Freedom, Salvation, Redemption

Theologies of Political Asylum

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■ **ABSTRACT:** The politics of religious asylum is ripe for reassessment. Even as a robust literature on secularism and religion has shown otherwise over the past two decades, much of the discussion in this field presumes that religion stands cleanly apart from law and politics. This article makes the case for a different approach to religion in the context of asylum-seeking and claiming. In the United States, it suggests, the politics of asylum is integral to the maintenance of American exceptionalism. Participants in the asylum-seeking process create a gap between Americans and others, affirming the promise of freedom, salvation, and redemption through conversion not to a particular religion or faith but to the American project itself. This hails a particular kind of subject of freedom and unencumbered choice. It is both a theological and a political process.

■ **KEYWORDS:** American exceptionalism, law and religion, political theology, religion and politics, religious asylum, religious freedom

In light of the cultural and sociological complexities which inhere in defining a practice as a religion, or determining whether persecutors consider it as such, a factfinder is encouraged to seek out the assistance of professionals with relevant expertise on the issue.

—Karen Musalo, “Claims for Protection Based on Religion or Belief”

To be saved is to be made “religious” in the proper way within a properly ordered secular space; those who cannot or who refuse to enter this “order of things” must be annihilated for the sake of the Kingdom.

—J. Kameron Carter, “An Unlikely Convergence”

Asylum and the Limits of Law

Religion is among several protected categories in US and international refugee law.¹ Asylum courts and bureaucracies regularly adjudicate questions involving religious identity, conversion, and persecution (Oraby 2015). Experts like Karen Musalo, whose cautionary advice to religious asylum factfinders is cited above, prioritize international legal instruments and professionals with relevant expertise (Good 2007). Winnifred Fallers Sullivan, however, has described such attempts to define religion for legal purposes as inherently discriminatory (2018). Moreover, as Sullivan has emphasized, it is not only religion but also law that is ripe for interrogation: “We have mostly accepted the exceptionalism of US law. What we need to do now is see that law is

as radically messy and unstable as religion—and that the two are always intertwined in often unnoticed ways” (Sullivan 2019: 284).

The US religious asylum regime is an expression of these entanglements. I became interested in it as part of my research on religion and the US border. I wanted to understand how to think about religion in the context of asylum. Reading through cases and case summaries, consulting the secondary literature, and writing expert affidavits on behalf of asylum claimants in Chicago, where I live, I was struck by the haphazardness and, at times, incoherence that surrounds preparation for and practical adjudication of religious asylum. It is a messy and unpredictable business. In most cases, religion and religious persecution mean whatever the immigration judge says they mean. There is no rule or pattern. Taken together, the cases consulted for this research, approximately forty US federal asylum cases between 2008 and 2018 in which asylum was sought on grounds of religious persecution and, in several cases, at least one other protected status category, suggest that the line between “persecution” or “well-founded fear of persecution” on one hand, and “hate crime,” “lawlessness,” or “harassment,” on the other, is often ambiguous, if not arbitrary (see, for example, *Pan v. Holder* and *Eric Supangat v. Holder*).² Adjudication of credibility involving minor and dissident religions is ad hoc at best (see *Cosa v. Mukasey*). In virtually all cases, the line dividing religious from political persecution is nearly impossible to identify. There were no answers, and I began to suspect I was not asking the right questions.

Digging a bit deeper, I was not surprised to find that both scholarship and advocacy in the asylum and refugee field tends to be deeply invested in the redemptive power of law and human rights, including the right to religious freedom. It is easier to privilege religious freedom and choice than to question these categories, their histories, and their varied legal expressions. In the asylum field, in the United States but also internationally, to talk about religion or religious persecution is in general to invoke the “freedom to experience religion through individual choice.” As Lincoln Mullen explains in his history of the emergence of “religion as choice” in the United States in the nineteenth century, “the prevalence of religion as choice instead of religion as inheritance is distinctively (though not uniquely) American” (2017: 5). He shows that, “Americans came to think of religion as an identity that one could and must chose for oneself” (2017: 10). The limitations of construing religion as belief and freedom as choice for the purposes of defining religious freedom (Hurd 2015; Sullivan et al. 2015) shape the politics of religious asylum. Yet declarations of religious choice, identity, and practice prove stubbornly resistant to the task of ascertaining sincerity, as discussed below. Fears of religious imposterhood and politically expedient conversions haunt the process at every step. The power of state and international law to free the individual remains elusive. As a technocratic solution to political problems, law is never enough (Gunn 2002). Something more is needed. This article explores this “something more.” To focus on narrow understandings of religion in these cases, I suggest, whether framed in terms of sincerity, the “eye of the persecutor,” the First Amendment, or some other definition or metric, obscures a broader field of theological politics of asylum seeking and claiming. To explore that field requires looking beyond the category of religion as it is invoked in legal proceedings and scholarship. It requires looking beyond most of the scholarly literature invoking religion in the adjacent field of asylum and refugee studies (for an exception, see Mavelli and Wilson 2017). While offering important perspectives on the myriad evidentiary assessment challenges facing adjudicators, the legal and social scientific literature bypasses the political theological questions that interest me here. What are the theological and political conditions that sustain practices of political and religious asylum seeking despite the persistent limitations and limits surrounding legal adjudication involving religion? Given the instability of the category of religion, why do the authorities persist in trying to establish whether a person,

action, belief, or practice is credibly subject to *religious* persecution?³ How might we understand religion anew in this context?

