeed, a central premise of my argument is that the category of religion has been long assumed to be of universal applicability – everyone has a religion or, put perhaps more cautiously, every culture has a concept of religion, even if not everyone in that culture may share its doctrines and beliefs. An exercise like the Census therefore, in powerfully deploying the idea that religion is a valid cross-cultural category, and that one can be placed into named religious group categories, certainly belies the presupposition that something tangible in a social scientific sense lies behind the exercise. As hinted, it may just be the case that we want to know more about the South Asians in our midst but are afraid of being accused of being 'racist' if we were to ask the religion question only of South Asians.

Modood (2005) has written that the main proponents for including a religion question in the Census were Muslim spokespersons and organisations. Indeed it is arguable that we might not be having this series of workshops if it were not for what can be termed the 'Muslim question' in the West right now. 'Religion' has become a code for the fact that we really want to speak about Muslims and to imagine how we can accommodate them within the legal and other official systems. To the extent that that is the case, we have become actors in the process that Modood (2005) has already described of the Muslim challenge to prevailing notions of official British multiculturalism and of refashioning Britain's notions of 'multicultural citizenship'.

Something similar may also be being implied by the frequent reference to religion as a seemingly neutral concept in fast developing statutory laws: the Human Rights Act 1998 which brings in the ECHR (with its protection of thought, conscience and religion), the Racial and Religious Hatred Act 2006 (making threatening and

abusive behaviour on the basis of religion an offence) and the Divorce (Religious Marriages) Act 2002 (with its mention of 'prescribed religious usages'), the Anti-Terrorism, Crime and Security Act 2001 (adding religion to racially aggravated offences). Some of these laws, like the Human Rights Act 1998 are of course tied in to a much larger agenda of human rights lawmaking where religious issues are just one factor in a much bigger corpus of norms. Muslims have however been at the forefront of using the freedom of religion provision in litigation. In the case of the Divorce (Religious Marriages) Act 2002 it is explicitly stated that the legislation primarily contemplated making provision for Jewish 'chained wives', but it also then included a general provision about divorce according to 'prescribed religious usages', without mentioning Muslims (or Catholics) specifically. The other two pieces of legislation were I think more directly linked to Muslim concerns, although a general ground of religion has been used. Therefore, rather than being seen to favour or legislate for one group - in Europe we are, after all, not willing to countenance personal law systems - it helps to ground concessions to ethnic or religious minorities in more generic text. By contrast, the Archbishop of Canterbury, earlier this year, was more specific about the need to accommodate Muslim legal concerns, although his speech drew almost entirely on the more general need for religious groups to be respected within a secular framework.

Where is all this leading? Well, to answer that we have to go a bit further back before going forward again. Balagangadhara and his colleagues have argued that Christianity is a 'prototypical instance of religion'. Am I in citing this arguing that there is some sort of essential difference between religious and non-religious traditions? Yes. Why is that? De Roover explains:

1. There is a crucial fact about the intolerance of Christianity: it has had many rivals throughout its history, but it has singled out only some of these as religious rivals. At various points in time, for instance, monarchy and democracy have been rivals to particular Christian movements. Yet, Christianity did not identify these as rival religions, while it did so where it concerned Judaism and Islam, the ancient Roman *religio* and the Hindu traditions in India. It has also identified itself as religion. Which properties make Christianity identify both itself and some others as religion? These are not necessarily the properties of religion, but they do give us the Christian "concept of religion."

2. Not only Christianity identified Judaism and Islam as rival religions; the latter two also distinguished both Christianity and each other as rivals under the same description. Moreover, they recognised themselves as religions under that same description, whatever word they may have used.

3. Christianity, Judaism and Islam also identified the same others as rival religions, that is, the ancient Roman *religio* in the case of Christianity and Judaism; the Indian traditions in the case of Christianity and Islam.

4. Going beyond the confines of the "Semitic concept of religion", neither the Roman *religio* nor the Indian traditions identified Christianity, Judaism and Islam as religious rivals. They <u>did not recognise themselves in the description given by the latter</u>. They simply failed to understand how they could be religious rivals to these others.

