ABSTRACT

This thesis examines the difficulties surrounding the legal regulation of religion. These difficulties are caused by the inability of law to coherently identify religion as an entity, which results in every human activity having the potential to be considered religious. Social theory universally accepts the view that all societies undergo a process of secularisation wherein religion recedes and fades away. The failure of law to regulate religion is seen as the inadequacy of law itself, and as evidence of that society’s inability to secularise. Within this theory of secularisation there is no attempt to theorise religion.

In order to analyse these difficulties I identify a particular legal category which is the religious place or “the place of worship” for investigation. I propose that such difficulties are due to the colonial origins of the Indian legal system and a conceptual framework that is based on Western law and culture. Therefore an archaeology of colonial legal discourse must form the mode of investigation.

I argue that that the unintelligibility of religion within law is due to the dynamic of theologisation in which idolatry as a concept plays a central role. Theologisation is the process of bringing about “religion” in legal discourse and is behind the making of our secular legal systems. The cultural history of theologisation, and the structural resemblance that it bears to the manner in which religion (in the form of Christianity) has spread in the West, forces us to rethink the nature of the religious and the “secular”. This has implications for our understanding of the Indian legal system and the emergence of Islamic law in a particular form and structure in the post-colonial period.
The potential of theologisation as a hypothesis lies in its ability to highlight the conceptual dissonance that is behind the inability to resolve the difficulties surrounding the legal regulation of religion. I show how idolatry as a concept is central to the process of theologisation in the context of the place of worship as a legal category. In our investigation of this category, we discover that secular legal concepts and structures such as equity and trusts are the result of the Christian theological principle of charity becoming a theme in Western culture. The transplantation of these secular legal structures in India provides the framework for the “religious place” as a legal category. A further analysis reveals that there are three conditions which are dedication to God, an authority to interpret God’s purposes and the public and the private which finally determine the formation of the legal category of the religious place. Therefore, any resolution of the difficulties surrounding the legal regulation of religion requires engaging with the conceptual dissonance caused by theologisation and its discursive conditions.