To address these questions, I approach the question of religion in asylum seeking and claiming through the prism of theology, understood in this context as a mode of inquiry that takes the human as a question rather than as a given, and acknowledges the significance of human finitude rather than an assertion of human mastery.⁴ I suggest that the asylum regime is integral to American political and religious exceptionalism because it serves to reinstate a religious and political gap between Americans and others. It creates a border. It affirms the possibility of freedom, salvation, and redemption through conversion not to a particular religion but to the American project itself. To the United States, that is, as a religious project. Faced with the limits of law and legal procedure, those involved in these proceedings on all sides—judges, claimants, advocates, attorneys, scholars, and even ordinary Americans—seek recourse in the promise of freedom, salvation, and redemption through conversion to America as a religious project. Through this process, they affirm the capacity of the American project to offer these goods. Most “religion-talk” in legal and social scientific treatments of asylum obscures these political theological aspects of the politics of asylum, favoring instead definitional, administrative, and bureaucratic concerns associated with specific cases.

The first part of this article examines this “religion-talk” in two common approaches to religious asylum adjudication: religious sincerity and the “eye of the persecutor.” Because the international asylum regime is a transnational and colonial artifact, as Lucy Mayblin (2018) has so ably shown, and because the United States has adopted much of the international legal infrastructure in this area, unlike in other domains, legal discourse surrounding religious asylum is distinctly transnational. As a result, these tests are common in US and European legal contexts. I discuss both with a nod to Mullen’s observation that the emphasis on religious freedom and religious choice is “distinctively though not uniquely American.” Moving beyond the courtroom, and the judicial and technocratic grammar of religion-talk, the second part of the article develops my claim that the asylum regime is integral to American religious exceptionalism and to America as a religious project.

I want to acknowledge at the outset the scale of global displacement in the refugee crisis and the seemingly limitless human and environmental costs that have arisen in its wake. To explore the theological dimensions of protective legal frameworks, as this article does, is not to call for their elimination. Many individuals in desperate circumstances avail themselves of whatever protections are at their disposal, as they should. My aim is not to disparage or discourage these individuals or their advocates. It is rather to explore the limits of secularist and separationist approaches to the refugee crisis and the US border more broadly. Refugee and border studies tend to segregate religion as a distinct object of state law. I want to call attention to the political theological dimensions of this crisis and the forms of knowledge generated about it, which are rarely acknowledged and, perhaps, not well understood. The refugee crisis is both a political and a theological one. It is a crisis of sovereignty. It is a crisis of what it means to be human (Mulligan Sépulveda 2018).

Religion-Talk in the Context of Asylum

This section provides an overview of how US and European scholars, judges, and advocates talk about what they understand to be “religion” in the context of asylum, focusing on religious sincerity, credibility assessment, and the “eye of the persecutor” test.

Religion-based asylum claims often invoke the claimant’s sincere and credible religious belief and practice. Musalo describes a US case from the early 2000s that is not unusual in its general

outline, *Chang Hua Wang v. Ashcroft*, which involved a claim to religious asylum by a young Chinese woman. The immigration judge accepted the woman's testimony that she had practiced on a weekly basis with an underground church for five years before fleeing China, and that she had attended church regularly since arriving in the United States. Yet in the end the judge, as Musalo explains, "found her religious claim to be weakened by the fact that she had not been baptized as a Catholic, did not know the name of the current Pope, was never 'formally registered with the Catholic Church,' and had two abortions while in the United States—one of them the result of a pregnancy resulting from repeated rapes at the hands of the smugglers who transported her to the United States." The judge concluded:

The Court is concerned by the fact that the applicant has had two abortions while in the United States. The Court does not dispute the applicant's right under the American legal system to obtain an abortion. However, it is a well-established fact that one of the primary doctrines of the Catholic Church, and probably the most publicly known doctrine of the Catholic Church, is strong opposition to abortion. The Court feels that the fact that the applicant has had two abortions in this country [*sic*] that detracts from the strength of her claims for religious convictions under Catholicism.⁵

The immigration judge relies on his personal interpretation of Catholic doctrine to negatively assess the sincerity of the plaintiff's claim to be Catholic.

Credibility assessments hinging on religious sincerity operate on the assumption that it is possible for the authorities to distinguish religious identities, reasons, and actions from non-religious ones. This presumes the model of religion as choice. In this model, you can be one religion but not more than one. As Mullen explains, "as religion became voluntary, more people chose religion, but fewer could be religious without a choice" (Mullen 2017: 15). Credibility assessment requires a sharp line demarcating authentic religiosity from religious imposterhood. The adjudicator's job is to identify this line and uncover a religious truth (or untruth) that is understood to exist objectively in the person prior to the process of adjudication. Religion, in this view, is understood to be comprised of inner convictions and outward manifestations that can be assessed for authenticity by a reasonable and well-trained observer; in other words, by a judge "seeing like a church." As Paul Christopher Johnson, Pamela E. Klassen, and Winnifred Fallers Sullivan (2018: 7) explain, riffing on James Scott's notion of "seeing like a state," "states might . . . be understood to 'see like a church' when legal courts begin to cast themselves as experts on religious authenticity." A focus on sincere belief leads to a methodical search for what I describe elsewhere as "submerged religion" (Hurd 2021). Judges and bureaucrats are meant to locate and verify a claimant's presumably stable yet submerged—and potentially shifting or disingenuous—religious identity. If the claimant is not verifiably religious, or is religious but insincere, then grounds for asylum are absent.

