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Race, religion, law: an intertextual micro-genealogy of 'stirring up hatred' provisions in England and Wales

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ABSTRACT

This paper examines why there are different thresholds for the offences of stirring up racial hatred and stirring up religious hatred in the UK's Public Order Act 1986. Concepts of genealogy, intertextuality and problematisation are used to structure a critical discourse analysis that traces different understandings of race, religion, and racial and religious hatred across legal texts. The analysis reveals a rift between assertions within parliament that race is an immutable characteristic, and much more flexible and inclusive judicial understandings of race. This finding challenges justifications for the legislative discrepancy and points to more progressive possibilities.

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Introduction

Literature on hate speech and the law is plentiful. The topic is often approached as a dilemma of competing values, with free speech and individual autonomy variously pitted against dignity, equality and other notions of group or individual harm (e.g. Baker, 1989; Brown, 2008; Coliver, 1992; Hare & Weinstein, 2009; Heinze, 2006; Matsuda et al., 1993; Thompson, 2012; Tsesis, 2009; Waldron, 2012). However, from critical and anticolonial perspectives, the pursuit of a single, universal answer to a normative question is problematic (Bhambra, 2014; Young, 1990). Such perspectives instead require attention to the particular: in this instance, the particular contexts in which certain speech is criminalised. With its emphasis on understanding texts in relation to their contexts of production (Van Dijk, 1994, p. 435), critical discourse analysis can be used to shift from the abstract, positivist debates that dominate the topic of hate speech law to more concrete, constructivist analyses.

The particular context with which this article is concerned is the 'stirring up hatred' provisions of the Public Order Act 1986 (POA). This legislation has been critiqued both for being too broad an incursion on free speech (Hare, 2006) and for being too narrow to be effective in the pursuit of equality (Goodall, 2007; Oyediran, 1992). But in addition to grounding debates on how values have and should be balanced, analysing legal

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texts allows other themes to emerge. Thus, this article focuses on questions of identity in the context of a distinction between racial and religious hatred within the POA. I begin by explaining how this distinction motivated a genealogical enquiry, which reaches back in time through interconnected texts. I then analyse three sets of legal texts:

- The primary text: relevant sections of the POA currently in force;
- Secondary texts: selected parliamentary debates on the enactment of the religious hatred provisions, which were added alongside the POA's racial hatred provisions in 2006.
- A tertiary text: the 1983 House of Lords judgment in the case of *Mandla v Dowell Lee* [1983] 2 WLR 620.

Through these texts, I follow a thread backwards in time to build a nuanced picture of how a particular legal issue – the distinction between racial and religious hatred – has been understood by lawmakers and judges in the UK.

Intertextual genealogy

Constructing a genealogy entails 'using history as a means of critical engagement with the present' (Garland, 2014, p. 367). Ordinarily, legal studies investigate the past to reveal the 'true' origins of something, and thereby to locate a historical authority to support a present assertion. In contrast, a genealogy investigates the past to reveal contradictions and contingencies, and thus to disrupt present beliefs (Foucault, 1984a, p. 82; see also Fairclough, 2013, p. 33). Thus, rather than starting with an artefact from the past and seeking to trace its influences over time, a genealogical study begins with a problem in the present and looks back through time to trace the conditions that brought it about (Garland, 2014, pp. 378–379; Foucault in Kritzman, 1988, p. 262). But this is not a purely destructive endeavour: by unsettling assumed trajectories, space is made to consider alternative possibilities for the future (Box & Simrell King, 2000).

After the initial diagnosis of a present concern, the notion of problematisation – how something comes to be regarded as a problem – continues to shape the enquiry (Foucault, 1984b, p. 389). Therefore, in this paper I investigate how the problematic stirring up hatred provisions were constructed and agreed upon as a solution, which in turn entails examining how racial and religious hatred have been problematised. More specifically, the focus is on discrepancies between the stirring up racial hatred offences, which are contained in Part III of the POA, and the stirring up religious hatred offences, which were added in 2006 as Part IIIA. The problem is ostensibly that the latter are more restrictive and thus more difficult to convict under. As considered below, it has been argued that this distinction is justified by a substantive difference between racial and religious hatred. However, the matter is complicated by the fact that stirring up hatred against Jews and Sikhs can currently be prosecuted under the wider racial hatred provisions, whereas stirring up hatred against other religious groups can only be prosecuted under the narrower religious hatred provisions. The discrepancy between Parts III and IIIA of the POA therefore establishes a distinction between racial and religious hatred that has been described as creating a 'hierarchy of hatred' (Law Commission, 2021, p. 394) and as failing to account

for the ways in which race and religion may be experienced as indivisible (Meer, 2008; Idriss, 2002).