Which properties caused Christianity, Judaism and Islam to identify themselves, each other and the same others as religious rivals? The descriptions invoked a set of beliefs or doctrines that referred either to "the true God" or to "false gods." On the one hand, Christianity, Judaism and Islam identified themselves and each other as religions through the isolation of a core of doctrines about God. On the other hand, they singled out the Roman *religio* and the Indian traditions as false religions by describing their traditional practices as the expression of false beliefs or doctrines about their false gods.

To focus on Christianity, its role has been fundamental to the history and culture of the West, such that it is possible to argue that the West is indeed a 'Christian culture', or at least a culture significantly shaped by Christianity. Not only that. Within Christianity there is a simultaneous dynamic of proselytisation and secularisation such that there was a move from the idea of monasticism to a church of all without priests with the Reformation and the rise of Protestantism. Together with this expansion of Christianity (the universalisation dynamic) there was a striving to reach as formal a level as possible by a progressive ridding of its specific features to become an increasingly simple and variable account. The basic conceptual structures of its account are retained, but these are dressed up in an alterable secular garb, which assist in further universalisation.

Today concepts such as equality and toleration, for instance, have come to be assumed to be entirely secular concepts. However, as Waldron (2002) notes for equality and as de Roover notes for toleration, they have their roots in the Protestant thinking of the Reformation. Fast forwarding, these concepts have come to be deployed as a response to the multiculturalisation of Britain. Note the use of the concept in the now classic definition of integration by Roy Jenkins, and note the rise of equality law. It can be argued that both are manifestations of the playing out of a dynamic already established within a culture that is significantly constituted out of Christianity as a religion. Similarly the separation of a public secular sphere from a private sphere where religious freedom should prevail goes back to this same process of expansion after the revolt against Rome. But, in turn, while the religious backdrop behind the splitting of the public and private realms has been shed, particularly in post-Enlightenment liberal political and legal philosophy, the essential structure of this thinking has not been disturbed significantly. It is arguable that liberal equality, tolerance and secularity are themselves grounded in theological premises albeit now having taken on an ostensibly non-religious garb.

So what of the concept of religion itself? We have already noted how within an essentially religious framework Christianity presupposed that there were other 'rival' religions, and it was only that these were somehow imperfect versions of the one true religion. Islam and Judaism share similar worldviews. As the West began to increasingly come into contact with the non-Western cultures, there was a significant question as to whether these cultures also shared or possessed a concept of religion. The early explicitly religious classification was of those others as not having the same type of religion but 'religion' as a descriptive term was nevertheless retained. However, as Indology and its genus Orientalism developed into the social sciences a 'secular' theology began to ascribe the character of religion to non-Western cultures also. Thus the belief in the universality of religion was retained, even though it was evident to some of the most brilliant minds of the West that these non-Western cultures did not share the assumptions of Christianity, Judaism or Islam.

Tambiah (1990) already laid the foundation for a reading of the same development in anthropology in a series of lectures given in 1984 and later published

as *Magic, Science, Religion and the Scope of Rationality*. He outlined the emergence of the Protestant view of Catholic rites as being based on sacramental magic, preferring instead to emphasise God's sovereignty and divine providence as manifested in daily happenings in the world, for which only truly the religious acts of prayer and supplication could act as intercessory, while magical acts were seen as attempts to manipulate the divine. Protestant theologians, argued Tambiah, laid out a distinction between prayer and spell, the former belonging to true religion and the latter to fake religion; 'those theologians evinced a characteristic Protestant rationalism that saw religion first and foremost as a system of belief' (1990: 19). In the eighteenth century, Enlightenment rationalism carried this tendency further and proposed an intellectual conception of religion as an object of study (1990: 31). Tambiah went on to argue that the distinction between prayer and spell was adopted by later Victorian theorists like Tylor and Frazer and given a universal significance as both historical and analytical categories useful in tracing the intellectual development of mankind from savagery to civilization.