Media coverage of religion-based claims during the refugee crisis confirms this emphasis on sincerity and credibility among public officials in the United States and the United Kingdom. In 2016, British Conservative politician and House of Lords member Baroness Elizabeth Berridge told *The Guardian* that when it comes to religious asylum, the Home Office is making "incredibly nuanced and difficult decisions to make sure that genuine claims are accepted and non-genuine ones are rejected" (Sherwood 2016). According to several MPs, immigration officials interrogated refugees applying for asylum on the grounds of conversion to Christianity on "Bible trivia." Another report confirmed that "interviewers sometimes asked Christians to recite the Ten Commandments or the Lord's Prayer, name the apostles, or explain the meaning of Lent" (Blumberg 2017). As Harriet Sherwood concludes, "MPs are calling for religious literacy training for Home Office immigration and asylum officials, and for data to be kept on the

number of asylum claims made on the grounds of religious persecution. Cases involving religious persecution should be checked by an expert supervisor.” Megan Brewer, an immigration attorney and former US asylum officer, notes that “[a]s an officer you can never be informed enough about all the religions and subgroups.” But, she continued, there may be other ways to determine what religious group a person belongs to, such as their name or choice of clothing, depending on which country they come from. If that is not the case, Brewer said, “we might ask about behavior or how they practice their religion” (Blumberg 2017).

The UN Refugee Agency (UN High Commissioner on Refugees; UNHCR) also emphasizes sincere and credible belief when evaluating refugee claims. The Agency’s *Note on Burden and Standard of Proof in Refugee Claims* says that “credibility is established where the applicant has presented a claim which is . . . on balance, capable of being believed” (UNHCR 1998). UNHCR guidelines offer “interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field” (UNHCR 2004). The guidance emphasizes the need to ascertain the sincerity of claims to conversion, particularly if conversions occur after the claimant has departed their home country. Sincerity of belief also structures the European religious asylum regime. Eager to standardize the practice of credibility assessment, European asylum judges Uwe Berlit, Harold Doerig, and Hugo Storey (2015) wrote an article describing the forms of religiosity required to qualify for a positive credibility assessment. Berlit and Doerig are judges at the German Supreme Administrative Court and Storey is a senior judge at the UK Upper Tribunal and President of the European Chapter of the International Association of Refugee Law Judges-Europe. In their view, claimants must evince a sincere, internal understanding of the religion that goes beyond a general or ad hoc knowledge of its tenets and practices. “Merely externally appropriated, general/ad hoc ‘intellectual’ knowledge of the new religion may well not be enough” (Berlit et al. 2015: 658). Religion, for these judges, is a stable and knowable entity that exists independent of context. It can be verified by the proper authorities. While acknowledging the difficulty of assessing religious credibility based on inner convictions, the judges reassure skeptics that “in practice, there was a surprising consensus between judges from different jurisdictions on the concrete questions to be asked and on the criteria for assessing the credibility of different asylum seekers” (Berlit et al. 2015: 656). Problems arise, they admit, when applicants make “non-credible” claims to conversion. Non-specific and cliché statements are especially suspect:

A serious turn towards the new religion will only be accepted if there is reasonable concern with the content of that faith and a corresponding knowledge of its beliefs/essential features, the religious texts, rituals, traditions, and holidays. The extent to which an applicant may be expected to furnish detail will vary depending on such matters as his or her personality and intellectual disposition. Knowledge of the new religion is not to be expected at the level of scientific and theological debate, but completely non-specific and cliché statements may be significant pointers to a non-credible account. (Berlit et al. 2015: 656)

The judges conclude that “circumstances must always be looked at in the context of an overall fact-specific assessment. They do not by themselves preclude a court’s acceptance of a true conversion” (Berlit et al. 2015: 660). The phrase “true conversion” also appears in a 1997 decision of the US Seventh Circuit, *Najafi v. I.N.S.*, in which the court observes that

certainly true conversion does matter in one sense. If one is a believer in a religious faith, one would presumably wish to practice that faith. Religious adherence could take the form of attending services, meeting with others of the same faith, personal prayer, or openly sharing one’s belief, to name a few examples. If any activity necessary to a convert could trigger per-

secution in Iran, such a practice should be brought to the attention of the immigration judge. To evaluate the relevance of this practice to the life of the alien, the immigration judge should be satisfied with the sincerity of the alien's new religious commitment. (*Najafi v. INS* 1997)

Deborah Thebault and Lena Rose (2018) question the emphasis on sincere belief in credibility assessment. Thebault and Rose recount the case of an Iranian convert to Christianity who sought asylum in Switzerland, "A," who was deported in a decision that was later affirmed by the European Court of Human Rights. They suggest that "the authorities based their decision on a culturally biased understanding of Christianity, which may have skewed the appreciation of the real risk the applicant will be subjected to on his return to Iran" (Thebault and Rose 2018: 545). Questioning the Swiss authorities' approach to the authenticity of A's conversion, they conclude that the former presumed a form of Christianity that does not actually align with the claimant's practice (Thebault and Rose 2018: 548). "How then could the Swiss authorities be so sure as to what kind of Christianity was permissible and acceptable in the case of A—were they not rather showing a cultural bias toward a traditional Western form of Christianity, betraying Christianity's many different forms? And do not all forms of Christianity require equal measure of protection under the right to religious freedom? (Thebault and Rose 2018: 547). Elena Fiddian-Qasmiyeh also helpfully explores the limits of credibility assessment in her work on asylum decision-makers' expectations about relations between gender, sexuality, and religion. She cites the case of LGBT+ asylum claimants who persist in self-identifying as Muslim but whose claims are dismissed as implausible, noting that "decision-makers have regularly dismissed the credibility of such applicants since they believe that it is impossible for LGBT+ refugees to continue self-identifying as Muslim because Islam is constituted through orientalist frameworks as inherently oppressive of sexual minorities" (Fiddian-Qasmiyeh 2017: 217–218).