Through the methods of genealogy and problematisation, this paper seeks to understand the legal distinction between racial and religious hatred, not in relation to some ontological notion of what race, religion and racial/religious hatred *are*, but in relation to how they have been perceived and given meaning as legal categories. Law is therefore studied as both a social phenomenon and a discursive phenomenon. Although there may be many unwritten and unspoken modes by which law is produced and operates, and although meanings and significances shift and develop over time, legal texts provide a concrete dataset through which those shifts can be traced. It is these relationships that are encompassed by the term intertextuality, which refers how 'all texts are linked to other texts, both in the past and in the present' (Wodak, 2008, p. 3).

While all genealogies are intertextual insofar as they draw together a variety of texts, I use the term to describe a particular method for selecting a dataset. First, an intertextual genealogy requires a primary text which elucidates the problem to be investigated. Then, the texts that most directly influenced the primary text are selected as secondary texts. Then, the texts that most directly influenced the secondary texts in relation to the initial problem are selected as tertiary texts. And so on. This application of genealogy to intertextuality inverts the notion of 'textual travel' (Rock et al., 2013): rather than tracing the journeys and evolutions of a primary text through its iterations in *later* texts, a primary text is dissected so as to identify *earlier* texts that have 'travelled' into it.

Here, I have space to discuss only three sets of texts that I have selected for their intertextual connection to the initial problem: Parts III and IIIA of the POA (the primary text), relevant excerpts from the parliamentary debates on the Racial and Religious Hatred (RRH) Bill (secondary texts), and the House of Lords judgment in the *Mandla* case (a tertiary text). Far longer chains and far more complex webs could be constructed. However, I hope to demonstrate that even a micro-genealogy can prove insightful.

The primary text: the legislation

Part III of the Public Order Act 1986 (POA) is titled 'Racial Hatred'. Section 18(1) therein reads as follows:

> A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if –
>
> (a) he intends thereby to stir up racial hatred, or
>
> (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby

Sections 19–23 cover various other acts that are intended or likely to stir up racial hatred, including publishing, distributing, displaying, performing or broadcasting material that is threatening, abusive or insulting. From these provisions, the legislation appears to encompass racial hatred in all its forms, regardless of the identities of the victims or the perpetrators. However, s. 17 elaborates on the meaning of 'racial hatred':

> In this Part 'racial hatred' means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

We might ask how this is to be determined. In a case brought under these provisions, must a group targeted by hate speech be found to 'objectively' fulfil this definition? If so, these provisions engage the law in scrutinising identity characteristics and classifying who *is* and who *is not* a member of a racial group. Such an understanding of race as fixed and objectively classifiable conflicts with more progressive views that race is socially determined and variable according to context (Hall, 1997; Meer, 2008; Powell, 1997). Alternatively, would it be sufficient for the hate speech itself to define its target group by reference to colour, race, nationality or ethnic or national origins? If so, scrutiny would fall on the hate speech rather than its targets; fulfilment of the s. 17 definition would depend on whether a targeted group had been *racialised* rather than whether they were deemed inherently 'racial'.

Let us now examine the religious hatred provisions. The Racial and Religious Hatred Act 2006 (RRH Act) added Part IIIA to the POA. Part IIIA has also, since 2008, been amended to include hatred on grounds of sexual orientation. Although there is much of interest in this addition, it is tangential to our focus on how racial and religious hatred have been distinguished. Part IIIA copies the structure of Part III but contains three significant discrepancies. Disregarding the 2008 additions pertaining to sexual orientation, s. 29B reads:

> A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.

Compared with the corresponding text of s. 18(1) in Part III, s. 29B is narrower as it only encompasses threatening words or behaviour, and not also that which is abusive or insulting. Secondly, it is necessary to demonstrate that there was intent to stir up religious hatred; this is not always required in relation to racial hatred as it can alternatively be demonstrated that hatred was likely to be stirred up.[1] The third discrepancy arises from s. 29J in Part IIIA:

> Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

There is no corresponding 'free speech' provision in relation to racial hatred.

