

Free to Believe?

Religious Freedom in a Liberal Society

by Roger Trigg

Stephen RL Clark - Professor of Philosophy, University of Liverpool

“Religious toleration is, originally, a religious notion, born of the conviction that faith cannot be compelled. Professor Trigg’s report makes a strong case against the modern, secular distortion of this ideal, and emphasises especially that the ideas and ideals of secular humanists are no less contentious than those of religious believers.

A multi-faith society must find some way of accommodating different faith-communities, and must acknowledge that there are limits to what we can or should tolerate. But simply to deny religious believers any right to the public expression of their faith (their choice of education, their convictions about gender roles, their sense of sacred space), in the name of one particular faith – the secular humanist – is an unacknowledged bigotry. This is a valuable contribution to a difficult exchange.”

Rt. Hon Dominic Grieve QC MP - Shadow Justice Secretary

“One does not have to agree with everything that Professor Trigg writes to appreciate the important contribution he has made to the debate on religious freedom in our society. His Christian view point provides a powerful critique of current secular orthodoxies which have been progressively imposed on us. His strong advocacy that the religious foundation to society has served this country well is undoubtedly reflected by the evidence around us of what tolerant Christianity has been able offer to a multiplicity of other faith and secular groups within our country.”

Simon Hughes MP - Liberal Democrat Shadow Secretary of State for Energy and Climate Change

“Roger Trigg’s report on religious freedom is serious, timely, and thought provoking. Some will call it provocative. Professor Trigg takes this issue of central importance to the beliefs and lives of millions, reminds us properly of its historic and national context in these islands, and then explains how law makers and judges struggle to uphold the freedom of religion in a world of charters and conventions of human rights and of competing freedoms. This is a report which Christians and non Christians alike, believers, agnostics and atheists should read. They will be better protagonists in the debate and in their decisions if they do.”



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Published by Theos in 2010
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ISBN-13 978-0-9562182-1-6

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The research for this report was aided
by a grant from the **John Templeton Foundation**.

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foreword

The essay that follows is not a cool abstract discussion of religious freedom in a liberal society. It is animated by a deep concern, the concern that there is a dynamic at work in European society toward regarding religion as a matter of optional, idiosyncratic, private and personal belief, and toward treating those beliefs, in law and bureaucratic practice, like any other such beliefs. The decline of religious commitment and observance in Western Europe gives this view of religion some plausibility and makes it possible for the dynamic to work its effects. Professor Trigg sees this dynamic as driven sometimes by hostility to religion, but often by commitment to the important values of pluralism, toleration for diversity, freedom, and equality. Trigg's discussion is a multi-pronged critique of these developments, interspersed with an articulation and defence of this social analysis. The discussion is rich in evidence and example; I can do no more than call attention to some of its highlights.

Trigg argues, from a number of different angles, that it's a seriously flawed understanding of religion which thinks of it as optional and idiosyncratic private personal beliefs. Religion is not typically private; it takes public communal form. Seldom is it purely personal; it finds expression in how the adherents of the religion live out their social existence. For many if not most religious people, religion is not an optional add-on to the rest of their lives but part of their fundamental identity as persons. And religion proves to be not at all idiosyncratic; recent studies in cognitive psychology confirm what writers down through the centuries have argued, namely, that human beings are naturally religious. What has to be added, of course, is that nobody just has *religion*; religion only comes in the form of *religions*.

All this, if true, constitutes a powerful case for holding that human beings have a prima facie natural right to the "free exercise" of their religion, as the first amendment in the U.S. Bill of Rights puts it, and that this is not to be equated with a right to free speech. Trigg notes that it has become rather common practice in recent official European declarations to say that when religion comes into conflict with rights, as it sometimes does, it has to give way to rights. But to think and speak thus is to presuppose that religion carries no rights of its own – that citizens have no right to the free exercise of their religion.

Trigg carries the argument farther. Not only is there a right to exercise one's religion freely; to confine religion to the domain of the private, the personal, the optional, the idiosyncratic, is for defenders of rights to cut off the branch on which they sit. It is commonly said that the recognition of rights emerged out of the secular Enlightenment. We know now that the Enlightenment was considerably less secular than it is often represented as having been. More importantly, we also know now that natural rights were not first recognized by the Enlightenment; they were explicitly recognized by the canon lawyers of the twelfth century.

As all the UN documents on rights acknowledge, rights are grounded in human dignity. It was Judaism and Christianity that introduced into the West the idea that every human being bears ineradicable dignity. The Stoics recognized that every *rational* human being has dignity; they were, in that way, cosmopolitan. But not every human being is what the Stoics would recognize as a rational human being. We can argue over whether there are adequate secular reasons for affirming the dignity that grounds human rights. But even if there are, Trigg argues that would be folly for someone who cares about rights to try to eliminate or silence the religious grounding for human dignity.

In short, if we care about rights, we will resist the attempts of governments to squeeze religion out of public life; we will argue that governments should instead treat all citizens fairly with respect to their religion. As Trigg notes, that cannot mean being neutral with respect to all religious practices. Every polity has no choice but to declare some religious practices out of bounds – child sacrifice being an easy and obvious example. What it will mean, however, is that governments will be as protective as possible of religious conviction. Is it really necessary, for example, to force physicians who, for religious reasons, believe that euthanasia is wrong, to either leave their practice or violate their deep convictions and euthanize patients? Is it really necessary for liberal democratic governments to forbid students from wearing clothes or accessories that reveal their religion? Trigg's discussion is rich with sensitive analyses of examples of these sorts.

These, for me, were the highlights in this rich, probing, and lucid critique of some of the dynamics that seem currently to be shaping how liberal democracies in the West are dealing with the phenomenon of religiously diverse citizenries.

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introduction: a live issue

Is there total religious freedom in the United Kingdom today? If not, should there be? Some people think that a so-called “liberal” society produces ever greater toleration for alternative “life-styles”. They envisage greater respect for diversity in an increasingly pluralist society. Others, though, discover that there are definite limits to that toleration. Surveys show that a majority of church-going Christians tend to think that religious freedom, both of speech and practice, is under threat in what often appears to be an increasingly “secular” country. Many Christians feel that their beliefs and practices are made targets in a way which would not be deemed acceptable if the attacks were directed at minority religions. Yet even the members of the latter feel insecure, recognising that they too will suffer if all traces of religious influence are relentlessly driven out of public life. Indeed, some of their practices are already questioned and made the subject of legal action.

One particular concern arises out of the application of the *Equality Act, 2006*, particularly in health and in education, where workers are urged to have a “professional” commitment to equality and diversity. Much depends on the way this is interpreted, as it could be a bulwark of religious freedom, particularly for minorities. Unfortunately, what is often advocated in practice is not just an equality of treatment for people, but also an equality of belief. It becomes improper to imply in public the superiority of one religious or moral viewpoint over another for fear of causing “offence”. Traditional Christian views, conversely, can be seen as legitimate targets. The Department of Health’s guidance on this issue makes it clear that there is an “equalities agenda”, and aims to stamp out discrimination on the grounds of religion or belief. There is, however, more than a suggestion that this is not just discrimination against religious people, but also discrimination by them.¹

An example is given of how the airing of particular views “on matters such as sexual orientation, gender and single parents” in a workplace environment, could potentially cause “great offence”.² We are told that “such behaviour, notwithstanding religious beliefs, could be construed as harassment under the disciplinary and grievance procedures.” There are real cases of harassment and unacceptable behaviour in these areas, but it looks as if even a sensitive comment on the real difficulties faced by single parents in some situations could cause offence, and face disciplinary action, especially if the remark were construed as religiously motivated. The right to manifest a religion is considered so unimportant in the face of the “equality agenda” that merely expressing an opinion can become harassment.

