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The contents of religion and the contexts in which we study it, especially in the West, are rapidly changing. Among the factors that have been adduced for this change are globalization and immigration, two trends that are also best explained in terms of their mutual interplay. Understood as the process that has compressed the world into a shared social space, thanks to the forces of economics and technology, globalization has also been accompanied by bundles of material benefits and burdens that are being disparately distributed between the countries of the North and South.

Ironically, this asymmetry in the regional experience of globalization has subverted the logic of reciprocity that the defenders of the process usually invoke to justify it, triggering a form of unidirectionality in South-North relationship as instantiated in the accelerated movement of peoples from the former to the latter. The noticeable increase in both legal and illegal immigration to the developed countries of the North is a predictable consequence of their disproportionate advantages within the global order: "First, they are the source of much of the modern culture of consumption and of the new expectations diffused worldwide. Second, the same process of global diffusion has taught an increasing number of people about economic opportunities in the developed world that are absent in their own countries" (Portes and Rumbaut 1996, 23).

While the economic and social impact of immigration on the host societies remains the subject of prodigious intellectual debate, its cultural dimensions, especially in the religious sphere, have also not escaped scholarly attention (Olupona 2006). That the new immigrants are changing the American religious landscape, for instance, is now a relatively uncontroversial assertion to make. Even then, "the focus of much of the literature on new immigrant religion," as noted by Carolyn Chen, "has been on the happenings within the religious institution, and little attention has been given to their public presence and relationship to those outside their institutional walls" (2002, 217).

One of the outside institutions with which immigrant religious communities have to deal is the law of the host country, and in the context of this essay, the U.S. law. Although every individual immigrant to the United States, especially a legal immigrant, must deal with this institution, the religious communities face a special challenge because of certain religion related provisions in U.S. immigration law. An examination of these provisions and how the relevant organs[1] of the state interpret and apply them provides us with an interesting picture of a dynamic interaction between two cultural complexes: the religious "other" (the immigrant) and its construction by an institution other than religion. The secular state, through the avenues of law and other administrative agencies, joins religion scholars in the wider debate about how to understand religion and the privileges that should accrue to those acknowledged as its guardians.

In this essay, I will discuss the provisions on religious workers in U.S. immigration law to illustrate the relationship and tension between these alternative structures of meaning and cultural systems. The tension exists not only between the state and religious communities, but also among state institutions themselves, particularly between traditional curators of law (the courts) and the administrative agencies in charge of immigration matters, whose decisions will determine whether or not judicial review is warranted. I argue that the rule of deference that the courts have articulated when adjudicating on religious visa applications has important implications for scholarly debate about the nature and public understanding of religion.

When Congress enacted the religious worker visa program in 1990, the intent was to allow U.S. religious denominations to fill positions with qualified religious workers from abroad. Historically, however, the practice of hiring foreign ministers to serve U.S. religious congregations is as old as the country (Hoge and Okure 2006).[2] But until the 1990 legislation, religious organizations had limited success in hiring nonminister religious workers from abroad because of their inability to meet the stringent visa requirements imposed by law. The Immigration Act of 1990 simultaneously relaxed the requirements and expanded the definition of religious workers, encompassing clergy and lay religious workers, with eligibility for visa on either a temporary or permanent basis (Aleinikoff et al. 2004, 26, 30). The new law was thus a welcome relief for many religious denominations, including the Catholic Church and Protestant churches, as well as Jewish, Muslim, Buddhist, and other communities that rely heavily on the religious worker

visa program to maintain and serve their communities.

The eligibility hurdles faced by petitioners for religious visas revolve around three broad inquiries that USCIS officials are required to make. The first is whether the petitioning employer is religiously qualified; second is whether the position to be filled is a religious vocation or occupation; and the third evaluates the religious qualifications of the visa beneficiary (Aleinikoff 2004, 26, 30). Because Congress did not provide the criteria by which religions may be qualitatively appraised in these three respects, many applications have been denied on the ground that they do not meet the test. On the religious character of the employer, for example, USCIS service centers have often ruled that petitioners must show that they have been classified as a “church” or are a subsidiary of an organization so classified. Specific elements of such designation include some form of ecclesiastical government, a recognized creed and form of worship, religious services and ceremonies, etc.[3]

An important question is whether the discretion of USCIS officials to make these determinations regarding the character and qualifications of religious employers and workers hired for religious jobs is absolute. The position of the courts is that the authority to make these determinations must be exercised within the constraints of the First Amendment to the U.S. Constitution, which limits governmental authority over religious institutions and religious exercise. In 1871 in the case of *Watson v. Jones*, the U.S. Supreme Court argued that the deference rule is required by the right of religious institutions to determine their own religious identity: “The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in expression and dissemination of any religious doctrine...is unquestioned.” [4]

Applying this rule to religious workers’ visa appeals, the courts’ reasoning seems to be motivated by the suspicion that government officials may sometimes intrude too far into the religious doctrine, governance, or qualifications of petitioners and applicants. This may particularly occur in situations involving minority religions or religious occupations unfamiliar to the adjudicating officer. Immigrant religions, their workers, as well as mainstream religious denominations, are all benefiting from this hospitable judicial outlook.

