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SYMPOSIUM INTRODUCTION

Status between Law and Religion: Introduction

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Abstract

The juridical status of persons nowadays tends to be discussed only in narrow contexts: civic status (citizen, alien, and various visa statuses), marital status, penal status, employment status, religious or ethnic status within colonial and postcolonial states, status of the fetus, corporate personal status, and so on. In the century and a half since Henry Maine's 1861 treatise, *Ancient Law*, in which he discerned a general movement from status to contract in progressive societies, broad discussions of status as a general feature of law are few, so a renewed comprehensive approach to the issue remains a desideratum. This symposium, which has its origins in an interdisciplinary conference held in November 2019 at Washington and Lee University School of Law, is a step in that direction. The articles and essay gathered here illuminate the multifarious ways in which juridical status of persons overlaps with religious conceptions of persona and status. They provide grounds for seeing the religious component as distinctive because of the uniquely privileged authority attributed to divinely mandated status distinctions and the urgency of claims to religious rights. They also show how a juridical status can straddle law and religion, and how legal institutions handle such hybrid forms of status.

Keywords: status; persona; Hindu; Samaritan; religious freedom; Jewish law; minority; Ottomans; India; Satmars

The juridical status of persons nowadays tends to be discussed only in narrow contexts: civic status (citizen, alien, and various visa statuses), marital status, penal status, employment status, religious or ethnic status within colonial and postcolonial states, status of the fetus, corporate personal status, and so on. A comprehensive examination of status as a distinct feature of law has hardly been attempted since Henry Maine's treatise, *Ancient Law* (1861), in which he discerns a general movement from status to contract in progressive societies, whereby rights and capacities of the individual were gradually detached from status-based classifications of family and tribe. Recent broad discussions of status as a general feature of law are vanishingly few,[1] so a renewed comprehensive approach to the issue remains a desideratum.

[1] Recent exceptions include Kaiponanea T. Matsumura, *Breaking Down Status*, 98 Washington University Law Review 671 (2021) (demonstrating the useful insights that can be gained from examining contemporary legal problems from the point of view of status); George Letsas, *Offences Against Status,* 43 Oxford Journal of Legal Studies 322 (2023). Before these recent contributions, the generally referenced discussion of juridical status was J. M. Balkin, *The Constitution of Status*, 106 Yale Law Journal 2313 (1997), who described how juridical status can reflect social status but also "map" and even "constitute" it. Balkin, *supra*, at 2324–26. *See also* Eric J. Mitnick, *Law, Cognition, and Identity*,

This symposium is a step in that direction. It has its origins in an interdisciplinary conference, "Status and Justice in Law, Religion, and Society," that I organized, with the help of Kameliya Atanasova, in November 2019 at Washington and Lee University School of Law.[2] The conference brought together scholars of law and religion, legal theorists, legal historians, and social scientists working on topics from various periods and geographic contexts to examine the manifold ways in which legal systems ancient, medieval, and modern have defined and deployed the juridical status of persons, and the manifold ways in which other kinds of status classifications and social practices have impinged on juridical status. Four participants from the conference contribute to this symposium, along with a fifth who joined the conversation thereafter. These contributions include three case studies of status at the intersection of law and religion from three different geographic and historical contexts, complemented by a review article reflecting on two recent monographs on the status of religious groups in the contemporary United States and England.

Pratima Gopalakrishnan, in "Wives' Work: Gender and Status in a List from the Mishnah," focuses on the internal logic of status definition in an ancient model of religious law: Halakhah (Jewish law). The status in question is that of *wife* and the obligations and rights pertaining thereto. Gopalakrishnan carefully analyzes a section of the Mishnah ("the first unambiguously legal Jewish text,"[3] ca. 200 CE) that lists seven particular forms of domestic labor defined as belonging to the status of wife: grinding grain, baking, washing, cooking, nursing her son, making the bed, and wool-working. She observes that the list (*Mishnah Ketubot* 5:5) provides a basis for associating the basic obligations of a wife to her husband with domestic labor otherwise performable by slaves: if a wife's dowry includes one or more enslaved women, she is relieved of her duty to perform particular tasks. Owning four servants is sufficient to free her completely from these seven tasks. The order in which she is freed from them as each slave is added suggests a hierarchy of these labors; making the marital bed is the last to be transferred. Gopalakrishnan observes that the Mishnah treats such labor wholly within the context of a "self-sufficient household,"[4] despite evidence that in the early centuries of the common era, new techniques of mechanized milling created a market in processed grain flour. Yet the Mishnah continued to treat the household as the site of manual labor owed by wives and isolated from the marketplace and wider economy.

