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## Podcast Transcript

Version 1.1, 25 September 2019



### How Religious Freedom Makes Religion

Podcast with **Tisa Wenger** (30 September 2019).

Interviewed by **David G. Robertson**

Transcribed by **Helen Bradstock**.

Audio and transcript available at:

<http://www.religiousstudiesproject.com/podcast/how-religious-freedom-makes-religion/>

**David Robertson (DR):** *I'm joined today by [Tisa Wenger](#). We're here in Hanover at the DVRV conference. However, we're not going to be talking about the German context. We're going to be discussing how religious freedom makes religion. Tisa teaches in the Divinity School at Yale, including Religious Studies and American Studies, and is the author of the recent book, [Religious Freedom: The Contested History of an American Ideal](#). Welcome to the Religious Studies Project, first and foremost!*

**Tisa Wenger (TW):** Thank you so much! It's good to be with you.

**DR:** *Let's put the book in a little bit of context, before we get into a couple of case studies. Tell us how you started working on it. How did your early studies lead you to this subject?*

**TW:** Yes. Well I'll try to keep it relatively brief, instead of giving a full intellectual autobiography! But my first book, which was based on my dissertation, was called [We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom](#). I started that book, not by thinking about religious freedom, but by thinking about race, American colonialism and category of religion. And I wanted to make an intervention into the kind-of Religious Studies conversation about to what extent is the category of religion a colonial imposition in various contexts. And I wanted to talk about that in relation to Native Americans, and for a variety of reasons ended up looking at the American south west and the [Pueblo Indians](#) in Mexico. And I argued, in that book, that Pueblo Indians only began really to contextualise their traditions as religion in the 1920s in order to make the argument for religious freedom. So that's how I got to religious freedom – kind-of-like through the

back door, so to speak. And when I finished that book I wanted to put a similar set of questions on a

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much broader historical stage. So I was asking, “Who's invoking the idea of religious freedom and what kinds of cultural and political work does it do?” and, in particular, in kind-of imperial contexts, colonial contexts, and in relation to racial formation in the United States. So the set of arguments that you didn't hear me talk about today had to do with race, and the way race is shaped in America is kind-of co-constituted with religion. And so I have argued in various other examples about how race and religion are co-constituted. But I was interested initially in this question of how religious freedom shapes or produces religion; when different sort-of social and cultural formations come to be conceptualised as religion, and how the category of religion is formed in that process. And so part of what I'm arguing in the book is that religious freedom disputes do important political and cultural work in that way, in shaping what is religion.

**DR:** *Yeah. Right. And that, for me, is a very interesting aspect of your work. We're very familiar with the kind-of human rights approach to this issue of, “How do we represent religions in the law?” and “How do we deal with religious freedom?” and these kinds of ideas. All of which, of course, sort-of assume this thing which needs to be represented. Whereas your argument is more subtle. So, if I'm understanding, it's essentially that the category of religion is almost created in these legal negotiations about how we represent and recognise religions in the law – especially in a sort-of colonial context. Is that . . . have I got that correct?*

**TW:** Yes that's exactly right. But I would say that in most cases, it has not been created out of nothing, right?

**DR:** *Of course, yeah.*

**TW:** (Laughs). In most religious freedom controversies that we see . . . of course, the category of religion already was present and being used by people, but it is recreated and reshaped all the time. And in some cases, I think particularly in colonial contexts, you can see where local people – colonised people – start to use it for themselves for the first time, or pretty much for the first time, right? Because particularly the thing about US imperialism . . . . And religious freedom is such an important concept for Americans, generally – but for colonial officials in particular, who saw themselves as bringing freedom to the people they colonise, right?

**DR:** *Right.*

**TW:** And in some cases, bringing religious freedom was particularly important to them. So I'm

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interested in how, then, religious freedom served as a tool for kind-of colonial administration. But I'm also interested, then, in how colonised people take that principle and use it to kind-of speak back to empires.

