"Race" and "Religion" in the Law of Migration: Comparing E.U. and U.S. Contexts

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I. INTRODUCTION

On both sides of the Atlantic, the law of migration is increasingly contested, not only in humanitarian terms. Migration law operates through categories that determine who is or is not admitted; who is detained, who is deported, who should stay, and who, tragically in some instances, dies. Chief among these are "race" and "religion," categories that are rarely named—let alone acknowledged or analyzed—in legal scholarship on migration. The scale of that contestation makes this silence all the more urgent.

According to the United Nations High Commissioner for Refugees, the number of people who have been forced to flee across the globe is unprecedented: more than 100 million people—1 out of 70—have been displaced.[1] While only very few of these people seek safety in the E.U. or the U.S., the number

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[1] See United Nations High Commissioner for Refugees, "Figures at a Glance," https://www.unhcr.org/about-unhcr/overview/figures-glance.

of deaths, detentions, and deportations is on the rise on both sides of the Atlantic. The law of migration is being hardened, criminalizing both people on the move and people who accompany people on the move.[2] Human rights violations by governmental and non-governmental organizations, including pushbacks, are well documented.[3] On both sides of the Atlantic, migration management is ripe with dehumanization.

In this Symposium Issue we explore the racial and religious discrimination of people on the move to examine dehumanization in E.U. and U.S. migration law past and present. If racism has to do with dehumanization, then it is imperative to investigate the racialization and the religionization of the hierarchies that determine who is and who is not defined as "human." How are "race" and "religion" conceptualized in the law of migration? Where are they connected by the law? Where are they disconnected by the law? And what normative frameworks shape the intersection of race and religion in the law?

II. ANALYTICAL FRAMEWORKS

In order to ask and answer questions like these, the articles collected in this Symposium Issue draw on two analytical frameworks: studies in critical race and in critical religion. Critical race theory, which emerged in the United States, encompasses the broader intellectual movement focused on examining the

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[2] Juliet Stumpf, "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 46:2 (2026): 367–419, coined the concept. For a specific focus on the U.S., see César Cuahtémoc García Hernández, *Creating Crimmigration*, 2013 BYU L. Rev. 1457 (2014). For a specific focus on the E.U., see Maartje van der Woude, Vanessa Barker, and Joanne van der Leun, "Crimmigration in Europe," *European Journal of Criminology* 14:1 (2017): 3–6.

[3] For the U.S. and other parts of the Americas, see Americas: Pushback Practices and Their Impact on the Human Rights of Migrants and Refugees, Amnesty International, https://www.amnesty.org/es/wp-content/uploads/2021/05/AMR0136582021ENGLISH.pdf. For the E.U., see the reports of the Border Violence Monitoring Network, https://borderviolence.eu/.

connections between race, racism, and power.[4] Rather than analyzing law in isolation, critical race theory takes an interdisciplinary approach, drawing on history, sociology, cultural and ethnic studies, political science, and other fields to understand how legal systems operate to subordinate people of color to promote white supremacy. Its central tenets include that racism is not an occasional deviation from an otherwise just system but is instead deeply woven in the legal order itself; that formal legal equality has proven insufficient to produce meaningful racial justice; and that reforms benefiting racially minoritized individuals and communities tend to gain traction only when they simultaneously serve the interests of white elites or the principle of "interest convergence."[5]

Research in critical religion makes a similar case about the category of religion. Rather than treating "religion" as a self-evident universal category that is neutral rather than normative, critical religion scholars argue that the category is a historical and political construction that emerged out of European colonialism. It has been entangled with the conception of Europe as Christian.[6] Just as critical race theory reveals race to be not a biological fact but a socially and legally constructed category deployed to organize hierarchies of power, critical religion reveals that what is counted as "religious" and as "non-religious" is similarly constructed and contested in ways that structure societies across the globe. Even in its secular and post-secular iterations, it privileges the Christian over the non-Christian as the implicit norm against which all

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[4] See Kimberle Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, *Critical Race Theory: The Key Writings That Formed the Movement* (New York: The New Press, 1995).

[5] See Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980).

[6] See David Chidester, *Empire of Religion: Imperialism and Comparative Religion* (Chicago: The University of Chicago Press, 2014)

other traditions are measured.[7] The result is a framework that marginalizes "other" religions while presenting itself as neutral, in the same way that formal equality masks racial subordination that CRT underscores.

Taken together, these two analytical frameworks allow us to engage not only what the law says about race and religion, but what race and religion do within the law of migration, often without acknowledgment or analysis.