Religious credibility assessment appears to generate more questions than it answers. What is the relevant measure of religious sincerity or genuineness in religious asylum claims? Is knowledge of doctrine sufficient? Does such knowledge correlate with individual conviction? What about holidays: which are required and which are optional? Do experiential descriptions of religious experience count? Participation in religious organizations? Is attendance at church or an equivalent sufficient, or must one be an active and dedicated participant? How is that measured? What about dietary practices and religious attire? Or ethnicity in relation to religion? (Kagan 2010: 1186–1187).

These are familiar concerns among practitioners and scholars. Drawing on his experience as an asylum adjudicator in Cairo, Michael Kagan describes the religious asylum process as "a special type of adjudication where officials from secular governments and the United Nations conduct formal hearings into religious faith" (Kagan 2010: 1180). Citing its roots in the US Supreme Court's 1944 *United States v. Ballard* decision, Kagan criticizes the sincerity test as "a common means of avoiding the problem of defining religion or ruling directly on the truth of religious beliefs" (Kagan 2010: 1207). He concludes: "the sincerity test can work only by making assumptions about how a religious person would talk or act, but ambiguity, ambivalence, conflicted deeds and words, and apparent incoherency (especially in the perception of outsiders) are all regular parts of religious experience" (Kagan 2010: 1212). Kagan describes an episode in which "the applicant stated that she converted after a friend preached the Bible to her. The interviewer followed up by asking for a specific Bible reference," leading to the following exchange:

Q: Which part of the Bible did she, I mean your friend, preach to you?

A: The Book of John.

Q: Do you remember which part?

A: I couldn't remember which part, but it was around chapter 3.

Q: What was the chapter about?

A: You want me to tell you one verse or the whole chapter?

Q: What you know. I don't want you to worry. It's okay if you don't remember.

A: I am very stressed.

Q: Okay, are you willing to continue the interview today or do you want to reschedule?

A: I am not in a good mood now.

Q: I am here for you. You have the choice to reschedule or take another break.

A: I know I make you tired, but maybe we can reschedule. (Kagan 2010: 1212–1213)

Exchanges such as this one led to call for a shift to the “eye of the persecutor” test, which focuses on the perceptions of the persecutor rather than the claimant’s alleged religious sincerity. While credibility assessment remains central to the process, the focus moves to what the claimant has done and how those in positions of power perceive her actions. The eye of the persecutor test is now common in the United States, as Musalo explains: “U.S. jurisprudence has imposed the most rigid formula, requiring proof of the persecutor’s intent in order to establish nexus” (Musalo 2004: 206) and “in the U.S. several decisions have ruled that the appropriate test is not whether the adjudicator believes the applicant to be a true believer, but whether the persecuting agents will so perceive him” (Musalo 2004: 218–219). Kagan (2010: 1224) elaborates on the rationale: “It matters little why an Eritrean person went to church, whether for belief, for curiosity, for business connections, or to find a spouse. What matters is the impact of Pentecostal church attendance on the actions of the Eritrean government. The interviewer and the adjudicator should seek to determine if the applicant can describe her church attendance in detail and with consistency.” Of course, he concedes, “a smart liar could attend church just to win asylum” (Kagan 2010: 1226).

The eye of the persecutor test attempts to grapple with what Pinky Hota (2018) describes as “the insistent refrains of sincerity and authenticity inherent to a distinctly Christian conception of an idealized transformative conversion.” Yet its proponents remain committed to the emancipatory potential of the asylum regime, attributing unjust outcomes to a weak attachment to human rights and the failed realization of an imperfect process. Kagan, for instance, seeks to ensure that “refugees who are genuinely at risk will find protection without endangering the integrity of the asylum system or infringing on the religious liberty of asylum seekers” (2010: 1181). He is concerned that adjudicators not “deprive asylum seekers of the freedom to experience religion through individual choice” (2010: 1219–1220). Thebault and Rose also seek to improve adjudicators’ understandings of the complexity of these claims in order to guarantee the possibility of religious freedom. Tuan Samahon calls for applicants facing adverse credibility determinations in the United States to assert claims to violations of the Free Exercise and Establishment Clauses of the First Amendment. “Free exercise and establishment claims can provide asylum applicants with tools to challenge credibility findings tainted by adjudicator disbelief or adjudicator orthodoxy” (Samahon 2000: 2225, 2233). He elaborates: “if the asylum applicant demonstrates that INS adjudicators impermissibly used particular religious practices or beliefs as a standard in evaluating his or her sincerity of conversion (and thus credibility of membership), then the asylum applicant will be able to state an establishment claim from which no compelling state interest could rescue the invalid determination” (Samahon 2000: 2232). Critical of the “orthodoxy-establishing character of credibility determinations,” he calls for the “creation of a detailed administrative record clearly stating reasons for denied credibility” (Samahon 2000: 2228, 2238). Claimants should avail themselves of the constitutional protections of the First Amendment and bureaucrats should keep better records. If lawmakers and adjudicators would

reform the law and get the process right, this story goes, it would unfold more justly (see, for example, Fitzpatrick 1997).