Problems increasingly arise in matters of employment when, as public policy and social attitudes change, holding to principles derived from religious belief can become increasingly difficult. One controversial case concerns a civil registrar, employed in the London Borough of Islington, who has had conscientious objections to conducting civil partnership ceremonies. It was claimed that she was harassed and threatened with dismissal.³ She was a Christian and “could not reconcile her faith with taking an active part in enabling same sex unions to be formed.”⁴ It was said by the Council that this was clear discrimination against homosexuals and could not be tolerated. She was employed to administer the law of the land, and was in effect choosing which bits of it would guide her. The Judgement of an Employment Tribunal in July 2008 said that “this is a case where there is direct conflict between the legislative protection afforded to religion or belief and the legislative protection afforded to sexual orientation.”⁵ It asserted that “both sets of rights are protected” and went on to insist that “one set of rights cannot override the other set of rights”. There could be no “trumps” in what was a complicated situation, and an effort should be made to accommodate her beliefs. The Tribunal’s finding was that the registrar “was less favourably treated on the grounds of her orthodox Christian religion.”⁶

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Nevertheless, the Employment Appeal Tribunal, held in December 2008, came to an opposite conclusion, holding that the council were entitled to require all registrars to perform the full range of services, particularly as they were, in effect, state functions.⁷ Further, the Appeal Tribunal quoted a line of jurisprudence from the European Court of Human Rights, to which we shall return, holding that employees cannot claim freedom to manifest particular religious beliefs “because the employees could resign and take up other employment.”⁸ Some may think that the freedom to be out of work is not a very valuable freedom, but the Appeals Tribunal was clear that “religious rights must be exercised in a way which is compatible with the rights and interests of others”, and that “the right to manifest the religious belief must give way to the rights of same sex partners to have their partnership recognised by law.”⁹

Freedom of religion was thus not thought to be of paramount importance. The Tribunal also, somewhat ominously, asserted that “the limitations imposed on freedom of religion are particularly strong where a person has to carry out state functions.”¹⁰ If this is European law, it suggests that Parliament should be very vigilant in protecting religious freedom, perhaps through explicit accommodation in legislation. Otherwise religion will tend always to be subordinated to the needs of the state.

There is clear disagreement between the two Tribunals about the weight to be given to religious freedom, when it clashes with other acknowledged rights. Is religious freedom a

fundamental right, which can “trump” or override other rights? Are there other rights which are more important, such as the right to equality, and the right not to be discriminated against? Quite often in such cases, an individual’s beliefs can be accommodated, by being excused some duties, without other people’s rights being compromised, but the Appeals Tribunal rejected any such compromise. Religious freedom was not seen to be as important as other items of public policy. No doubt, this kind of case will continue to provide difficulties for many courts, right up to the European Court, in the years to come. Parliament too must decide just how important a religious conscience is, when other rights are at risk. The issue is not which side one agrees with. In fact, it is often more important that people’s freedoms are protected when it is thought that they are in the wrong. Everyone’s freedom is at risk once conformity is enforced. The fundamental issue is just how important is the right to religious freedom, and indeed how important for human life is religion? If religious beliefs and practices should not always be given priority, how do we decide when they should be overruled?

The fundamental issue is just how important is the right to religious freedom, and indeed how important for human life is religion?

This is not a simple question. Not everything done in the name of every religion can be allowed even in a free and democratic society. The issue of how to define religion is always complicated and there may be a temptation to define it too narrowly. Courts often try to avoid the question. Certainly belief in some form of transcendental reality, such as God, or gods, coupled with a particular way of life, constitute typical characteristics. However it is defined, human rights documents invariably give protection to religious belief and its exercise, whilst recognising that there will be limits on some religious practices. People may sometimes have to be protected *from* religion. Where the line is to be drawn is going to be difficult. For instance, the mere fact that human sacrifice is sanctioned by a religion should not excuse it. Further, some would claim that the mere existence of the official recognition of national churches favours some religious beliefs at the expense of others in a way that gives undeserved privileges to some sections of society. The idea that a country can be particularly associated with one religious tradition is thought to challenge individual freedom in the sphere of religion. If the State is officially aligned with one particular religion, the argument goes, that appears to make those who do not subscribe to that religion “second-class citizens”. Freedom is thought to be a matter of individual right and when, say, those in the direct line of succession to the throne cannot marry a Catholic without renouncing their position, it is seen in the contemporary climate as a breach of a basic human right.

The issue does not only surface at the level of constitutional theory. It affects the ordinary daily lives of many people. Much contemporary argument deals with the public display

of symbols but this is often a surrogate for positions about the public role of any religion, and the freedom of individuals to manifest it publicly in any form. Should a woman appear in court as a witness or defendant, or as a teacher in a classroom, with her face obscured by a veil? Should a Sikh boy be allowed to wear a ceremonial dagger on his person in school? Should a British Airways employee be allowed to wear a small cross on her uniform?

Many recent high-profile cases have centred on possible exceptions to rules about school uniform. The question has often been how far accommodation should be made for particular religious beliefs about what should be worn. How far would bending the rules challenge the authority of schools or discriminate against other pupils? In July 2008, a High Court judge. Mr Justice Silber, ruled that a Sikh girl from South Wales could wear a *Kara*, a plain steel bangle, in contravention of her school's policy on jewellery. Expert evidence was given the court on the importance of the *Kara* to Sikhs as a sign of their identity. The judge saw this as a matter of "exceptional importance" to the religion and race of the pupil.¹¹ As such, he distinguished it from, say, displaying the Welsh flag. He described this as an erroneous comparison, because "it totally ignores the critically important religious significance of wearing the *Kara* which is not shared by wearing the Welsh flag." He thus appeared to be weighting religious loyalties more than other kinds. This did not constitute a *carte blanche* for all religious displays, however. Mr Silber did not accept that his ruling would carry implications for the wearing of crosses or crucifixes. He said of a crucifix that "there is no evidence that the wearing of it is regarded in the same way as the wearing of the *Kara*."¹²

The problem with cases like this is that they invariably involve courts getting involved in quasi-theological judgements about whether someone's sincere wish to display an outward sign of his or her religious commitment is, in fact, demanded by that religion. There is clearly a difficulty in allowing some signs of religious identity, or some manifestations of religion, and not others. The decision about the *Kara* was greeted by some as a blow for religious freedom and for religious tolerance. Yet it was a decision with very limited application. Cases are judged on their individual merits. Indeed, the same judge in February 2007 had refused permission in the High Court for a Muslim girl to wear a *niqab* (a full-face veil) in school. The school allowed Muslim girls to wear scarves, but not to cover their faces, and the judge recognised the enormous problems in a school if pupils could not be properly identified, nor their facial expression seen.