It was obvious to many thinkers that belief in God, a doctrine or creed, Church, etc. were not relevant to those non-Western cultures, but there was yet an insistence that they had religion; the main problem then was to expand the concept of religion to encompass those others. Yet the question in what way the label of religion could be justified as applying to such cultures was largely evaded. We are back to what Said has said about finding in the 'other' some way of recognising oneself. Perhaps a secular intellectual development of religion as an analytical category, and as an essential property of cultures, can be found in Durkheim. Durkheim can be singled out here because he is arguably one writer who does not acknowledge his debt to religious categories but ends up being constrained by them (Balagangadhara 1994: 206). In *Les formes élémentaires* (1912) he says: 'Religion is a unified system of beliefs and practices relative to sacred things, that is to say separate, forbidden, beliefs and practices which unite all who adhere to it in the same moral community' (Jones 2001: 206). Thus, ostensibly, the concept of God is abandoned in an effort by Durkheim to reject the classical and theological definitions of religion which centre around the idea of God. Balaganadhara (1994: 16n, 253) notes that his definition was arrived at so as to accommodate Buddhism which does not have a God concept, and after all his aim was to establish the existence of religion among indigenous Australians (also see Jones 2001: 204). Religion is always associated with a cohesive social group; it is invariably a church, which is to say a community of believers (Parkin 1992: 46); the division between sacred and profane, which is central for Durkheim, presupposes a religious framework; and a heavy dose of belief is essential for Durkheim's conception. It is belief that is a constituting factor of religion; by definition sacred things represent that which is believed in: 'the sacred character is added to them by belief' (Jones 2001: 202-207).

So much for the trajectory of the concept of religion as developed by Western thinkers. We have so far noted the centrality of Christianity and its concept of religion as well as the dynamic of universalisation and secularisation to which it gave rise. We have noted also that religion was used to describe the traditions of non-Western peoples. It is interesting to now examine also what happened as a consequence of the contact between Western and non-Western cultures and, more precisely, how the reception or transplantation of the Western concept of religion changed the thinking of people who received it. Frits Staal's work on ritual and mantras has provoked fresh debate in a series of fields related to Asian studies and within his work he has also

critiqued the dominant framework of religious studies and anthropology as applied to Asian contexts. Staal (1996: 393) writes:

> The inapplicability of Western notions of religion to the traditions of Asia has not only led to piecemeal errors of labelling, identification and classification, to conceptual confusion and to some name calling. It is also responsible for something more extraordinary: the *creation* of so-called religions. This act was primarily engaged in by outsiders and foreigners, but is sometimes subsequently accepted by members of a tradition. The reasons lie in the nature of Western religion, which is pervaded by the notion of exclusive truth and claims a monopoly on truth. It is professed by the "People of the Book" in the apt phrase the Koran uses to refer to Jews, Christians and Muslims. In most parts of Asia, such religions do not exist, but scholars, laymen and Western converts persist in searching for them. If they cannot find them, they seize upon labels used for indigenous categories, rent them from their original context and use them for subsequent identification of what is now called a "religious" tradition. Thus there arises a host of religions: Vedic, Brahmanical, Hindu, Buddhist, Bon-po, Tantric, Taoist, Confucian, Shinto, etc. In Asia such groupings are not only uninteresting and uninformative, but tinged with the unreal. What counts instead are ancestors and teachers – hence lineages, traditions, affiliations, cults, eligibility, and initiation – concepts with ritual rather than truth-functional overtones.

We have noted already how doctrine and belief were and are a central component of (expanded concept of) Western religions. On this issue Staal writes (1996: 389-390):

> Doctrines and beliefs are regarded as religious when they involve belief in a god or gods, in paradise and hell, faith, salvation, and similar religious concepts that are characteristic of the three monotheistic religions of the West. But now we meet with a difficulty. It is gradually becoming more widely known that most of the other "religions" of mankind are deficient in one or another respect when studied within this perspective: in Buddhism and Jainism there is no belief in a god or gods; in Taoism immortality is no located in a hereafter; in Yoga, Mīmāmsa and several other Indian traditions, gods are accessories or otherwise subordinate; in Confucianism none of these concepts or ideas exist in even remotely similar forms. The main reason, however, that Asian traditions do not fit the Western pattern of religion is that their emphasis is not on doctrines or beliefs, but on ritual mysticism or both. In so far as doctrines or beliefs are mentioned at al, they are not primary but added: they are of the nature of secondary interpretations, often rationalisations and generally after-thoughts. Not infrequently the doctrinal dimension, allegedly incorporated into a sacred book, has been created in response to Western demands and expectations. This is in accordance with the fact that terms for religion that refer to its doctrinal content are relatively rare in the languages of Asia and are invariably of a recent date…in India the term dharma has been used in the sense of "religion" in expressions like *hindū dharma, bauddha dharma, jaina dharma* only during the last few centuries. The same holds for the Chinese *tsang-chiao* and the Japanese *shūkyō*… The concept of "Hinduism", incidentally, came up in the thirties of the nineteenth century in English literature on India…