Others question the capacity of the law and legal process to serve as an objective arbiter. Among the most eloquent is Michael Nijhawan whose work on Ahmadi asylum claims in the German courts (Nijhawan 2016) shows that judicial authorities' verification of the line between the authentically religious and nonpracticing or "imposter" subject often determines whether or not an individual receives asylum. Reflecting on the simultaneous power and poverty of a commitment to an understanding of religion as sincere belief in these proceedings, Nijhawan finds that religiosity "is assessed in the courts as an opaque state, entirely subjective and yet paradoxically in need of certainty for the legal process of granting Ahmadis asylum (based on religious persecution) to make sense. It becomes imperative for the courts to determine what counts as normalcy in religious terms and especially so when particular identities bear the mark of either too little or too much of such religion in the current immigration discourse" (Nijhawan 2016: 107). This leads to a focus on credibility assessment as "the core of the judicial process" (Nijhawan 2016: 108). In international contexts, "the reference to credibility assessments (also known as 'refugee status determination' or RSD) is particularly contentious" and "in scenarios of religious persecution, courts engage in RSD to make categorical distinctions between legitimate refugees and so-called religious imposters." As Nijhawan concludes, "when asylum adjudicators set out to decide whether to accept such refugee claims, they can quickly find themselves administering a process akin to a religious trial" (Nijhawan 2016: 108, citing Kagan 2010: 1181; see also Oraby 2018 and Marzouki 2012).

This overview of religion-talk in the asylum field suggests that the politics of religious asylum is shot through with presumptions and pressures involving the proper interrelations between modern religion, law, and politics. It is presumed that these fields are ontologically distinct; and that religion stands apart from law and politics. It does not. State and international laws demand that adjudicators distinguish between authentic and simulated religion, true conversion and religious imposterhood, callous lawlessness and genuine religious dissidence—all modern distinctions that are presumed to exist independently of the judicial process yet do not. Secular democracies and the transnational asylum regime they have created do not simply adjudicate the fate of pre-existing religious individuals. They privilege particular kinds of subjects, create forms of subjectivity they claim to objectively locate, and generate the very indeterminacy surrounding religion that they claim to resolve (Agrama 2012; French 2019).⁶ The next section explores a different approach to religion and asylum.

Beyond Religion-Talk: The Theological Politics of Asylum

Nijhawan and Kagan are right to note that asylum proceedings involve something akin to a religious trial. Secularism is itself a religious trial. Sincerity tests, credibility assessment, and eye of the persecutor tests all bring an element of the Inquisition to these proceedings. The authentication of religious identity and affiliation are always insufficient to the task of ascertaining sincerity. Fears of religious imposterhood, of political anarchy disguised as religious agency, of politically expedient conversion, and of fabricated religious commitment all haunt the asylum process. Under such conditions, the power of the law to free the individual remains elusive at best. As a technocratic solution to political problems law is never enough. The pervasive religion-talk in these cases, whether framed in terms of sincerity, credibility, eye of the persecutor, the US religion clauses, or some other metric, is a distraction from the broader political and

theological conditions of possibility and promise that structure these proceedings. It is those conditions that interest me here.

This requires telling a different story about the politics of asylum. In the United States, these proceedings serve a purpose that goes beyond the individual cases that are admitted for legal scrutiny. The politics of asylum is integral to the maintenance of American religious and political exceptionalism. Specifically, this process contributes to creating a religious and political gap between Americans and others that is essential to the maintenance of US exceptionalism. Faced with the limits of law and legal process, those implicated in these proceedings on all sides turn to the promise of freedom, salvation, and redemption through conversion not to a particular religion but rather to the America national project itself. In seeking salvation and redemption, asylum-seekers affirm the capacity of the American project to offer these goods. That capacity may or may not be actualized, but it remains central to the mythic promise of the American project. The audience for this affirmation is more than just those involved in an immediate process. It is everyone. The theological politics of asylum does important social and political work.

To explore these dynamics further requires a foray into my current research on religion and the US border. The project is motivated by a paradox: Americans of different political persuasions call for the border to be secured and defended while at the same time, the American project announces itself as borderless, universal, capacious, and all-encompassing. This paradox, I suggest, can be grasped through the prism of what Robert Yelle describes as the idea of an antinomian sacred (Yelle 2019: 18, 20). To understand the theological politics of asylum and the religious politics of the American national project requires paying attention to the antinomian sacred as a political category (Yelle 2019: 9). Antinomian means “against or without law.” The antinomian sacred, then, refers to a space of exception that may be compared to Carl Schmitt’s notion of the “sovereign exception” or Max Weber’s idea of “charisma.” Importantly for Yelle, and also for my argument, is that “what we call ‘religion’ or the ‘sacred’ encompasses the dynamic interplay between a normative order and the drive to go beyond this order, either to escape or to legitimate it” (Yelle 2019: 8). In other words, “human beings aim at something more than reason and legality alone.” In his excellent book *Sovereignty and the Sacred*, Yelle explores the fascinating convergence between the sacred and the sovereign, suggesting that both are states of exception that share important qualities of rupture, singularity, and antinomianism. Drawing out this analogy allows him to provocatively re-describe the history of religions as a series of expressions of sovereignty (Yelle 2019: 73). Religion, in Yelle’s estimation, reveals its true form as sovereignty. Peter Van der Veer puts it slightly differently when he notes that “one cannot deny the importance of the nation-state as the dominant form of political and religious practice” (Van der Veer 2016: 148).