A further implication is that wifely labor and slave labor in these seven cases are "interchangeable" in the domestic context. Wives could avail themselves of the privilege of buying their leisure ("an easy chair") with wealth thanks to what Gopalakrishnan calls the "fantasy of endless access to enslaved women."[5] This analysis offers valuable insights into the rabbinic construction of the status of wife: it was a status entailing specific home-based forms of obligatory labor, but the obligation could, in effect, be transferred to other women (human *assets*) in the wife's possession. Even though these seven forms of labor were constitutive of wife-status, the labor itself was fungible, and could be delegated while preserving the status of the dutiful free-born wife. The wife's wealth confers privilege that can cushion her from the servile aspects of her status even if it does not wholly detach her from them.

67 Louisiana Law Review 823 (2007). For status in ancient law, see Timothy Lubin et al., *Status and Family*, in Cambridge Comparative History of Ancient Law (Caroline Humfress, David Ibbetson, and Patrick Olivelle, eds., forthcoming).

[2] *Status and Justice in Law, Religion, and Society: A Conference at Washington and Lee University, 1–3 November 2019*, https://status-and-justice2019.academic.wlu.edu (last visited Oct. 18, 2023).

[3] Pratima Gopalakrishnan, *Wives' Work: Gender and Status in a List from the Mishnah*, 38 Journal of Law and Religion (2023) (this issue).

[4] *Id.*

[5] *Id.*

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Kameliya Atanasova and Matthew Chalmers, in "The Status of Samaritans in Sixteenth-Century Ottoman Damascus," analyze an Ottoman administrative document as a window onto the dynamics of "minority status before modernity."[6] They find in it an example of how status classifications in a state legal framework can have their basis not only in explicitly theological presuppositions of the dominant religion (in this case, the *dhimmī* status assigned to Jews and Christians as *peoples of the book*—that is, non-Muslims who received earlier authentic revelations from God) but also in internecine doctrinal rifts between subordinate communities (here, Samaritans and [other] Jews). We see how status categories that determine jurisdiction, tax liability, and even eligibility for government work can be carried over, often heuristically and uncritically, from theology and sectarian invective and used to classify and rank *minorities.*

This sixteenth-century Ottoman instance illustrates the often deleterious effects of a state defining *correct* religion and ranking deviant minorities, but it also exhibits the Samaritans exercising their professional expertise as scribes and thereby exercising power in property matters (allegedly to the disadvantage of some Muslims). Their skills were, nevertheless, evidently valuable enough to the Ottoman administration that the sultan had to insist that Samaritans not be so employed, sending repeated orders and resorting to threats of punishment in case the practice continues. In the end, Atanasova and Chalmers conclude, it is clear that the Samaritans themselves had a hand in shaping their status as a religious minority distinct from "other Jews" in the Ottoman realm, and in occupying positions of some bureaucratic power as well—even if it that power is regretted and abolished in the decree.[7] The document unintentionally provides a window onto a premodern mode of minoritization that was "a collaborative affair rather than merely a top-down imposition" (the sultan's ineffective objections notwithstanding).[8] Atanasova and Chalmers thus propose not only that the defining of minority group status can be identified in premodern legal orders but also that minority groups could find ways to bend their status to their own purposes, be that self-assertion of identity or advantageous forms of recognition vis-à-vis the political sovereign and its administration.

While the authors of the first two articles highlight aspects of the constructedness, the artificiality, of juridical status, and the ways in which it can refract social difference and hierarchy, Deepa Das Acevedo, the author of the third article, "Deities' Rights?," addresses a striking form of constructed juridical status: the fictive persona of a deity bearing legal rights. Religious grants recorded in ancient and medieval Indian inscriptions commonly listed a deity[9] or the Buddha[10] as recipient, in which case the property was treated as held in trust by the (human) priests or monks responsible for administering the property and for performing ritual obligations stipulated in the grant. Recalling that "neither the figurative nor the literal view of [Hindu divine] personhood is of entirely colonial origin,"[11] Das Acevedo proceeds to discuss the phenomenon of Hindu deities participating in litigation in defense of their legal rights, as it played out in a legal battle over whether all women of childbearing age could be banned from entering a

[6] Kameliya Atanasova and Matthew Chalmers, *The Status of Samaritans in Sixteenth-Century Ottoman Damascus*, 38 Journal of Law and Religion (2023) (this issue).

[7] *Id.*

[8] *Id.*

[9] Günther-Dietz Sontheimer, *Religious Endowments in India: The Juristic Personality of Hindu Deities*, 67 Zeitschrift für vergleichende Rechtswissenschaft 45 (1965).

[10] Gregory Schopen, *The Buddha as an Owner of Property and Permanent Resident in Medieval Indian Monasteries*, 18 Journal of Indian Philosophy 181 (1990).

[11] Deepa Das Acevedo, *Deities' Rights*, 38 Journal of Law and Religion (2023) (this issue).