A final point to note is that Part IIIA also contains a section on the meaning of 'religious hatred': s 29A states that,

> In this Part 'religious hatred' means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

Here, we can raise the same query as to whether a group of persons must be identified as religious by some purportedly objective determination or by the hate speech itself. If the hatred is explicitly against Christians, Muslims or Hindus, for example, this ambiguity is likely to be inconsequential. If, however, the hatred is against women who wear headscarves, for example, then it is indeed consequential. Headscarves are widely enough associated with Islam in the UK that hatred against their wearers could be religious hatred. However, women from many different religions wear headscarves, while others

choose such attire due to culture, hair loss or fashion. Therefore, 'women who wear headscarves' cannot be classified as 'a group of persons defined by reference to religious belief'. This example illustrates the significance of context in understanding hate speech and the difficulty of pre-determining who can and cannot be victims of a particular type of hatred.

While the separation of the religious hatred provisions from the racial hatred provisions in the POA is apparent, close analysis enables the precise contours of this distinction to be mapped, raising questions of not only why the distinction has been drawn in these particular ways, but also of the extent to which it reflects a tendency to view identity characteristics as fixed and objectively discernible. These questions inform the following inquiry into the secondary texts.

The secondary texts: parliamentary debates

Legislative texts are shaped by the parliamentary debates in which they were scrutinised, amended and ultimately approved; these debates therefore comprise a useful source of insight into the particularities of specific legislation. Moreover, as parliamentarians aim both to influence the opinions of their peers and to be seen as representative of wider public opinion, parliamentary debates provide an index of perspectives and norms at a particular time and in relation to a particular topic (Johnson & Vanderbeck, 2014, p. 4; Lunny, 2017, p. 3; Thompson, 2016, p. 92).

In his introduction to the second reading of the Racial and Religious Hatred (RRH) Bill in the House of Commons, the then Home Secretary, Charles Clarke, stated that the stirring up religious hatred provisions 'had been agreed by the House twice previously: as part of the Anti-Terrorism, Crime and Security Act 2001 and, only a few months ago, as part of the Serious Organised Crime and Police Act 2005' (HC Deb 21 June 2005, co. 668). While there were concerns in 2001 that it was unwise to include religious hatred provisions within emergency anti-terrorism legislation, the provisions were more deeply debated during the passage of the Serious Organised Crime and Police (SOCP) Bill. The SOCP Bill proposed amending Part III of the POA to place stirring up religious hatred on an equal footing with stirring up racial hatred. This was rejected by the House of Lords, which led to the removal of the provisions from the Bill to secure its passage before the 2005 general election. Labour included the religious hatred provisions within their election manifesto, and once re-elected the Labour Government reproduced the SOCP Bill's amendments to Part III in a new RRH Bill. However, the Lords rejected this again and counter proposed Part IIIA. The Government accepted the separation of the offences and the addition of the free speech provision but asked the Commons to reject the more restrictive speech and intent thresholds. In two extremely close divisions, the Government was outvoted and the Lords' amendments were all accepted.

These events suggest that the legislative differentiation between racial and religious hatred originated in the House of Lords. However, how it was rationalised remains unclear. Analysis of the secondary texts reveals that the debates on the religious hatred offences were deeply convoluted and complicated by misunderstandings as well as disagreements. In this situation, problematisation provides a means of unravelling the tangled threads. Three main framings of the problem – to which the RRH Bill was

presented as a solution – structure the remainder of this section. I call these the formal, substantive and rhetorical problems.