This space, the space of the antinomian sacred, the space of sovereignty, is the broader context in which the asylum regime operates, and which in turn it helps to sustain. Like other border-making projects, the politics of asylum exceeds at every turn the rational and legal terms and vocabularies that are intended to regulate and constrain it. It reaches toward and is guided by an ideal subject of freedom, free will, and unencumbered choice that, according to the narrative, can be realized fully only in America, only in the “West.” (There is a productive equivocation here that helps to explain the relatively painless transnationalization of the legal regime, as mentioned above.) Webb Keane has shown that an important feature of political modernity is the production of religious and political subjects that understand themselves to be “free” because they exercise particular kinds of individual agency: “what is at stake is not just the transmission of correct doctrine but also the production of human subjects who are (relatively) free because they fully grasp the agency that is rightly theirs” (Keane 2007: 76). This includes, in the US context, the ability (and obligation, as Lincoln Mullen would remind us) to choose one’s

religion. The juridical invocation, legal validation, and extra-legal summoning of this ideal, “free” American choosing religious/political subject illustrates what Constance Furey describes as the “play of the ideal in the real.”⁷ It is a theological process even as it is also a political one.

A second political theological dimension of the asylum regime that is especially salient in the US context involves the capacity of Protestant Christianity to both be and not be a religion, legally speaking (see Hurd and Sullivan 2021). As Sullivan explains, “law is both Christian and not Christian. That doubleness enables American exceptionalism in very specific ways” (Sullivan 2021: 191). This Janus-faced capacity sets the terms in which the adjudication of religious asylum unfolds in the United States. Protestant Christianity, then, is both a religion to which one may convert, and simultaneously “not a religion” but rather a universalizing template of what it means to be authentically modern and truly religious (a voluntary and sincere believer) rather than an imitation or imposter (Hurd 2020).

Drawing on the work of Gil Anidjar, J. Kameron Carter argues that this naturalized form of Christianity, which is aligned closely with the West, “conceives of itself as that religion that can be beyond religion, that is, that can be ‘secular,’ it can serve as a mediator and pedagogue for the rest of the world. Put simply, it can be ‘the way, the truth, and the life’ (cf. John 14:6)” (Carter 2011: 179). As Carter explains, and as cited in the epigraph, “to be saved is to be made ‘religious’ in the proper way within a properly ordered secular space; those who cannot or who refuse to enter this ‘order of things’ must be annihilated for the sake of the Kingdom.”⁸ Today’s asylum adjudicator stands in for the West, civilization, humanity, and also, at times, for God. “The ideal and Utopian figure of a mediator continues to function as the one toward whom ‘salvation’ as a social process aims in the making of modern subjects. Mediation still works on bodies. In approximation to him, subjectivity arises, the citizen is made, or—if subjectivity is denied—citizenship is refused” (Carter 2011: 182).

Conclusion: A Will to Redemption

The political theology of asylum seeking and claiming is easily overlooked in favor of the immediacy of debates over how to define religion, persecution, conversion, and credibility. To focus on these definitions often uses up all of the oxygen in the room. Political theology also operates outside of the accepted terms of discourse about religion. The dynamics that interest me do not fit within the boundaries of world religions discourse. They do not implicate religion understood as something that is or ever could be separate from politics or law. They require thinking religion anew. In the US context, I have suggested, the theological aspects of asylum seeking and claiming are based on a will to be redeemed through membership in the American people and the American project. That is what asylum-seekers are understood to be seeking. The search for freedom, salvation, and redemption affirms the capacity of the American project to provide these goods while also confirming their scarcity or absence in other countries and contexts.

This is the distinguishing element of American religious and political exceptionalism. Americans have something that others do not. Americans have freedom and others have establishment. Americans have choice while others have compulsion. Americans have disestablishment and others have state religion. Americans enjoy equality while others suffer from subordination. Americans are saved and others are damned. More encompassing legal definitions of religion and more capacious understandings of persecution will do little to change this state of affairs. It is a redemptive process. It is about salvation, hope, and grace. The energy behind these efforts is both theological and political. They cannot be disentangled.

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■ NOTES

Epigraphs: Karen Musalo (2004: 205) and J. Kameron Carter (2011: 189).

1. The United States enacted the Immigration and Nationality Act (INA) in 1980 to bring existing US asylum practices into conformity with the 1967 U.N. Protocol Relating to the Status of Refugees [Oct. 4, 1967, 606 U.N.T.S. 267], ratified by the United States in November 1968, and the UN Convention Relating to the Status of Refugees, which is incorporated by reference into US law through the Protocol. The INA defines a refugee as “any person who is outside any country of such person’s nationality . . . who is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” S. REP. No. 96-256 (1979), reprinted in 1980 U.S.C.C.A.N. 141. Like the First Amendment, the INA employs the term religion without providing any statutory or regulatory definition (Cited in Samahon 2000: 2216).
2. Thanks to Northwestern Ph.D. candidate Christa Kuntzelman for her research assistance in locating and summarizing these legal cases and for our discussions about her experience as a refugee advocate in Chicago.
3. There is an extensive literature on credibility assessment and the asylum bureaucracy; in the European context, see Dahlvik 2018; Farrell 2012; and Noll 2005. On inconsistency in the application of constitutional norms in the analysis of asylum claims in US federal courts, see Ray 2016.
4. My thinking on this topic is indebted to Constance Furey, who suggests that “thinking about humanity can be especially nuanced and subtle in sources that appeal to transcendent ideals. The distinctive value of sources that appeal to transcendent ideals seems especially clear when that ideal is personified: when people are thinking about themselves in relation to a being they envision as simultaneously similar to and different from themselves—in relation to a being who is, in other words, part of their own world while also denizen of another. I do not think, as Wynter implies, that having a god keeps humans in check, but instead that putting a god or gods in the mix might help us to think the human better” (Furey 2020).
5. Musalo (2004: 2221n311) citing decision of the Immigration Judge, File #A72 898 126, at 16. When Musalo wrote about this case it was on appeal to the Eighth Circuit Court of Appeals, and she did not track it beyond that point. She explained that the Circuit Court could have remanded it back to the Board of Immigration Appeals in an unpublished decision. The Board could have either decided it (which they could have done in an unpublished decision) or remanded back to the immigration judge. (Email communication with Karen Musalo, 3 March 2019.)
6. This affirms Hussein Agrama’s suggestion that “secularism should neither be seen solely in terms of a separation between religion and politics nor in terms of its success or failure in imposing a set of regulatory norms. Rather it is more usefully approached as a historical problem-space, that is, in terms of an ensemble of questions and attached stakes that seem indispensable to the practical intelligibility of political and social life. . . . [I]t is an expression of the state’s sovereign power and . . . it is increasingly fraught with irrevocable indeterminacy” (Agrama 2012: 71–72).
7. Thanks to Constance Furey and the Center for the Religion & the Human at Indiana University, Bloomington, for hosting the discussion.