These cases highlight problems that become very apparent in a so-called "pluralist" society, where people of many different traditions live, and where shared assumptions can no longer be taken for granted in any area, least of all religion. Customs and practices which not so long ago would have seemed totally alien are now widespread in Britain. As a result, we are all confronted with new problems, not all restricted to issues about

symbolism. Should our society allow a sacred cow, kept by Hindus, to live, even if it has TB, when normal health requirements mean it should be slaughtered? Hindus practise outdoor cremations. That is not an English tradition, but is that a reason for forbidding them? Are possible misgivings merely aesthetic, or are there legitimate health objections to such a practice? Even if there are, should those be allowed to overrule religious scruple?

How far should people be allowed to take time off to attend public worship on specific days such as a Sabbath or a religious festival? It is not just Sunday and Christian festivals such as Christmas and Easter that are in question. What about Muslims who wish to attend Friday prayers? How far should, say, Universities try to accommodate the wish of Jews not to take examinations on a Saturday, or Muslims on a Friday? Should these (and other) religions all be treated equally? An easy way out of such dilemmas is to treat all religions equally by ignoring them all equally. Charges of special treatment for some, of privileges that are not shared, can be met bluntly by refusing to grant any of them public recognition. Yet that is hardly to respect religious freedom.

Some query whether “religious” freedom is of particular importance. What about other kinds of freedom? In the case of those who wish to have time off work on their Sabbath for public worship, why should that be regarded as any more important or worthy than those who wish, say, to have Saturdays or Sundays off to spend with their family, or even to attend a football match? In a society that values equality above all else, why should someone’s loyalty to a religion be thought to warrant more respect and consideration than loyalty to a non-religious institution such as football club or a golf club? In a society where scepticism about the value of all religion is spreading, the very idea of religious freedom being more important than liberty in other matters may be controversial.

Take the issue of Sunday working. With shops opening as a matter of course on Sundays, and many retailers working on a seven days a week basis, it becomes progressively more difficult for someone to refuse to work on a Sunday for reasons of conscience. The courts, under the influence of the European Court of Human Rights, tend to take the line that freedom is safeguarded by the idea of freedom of contract. No-one is compelled to accept a particular contract of employment. Thus freedom of religion is allegedly safeguarded by the view that if someone does not wish to work on a Sunday, that person does not have to take employment requiring it. Yet as more and more employment demands Sunday working, it seems as if freedom of worship is likely to be paid for by unemployment. Religious freedom comes at such great cost that individuals are hardly being given a free choice.

In a society which often appears not only increasingly secular, but even positively hostile to any form of religion that challenges fashionable assumptions, many people in other situations are also beginning to find that they have to choose between their job and their

religious convictions. This becomes a particular problem for those who have to implement changes in the law of which they disapprove. It is beyond dispute that everyone must uphold the law once it has been enacted by Parliament. Any other course of action would be to undermine democracy. Order could not be maintained, if anything could be blocked by a dissident minority refusing to put the law, or decisions of the government, into practice. Yet the example of conscientious objectors in a time of war demonstrates that things are not that simple. Indeed, doctors and nurses are allowed to opt out of performing abortions in the National Health Service for similar reasons. There are always certain actions which are so abhorrent to some that they simply cannot perform them. Should society as a whole respect such conscientious positions?

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drawing the line

One reason why the idea of religious freedom is of crucial importance, and seen as one of the most basic of human rights, is that the practice of religion is vulnerable to those who see it as an obstacle to their exercise of power. Religion can provide a rival source of authority and power to that of a State. Even democracies can become impatient with those who, in the name of a religion, refuse to accept what is the current conception of individual freedom.

Arguments about the place of women provide a particularly graphic example, where the wish by religious institutions to exercise freedom about who, say, should be a priest or a bishop, runs up against current conceptions of the equality of men and women. Should Churches be allowed to choose their clergy as they wish, restricting offices to males, or should they be open to charges of unacceptable sexual discrimination? At a time of rapid social change, time-honoured practices can suddenly be seen as basically undemocratic, in that they fail to allow a proper place to women.

It is, however, one thing for such issues to be dealt with within the structures of a church or other institution, and quite another for the law of the land to be used to impose a solution from the outside. That would seem no less a challenge to religious freedom because it is done in the name of democracy, than if it had been the result of coercion by a totalitarian regime. It must be the mark of any free democratic society that it can tolerate the existence of practices of which it disapproves. The problem is defining the limits of that toleration. To return to the example at the beginning it cannot tolerate human sacrifice. There is still a line to be drawn.

A fierce controversy in Oxford in the early months of 2008 illustrates the way in which communities can rapidly become divided when freedom for a religious practice is newly demanded. Positions become polarised. A proposal to broadcast the call to prayer from a local mosque not far from the city centre appeared to be a demand to fulfil the requirements of a particular religion. As such it was a request to exercise a basic freedom, the right to manifest one's religion. It could perhaps be seen as not so very different from the bells summoning worshippers to church, which are such a feature of the heart of Oxford. Why should the bells be welcomed and the call to prayer rejected? Of course, not

everyone living near a church is enthusiastic about the sound of bells, and a furious outcry greeted the proposal for the call to prayer from neighbours who regarded it potentially as an intolerable instance of noise pollution.

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Yet it is hard not to conclude that more was at stake on both sides. Only a few Muslims were behind the proposal and it later transpired that they did not command wide support even in their own

community. They may have been making a calculation about the wider significance of the Muslim call to prayer being audible in Oxford, and those opposing it may have similarly seen it as an attempt to undermine the "English" character of the place. Such attitudes can quickly become racist, but they do betray a worry about the adverse consequences of sitting light to traditional ways of living and behaving, which have been derived from an avowedly Christian culture. People suddenly lose their cultural bearings and become afraid. Even those within the Church of England in the city were not sure how to react to the proposal. The local Bishop appeared to welcome it whilst the Rector of one of city's largest churches voiced the misgivings of local residents, who feared the formation of a religious ghetto in that part of the city. Even the churches are not sure where to draw the line on the limits of religious freedom.

Religious freedom is usually regarded as an absolute right in law, although what this amounts to is none too clear. I can, it seems, believe what I like, as long as I keep it to myself. I am free to believe anything, as long as I do not put my beliefs into practice, when that "right" immediately becomes much more qualified. Private beliefs about religion do not, however, usually amount to a full-blooded religious commitment. Most religions would expect that to be expressed in definite practices. Even a totalitarian state would be content to let its citizens have their own beliefs as long as they never acted on them, communicated them to others, or manifested them in public in any way. Indeed, it is impossible to know what anyone really thinks if they never express or demonstrate it. The trouble comes when they wish to manifest that belief, whether on their own or with others.

The European Convention on Human Rights declares the right to religious freedom unequivocally in Article 9.¹³ As such, it does pick out religion (widening it also to comparable basic beliefs, such as atheism or humanism) as being of particular significance. However, it goes on in a second section of the Article to qualify the freedom to manifest one's religion or belief, saying that it shall be subject "only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." This raises the question of just what limitations on religious freedom can be allowed. It could be read as requiring that a manifestation of religious belief should always give way when the rights and freedoms of others are engaged and there is apparent discrimination. "Equality" would then trump freedom.