**DR:** *Right. Which is one of the most difficult aspects of post-colonial study of religion, I think, for people to get their heads around. It's that it's a process. There's a two-way process. It's not simply the baddies making the goodies behave in a certain way. But the category is reshaped, reconstituted and sustained in that dialogue where it is imposed in certain legal contexts. But then it's also used by the people being colonised.*

**TW:** Yes

**DR:** *As an act of legitimatisation, yes?*

**TW:** Yes. Exactly. So in the Native American case . . . and I can point to lots of specific examples, you know? In my work on the Pueblo Indians, and the piece of my book that you heard me present on today about [Ojibwe](#) Indians in Minnesota, in both cases you see US government officials with the [Bureau of Indian Affairs](#) (BIA) delegitimising indigenous traditions by categorising them as superstitious, heathenish, pagan, right? And indigenous people who really in their own languages and ways of structuring . . . . They had their own ways of structuring their societies, but those ways of structuring their societies didn't really include anything equivalent to the category of religion as Americans understood it at the time. But they start to conceive of those traditions as religion in order to argue back against the categorisation of themselves as heathen savage, pagan etc., right? So this is why I title my first book *We Have a Religion*. This was a quote from a Pueblo Indian petition to the superintendent of Indian Affairs, saying “We also have a religion,” You know? “And you can't ban it, because of the First amendment to the US Constitution.” Right?

**DR:** *Yes. The clearest example that I'm aware of – it's quite a well-known case, you know – is the way that Indian independence and Hinduism are kind-of coeval. So Hinduism is an administrative category, essentially by the British Empire, which then becomes one of the central motifs in the national identity of India leading directly into the Indian independence movement, and, you know, One Nation Indian political power today.*

**TW:** Yes, that's exactly right. And the sort-of construction of Hinduism as a “world religion” is happening in conjunction with that colonial history. Both by Indian intellectuals and by British . . .

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**DR:** *Absolutely.*

**TW:** . . . for somewhat different ends. But it serves both of their interests to construct Hinduism as a world religion.

**DR:** *Absolutely, yes.*

**TW:** But native indigenous traditions, for Native Americans and elsewhere around the world, never got conceptualised or moved to that level of world religion, which is a different thing, as we know from [Tomoko Masuzawa](#)'s work and others.

**DR:** *Absolutely. Let's dig into one of those examples, then. The Pueblo Indians example is really fascinating. So perhaps you could take the Listeners through some of the details of that?*

**TW:** Sure, so the Pueblo Indians are really a group of culturally related peoples in New Mexico, sort of related to the [Hopi](#) in Arizona. Related because . . . well . . . Now I'm going to ramble! But they're really four separate language groups that lived close by each other for several centuries and so came to share a lot of cultural characteristics. But they were colonised by Spain early on, as part of the kind-of northern expansion of New Spain up into what is now the south-western United States. And that's hugely influential in shaping who the Pueblo Indians were by the time that the United States arrived in the region, after the Spanish American War in 1848. And most of the Pueblo communities – although not all of them – became Catholic under Spanish rule, and were pretty bilingual in Spanish and indigenous Tewa and Tiwa languages. And they, in the kind-of Spanish uses of religion, would conceive as Catholicism as their religion. So it's not that they weren't familiar with the category of religion. But under Spanish law, let's just say, and in the kind-of Mexican New Spain, and then independent Mexico, there was no legal advantage because there was no religious freedom guaranteed to conceptualising indigenous practices as religion. So they had come to a kind-of accommodation with the Franciscan priests, who were mostly the clergy in the churches. And the Pueblos came to be named for Catholic saints and had feast days for the patron saint of each Pueblo, where they would practice traditional Pueblo dances as well as have a Catholic mass and a procession through the town. But they had kind-of come to an accommodation with the Catholic priests, the Franciscan priests, where they would . . . They talked about Pueblo [kiva](#) ceremonies and Pueblo ways as *costumbre*: custom, right?

**DR:** *Yes.*

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**TW:** And so that really didn't change under American rule until the 1920s, when there's a new Commissioner of Indian Affairs, [Charles Burke](#), who puts out this kind-of dance policy in order to enforce older regulations against Indian dances and those that . . . the one from the 1880s that I was actually referring to in my talk today. He, Charles Burke in the 1920s, tries to reinforce those relations.

**DR:** *So, maybe just in a sentence or two, tell us what they are, because the Listener won't have . . .*

**TW:** Right, so there was . . . and these are not laws passed by Congress, right? They're more bureaucratic regulations within the Bureau of Indian Affairs, that's nested under the Department of the Interior. And the Commissioner of Indian Affairs is in charge of the Bureau of Indian Affairs. And he had immense sort-of executive power to regulate. And so this court of Indian offences was created by the Commissioner of Indian Affairs as a way to . . . I'm sorry, I'm not being very brief here! But it's relevant . . .