The formal problem: inequality before the law

The problem of inequality before the law was described in Clarke's assertion that,

> The Bill seeks to address the anomaly that means that Jews and Sikhs are protected under the existing law, but that other faith groups, and people of no faith, are not protected. (HC Deb 21 June 2005, col. 678)

This framing of the problem was widely affirmed in parliament. The apparent anomaly was said to be the result of the racial hatred provisions being extended by case law. However, the case law referred to was the 1983 judgment in *Mandla v Dowell Lee*, which predated the enactment of the POA in 1986. Therefore, the 'anomaly' had been endorsed by parliament when it passed Part III. Nevertheless, the logic was that when the court established in *Mandla* that Sikhs – like Jews – comprise a group defined by reference to ethnic origins, Sikhs became encompassed within the stirring up racial hatred provisions by virtue of s. 17 of the POA (and its earlier equivalent). This was expressed in the debates as the inclusion within racial hatred provisions of mono-ethnic religious groups, as compared to multi-ethnic religious groups. Such perspectives, which were backed by the Government, belie a belief that a legal determination of whether a group is categorically 'defined by reference to race' (including ethnic origins) establishes whether hatred against that group is 'racial hatred'. Indeed, the immutability of race was asserted repeatedly throughout the debates. As then Conservative MP Boris Johnson put it, 'It is obvious that there is a category difference between one's race, which is a question of nature, and one's religion, which is a matter of choice' (HC Deb 21 June 2005, col. 732). Immutability does seem to be implied by the term 'ethnic *origins*' in s. 17; yet since s. 17 also includes citizenship, it cannot be held that racial hatred can only be hatred of unchangeable characteristics.

For others, the mono/multi-ethnic framing was unsatisfactory. During earlier attempts to enact religious hatred provisions, Lord Lester argued that there was not in fact any anomaly or inequality between the treatment of different religious groups (henceforth referred to as 'the Lester argument'). With support in the House of Commons from Conservative MP Dominic Grieve and Liberal Democrat MP Evan Harris, Lester's position was that existing law provided no protection against incitement to religious hatred of any group, but provided protection against incitement to racial hatred for all groups. This responded to the Government's concern that far-right organisations were referring to religious groups in order to evade the racial hatred offences. The Lester argument asserted that such hatred should be classified as racial since it was 'not making a theological point, but a racist one' (Harris, HC Deb 21 June 2005, col. 740). Therefore, the only solution required was clarification, via an amendment to s. 17, that the stirring up of racial hatred through reference to religion would be caught by Part III. Conversely, expressions of hatred that addressed religious beliefs were argued to be beyond the proper remit of criminal law.

The Lester argument was exceptional for advocating scrutiny of the hatred rather than its targets, and Grieve also acknowledged that religion may contribute to racial identity

(HC Deb 28 June, col. 11). However, the argument is premised on a distinction – and hierarchy – between racial and religious hatred that limits the latter to statements about the doctrine or practice of a religion. Hatred stirred up against a religious group which cannot conceivably be classified as racial hatred, such as sectarian hatred or hatred against converts, is not accounted for. Thus, the Lester argument sought to redraw the line between racial and religious hatred but was limited in its engagement with the substantive problem of religious hatred, to which we turn next.

The substantive problem: religious hatred

Other framings of the problem focused less on the technicality of the law and more on lived experiences that showed religious hatred to be a significant and harmful phenomenon. Such arguments often directly challenged the aforementioned distinction between race as immutable and religion as chosen. Several speakers noted that an individual cannot change the fact that they were born into a certain religion, the religiosity of their upbringing or the religious identity of their family. For example, Labour MP Shahid Malik emphasised how an individual has little control over the racial or religious group to which they are *perceived* as belonging:

> When I was beaten to a pulp by a gang of skinheads on my first day at high school, it was not because of my religion. They did not know or care whether I was a Christian, Hindu or Muslim … In those days we were all seen as "Pakis" and we were all fair game. … Now, when I receive anonymous hate mail or the family car is firebombed in the middle of the night, or when abuse is hurled from cars that whisk by, or I am surrounded by a gang of 20 thugs from Combat 18 telling me that I am going to die, it is because I am a Muslim. Whether I choose it or not, I am defined by others in terms of my religion, and by my perceived culture. (HC Deb 21 June 2005, col. 703)

Furthermore, Baroness Ramsay (HL 11 October 2005, col. 208) referred to sectarianism in Northern Ireland to emphasise the harms of religious hatred quite apart from any entanglements with race. It was also argued that the ability to change religion was irrelevant. For example, Baroness Whitaker (HL Deb 11 October 2005, cols. 214–215) questioned 'why should we want a society where people have to do that to be accepted without hatred?' Thus, some advocates of the Bill argued that experiences of religious hatred are equivalent to experiences of racial hatred and therefore warrant equal redress.