And yet, if religious freedom is itself one of the most important rights, it must itself by the same token be entitled to equal respect from others. It cannot be automatically overridden in a clash of such rights. That recognised, a mere appeal to a right to such freedom may not succeed simply on the grounds that one is practising one's religion. As the Oxford row illustrated, the freedom of one person or group to act can also be seen as a major public nuisance. A balance will often have to be struck between one right and another. Rights do not come already labelled as to their importance.

The criteria mentioned in the Convention themselves cry out for further elucidation, and may, at times, themselves conflict with each other. When, for instance, the Article refers to "morals", whose conception of morality is to be invoked? We need firmer ground on which to stand in order to determine what should be done in a particular case. Interestingly, the United Nations in a "General Comment" on Article 18 of the *Universal Declaration on Human Rights* refers to similar limitations placed on religion or belief, and notes that "the concept of morals derives from many social, philosophical and religious traditions".¹⁴ It concludes that any limitations on the freedom to manifest a religion (or belief) to protect morals "must be based on principles not deriving exclusively from a single tradition". This, perhaps optimistically, assumes a major overlap in moral understanding between religions and traditions, and inevitably gives no guidance as to which traditions should have preference.

If religious freedom is itself one of the most important rights, it must itself by the same token be entitled to equal respect from others. It cannot be automatically overridden in a clash of such rights.

We are faced, therefore, not only with the problem of balancing different rights, for example of religious claims against claims to equality and non-discrimination, but also with the wider question of what is our moral and philosophical framework for

adjudication. Whose “conception of morality” is to be invoked as the basis for judgement? Which, or which combination, of the “many social, philosophical and religious traditions” should we use?

Freedom, as we understand and have implemented it in this country, is founded on theological conceptions, and ignoring or downplaying these, will come at a cost.

This essay examines these issues, arguing that religious freedom is an essential and fundamental part of our democratic freedoms. It is too important to be overridden *as a matter of course* by other human rights, even the right to equality. Such freedom has always been seen as a prime component of, and spur to, the achievement of democratic freedom. Further, it will be argued that religious impulses are so central to human nature that to attempt unduly to control their manifestation, is to put a stranglehold on a major element of human identity.

The essay argues that, in contrast to received opinion, recognising the Christian origins and foundations of our freedoms offers the best basis for maintaining those freedoms and working out where to draw the line. It first looks at the roots of our ideas of freedom and toleration, arguing that those ideas of freedom and tolerance are rooted in historical and philosophical presuppositions and that, in Britain (and indeed Europe), those presuppositions are resolutely Christian. Christian conceptions of the fatherhood of God, the equality and dignity of humans made in his image, and the order and comprehensibility of creation all nourish our ideas of freedom and toleration, as does the particular story of post-Reformation Christianity in Britain. Freedom, as we understand and have implemented it in this country, is founded on theological conceptions, and ignoring or downplaying these, the chapter argues, will come at a cost.

It then looks at how those Christian foundations have traditionally been recognised, in particular through establishment, before proceeding to explore alternatives that are articulated by those who resist recognising these foundations. These are, variously, that the scope and limits of religious freedom should be decided by democratic will; that they should be enabled by the recognition of supplementary legal jurisdictions; and, most popularly, that the state should simply remain “neutral” on such matters. These, it argues, rather than protecting and nurturing religious freedom would be liable to limit it or to downgrade it in the pecking order of rights. Either way, they do not compare with recognising the specifically *religious* roots of our freedom.

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the Christian foundation of our freedoms:

the historical context

The British are rightly proud of their love of freedom, and their willingness to defend it to the uttermost. It is not just that these islands have been free of invasion for a thousand years, but that individual liberty has, over the centuries, been progressively nurtured and cherished. It has been a gradual process, and some would say that it has still not been fully achieved, but it is nonetheless a real and significant one.

What are the roots of that freedom? Some, following the tradition of the later Enlightenment, have seen the achievement of freedom in Europe as the story of the progressive winning of a battle with the forces of superstition and the authority of the Church (particularly the Roman Catholic Church). The philosopher AC Grayling sums up this view, when he claims:

The history of liberty proves to be another chapter – and perhaps the most important of all – in the great quarrel between religion and secularism, for without the latter there would (because there could) be no liberty at all.¹

Grayling's view is that, in the eyes of the Enlightenment of the eighteenth century, the "belief systems and institutions of religion had resisted liberty of conscience, liberty of thought and enquiry, liberty of expression, and liberty of the individual in the political sense."² In opposition to this, the Enlightenment relied on the authority of reason and the powers of the human intellect "to discover truths about man, society and the world, and therefore to make concrete progress towards the good of mankind."³

Grayling sees our present situation as formed by this and what he terms "the lineaments of our contemporary dispensation" as characterised by "secularism, freedom of thought, human rights, democracy and the achievements of science."⁴ This is a very well-worn story, opposing the forces of reason, depicted as a drive towards illumination and improvement, with those of authoritarian religion, characterised as arbitrary dogma and blind faith. It betrays a touching faith itself in human reason, which the history of the twentieth century showed to be misplaced. Scientific progress could mean more efficient gas ovens and more destructive weapons.

Such a trust in the “modern” views of the Enlightenment has led in the past generation to the major reaction of so-called “post-modernism” - a distrust of any exclusive reliance on an allegedly neutral rationality.⁵ It sees even the Enlightenment, with its hope that increasing scientific knowledge would automatically deliver a better world, as one historical tradition among others, whose claims to truth are no more valid than anyone else’s. The Enlightenment’s trust in human rights, the post-modern critics hold, demonstrates a misplaced belief in universal standards, and in a common yardstick for what it is to be human.

This certainly punctures the pretensions of Enlightenment thinkers, but in so doing negates the idea that there could be any moral standards that are universally applicable, or truths that are objectively the case regardless of people’s beliefs. In attacking science as the only expression of human reason, it removes any basis on which science, religion or anything else can claim truth. We are just left with competing beliefs, with no way, even in principle, of resolving them.

No doubt something of this relativism affects those who currently wish to pursue a multiculturalist agenda, holding that each cultural grouping has to be accepted at face value. Every belief must be equally respected, and no adverse judgements must be made, either about groups or the individuals who belong to them. To question people’s beliefs, particularly their religious ones, is seen as an assault on their personal dignity. Respect for the freedom of others degenerates into an acceptance of any and every belief. At the extreme, child sacrifice, cannibalism and genocide could all gain some respectability if they were seen as genuine cultural or religious practices. If everything must be respected, nothing can be condemned.

It is doubtful whether anyone would go to such extremes in the advocacy of multiculturalism, but that merely serves to demonstrate the impossibility of refusing to acknowledge any universal principles, even of a general kind. We cannot afford to see ideas of human dignity as the mere product of time and place with no wider significance. Traditions are important, but only as a means of opening our eyes to what should be universal principles, which can be recognised by everyone. The United Nations *Declaration of Human Rights* claims to be a “Universal” one, applying everywhere, even where it is rejected by those in power.