**DR:** *No, this is good!*

**TW:** as a way to, again . . . it's a kind-of tutelary regime: a way to instruct Indians – and this is done in a very patronising way, so I'm kind-of echoing the patronising language that was used – to instruct Indians in civilisation and in the law. So they would . . . the agents would appoint a kind-of more – quote unquote – “progressive” Indian, to be the judge of the Court of Indian Affairs. But part of what the Court of . . . There're also kind-of regulations or there were a list of quote “[Indian offences](#)“. And nowhere in the documents extant from the time or in the regulations that were written up by the commissioner, was this referred to as “religion”. But it later came to be called the Religious Crimes Code. But the Indian offences that were listed in this code were “heathenish rites”, “the arts of the conjurer”, “the medicine man” etc., etc., right? And so native people could be, and were, fined and imprisoned for practising the arts of the conjurer, or participating in certain kinds of dances that were specified to be banned. But that had not . . . For various reasons the US control over Pueblo Indians was not nearly so strong in that period in the late 19th century. And it hadn't really been enforced against the Pueblo Indians ever. And I don't need to take the time to go into the reasons for that. But in the 1920s, actually – sparked in part by an exposé of Pueblo ceremonies, in which those ceremonies were depicted as sexually lascivious and immoral by missionaries and missionary-minded government agents – who were really, I think it's safe to say, completely misinterpreting and misreading those ceremonies . . .

**DR:** *That's a common way of representing any barbarous religion anyway, isn't it?*

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TW: Correct.

**DR:** *It's a common language.*

**TW:** Correct. So Charles Burke's new regulations on dances, that were really just trying to re-inforce some of the earlier regulations from the 1880s, were sparked by a controversy of Pueblo Indian dances. So they were very much at the focus of the controversy that ensued. In the meantime, there were kind-of a group of [Boasian anthropologists](#) and sort-of modernist artists and writers who had settled in New Mexico, it was in Santa Fe, and who were starting to really romanticise the Pueblos as “ideal primitives” – quote unquote – right? And so some of those people also leapt to the defence of the Pueblos. And the Pueblo leaders themselves resisted the government suppression by saying, you know, “You can't do this. Our traditions are religion.” But their re-categorising their traditions as religion was aided by the anthropologists and artists who were also starting to do the same thing, right? In a kind of celebration-of-primitive-religion way. So that's what happened. Then it was a pretty big public controversy, I mean with articles in lots of national magazines and newspapers and such about the Pueblos. And one of the people who was centrally involved was [John Collier](#) who at the time had just become the head of a new reform association called the [American Indian Defence Association](#). And he was becoming one of the biggest gadflies against BIA assimilationist policies. And then later under Franklin Delano Roosevelt' with the New Deal, Collier was appointed as the commissioner of Indian Affairs – which was a huge overturn. And he reversed some of these policies outlawing Native American dances, and he did so on religious freedom grounds. That reform had its own limitations, of course. And most BIA agents, even after that point in the mid-1930s, continued to work closely with Christian missionaries. And even when they formally recognised the right of Native Americans to religious freedom, nonetheless still conceptualised religion with such a Christian model that they often ruled indigenous practices outside of what counted as religion, right? So what was considered religion was always being negotiated and contested on different Indian reservations between native people and government agents.

**DR:** *And so was there also the kind-of opposite side of that? Does the legislation and the control then shape the way that the Indians are practising? Did they begin to think differently about their practices and maybe even emphasise different bits more, and focus on things differently as a result?*

**TW:** Yes absolutely. So when I finished the book on the Pueblos . . . this was the first piece that I did for my new big sort-of broad-scope religious freedom book. My first transitional step I took was to say, “Well I've done all of this in-depth work on the Pueblos in New Mexico. Now I wonder how this”

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happened, or can I tell a similar kinds of stories about other Native Americans elsewhere in the United States?” right? And “When did native people start to use religious freedom arguments?” and “How did that shift things for them?” I didn't get to that part of . . . . I did make that kind of argument in relation to the Pueblos, as well, and talk about how reconceptualising their traditions as religion created new conflicts within Pueblo communities. But I want to talk now about the newer research that appeared in the second book, in the religious freedom book, that resulted from me asking, “Well, what did this look like more broadly?” And initially I was actually thinking, “Well, probably because there was such a concerted government attempt at suppressing these traditions and nobody was thinking of them as religion, that probably religious freedom wasn't a pertinent category until the twentieth century.” But I found that not to be the case. I found that actually the more I looked, the more I found Native Americans from the beginning of the nineteenth-century really, in some cases, using religious freedom talk. And I would say, broadly speaking, there are at least two different types of ways that that was applied. So one, in relation to the kind-of stages of colonial history, perhaps – in early stages of colonial contact, before native nations were conquered, when you have Christian missionaries coming, where the native nations are not under US control – you often see native people saying something like “We're not interested in your religion. We have our own religion.” And sometimes that directly becomes language about religious freedom and sometimes it becomes directly language about religious freedom that is also about protecting indigenous sovereignty, in a kind-of collective way: “Our people have our own ways. And you can't take our land. You can't take our . . .” You know? And religious freedom was part of that. But it's not a religious freedom that is appealing to the US Constitution, because they're not under the US Constitution. They don't see themselves as being governed by the United States.