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temple to the Hindu deity Ayyappan at Sabarimala in the state of Kerala. The arguments used to defend the ban radically extended the range of rights that can be borne by a fictive person (as opposed to a natural person). It is normal for fictive persons to have rights under private law, such as the capacity to be party to a contract, hold property, sue, or be sued. However, J. Sai Deepak, representing the advocacy group People for Dharma, claimed for Ayyappan a constitutional right: "the Deity has the right to follow His Dharma, like any other person under Article 25(1)"[12] of the Indian Constitution, namely: "all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."[13] Here, "to follow His Dharma" is offered as a specifically Hindu equivalent of the constitutional formulation, "to profess, practise and propagate religion."

Various other juridical statuses are involved. Indian law abolishes untouchability and prohibits discrimination on the basis of caste in matters of entry into Hindu temples of a public character. The temple's representatives argued that women as a class were not covered by this protection, and that even if they were, the Sabarimala temple and its devotees constitute a distinct denomination which renders that law inapplicable. Uniquely at the Sabarimala temple, the petition asserts, the deity's personal dharma entails perpetual celibacy, which in turn requires (in the view of the temple priests and the Travancore Devaswom Board) exclusion of women of menstruating age. The exclusion of women between the ages of ten and fifty, presented as an "essential practice" of religion at this temple, protects the divinity's religious freedom and right to privacy. In legal terms, the constitutional rights of a fictive person trump the rights of natural (human) persons severally and collectively.

The Supreme Court deemed that the Devaswom's arguments failed the essential practices test and the denominational test—that is, the Court found that excluding women of those ages was not a sufficiently essential practice of Hinduism to merit constitutional protection, nor did it accept that the Sabarimala devotees represent a distinct "denomination," which would have protected the temple's right to "manage its own affairs" under Article 26 and thus to evade laws mandating free entry to Hindu temples.[14] They are "just Hindus," in the words of Chief Justice Dipak Misra.[15] But among the Supreme Court justices, only Justice D. Y. Chandrachud addressed the argument for constitutional rights of the divinity. He flatly denied that Ayyappan, though "a juristic person for certain purposes," could have constitutional rights (such as a right to privacy, or a right to freedom of conscience).[16] Das Acevedo concludes by comparing this case to other cases involving Hindu deities. She finds that in most such cases that revolve around temple property, deities have private law rights but not independent capacity to act: trustees and representatives must act on their behalf, and their divine participation is symbolic. The Sabarimala Ayyappan case differed insofar as a serious claim was advanced for the divine litigant "conceived as a living person"[17] with independent agency, and so, endowed with constitutional rights. Here, Justice Chandrachud drew the line, but Das Acevedo notes that analogous arguments have been advanced, for example, for the goddesses believed to be embodied in the sacred Ganga and Yamuna rivers—goddesses

[12] *In re IYLA v. State of Kerala* and *In re People for Dharma*, I.A. No. 30 of 2016 in WP(C) 373 of 2006, ¶ IV(4).

[13] Indian Const., art. 25.

[14] *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1, 94–97 (¶¶ 88–96) (discussing the denominational test); 102–06 (¶¶ 112–26) (discussing the essential practices test) (Misra, C.J.).

[15] *Id.* at 97 (¶ 96). On this point, see Deepa Das Acevedo, *Just Hindus*, 45 Law & Social Inquiry 965 (2020).

[16] *Id.* at 235 (¶ 403).

[17] J. Sai Deepak cited *Rambrahma v. Kedar* (1922) 36 C.L.J. 478, 483, to support this position. *See In re People for Dharma*, *supra* note 12, ¶ IV(1). In *Rambrahma*, however, the court used the language "conceived as a living being." *Rambrahma*, 36 C.L.J. at 483.

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whom an Indian judge declared to be "juristic/legal persons/living entities," a compound designation conflating natural and fictive status.[18]

The question of how far the personhood of fictive persons such as corporations or deities can extend is not by any means a new one. Deities have been accorded such rights in India for centuries. In the thirteenth century, Pope Innocent IV felt obliged to affirm that associations, being mere "names of law" rather than human persons in Canon Law, could not be excommunicated.[19] Six centuries later in 1809, early in American legal history, the Supreme Court considered whether banks had a right to diversity jurisdiction under article III of the Constitution (the Court found that they do).[20] Winnifred Fallers Sullivan, who delivered one of the two keynote lectures at the conference—the substance of which has since been published in *Church State Corporation*[21]—points out how American courts increasingly endow *the church*—a collective abstraction with a Christian complexion—with ever more extensive rights, while limiting rights for individuals. So, the question is far from settled.