AC Grayling is right that the later Enlightenment, particularly in France, became allied to the forces of secularism, driving religion from the public sphere. Yet the slogan of the French Revolution was “*Liberté, Égalité, Fraternité*” (“freedom, equality, brotherhood”), and those ideas could only have grown in Christian soil. However authoritarian the Roman Catholic Church was perceived as being (and the term “*laïcité*”, denoting the banishment of religion from public life, with its reference to laity, betrays an anti-clerical bias), Christian

ideas formed Europe. Each individual was regarded as being equally important in the sight of a God, who had endowed humans with the free will to accept or reject Him. It was inevitable that in the end there would be demands that politics would come to reflect these beliefs, just as the Reformation itself had already changed Christian thinking in many parts of Europe. The old-fashioned word “brotherhood” certainly only made sense against a set of beliefs which stressed the overall Fatherhood of God.

In fact, it is a mistake to focus on France and the French Revolution as the sole cradle for “Enlightenment” ideas about reason and liberty. In many ways, the seventeenth century’s emphasis on reason, and the concomitant growth in science, was even more important. Modern science, characterised by the work of such figures as Newton and Boyle, developed against a definite theological background. The scientific revolution was only made possible by the belief in the existence of a regular and ordered world, which is not only structured, but accessible to human reason. Why is mathematics able to unlock the secrets of the physical universe? Certainly the answer of seventeenth century thinkers, particularly in Cambridge, was that human reason was the gift of a God who had created a universe with a rational order reflecting the divine order.

The old-fashioned word “brotherhood” only made sense against a set of beliefs which stressed the overall Fatherhood of God.

The later Enlightenment continued its trust in empirical science but ignored its theological underpinnings. In the same way, ideas of human rights were proclaimed without the Christian teaching that was able to explain why human beings matter in the first place. Yet a deeply entrenched Christian basis for European thought cannot be removed in such a way that everything else remains the same. Remove the foundations and the superstructure will eventually totter. The advent of postmodernism has put the whole question of the viability of human reason, and with it ideas of human rights, into question, with some claiming that there can be no context-free rationality, and that reference to human rights is merely rhetorical.

This is all the more the case with beliefs in rights and freedoms. The great apostle of liberal ideas of individual freedom is often thought to be John Locke, an apologist for the Glorious Revolution of 1688, and a major influence on those who founded the United States a century later. Thomas Jefferson had a portrait of him hanging in his home at Monticello, Virginia, calling him, Newton and Bacon, “my trinity of the three greatest men the world had ever produced”⁶.

Like Newton, Locke was much influenced by theological ideas of reason and freedom typified by the so-called “Cambridge Platonists”. He was a committed member of the Church of England and much concerned with the importance of the reasonableness of Christianity. He saw that ideas of human equality had to be rooted in Christian teaching. The question for us is how sustainable such beliefs can be *without* this Christian underpinning.

the religious roots of current freedoms

The importance of philosophical ideas in guiding the destinies of nations cannot be overestimated. That is why the European Union’s decision to downplay the religious underpinnings of Europe in its “constitution” was more than simply a sectarian spat. One of the highly symbolic battles that took place over the wording of what became the Lisbon Treaty was whether any acknowledgement should be made in it of God or, at least, of Europe’s Christian heritage. Poland was one of the countries particularly exercised about this, but it was always unlikely that France with its fiercely secular tradition would allow even a nod in the direction of Christian influence.

As it is, the Preamble merely refers in an even-handed way to “inspiration from the cultural, religious and humanist inheritance of Europe,” thus making clear the commitment to the dispensability of a particularly Christian vision. There then follows a reference to the “inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.” Article 1a says the Union is founded on such values as human dignity and respect for human rights, without saying where they come from. It then begins to muddy the waters by talking of the rights of persons belonging to minorities, and to such principles as pluralism, and non-discrimination.⁷

The possibility of radical disagreement is raised in the Treaty, without any clear principles with which to settle it. We have apparently to respect minority positions, to such an extent that we do not discriminate between beliefs by daring to suggest that some are better than others. Indeed, the longer the list of values given, such as dignity, equality, and freedom, the more they are likely to come into conflict with each other. Reference to minorities, and to the importance of non-discrimination, raises the issue of how far divergence from the norms proclaimed will in fact be tolerated. We are back with the issue of the limits of freedom in general and religious freedom in particular. What happens for instance when a claim of religious freedom clashes with a demand for equality, as when women or homosexuals claim rights denied for religious reasons? In practical terms, the problem is likely to be that such issues will be handed over to the courts at various levels, in a way that will give judges considerable power at the expense of legislatures. Whether that is good for democracy is another issue.

The European Union wants to impose a pattern on the whole of Europe which may not take seriously enough the deep roots of Christianity in Europe. How does this vision of a system of law and politics which sits light to any acknowledgement of Christianity compare with the history, and the current situation, in the United Kingdom? There is much current discussion about national identity and the nature of "Britishness". However that is to be defined, it is not just constituted by a chance love of "fair play" and an accidental toleration that exists without any historical, philosophical or theological underpinnings. It is all too easy for our traditions and our principles to be simply taken for granted. Even the institutions which should exemplify and guard them, such as Crown, Church and Parliament are not respected as they were.

The Joint Committee on Human Rights (of the House of Commons and the House of Lords) recently advocated a *United Kingdom Bill of Rights and Freedoms*, which the Committee said, in a suggested Preamble to such a Bill, would "give lasting effect to the values which the people of the United Kingdom of Great Britain and Northern Ireland consider to be fundamental."⁸

We cannot escape the fact that ideals of freedom and equality are the products of the long Christian heritage of the British Isles. They exist because of it and are still nourished by it. It is no accident that the Union Jack is composed of three Christian crosses, the symbols of three different Christian saints. The identities of each of the component countries of the United Kingdom have been moulded by Christianity. The monarch's crown is, and has long been, surmounted by a cross, symbolizing not just a Christian heritage, but the fact that earthly authority is seen as secondary to divine authority. The apparatus of the state is not a replacement for the Christian religion, or independent of it, but is formed by, and should be judged by, a Christian understanding of the nature of the world and the place of humanity in it.

The idea of human dignity is fundamental in human rights charters. Why, though, are humans particularly important? Why, indeed, are we all equally important, so that our individual freedom should be respected by others? A shallow respect for all views in an indiscriminate way may seem to provide an example of non-discrimination, but it is crucial to realise that mere respect for diversity and an easy-going tolerance of all possible positions is incoherent. What do we do about those who care little for other humans, and use violence and terror to get their way? Not all beliefs are beneficial, and we have to be willing to judge between them. We can only do so according to our own principles and cannot empty ourselves of all our own beliefs. There is a difference between those beliefs and practices which we think are wrong but should be permitted, and those which we recognise must not be tolerated in a free and democratic society, simply because it is free and democratic. Yet that means we cannot take freedom at face value. We have to know why it matters, and be willing to pass on a love of freedom and a respect for other people to future generations.

Our whole vision of justice and rights, and our public institutions, from the monarchy down, are explicitly the product of a Christian vision.