A representative example is *Jin Soo Lee v. Immigration and Naturalization Service*, a case dealing with the criteria used by religious organizations to select their leaders, and the training required of leaders within a religious organization. The court reversed an INS decision that a beneficiary was not a bona fide “religious worker” under the applicable regulations.
[5]

Acknowledging elsewhere that “The task of distinguishing a religion from something else (e.g., a

delusion, a personal credo, or a fraud) is a recurring and perplexing problem, and the outer limits of what is 'religious' may be ultimately unascertainable,"
[6]

the court observed that "INS officials, no more than judges, are equipped to be oracles of theological verity, and it is unlikely that either Congress or the Founders ever intended for them to be declarants of religious orthodoxy even for aliens."
[7]

In short, INS must accept the good-faith explanations of a religious order "as to what it means to be functioning within a religious occupation of that order."
[8]

The judicial rule of deference is instructive for how the study of religion is conducted, especially the effort to understand and 'represent' the religion of the 'other' in the context of our teaching. The rule vests the right of representation in the religious practitioner and grounds this right not only in the practitioner's subjectivity, but also in the presumed autonomy and uniqueness of the religious sphere which requires a distinct logic of understanding. The instrumental significance of representational right lies in its being a precondition for the mediation of social goods, such as being approved for an immigrant religious visa. For, when the right is vested in an agent other than the one whose interest is at stake, the court fears misrepresentation and arbitrary adjudication as the likely outcomes. The deference rule thus preempts the temptation to impose exogenous constructions of reality upon the subject of inquiry and legitimizes the subject's prerogative to draw the boundary within which matters germane to the subject's identity and interests are articulated and settled.

The rule of deference privileges experience in explaining the contours of religious worldview and validates this experience in determining how religious considerations should bear upon public policy. Hence, it thrusts itself into the perennial debate about methodology and interpretation in the academic study of religion. By conceding lexical priority to an insider's perspectives in the discursive practice of explaining and analyzing religious data, the rule shares a latent affinity with hermeneutics and a more intimate one with phenomenology, whose claim to methodological fame is anchored in its twin tenets of epoche and eidetic vision that enjoin scholars to study religion with an attitude of empathy and openness to experiential immersion (van Leeuw 1938, 1968).

In effect, the rule relies on an understanding of religion as *sui generis* and restricts the qualifications to speak on its behalf to either devotees or scholars with an appreciative view of its intrinsic value, although it is silent on the issue of which dimensions of religion — belief or the material (ritual) — should receive scholarly and interpretive attention (Godlove 2002). It is therefore not surprising that some scholars have challenged the validity of this approach to the study of religion. Not only is the insider-outsider dichotomy considered simplistic (Westerlund

1991) in that it relies on “a suspect understanding of religion” (McCutcheon 1997, 449), the approach is also criticized for misconstruing the proper role of the scholar of religion. McCutcheon assigns the role of critic, rather than of reproducer and translator, to religion scholars, whose task is to uncloak and lay bare “the conditions and strategies by which his/her fellow citizens authorize the local as universal and the contingent as necessary” (454).

It is not clear, however, that being an intellectual and a critic, as McCutcheon understands these labels, entails explaining away religion or reducing it to epiphenomenal reflections of historical and contextual conditions and functions. Certainly, there are scholars who see the issue quite differently (Griffiths 1998; O’Connor 1998). Religious visa petitioners are also likely to be frightened by this interpretation of religion, for it would make it difficult, if not impossible, to represent themselves *credibly* before the adjudicating officers. Scholars of religion are possibly unique among intellectuals in being among the few who seek to delegitimize the very object of their intellectual investment in the name of methodological sophistication and theoretical elegance. That religion can cloak nonreligious interests is not in dispute, but to assert that religion is nothing more than this seems exaggerated. As Wayne Proudfoot has argued, while scholars of religion may explain religious experience “in terms that are not those of the subject and that might not meet with his approval” (1985, 197), he warns that the subject’s experience “must be identified under a description that can plausibly be attributed to him” (194–195). As such, “to describe an experience in nonreligious when the subject himself describes it in religious terms is to misidentify the experience, or to attend to another experience altogether” (196). Avoiding what Proudfoot characterizes as “descriptive reduction” seems to be the same danger against which the rule of deference is designed to guide us.

Endnotes

[1]In addition to the courts, the other relevant state institutions vested with the power to administer the religious workers visa program are the U.S. Citizenship and Immigration Services (formerly known as the INS) and the USCIS service centers (formerly known as Administrative Appeals Office (AAO).

[2]See also *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892).

[3]8 CFR §214.2(r)(2).

[4]80 U.S. (13 Wall.) 679 (1871), 728–29.

[5]541 F.2d 1383 (9th Cir. 1976).

[6]*Unification Church v. Immigration and Naturalization Service*, 547 F. Supp. 623 (D.D.C. 1982), 628.

[7]Ibid.

[8]*Tenacre v. Immigration and Naturalization Service*, 78 F.3d 693 (D.C. Cir. 1996), 697.

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