III. MIGRATION AS A MAGNIFYING GLASS

Migration, we argue, can be taken as a magnifying glass through which the impact of the categories of race and religion become visible. The border—whether confronted at the moment of crossing or after the moment of crossing in the "hostile environments" constructed on both sides of the Atlantic[8]—is a site where abstractions of race and religion are rendered concrete: in the face of a border or asylum officer, in the forms for a credibility assessment, in the fences around the detention center. Who is or is not deemed a credible refugee? Whose conversion to Christianity is considered authentic or inauthentic? And who is seen as a threat to society? These are not reducible to administrative or analytical questions. They are questions filled with racial and religious normativities even, and perhaps especially, when the law insists otherwise. Migration, then, presents a premier site for the construction as well as the contestation of the very idea of a nation that defines insiders and outsiders through militarized and mental reinforcements of our sense of belonging.

The transatlantic comparison that connects the articles collected in this Symposium Issue resists the tendency to treat each jurisdiction's migration law as a

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[7] For succinct summaries of the debate, see Jayne Svenungsson, "The return of religion or the end of religion? On the need to rethink religion as a category of social and political life," *Philosophy and Social Criticism* 46:7 (2020): 785–809 and "Religion and secularity as supersessionist categories," *Journal for Religion, Society and Politics* 7 (2023): 751–763.

[8] See Nira Yuval-Davis, Georgie Wemyss, and Kathryn Cassidy, *Bordering* (Cambridge: Polity Press, 2019).

purely domestic affair, shaped only by its own history. When analyzed against and alongside each other, scholarship from both sides of the Atlantic reveals shared racial and religious conceptions of who does and who does not belong to society. The pieces in this Symposium Issue illuminate the connections between E.U. and U.S. legislation, revealing common histories and common hermeneutics. Read together, they open space for comparative interpretations and critical insights on related topics, such as between the E.U. Migration Pact and the U.S. plenary power doctrine and the extent to which they are grounded on the sovereign authority of states to control their borders; the Dutch conversion hearing and the Trump administration's selective protection of Christians abroad and how both processes aim to determine and construct who is an "authentic" Christian; and the Polish asylum suspension and American deportation policy and the ways in which they both deny humanitarian relief for refugees and asylum applicants.

Finally, the scholarly inquiry collected in this Symposium Issue is interdisciplinary. Law alone cannot fully account for how race and religion operate in the regulation of migration. Located in the increasingly interdisciplinary field of law and religion, the articles draw on theology, philosophy, history, sociology, cultural studies, and political science. Such an interdisciplinary approach reflects the complexity of the issues we are examining. We need a conversation that cuts across enrooted disciplines, entrenched debates, and established denominations.

IV. OVERVIEW OF THE ARTICLES

Our conversation is opened by ***Dianne van den Bosch*** and ***Ulrich Schmiedel***'s "Neutralizing Justice: 'Race' and 'Religion' in the E.U. Migration Pact." The European Union's new Migration Pact is a set of policies that aims at unifying the E.U.'s approach to forced migration. Van den Bosch and Schmiedel analyze the ethical and political assumptions that the Pact makes to present the E.U. as a colorblind arbiter between the demands of migrants and the demands of member states. This self-presentation, they argue, allows the

E.U. to ignore how race and religion continue to operate as categories that draw the distinction between "deserving" and "undeserving" people on the move. The article suggests that racial and religious discrimination impact the law of migration regardless of whether "race" and "religion" are acknowledged by the law. Drawing on Magda Teter's and Anya Topolski's discussions of the intersection of these categories,[9] Van den Bosch and Schmiedel discuss Islamophobia as the anti-Muslim racism on which the EU draws to justify its policies.

The connection between "race" and "religion" that Van den Bosch and Schmiedel outline in their article has been crucial for imaginations of the nation-state on both sides of the Atlantic. This imagination is explored in the following two articles, covering a case from the U.S. and a case from the E.U. ***Silas W. Allard*** explores the 1889 Supreme Court decision *Chae Chan Ping v. United States*.[10] For the imagination of a nation-state like the United States—founded, as it has been, through settler colonialism—migration is a continuous irritant. Only through the policing of the borders of "America" can the history of the settlers' own migration be erased so that they come to stand as the nation's rightful owners. Characterizing the plenary power to exclude, established in the 1889 Supreme Court decision against Chae Chan Ping, as a founding of the United States, Allard argues, sheds new light on the campaign for mass deportation today. This campaign is legitimated by the appeal to an imaginary that is constructed through racial and religious logics and along racial and religious lines. The nation state is founded and re-founded through this campaign, but it could be founded otherwise.