Our law, our whole vision of justice and rights, and our public institutions, from the monarchy down, are explicitly the product of a Christian vision. A belief in the importance of the individual is its product. The very stress on religious freedom may have been hard won, but it is, even so, firmly grounded in Christian belief. Coerced belief is, it is realised, not genuine belief. We each have to be able to choose what we think important and how we are to live. To safeguard a free society, we need a framework in which we can

hope that the best of our heritage can be passed on to future generations. The admirable aim of fostering a society in which there is mutual respect, and an acknowledgement of our inherent value as individual human beings, is still best done through the continued acknowledgement, and transmission, of the *Christian* foundations of our belief in the importance of freedom. Otherwise, it is difficult to explain *why* we each equally matter, or even *why* we should hesitate in imposing our views on others.

establishment and toleration

The bold assertion at the end of the previous section that our society needs to continue to acknowledge its Christian foundations may seem absurd to many. The Enlightenment may have produced a (long-delayed) reaction against itself, with the idea that scientific advance is to be automatically equated with human progress having long since withered. Nevertheless, the attacks on religion in the later Enlightenment have not only left permanent intellectual doubts, but also a distrust of any religion wielding political authority. It was significant that the support of Pope John Paul II for an acknowledgement in the European Union's would-be Constitution of Europe's Christian roots was itself a factor in producing *opposition* to that acknowledgement. The fear of a powerful Roman Catholic Church influencing European politics was apparently still alive.

Coercion by the State of any kind in the exercise of religion must be wrong. Penalties for not professing a particular religion, or obstacles put in the way of alternative religious practices, cannot be part of a genuinely free society. If, as was the case until well into the nineteenth century, one cannot become a Member of Parliament, hold public office or even go to University, without being a member of the Church of England, the coercion involved is undoubtedly unjustified. It took a long time for that to be realised in this country, but gradually any penalty for not belonging to the Established Church was removed, as were its financial privileges such as the tithes that were once paid to it. It is hard now to see what concrete privileges Establishment brings. Certainly it gains no financial advantage. In France, even with its aggressive secularist policy, the state maintains all churches built before 1905. The Church of England by contrast is weighed down with its struggle to maintain its historic churches from the money it raises itself.

There is no longer any coercion, or even inducement, to profess any particular religious faith. The situation in England, and Scotland, has never been like that in Sweden, which disestablished the Lutheran Church of Sweden in 2000. Up until then, there had been an explicit identification between being Swedish and a member of the Church, and it was only in 1951 that the Religious Freedom Act granted every Swedish citizen the right to leave the Church and remain outside any religious organisation. Now, however, the Church of Sweden is, in most respects, like any other “faith community” in Sweden, although it still has a particular relation to the monarchy, in that the monarch still has to “profess the evangelical faith”, namely that of the Lutheran Church.

Establishment in Britain no longer carries with it the coercion of any citizens, or great privilege. What Establishment still does imply is recognition by the state of the religious dimension to life. For reasons of tradition this is conveyed through the particular recognition of one institution. This has, however, become less a means of shutting others out, than a means of drawing others in. It is no surprise that 79% of Muslims and 74% of Hindus think that British laws “should respect and be influenced by UK religious values” – more than the proportion of Christians (70%) who think so.¹⁰

Such an argument is increasingly deemed suspect however, with the response coming that state sponsorship of any religious service is bound to involve the state “taking sides” in doctrinal and other disputes between its citizens. Some citizens, it is argued, are made “second-class”, and are less identified with the nation than are others. Perhaps there is even a tacit criticism of atheists and others who are not religious, and even of non-Christians.

Even if the apparatus of state sits light to its espousal of the Anglican Church, should it even remain avowedly Christian? Given the pluralist society advocated by the European Court, should not the state be neutral? The function of the State, it is suggested, should be like that of a referee, making sure that its citizens can live in peace with one another. It should not be partisan, in what could potentially be very divisive disputes.

Such arguments have gained much prominence over recent years, although they tend to be better at criticising the current state of affairs than proposing alternative foundations for our freedoms, both religious and more general. When one explores these, it is easy to see why.

decision by democracy

One response is that debate about how far religion should be acknowledged in any society should simply be part of the ordinary subject-matter of democratic politics. The case for and against should be made, and the majority should decide. This, however, raises serious problems, relating to “the tyranny of the majority”. A cardinal part of current human rights doctrine is that minorities should have rights and, moreover, that one should not be discriminated against merely because one’s culture is in the minority.

Human rights bear witness to the fact that there are basic freedoms that cannot be ignored even if a majority in a society wishes to put them on one side. The language of rights, enshrining universal standards of how people should be treated, cannot be subject to democratic argument. Indeed many would hold that the basic structure of rights, legally acknowledged, makes democracy possible in the first place. It enables citizens to approach each other on a basis of equality, without fear of coercion. In a Judgement of 2006, the European Court of Human Rights reiterated what it terms “settled case-law”, that “freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’”.¹¹ It pointed out that the European Convention of Human Rights “was designed to maintain the ideals and values of a democratic society”. The particular case in question concerned the right of the Salvation Army to be registered as a legal entity in Russia. The Court pointed out that the ability of citizens to form an association in order to act collectively “reveal[s] the state of democracy in the country concerned.”¹² The right to manifest one’s religion was seen by the Court as intimately connected with a right of association. It saw religious freedom as primarily a matter of individual conscience, but recognised that any religion must also have a collective dimension. The Court recorded that “the autonomous existence of religious communities is indispensable for pluralism in a democratic society”.¹³ Indeed the Court linked the idea of pluralism with that of democracy, saying that pluralism is “indissociable from a democratic society”.¹⁴

Difficulties in legally registering religious bodies, so that they can publicly function, are a regular feature of life in some European countries, particularly in the East. Some organisations (Jehovah’s Witnesses are a particular target) are viewed with grave suspicion. Often their main fault is that they are foreign imports challenging the link of national identity with a particular religious heritage. This is especially the case in countries in which the Orthodox Church has a traditional role. Other problems, usually beyond Europe, can also centre on the right of an individual to leave a religion, or to become a convert to another. In some Muslim countries this can still be a capital offence. Such cases remind us what real assaults on the religious freedom both of individuals and of groups amount to. They also remind us that the role of religion in public life and the scope and limits of religious freedom cannot be decided simply by the democratic will of the people.

supplementary jurisdictions

Another option is that of supplementary or parallel jurisdictions. These can be understood by exploring how the State should respond when, for example, faced with disagreement about marriage law. This is always going to be a fraught area, since to many people the family, as traditionally understood, is the bedrock of any society. If that disintegrates, the society may well be at risk. Marriage may have become, in the eyes of many, a purely secular institution, having the status of any optional civil contract, but religious institutions have regulated marriage, and concomitant human relationships, since time immemorial. It has been rightly seen as a step to greater freedom that the solemnization and regulation of marriage was not simply a matter for the Established Church. Other forms of religious marriage, and civil marriage apart from any religious sanction, became possible.

In the future, with the presence in the UK of adherents of other religions and of none, two courses of action seem possible, as a change from the existing arrangements. One would be for there to be a complete separation of the religious and the civil components of marriage, so that the state gained complete control, and religious ceremonies would be additional and optional. The other would be for the state to allow non-Christian religions themselves to gain more control of their adherents' marriages, so that, for example, in the case of Islam, Islamic family law could be applied for Muslims.