**DR:** *Yes. And there's maybe less of a . . . It's maybe not to do with freedom of religion and the role of the secular. They're more thinking in terms of religion as customs and that kind of idea.*

**TW:** Yes. They using religion-talk, but in a way where it's very integrated. But then, after Native Americans are conquered essentially, right – and that happens at different times in different parts of the country and for different native nations – but by the late nineteenth century, by the 1880s, really overwhelmingly native Americans have been conquered, and they have been restricted to reservations, and there are now new policies that are being implemented. And the Code of Indian offences that I was describing earlier is part of that period of a kind-of newly heightened effort at administrative control. And that's when, immediately in that period, you start to see Native Americans on reservations resisting the suppression of indigenous practices. And sometimes native people refer to their “doings”:

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ceremonies, dances, all kinds of practices – you know, medicines, healing practices – they start to refer to some of them as religion specifically in order to make religious freedom arguments. And that started to happen in the 1880s. It accelerated with the [Peyote movement](#), and the suppression of the Peyote movement. And I trace that history in the book. But you see . . . . And actually, the Peyote movement is a really interesting case with regard to the question you were asking about how that shifts indigenous traditions. Because, I mean, I don't think the government suppression and the law is the only reason that Peyotists, and people in that tradition, started to talk about it in the language of religion. There were other reasons as well, but this was certainly one of them. But what is very clear is that the Peyote leaders and practitioners . . . structurally, the movement shifts towards a more, what we might call a kind-of Protestant – certainly a Christian – model for what counts as religion, in order to make religious freedom arguments in the courts, and in Congressional hearings, and before state legislators. And that happened in various places. But, you know, there's the incorporation of the Native American church, right, that happened . . . which there was an anthropologist, [James Mooney](#), who helped with that process. And the Native American church, you know . . . . Again Peyote ceremonies were, for various reasons, borrowing from Christianity. And some of the Peyote movements began to see themselves as Christian. But the fact that being Christian helped with a religious freedom argument meant that those groups had a boost, right? (Laughs). So there's a kind-of incomplete Christianisation of the Peyote movement and the Native American Church that isn't entirely caused by the need to resist government suppression and make religious freedom arguments, but is certainly encouraged and accelerated by it. And so, you know, Peyote is called “the sacrament”. Again and again, you see Indians trying to argue, you know, against legislation and suppression. And that is also in the climate of a [prohibitionist period](#), when there's a huge campaign against drugs and alcohol – and particularly alcohol, right? So there were crusaders who were employed by the Bureau of Indian Affairs to stamp out the alcohol trade among Indians. And the Peyote became kind-of classified as a dangerous drug, alongside alcohol

**DR:** *Right, yes.*

**TW:** So the Bureau of Indian Affairs talked about Peyote and the Peyote as a cloak for drug dealers. They just . . .

**DR:** *Right. Similar to the way that cannabis became . . . ?*

**TW:** Yes. “They're pretending to be religious in order to kind-of pedal drugs”, right? And so, in order to combat that kind of suppression and denigration, Peyote leaders would emphasise the kind-of

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positive moral effects of Peyote practice and Peyote worship, and talk about the sacrament, and talk about the church. So that was very much a necessary strategy for them. And I don't see it . . . again, I don't see it only as a strategy, but it was certainly accelerated by that. Yes.