Adopting a *longue durée* approach to the telling and re-telling of national history in the imagination of Poland, ***Ryszard Bobrowicz*** argues that the category of religion operates as the main racializing marker in

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[9] Magda Teter, *Christian Supremacy: Reckoning with the Roots of Antisemitism and Racism* (Princeton: Princeton University Press, 2023); Anya Topolski, "The Race-Religion Constellation: A European Contribution to the Critical Philosophy of Race," *Critical Philosophy of Race* 6, no. 1 (2018): 58–81, https://doi.org/10.5325/critphilrace.6.1.0058.

[10] Chae Chan Ping v. United States, 130 U.S. 581 (1889).

the Polish public square, pitting Catholicism against Islam and Islam against Catholicism. According to Bobrowicz, it is precisely the essentialization and exploitation of a constructed contrast between religions that provides the cultural, political, and legal justification for the recent suspension of asylum that props up Poland's imperialistic ambitions today. While Islam continues to be racialized, the differences between Christians—Catholics and non-Catholics—that used to stratify Polish society have lost salience. Yet the racialized differences that they founded continue to determine the social status of people inside and outside the country, thus re-imagining Poland.

The parallels between these two cases are striking. What stands out when it comes to the connections between race and religion in the law of migration is that they are fueled by a particular and pernicious construction of Christianity. This construction is what is at stake in the following articles, again covering a case from the U.S. and a case from the E.U. ***Laura Alexander*** discusses the concerns with "anti-Christian bias" under the current presidency of Donald J. Trump. Drawing on empirical explorations that show how white Americans tend to conceive of Christianity as white and of whiteness as Christian, Alexander discusses how the categories of race and religion coalesce in current U.S. immigration policy. She argues that racist stereotypes influence who is and who is not counted as "Christian" in the eyes of the law. Under the Trump administration that has vowed to protect Christians across the globe, this racist construction of Christianity leads to immigration policies that harm Christians who fail to fit into the imagined mold of a white, Christian, "true" American.

Dorottya Nagy also analyzes the construction of "true" Christianity. She offers a detailed discussion of the assessment of conversions to Christianity in the context of asylum applications in the Netherlands. Nagy argues that the conversion story that is assessed for credibility during a hearing can never be the story of the asylum seeker alone. The hearing creates a particular subjectivity ("the convert") and a particular objectivity (the system judging "the convert"). The applicants for asylum are not asked what they believe or how what

they believe might put them in danger if they were deported to the countries from which they came. Instead, the system revolves around the question of "How can we be convinced that you became a true Christian?" Although she avoids the concept of race, Nagy captures the essentialization of Christianity that lies at the core of processes of racialization through religion. Both the U.S. and the E.U. case, then, clarify that constructions of Christianity fulfill functions in the law of migration, regulating admittance. And this function can only be fulfilled if Christianity is essentialized.

Of course, such essentializations impact both what is imagined as Christian and what is imagined as non-Christian. This is picked up by the following and final two articles—with a focus on Islam and Islamophobia. ***Maurits Berger***'s point of departure is a disciplinary preference in the definition of Islamophobia, where some scholars point to "racism" (as opposed to "discrimination") and some scholars point to "discrimination" (as opposed to "racism"). Stressing the significance of concrete national contexts, Berger surveys a central shift in the public debate about Islam in the Netherlands—a shift from what he calls "social-political" to what he calls "cultural-religious" values. Under the weight of centuries of anti-Muslim racism, this shift enables a sustained suspicion against Muslims or perceived Muslims, even if they are fully integrated into Dutch society in social and political terms. In the public debate about Islam in the Netherlands, then, there are mechanisms at play that go beyond discrimination. According to Berger, anti-Muslim racism is a more focused and more fitting concept to name these mechanisms than discrimination, both with a view to analysis and with a view to advocacy. Yet, "discrimination" tends to be favored in the legal system.

In "Make the World White Again: Notes on Race, Religion, and Immigration Across the Atlantic," ***Farid Hafez*** takes a more expansive and explanatory view of racism, theorizing "whiteness" as a socially constructed category that serves structures of domination. Exploring the entanglements of immigration policy with the politics that the Trump administration is pushing

both inside and outside the United States, Hafez draws on Dylan Rodríguez' concept of "white reconstruction" to capture the current political moment.[11] Crucially, Hafez contends that this reconstruction happens on both sides of the Atlantic, envisioning the creation of the world in "the image of the White Christian Man." In his decolonialist discussion of the policies and proposals that push the turn to the far right in European and American contexts, Hafez offers a provocative reminder that white supremacist sentiments about race and religion are shared on both sides of the Atlantic.