This raises the possibility of controversial aspects of *sharia* law being given some form of legal recognition. Issues about forced marriages, and polygamy, would then begin to arise, and many would worry about whether the interests of women would be given enough protection. There are other religious bodies, too, which might wish to practise polygamy. If all religious beliefs are to be treated equally, how can the state object?

Yet, quite clearly, many in the United Kingdom would object most vehemently. Apart from other considerations, the idea that the law ceases to apply in the same way to everyone, but that some can legitimately pursue their own practices, is itself a powerful attack on the very idea of individual equality which is supposed to be defended. Treating religious groups equally may not produce just and fair treatment of individuals. The law of the land would not then be able to protect the vulnerable if they were the victims of some religious practice.

The role of religion in public life and the scope and limits of religious freedom cannot be decided simply by the democratic will of the people.

The retiring Lord Chief Justice of England and Wales, Lord Phillips, gave a speech entitled “Equality Before the Law” in July 2008 in which he stressed that Muslim men and women are entitled to be treated in the same way as all others in this country.¹⁵ This should hardly need saying. All are equal before the law. That, though, does not settle what the law should be and, towards the end of his lecture Lord Phillips caused controversy by picking out *sharia* law for special attention. He said, quite rightly, that “there is no reason why principles of *sharia* law or any other religious code should not be the basis for mediation or other forms of alternative dispute resolution.”¹⁶ Everyone can voluntarily submit themselves to an agreed course of arbitration, just as anyone should be free to live their own lives by the code they choose, as long as it does not contravene the law of the land.

Everyone can voluntarily submit themselves to an agreed course of arbitration, as long as it does not contravene the law of the land.

It is, however, in the interaction between religious codes and the law of the land that controversy arises. Once *sharia* law, or any other code, is picked out for specific legal recognition, communities appear to be ring-fenced by their own legal standards and the nation inevitably begins to break apart. The Lord Chief Justice may have been trying to reassure Muslims that no-one wants to interfere with their freedom to live according to the demands of their religion, and that is right up to a point. That

does not mean however, that there should be any changes in the structure of English law in order to recognise any alternative jurisdictions, or that standards enshrined in English law, say, about the treatment of women, should not be applied.

The Lord Chief Justice attempted to address misunderstandings current in the UK about the alleged harsh nature of *sharia*. The problem, however, pointed out by the United Nations’ Special Rapporteur for Religious Freedom, is that there is no settled interpretation of such law, and power is thereby handed to individual imams to enforce as they will.¹⁷ In this it is different from a system of established law with acknowledged precedents and procedures for settling disputes about its nature in higher courts. Lord Phillips himself alluded to this, whilst not recognising the dangers, when he accepted that “the definition of the law and the sanctions to be applied for breach of it differ from one Muslim country to another.” This only raises the question which version of *sharia* is to be applied, and who decides. It is not surprising that the role of *sharia* is not just an issue between Muslims and non-Muslims; it arouses heated debate between Muslims.

state neutrality

If the nature of religious freedom demands a principled decision, it is clear to many what that principle should be: state neutrality. This idea is that states, and indeed international organisations and courts, should take up a neutral stance, enabling the differing groups in a pluralist democracy to live together. Thus the European Court can rule that the Salvation Army has not achieved the freedom to practise its beliefs in Russia that is its right, without in any way having to judge on the rightness or desirability of the Salvation Army's beliefs and practices. Indeed, in any country, the courts ought to enforce the law in a totally neutral way. They should show no partiality to individuals or groups. They should pass no judgement on particular beliefs or behaviour as long as it is lawful. All that should matter is whether the law is upheld.

It is a basic principle of law that courts should avoid getting involved in theological debates about which position is correct. Courts in the United States are particularly wary of 'entanglement' with religion in which a court could end up favouring one religious view over another. That way lies a path to breaching the clause in the US Constitution forbidding 'establishment'. Yet no court in any country can be happy about becoming mired in theological controversies, which they have no particular expertise in resolving. They will quite properly look for neutral principles of law to appeal to in their administration of justice.

Disputes about church property may, regrettably, in times of schism, come before the civil courts. This has often happened in the United Kingdom, and the Episcopal Church in the United States is involved in several such disputes at the moment, connected with wider arguments within the Anglican Communion. It is no part of a court's function to decide which side is right or even which is being the more faithful to its own tradition. It cannot decide whether the Communion should be 'liberal' or 'conservative' in its doctrines. All that matters is how the law can be applied in a neutral fashion. Who, according to the law of the land, has the right to decide on use of the property? That will depend on the relevant trust deeds, and local property law, and not the doctrine of the relevant church. In these respects the law must be neutral. It should show no partiality, or undue respect to ecclesiastical authority, such as the wishes of Bishops and Moderators.

The fact that the law should show no partiality between parties to a dispute is, however, a very different issue from the question of whether the law itself should be neutral between every conceivable point of view. Put like this, we are faced with an impossibility. The very fact that each law has to exclude certain courses of action makes it clear that all law has to be arrived at from a particular viewpoint. If we want an open and tolerant society, which gives maximum liberty to individuals, we are going to promote laws which reflect that vision – and it is not a neutral one. In contrast, some societies in the world do not see any intrinsic value in individuals, do not allow individual freedom, and have no

desire to be tolerant. The democratic ideal of a 'pluralist' society, based on a strong belief in human rights, much praised by the Council of Europe and the European Court of Human Rights, is so far from being neutral that it is not even firmly adopted in every European country.

The need for impartiality in the administration of law is not to be confused with having laws that take up no substantive position about the nature of human beings and their place in the world. Liberal political philosophers, such as John Rawls, have hankered after a vision of the law as somehow abstracted from beliefs of this nature.¹⁸ A liberal society, in such a view, neither supports nor denigrates any particular belief, but stands back from all definite or 'comprehensive' beliefs, such as those of religion. The law should not come down on one side or another among competing beliefs. It should be a neutral umpire, which will be upheld by citizens who (somehow) share a common conception of justice.

This desire for neutrality between all controversial positions, even at the level of legislation, may seem to maximize individual freedom. Indeed that is its purpose. Yet of its nature such a position is hardly neutral. It believes that all citizens are of equal importance, and that their freedom and individual autonomy must be respected. We must have a common conception of justice, with a shared public basis for justification for what we do, and this entails, even in a pluralist society, that we must all reason in the same way, even if we disagree about what is true. What emerges is a very definite view of the status of human beings, and of their shared characteristics, which makes sense – given a Christian background. Indeed, Kant's philosophy, which influenced Rawls, owes much to Kant's Lutheran background.

So, alleged state neutrality is not necessarily neutral, depending as it does on substantial prior philosophical commitments to the importance of freedom and equality for human beings. Nor, in fact, are its outworkings necessarily neutral, given that it can result in religions being adversely treated. An example of this can be seen in the guidance about the notion of "public benefit" in connection with religion issued by the Charity Commission.¹⁹ This followed the *Charities Act 2006*, creating a new "level playing field", by requiring that all charities demonstrate public benefit.