8. Carter continues: "In turning first to Barth and then to Du Bois, I want to demonstrate that this process was also a theo-political one built on a specific religious anthropology. It was (and, to a large extent, remains) one in which the constitution of the White Masculine as Imperial Man was tied to his assuming a messianic and mediatory role in the world, as he accumulated divinity for himself. As Imperial Savior, he functioned by 'divine right' to establish a Utopian kingdom—a kingdom of whiteness, we might say—as the Kingdom of God. Those who enter this Kingdom can be saved. Yet to be saved is to be made 'religious' in the proper way within a properly ordered secular space; those who cannot or who refuse to enter this 'order of things' must be annihilated for the sake of the Kingdom" (Carter 2011: 189).

■ REFERENCES

- Agrama, Hussein Ali. 2012. *Questioning Secularism: Islam, Sovereignty and the Rule of Law in Contemporary Egypt*. Chicago: University of Chicago Press.
- Berlit, Uwe, Harald Doerig, and Hugo Storey. 2015. "Credibility Assessment in Claims Based on Persecution for Reasons of Religious Conversion and Homosexuality: A Practitioners Approach." *International Journal of Refugee Law* 27 (4): 649–666.
- Blumberg, Antonia. 2017. "Why Trump's Failed Attempt to Prioritize Christian Refugees Never Had a Chance." *Huffington Post* (10 March). http://www.huffingtonpost.com/entry/why-trumps-failed-attempt-to-prioritize-christian-refugees-never-had-a-chance_us_58bef9bae4b0d841663e3595?linkId=35434890.
- Carter, J. Kameron. 2011. "An Unlikely Convergence: W. E. B. Du Bois, Karl Barth, and the Problem of the Imperial God-Man." *CR: The New Centennial Review* 11 (3): 167–224.
- Dahlvik, Julia. 2018. *Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria*. Cham: Springer. <https://doi.org/10.1007/978-3-319-63306-0>.
- Farrell, Catherine. 2012. *Asylum Narratives and Credibility Assessments: An Ethnographic Study of the Asylum Appeal Process in Scotland*. PhD diss., University of Glasgow. <http://theses.gla.ac.uk/4299/>.
- Fiddian-Qasimiyeh, Elena. 2017. "The Faith-Gender-Asylum Nexus: An Intersectionalist Analysis of Representations of the 'Refugee Crisis.'" In *The Refugee Crisis and Religion: Secularism, Security and Hospitality in Question*, ed. Luca Mavelli and Erin K. Wilson, 207–222. New York: Rowman & Littlefield.
- Fitzpatrick, Joan. 1997. "The International Dimension of U.S. Refugee Law." *Berkeley Journal of International Law* 15 (1): 1–26.
- French, Rebecca. 2019. "The Anthropology of Religion and Law." *Religious Studies Review* 45 (2): 153–161.
- Furey, Constance. 2020. "human." *The Immanent Frame* (13 March). <https://tif.ssrc.org/2020/03/13/human-furey/>.
- Good, Anthony. 2007. *Anthropology and Expertise in the Asylum Courts*. Abingdon: Routledge-Cavendish.
- Gunn, T. Jeremy. 2002. "The Complexity of Religion in Determining Refugee Status." Roundtable on Religion-Based Refugee Claims United Nations High Commissioner for Refugees and Church World Service, 24 October. <https://www.unhcr.org/en-us/protection/globalconsult/3e5f2f7f6/complexity-religion-determining-refugee-status-t-jeremy-gunn.html>.
- Hota, Pinky. 2018. "Duplicitous Dalits." *The Immanent Frame* (19 June). <https://tif.ssrc.org/2018/06/19/duplicitous-dalits/>.
- Hurd, Elizabeth Shakman. 2015. *Beyond Religious Freedom: The New Global Politics of Religion*. Princeton, NJ: Princeton University Press.
- Hurd, Elizabeth Shakman. 2020. "The America-Game." In *Theologies of American Exceptionalism*, ed. Winnifred Fallers Sullivan and Elizabeth Shakman Hurd. Bloomington: Indiana University Press. <https://publish.iupress.indiana.edu/read/theologies-of-american-exceptionalism/section/d5d3c759-e2ee-44c2-aba6-3f10fb5769fb>