However, a more subtle distinction between race and religion can be positioned in response to the purported irrelevance of mutability. This is the argument that criticism of race is nonsensical and undesirable in all situations, whereas criticism of religion can be rational. For example, Labour MP Robert Marshall-Andrews stated:

> Nobody can say to me that I ought to be black, white, Chinese or Russian, but there is no shortage of people outside this House, and some inside it, who would have no hesitation in saying that I ought to be Christian, Islamic, or Jewish. (HC Deb 31 Jan 2006, cols. 231–232)

While often conflating criticism and hatred, this argument highlights a more convincing substantive difference between race and religion, which could point to different understandings of *what amounts to hatred* in relation to these characteristics. To say that I am offended by your religious beliefs is clearly not the same as to say that I am offended by the colour of your skin. Such a distinction could justify some legal

discrepancy, such as the additional free speech provision of s. 29JA. However, this argument does not respond to the anecdotal evidence that *stirring up hatred* against groups defined by reference to race or religion produces commensurate harms. Moreover, hatred may not fall clearly into one or the other category as 'there are many people for whom an easy distinction between religion and race is not accurate' (Clarke, HC Deb 21 June 2005, col 676) and 'race, religion and culture are in truth intimately intertwined' (Denham, HC Deb 21 June 2005, col. 678).

The rhetorical problem: minority frustrations

Rather than viewing religious hatred as a problem in and of itself, a third framing presented it as detrimental to 'race relations', 'integration' and 'public order'. Here, the religious hatred provisions were presented as important for making certain groups – predominantly identified as Muslim – feel that their concerns were being taken seriously (Brown, 2017). For example, Lord Hannay presented the RRH Bill as a transaction in efforts to combat Islamist extremism:

> If we cannot legislate in a scrupulously even-handed way towards our Muslim compatriots, making it clear that they and we face the same laws and receive the same protection under those laws, how on earth are we to persuade them to work with us against this perverted and paranoiac ideology which has taken root in their midst? (HL Deb 11 October 2005, col 256)

There was thus an elision in some quarters of parliament between problematising religious hatred and problematising those who it targets. This was especially prominent among opponents of the RRH Bill who described it as a 'sop to the Muslim community' (Baron, HC Deb 21 June 2005, col, 745; see also Johnson, HC Deb 21 June 2005, col. 732; O'Cathain, HL Deb 11 October 2005, col. 210; Flather, HL Deb 11 October 2005, col. 216). There is a lot more to be unpacked here about racialisation, minoritisation and the problematisation of difference. However, this perspective provides little insight into the distinction between racial and religious hatred, aside from perhaps that it was more important to be seen to do something than nothing, even if it was ultimately more symbolism than substance (Goodall, 2007).

The tertiary text: the Mandla case

Analysis of the secondary texts reveals complex and conflicting views about the nature of racial and religious hatred, but a pervading belief in the immutability of race shines through. In light of this, the House of Lords *Mandla* judgment is taken as a tertiary text within this micro-genealogy for two reasons: first, to consider the extent to which this judgment informed the dominant perception in parliament that a court can determine whether a group is inherently 'racial'; and second, to evaluate contrasting interpretations of the judgment whereby it was understood either to have contributed to a legal discrepancy in the treatment of religious groups or it was denied that such a discrepancy existed, as per the Lester argument.

The legal provisions at issue in *Mandla* were not the stirring up racial hatred provisions but the anti-discrimination provisions of the Race Relations Act 1976 (RRA). The statutory language at issue, however, is identical: s. 3(1) of the RRA defines a racial group as 'a group

of persons defined by reference to colour, race, nationality or ethnic or national origins'. The case concerned whether a school's prohibition on wearing turbans could constitute racial discrimination against Sikhs, leading the Lords to focus on the question of whether Sikhs *are* a group defined by reference to their ethnic origins. To this extent, the Lords sought to determine the 'correct' classification of the group. In other ways, however, the leading judgments of Lords Fraser and Templeton significantly diverged from the notion that membership of a racial group is necessarily an immutable fact and emphasised the role of perception in racial identity. It is worth quoting a passage of Lord Fraser's judgment at length:

> For a group to constitute an ethnic group in the sense of the Act of 1976, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. … The conditions which appear to me to be essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community. (p. 562)

This broad and flexible framework is oriented around being subjectively regarded as a distinct community and, in finding that a shared religion can contribute to ethnicity, blurs the line between racial and religious identity. Moreover, Fraser explicitly challenged the notion of race as a biological fact:

> My Lords, I recognise that "ethnic" conveys a flavour of race but it cannot, in my opinion, have been used in the Act of 1976 in a strictly racial or biological sense. For one thing, it would be absurd to suppose that Parliament can have intended that membership of a particular racial group should depend upon scientific proof that a person possessed the relevant distinctive biological characteristics (assuming that such characteristics exist). … the briefest glance at the evidence in this case is enough to show that, within the human race, there are very few, if any, distinctions which are scientifically recognised as racial. (p. 561)

This aspect of the judgment, it seems, did not 'travel' into the parliamentary debates on the RRH Bill.

The judgment affirmed that Jews and Sikhs are groups defined by reference to ethnic origins, but neither endorsed nor foreclosed the possibility that other religious groups might also be. While it was recognised by some parliamentarians that hatred directed against Muslims could be racial in nature, the notion that Muslims might be regarded as a group defined by ethnic origins was not entertained. Yet, there were 50 references to the 'Muslim community' within the secondary texts, suggesting that Muslims might, even within those debates, have been 'regarded by others as a distinct community' (Dobe & Chhokar, 2000; Idriss, 2002).

Conclusions

This paper has sought to better understand the discrepancies between the racial and religious hatred provisions of the POA. Through a genealogical approach, the aim has not

been to seek *the* definitive answer to a question, but to explore a plurality of understandings. To this end, the intertextual method of data selection has proved a useful means of circumscribing the study (which could be extended in many directions) and the concept of problematisation has proved useful for delineating specific arguments.

On the initial question of the current discrepancy between the racial and religious hatred provisions, the genealogy has not found a coherent and persuasive rationale. It is shown instead that the RRH Act failed on its own terms: the Government set out to equalise the redress available to different religious groups but ultimately upheld the legal distinction between them. While *criticism* of a person's race and religion may be qualitatively different, no evidence was produced in parliament or in the *Mandla* case to suggest that the stirring up of racial or religious *hatred* against a group produces qualitatively different harms.

A second question emerged from close analysis of the primary text, which found that it would be possible to interpret the provisions defining racial and religious hatred either as requiring a targeted group to be classified as inherently 'defined by reference to' race or religion, or as requiring the hate speech itself to define its targets as such. Analysis of the secondary texts indicates that the positivist interpretation dominated in parliament during the passage of the stirring up religious hatred provisions (with the exception of the Lester argument) and the notion that race is an immutable 'fact' prevailed. However, the tertiary text provides judicial authority in support of far more nuanced interpretations. Thus, a seismic rift has been identified between the understandings of race presented by the House of Lords while exercising its judicial functions in 1983 and while exercising its parliamentary functions in 2005/6, with the earlier perspective being the more progressive of the two.

The intention here is not to highlight misrepresentations of the *Mandla* judgment in parliament as an error in an otherwise rational system. Rather, the analysis demonstrates the folly of seeking consistent logics, a coherent trajectory or a singular 'truth'. It shows how law that is intended to advance equality can end up entrenching inequality and how law that is supposed to combat racism can essentialise and entrench divisions. More specifically, this study has shown the propensity for understandings of race as an immutable classification to prevail within parliament, but also that there is scope – both within the legislative text and through judicial authority – to contest this framing and adopt more flexible and inclusive approaches. This paper therefore illustrates how attention to intertextuality can destabilise assumptions and uncover alternatives. Indeed, the ongoing need for such alternatives has been demonstrated by the Law Commission's recent consultation report on UK hate crime law, which continues to ascribe a distinction between 'ethnoreligious' groups and 'multi-ethnic' religious groups to *Mandla* and proclaims that 'Race is unquestionably and wholly immutable' (2021, p. 393). For many reasons, law is a blunt and limited tool in the pursuit of a more egalitarian society, but this paper shows one small area where a step back from the reproduction and entrenchment of outdated views on racial difference is possible.

Note

1. However, this discrepancy is complicated by s. 18(5) of Part III.

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