The final piece in this symposium is a review essay, "Life at the Margins: Religious Minorities, Status, and the State," by Mona Oraby[22] reflecting on two recent books dealing with the ways in which two contemporary religious minorities—conservative evangelical Christians in England and Satmar Hasidic Jews in New York State—engage with state law in different ways in pursuit of their religious and social aspirations.[23] These groups differ markedly from one another. Among English Christians are members of Christ Church, who aspire to restore England's historically Christian heritage by spreading the gospel. Christ Church provides some funding to a lobby group, Christian Concern, and its affiliate, the Christian Legal Centre, which litigates Christian-interest cases. Although Christ Churchites and the Christian legal activists largely practice different strategies of public engagement, they share a sense that Christianity is under threat and that they are a minority in terms of their theological and sociopolitical commitments, even as the monarch is still officially the head of the Church of England. Oraby notes how this context allows Christian Concern and the Christian Legal Centre to see themselves as advancing God's "blueprint" for humanity, using the legal mechanisms of the state. The fact that most of their cases fail is not, in their view, a sign of the futility of their cause or the intrinsic hostility of state institutions to religion; on the contrary, the state's legal system "provides a forum for the public expression of evangelical conviction."[24]

By contrast, the Satmar Hasids of Kiryas Joel, in New York State, embrace their minority status vis-à-vis the surrounding society (including other, non-Satmar Jews). For them, the American political and legal system provides administrative and institutional mechanisms

[18] *Salim v. State of Uttarakhand*, WP(C) 126 of 2014 (2017), at ¶ 19.

[19] This subject arises in another symposium arising from the conference on status and justice; see Timothy Lubin, *Status in Ancient and Medieval Law: Introduction*, 63 American Journal of Legal History 61, 64–65 (2023), and Melissa Vise, *The Matter of Personae in Medieval Italy*, 63 American Journal of Legal History 131 (2023).

[20] *Bank of the United States v Deveaux*, 9 U.S. 61 (1809).

[21] Winnifred Fallers Sullivan, *Church State Corporation: Construing Religion in US Law* (Chicago: University of Chicago Press, 2020).

[22] Oraby's contribution in the conference itself was drawn from her forthcoming monograph, Devotion to the Administrative State: Religion and Social Order in Egypt (2024). In it, she lays out the strategies by which Egypt's religious minorities (Coptic Christian and Bahá'í) have sought to secure their position in the wake of the 2011 uprising and subsequent repression. She shows how they did so by affirming their difference and embracing and instrumentalizing legal administrative and judicial structures (with a zeal that Oraby deems to amount to devotion) to ensure that their religious status was recognized and protected by the state. Some may find an echo here of Atanasova and Chalmers's argument in their contribution to the present symposium.

[23] Méadhbh McIvor, Representing God: Christian Legal Activism in Contemporary England (2020); Nomi M. Stolzenberg and David N. Myers, American Shtetl: The Making of Kiryas Joel, a Hasidic Village in Upstate New York (2021).

[24] Mona Oraby, *Life at the Margins: Religious Minorities, Status, and the State*, 38 Journal of Law and Religion (2023) (this issue).

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for separatist religious groups to exist in protected isolation. Their acquisition of private property and their exercise of rights therein facilitated their incorporation as a Satmar-majority village with the Town of Monroe, allowing the community to create an "American shtetl" that is "one of the most successful examples of local sovereignty in American history."[25]

As different as these cases are, Oraby sees in them a common theme: contrary to the views both of scholars skeptical of the state as an institution capable of facilitating religious flourishing and of those who advocate multiculturalism as a common good ensured by state institutions, these religious minority groups do not seek a post-identitarian democratic future; both are inclined to look to state law and political institutions in a democratic society as a means for proclaiming their difference and separateness. The conservative evangelicals use it to preach the Kingdom of God and its biblical law in a national public forum, while the Satmars use it to carve out a self-governing polity and jurisdiction for Jewish law as they understand it. This observation accords with her analysis in *Devotion to the Administrative State* and might resonate also with Atanasova and Chalmers's conclusions.

In sum, the contributions to this symposium open new vistas on the multifarious ways in which juridical status of persons overlaps with religious conceptions of persona and status. To a certain extent, this may be deemed simply one aspect of social status underlying legal status, or legal status responding to social and political dynamics. But these studies provide grounds for seeing the religious component as distinctive: because of the uniquely privileged authority attributed to divinely mandated status distinctions (for example, in Jewish law, in Islamic law as mediated by Ottoman institutions), and the unique urgency of those claiming religious rights, whether for the human faithful or for mystical entities like *the church* as *the body of Christ* or the divinity as a living person. Such cases help reveal how a juridical status can straddle law and religion, and how legal institutions handle such hybrid forms of status.

[25] Stolzenberg and Myers, *supra* note 23, at 380.

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