- Hurd, Elizabeth Shakman. 2021. "Border Religion." In *At Home and Abroad: The Politics of American Religion*, ed. Elizabeth Shakman Hurd and Winnifred Fallers Sullivan, 228–245. New York: Columbia University Press.
- Hurd, Elizabeth Shakman and Winnifred Fallers Sullivan, eds., 2021. *At Home and Abroad: The Politics of American Religion*. New York: Columbia University Press.
- Johnson, Paul Christopher, Pamela E. Klassen, and Winnifred Fallers Sullivan, 2018. "Introduction." In *Ekklesia: Three Inquiries in Church and State*, ed. Paul Christopher Johnson, Pamela E. Klassen, and Winnifred Fallers Sullivan, 1–32. Chicago: University of Chicago Press.
- Kagan, Michael. 2010. "Refugee Credibility Assessment and the Religious Imposter Problem: A Case Study of Eritrean Pentecostal Claims in Egypt." *Vanderbilt Journal of Transnational Law* 43: 1179–1233.
- Keane, Webb. 2007. *Christian Moderns: Freedom and Fetish in the Mission Encounter*. Berkeley: University of California Press.
- Marzouki, Nadia. 2012. "Conversion as Statelessness: A Study of Contemporary Algerian Conversions to Evangelical Christianity." *Middle East Law & Governance* 4: 69–105.
- Mavelli, Luca, and Erin K. Wilson, eds. 2017. *The Refugee Crisis and Religion: Secularism, Security and Hospitality in Question*. New York: Rowman & Littlefield.
- Mayblin, Lucy. 2018. *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*. London: Rowman & Littlefield.
- Mullen, Lincoln A. 2017. *The Chance of Salvation: A History of Conversion in America*. Cambridge, MA: Harvard University Press.
- Mulligan Sépulveda, J. J. 2018. *No Human is Illegal: An Attorney on the Frontlines of the Immigration War*. New York: Melville House Publishing.
- Musalo, Karen. 2004. "Claims for Protection Based on Religion or Belief: Analysis and Proposed Conclusions." *International Journal of Refugee Law* 16: 165–226.
- Nijhawan, Michael. 2016. *The Precarious Diasporas of Sikh and Ahmadiyya Generations: Violence, Memory, and Agency*. New York: Palgrave Macmillan.
- Noll, Gregory, ed. 2005. *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*. Leiden: Martinus Nijhoff Publishers.
- Oraby, Mona. 2015. "Authorizing Religious Conversion in Administrative Courts: Law, Rights and Secular Indeterminacy." *New Diversities* 17 (1): 63–75.
- Oraby, Mona. 2018. "Law, the State, and Public Order: Regulating Religion in Contemporary Egypt." *Law & Society Review* 52 (3): 574–602.
- Ray, Shalini Bhargava. 2016. "Applying the U.S. Constitution to Foreign Asylum Seekers: Exposing a Curious, Inconsistent Practice in the Federal Courts." *Marquette Law Review* 100 (1): 137–183.
- Samahon, Tuan N. 2000. "The Religion Clauses and Political Asylum: Religious Persecution Claims and the Religious Membership–Conversion Imposter Problem." *Georgetown Law Journal* 88: 2211–2238.
- Sherwood, Harriet. 2016. "Refugees Seeking Asylum on Religious Grounds Quizzed on 'Bible Trivia.'" *The Guardian* (7 June). <https://www.theguardian.com/uk-news/2016/jun/07/refugees-asylum-religious-grounds-quizzed-on-bible-trivia>.
- Sullivan, Winnifred Fallers. 2018. *The Impossibility of Religious Freedom*, 2nd ed. Princeton, NJ: Princeton University Press.
- Sullivan, Winnifred Fallers. 2019. "Afterword." In *Religion, Law, USA*, ed. Joshua Dubler and Isaac Weiner, 283–288. New York: New York University Press.
- Sullivan, Winnifred Fallers. 2021. "Due Process." In *At Home and Abroad: The Politics of American Religion*, ed. Elizabeth Shakman Hurd and Winnifred Fallers Sullivan, 183–195. New York: Columbia University Press.
- Sullivan, Winnifred Fallers, and Elizabeth Shakman Hurd, eds. 2020. *Theologies of American Exceptionalism*. Bloomington: Indiana University Press.
- Sullivan, Winnifred Fallers, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin, eds. 2015. *Politics of Religious Freedom*. Chicago: University of Chicago Press.

- Thebault, Deborah, and Lena Rose. 2018. "What Kind of Christianity? A v Switzerland." *Oxford Journal of Law and Religion* 7: 543–550.
- Van der Veer, Peter. *The Value of Comparison*. Durham, N.C.: Duke University Press, 2016.
- Yelle, Robert A. 2019. *Sovereignty and the Sacred: Secularism and the Political Economy of Religion*. Chicago: University of Chicago Press.

Government documents:

- UN High Commissioner for Refugees (UNHCR). 1998. *Note on Burden and Standard of Proof in Refugee Claims*, (16 December), <https://www.refworld.org/docid/3ae6b3338.html>
- UN High Commissioner for Refugees (UNHCR), 2004. *Religion-Based Refugee Claims Under Article 1A (2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*, U.N. Doc. HCR/GIP/04/06 (28 April). <http://www.unhcr.org/en-us/publications/legal/40d8427a4/guidelines-international-protection-6-religion-based-refugee-claims-under.html>.

Legal cases:

- Cosa v. Mukasey, Attorney General*, No. 04-75643, United States Court of Appeals for the Ninth Circuit, 15 September 2008. https://www.refworld.org/cases,USA_CA_9,4a5c91092.html.
- Eric Supangat v. Holder, Attorney General*, 12-3733, United States Court of Appeals for the Eighth Circuit, 7 November 2013. https://www.refworld.org/cases,USA_CA_8,558d166b4.html.
- Pan v. Holder, Attorney General*, 13-203-ag, United States Court of Appeals for the Second Circuit, 26 January 2015. https://www.refworld.org/cases,USA_CA_2,558d01824.html.