Hafez brings the conversation in this collection full circle. The articles move from current immigration policies through concrete constructions of the nation-states that are predicated on racialized and religionized contrasts between insiders and outsiders back to current immigration policies. The responses by ***Jennifer Koh*** and ***Perry Dane*** intervene in the construction of this very contrast. Summarizing key terms and key themes that emerged throughout the conversation, they suggest that religion can make a difference. Religion has the potential to connect people across racial differences, calling for a humane treatment of people on the move. As Koh reminds us, "the production of racial hierarchy involves many inputs, which include religion," which is a conclusion that cuts both ways. However, precisely because religion is implicated in the production of racial hierarchy, it also retains the capacity to unsettle it. "While this symposium casts a critical eye towards the operation of Christianity as a dominant religion," Koh suggests, "the papers hint at glimmers of hope that lie within the core commitments of the faith." Dane identifies where those glimmers come from. If we are rightly outraged by the dehumanization of people on the move, he reminds us, it is "in part because of a complicated heritage that both invented the worst forms of human oppression and read a Bible that, along with its own xenophobia, articulated care for the stranger." The very tradition that enables exclusion also demands accountability for it.

Given how deeply religion is entangled in the

[11] Dylan Rodríguez, *White Reconstruction: Domestic Warfare and the Logics of Genocide* (NYC: Fordham University Press, 2021.

perception and the production of racialized difference, it will take a lot of historical and hermeneutical labor to make the call of these core commitments heard under current transatlantic conditions. In fact, any call to action needs to reckon with the fact that scholarly conversations on race and religion in the law of migration escape simple or straightforward conclusions.

V. CONCLUSION

The articles collected in this issue resist easy resolution. Together, they demonstrate that race and religion are not incidental features of migration law but are constitutive of it, shaping who is seen as human or as less than human, which in turn determines who is and who is not granted protection. We offer three conclusions from this conversation.

First, our conversation demonstrates that migration works as a magnifying glass through which to track the operation of race and religion in law. At the border and after the border crossing, the abstractions that scholars debate in conferences and classrooms have become administrative realities. Serving either as a tool for protection or as a tool for power, migration law does more than merely reflecting the racial and religious hierarchies of humanity. It produces and reproduces them in a way that promotes the dehumanization of people on the move.

Second, our conversation demonstrates that race and religion are not parallel categories that happen to intersect. They are entangled, both historically and hermeneutically. The Islamophobia that runs through migration regimes on both sides of the Atlantic offers perhaps the most compelling evidence of the entanglement of race and religion in the construction of "humanity" today.[12] But not only when it comes to Islamophobia, processes of racialization and religionization are overlapping.

Third, and perhaps most sobering, our conversation demonstrates that racial and religious discrimination

[12] For a helpful conceptual account of social construction in this context, see Tommy Lynch, "Social construction and social critique: Haslanger, race, and the study of religion," *Critical Research on Religion*, *5*:3 (2017): 284–301.

are so deeply ingrained in the legal imagination that they operate largely at the level of the subconscious. The entanglement of race and religion is the air we breathe, so to speak, structuring our societies and our scholarship. On both sides of the Atlantic, it rests on centuries of white Christian supremacy that shifts its shape under secular and post-secular conditions.

Where, then, do we go from here? The honest answer is that our Symposium Issue offers no solutions. Our goal has been exploratory and explanatory, examining how race and religion operate to dehumanize people on the move through the law of migration. Yet this examination, at least implicitly, points towards what can be done. The historical and hermeneutical accounts that trace the construction of race and religion in the law of migration highlight the contingency in imaginations and re-imaginations of the nation-state on both sides of the Atlantic. These constructs are malleable. While this malleability allows them to adapt to changing circumstances, it also makes clear that the law of migration could have been—and should have been—formulated otherwise. In terms of religion, the construction of the contrast that pits Christianity against Islam and Islam against Christianity to prop up white supremacy can be interrupted by pointing to and promoting multi-faith coalitions that have countered this very construction past and present.[13] In these moments of interruption, a turn from colorblind to corrective justice comes into view as an actual ethical, political, and indeed legal possibility. New understandings of humanity can come into view.

These moments of interruption are all we have. Given what is going on in the E.U. and the U.S. today, it is hard to accept that they might have the potential and the power to promote change. But detecting the cracks in the dehumanization that runs through the law of migration on both sides of the Atlantic is a way—perhaps the only way—to create openings for new imaginations of a transatlantic future.

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[13] See the contributions to *Living in a World of Neighbours: Activists and Academics in Conversation about Multi-Faith Refugee Relief*, ed. Ryszard Bobrowicz, Anna Hjälm, and Ulrich Schmiedel (Eugene: Pickwick, 2025).