**DR:** *Yes, and on the RSP we've talked a few times – we've been talking about it over the last week here, as well – that all of these categories – you know, religion, race, the secular, human rights – they're all part of an interlocking system. So it's not just the one thing that affects the way that religion is constructed. But it's part of a larger system in which those are the building blocks we're working with.*

**TW:** Right. Yes. So you reminded me, in saying that, of the point I was making in the talk I gave earlier today: about how religious/secular distinctions are even produced in some Native American societies in this process. Because what I found was – this was the part I didn't quite get to in my earlier answer – but what I found was that in many native communities while religious freedom arguments appeared quite early, and many native leaders were making religious freedom arguments, sometimes kind-of strategically, tactically, that *wasn't* the most effective way to convince a particular official to allow them to hold dances. Of course, sometimes dances went on, regardless of what the officials said, out of their view. But many Native Americans on many reservations, you'd see dances being held on the Fourth of July, on various kinds of national holidays and Christian holidays – you know, Christmas and Thanksgiving, but especially the Fourth of July – and native people and returned veterans especially after the First World War saying, “We fought for our freedom and we have the right to celebrate our freedom.” And, plus, “These are just social dances, and white communities hold dances too, to celebrate the 4th of July – so why can't we?” And they, in those cases, would very much downplay any kind of sacred ceremonial. They didn't conceptualise those traditions as religious for the purposes of these arguments. And so you see, I think, a kind-of differentiation between certain dance or ceremonial traditions that became defended and conceptualised as religion, and came to take on the characteristics associated with religion – which is really modelled after Christianity in the United States – versus those kind-of dance or ceremonial complexes that were defended in different ways and so were not conceptualised as religion. And so there's a kind of religious/secular distinction that happens where some dances are secularised. But the point I want to make is even beyond that, that the very distinction between a religious dance and a secular dance is emerging in that process.

**DR:** *Right. As a last question, then: what do you think . . . where are we, then, with the religious/secular distinction in law today? Do you think this is something that we should be seeking to*

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*challenge? Or do you think that there is still some value in a religious freedom law?*

**TW:** That's a really big and hard question for me! (Laughs).

**DR:** *I know it's something you're thinking through just now, so maybe it can be just initial . . .*

**TW:** It is. And I mean I am more comfortable trying to observe and map how it's happening. Seeing the kind of work that religious freedom is doing. And I think in the contemporary United States certainly religious freedom disputes help shape what people think of as religious and what they don't think of, you know. And why certain things, again and again, get sort-of coded as a religious issue, as a religious freedom issue, is complex and puzzling. But, you know, it should . . . I'm in two minds about the continued utility of religious freedom. And I have always come down on the side that . . . as kind-of muddled and complicated as its history is, that it's a tool that has nonetheless been useful to lots of minority groups. And that we can't just reinvent our world and our categories *ex nihilo*, right? We don't have that kind of power as scholars. So is it better to try to eliminate religious freedom law? I mean, I don't really think so. I might change my mind about this. You know. I think that while seeing how historically constantly negotiated it is – what gets included within the scope of religious freedom and how that shapes what religion even is in our society – that we're better off pushing for more inclusive, but sometimes also more limited views of religious freedom. In the sense that I don't think religious freedom should kind-of trump every other value or principle of equality and justice that we have. In the history I trace, I think you can see how that tendency has been a problem and hence served . . . has been weaponised over and over again. And I think it's still weaponised today. So I think we're better off trying to kind-of reformulate and reclaim religious freedom. And I have a colleague and friend, [Michael McNally](#) who teaches at Carleton College and he has a new [book](#) coming out, on Native American religious freedom, which is really grounded in contemporary ethnographic research with . . . Well, he's worked with and learned from Native American activists and lawyers, and organisations advocating for religious freedom now. And he says that they're very . . . these contemporary native leaders are very much aware of sort-of limits and pitfalls of religious freedom. But they nevertheless find it to be a useful tool alongside others. Even though it has failed repeatedly in the courts for Native Americans, contemporary activists would not want it to be gone.

**DR:** *Right, yeah.*

**TW:** Because they see it as way that they can . . . because religious freedom does have such cultural power in the United States that it can be a way to give a certain amount of moral authority to their

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claims. I mean that's one of the kinds of arguments that he makes, and I find that very convincing. And so I think that for scholars who see religion as a constructed category and all of that – yes, absolutely. But who are we to say that activists shouldn't have that tool, right?

**DR:** *Absolutely. It's been a really interesting conversation. There are a number of big questions that we're not going to get time for today – so maybe we could have you back one day in the future to go more into the racial stuff,, for instance, which we didn't really get too much in. But for now, Tisa Wenger, I want to say thank you for taking part in the Religious Studies Project.*

**TW:** Absolutely. Thanks for having me! And I hope to be back, because, yes – there's so much more to talk about!

**DR:** *Excellent! Thank you.*

**TW:** Thanks very much.

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