Staal thereby provokes the question of the transformation of Asian traditions into religions which previously would not have been recognised as such.

We can concentrate on one example here - that of Tat Khalsa Sikhism - to concretise the discussion of the interaction between colonial writings and their significance for the reconstruction of Indian traditions into 'religions'. Ballantyne (1999) provides just such an explanation. He starts off with the observation that Europeans tended to construct images of Indian religions in the mould of Christianity and stresses that the 'isms' of Hinduism and Sikhism were largely the product of the European intellectual frameworks of the late Enlightenment period. British interpretations of popular Hinduism and common Protestant visions of Christian history gave rise to the reading of Nanak and subsequent Gurus as a 'reformers'. The view of Sikhism as a Hindu reformation breaking away from the Hindu polytheism, idolatry, superstition and caste sensitivities thereby became quite popular, and paralleled the Protestant reform of Catholicism, and coincided with the significance of Protestantism for the construction of British national identity at the time. This view never remained uncontested however since the very existence of Sikhism could also present an impediment to Christian proselytism and critiques of Sikhs from that perspective provided a call to arms for the Sikh intelligentsia who had begun to delineate a distinctly Sikh identity as a clean break from the Hindu tradition. The Orientalists' tropes that came about to describe Sikhism have subsequently provided the basis for a powerful narrative for developing a coherent Sikh identity, as distinct from Hinduism, and is particularly evident in the subsequent activities of the Tat Khalsa movement. This story can be repeated for the reconstruction of Hinduism and Jainism in India as well as Buddhism in Sri Lanka as distinct ethno-religious identities (Brekke). As Staal notes, elsewhere in Asia too there was an expending of energy in creating domestic equivalents of 'religion' where previously there had been none to match the Christian paradigm.

Given these kinds of historical developments associated with the Western Christian framework and its concept of religion, and its application to and transplantation in non-Western cultures, resulting in extremely odd, even authoritarian consequences, some are now calling for a serious revision in basic categories with which to work. Fitzgerald (2000: 129) argues that 'The concept of religion is in my view analytically redundant'. Staal has said that if the concept is to be retained it can really only be useful for the study of (his) Western religions, but it could equally be abandoned in favour of more interesting concepts such as mysticism and ritual. Balagangadhara argues that new ways of understanding and explaining Indian traditions need to be developed which are not premised on 'religion' and its post-Enlightenment non-identical twin, the 'secular', since either category does not meet with understanding within the Indian context.

Discussion points

1. If we accept that underlying the concept of 'religion' are culture specific attributes, what should we do about the continued deployment of the concept to other cultures? Some responses to this problem have already been noted. On a terminological level, I have, together with others, used 'traditions' to refer to the non-Western cultures, but how far is that satisfactory?

2. Given that a transformation along the lines of Westernisation has occurred to some extent in the understanding of non-Western elites of their own traditions, what is the impact of that transformation and how is that impact being transplanted and reconstructed in diaspora where urgent legal problems continue to arise?

3. Are these contests for recognition effectively presenting rebranded, Westernised versions of non-Western traditions before Western legal systems and what should those legal systems' approach be to such claims?

4. If the concept of the 'secular' sphere is itself a product of the reformation of religious categories in Christianity, how far, if at all, can that concept be deployed to understand developments in the reconstruction of non-Western traditions?

5. Much of my discussion excludes Islam, although its own relationship with Christianity and Western culture is fiercely contested. Can we arrive at some sort of conceptualisation to understand reworkings of Islam in light of its dialectic with Christianity and Western culture, thereby to understand the kinds of claims presented to legal systems in diaspora?