As the Guidance indicates, charities advancing religion "were previously presumed to be for the public benefit", the only contentious issue being what precisely constituted a religion.²⁰ Now, however, the idea of public benefit, balanced against ideas of "detriment" or "harm", raises the possibility that any genuine religious organisation could have its charitable status called into question by judgements about its social effects.²¹

Yet there are dangers in the use of the concepts of benefit and harm. What criteria are to be used in determining what is beneficial and what is detrimental? If the judgements are firmly anchored in English law, with its Christian roots, there may be little problem. Yet the Charity Commission asserts that “as between different religions the law is neutral”.²² Even assuming that this is possible, there is clearly a slippage here from the crucial idea of the impartiality of the law, to the more general idea that somehow judgements can be made about what is good and bad for humans without any reference to basic conceptions of human nature. In particular, ideas of public benefit and harm are not self-evident, and grow out of definite theological and philosophical positions.

The Guidance confirms that “our approach to decisions about what is charitable, and what is and is not for the public benefit, will continue to be informed by what is relevant and appropriate for current social and economic circumstances.”²³ Even though the Commission protests that it does not wish “to modernise traditional long-held religious beliefs”, there are clear risks stemming from this reference to contemporary society. Indeed the next paragraph refers to public opinion. We are told that “we would have regard to public opinion where there are objective and informed public concerns about, or evidence that, the beliefs or practices of an organisation advancing religion causes detriment or harm.” It is not clear who is to decide what is “objective and informed” but the fact that public opinion can be invoked goes far beyond ruling out charitable status because of illegality. It seems that religious organisations can lose it if, though acting lawfully, they have run foul of some current widely held fashion. In this way, “neutrality” could become a weapon to be used against some religion. It may not be fanciful, too, to see in the use of the word ‘modernise’ a subtle prejudice in favour of new, rather than traditional, understandings.

One problem is that religious groups, including Christian ones, may hold definite views about the truth of their own views and the falsity of others. If this involves any form of coercion or aggression, that cannot be tolerated. What, however, is not so clear is whether views may appear to threaten harmony between religious communities simply by challenging a respect for diversity. At the extreme, could an insistence on truth be seen as publicly harmful, simply because it is divisive? We cannot pretend that society can be governed by public opinion, without paying any attention to the principles which ought to inform that opinion. We have to pay attention to the ways in which the character of the people is formed. Democracy cannot operate in a historical, philosophical or religious vacuum. Indeed questions of truth can never be shirked, either individually or collectively. Without the possibility of truth, freedom of belief lapses into arbitrary and pointless commitment.²⁴

Democracy cannot operate in a historical, philosophical or religious vacuum.

Absolute neutrality between all possible positions must be an illusion. Every time anything is asserted, something is being implicitly denied. The cost of neutrality must be absolute silence. In the case of organising society, the ideal of maximum individual freedom may be a noble one, but it presupposes that individual human liberty is of paramount importance. Equality and justice must be important but there are many

countries that pay little regard to such notions. Our ideas about a democratic society no doubt grow from such basic concepts, but they need justification. They have to be taught. Indeed one of the paradoxes of a love of freedom is that we dare not let people be so free that they fail to respect freedom, not just for themselves but for everyone else. We cannot assume that such values can easily be passed on from generation to generation without giving some rationale for them. The very

One of the paradoxes of a love of freedom is that we dare not let people be so free that they fail to respect freedom.

worst reason for believing something, if it is a reason at all, is that it is simply what we believe. We still have to explain why we believe it. A society without a firm basis for its beliefs leaves those beliefs very vulnerable at first to indifference and then to outright attack.

religion versus human rights?

Religions can be treated, because of state neutrality, as if they are purely private matters of choice and can thus be downgraded in some invisible pecking-order of rights. The relation of religious freedom and other basic rights was brought into particular focus by recommendations in June 2007 coming from the Parliamentary Assembly of the Council of Europe, representing 47 states in Europe, and extending its reach beyond the European Union. It became apparent that upholding state neutrality to religion, so far from bolstering religious freedom, could in fact undermine it. In the report, entitled *State, Religion, Secularity and Human Rights*, one of the first affirmations was that “one of Europe’s shared values, transcending national differences, is the separation of church and state.”²⁵ The report said that “this is a generally accepted principle that prevails in politics and institutions in democratic countries.” In support of this, an earlier recommendation in 2005 was quoted to the effect that “each person’s religion, including the option of having no religion, is a strictly personal matter.”

It is, as a matter of fact, false to claim that one of Europe’s shared values is the separation of church and state. Many countries give recognition of different kinds to particular churches and to their own historical and religious heritage. The report does acknowledge this later but the suggestion is that these are regrettable legacies from a previous age which must be soon rectified. The reality does not yet conform to our shared values. In

other words, “values” are not merely being described, they are being appealed to in a normative fashion. The claim is that states *ought* to behave in particular way even if at present they do not. In the case of England, the views of the National Secular Society are quoted, saying that “it is simply wrong in principle to give any special recognition to any form of religion.”²⁶ The idea is that it is time “European” values were consistently applied. We are told bluntly that “the legislation of several Council of Europe member states still contains anachronisms dating from times when religion played a more important part in our societies.”²⁷

One of the pillars of the Council of Europe is its belief in human rights. This becomes particularly important with relevance to religion and religious freedom. The Council is under no doubt that in a clash between a particular religion and human rights, it is human rights which must always prevail. The report states absolutely that states may not allow “the dissemination of religious principles, which, if put into practice, would violate human rights.”²⁸ The explanatory memorandum attached to the recommendations says that “if there is ever a conflict between human rights and the dictates of faith, the State must always defend human rights.”²⁹ Thus potential battles between religion and the ideology of human rights become explicit: if human rights are at stake, religion must always give way.

Yet this is itself a contradictory position. The right to religious freedom is itself a basic human right. Even if the right to practise a religion must be qualified in certain circumstances, it is still a *prima facie* right. What we have, therefore, is not a clash between religion and rights, but a clash between different rights. The problem is how to weigh them. No proper understanding of human rights can allow that in a clash between, say, the demands of equal treatment and the right to religious freedom, the latter must always give way. The example given in the report is in fact a British one, concerning the right of same-sex couples to equal treatment in respect of adoption services, and the moral objections of Roman Catholic agencies to this.³⁰

The right to religious freedom is itself a basic human right.

This has been extremely controversial but to characterise it as an example of a conflict between rights and faith is unhelpful, as it does not take seriously the very genuine right to act in accordance with one’s conscience in matters of such seminal importance as parenthood and family life. The acute dilemma that arose in that case existed because of two conflicting claims to rights. It cannot be solved by just dismissing one.

The idea that religion is a private matter, with no claim for any public accommodation, makes it easy to ignore it.³¹ Yet that is to deny an important component of religious freedom. Rights to live according to one's religious principles, and to not suffer discrimination because of them, are as important as the right to protection from any other forms of discrimination. They must be publicly recognised. When rights clash, courts can only try to balance the respective rights and to accommodate all of them as best they can. Solutions cannot be found by simply writing religion out of the picture. Religious belief and conscience is entitled to respect, even if a "secular" society finds that inconvenient or repugnant.

It is troubling that in the July 2008 report of the Parliamentary Joint Committee on Human Rights there is a recommendation that any Bill of Rights "should make clear the responsibility, when performing a public function, to subordinate the manifestation of a personal belief which would discriminate against, or undermine, the rights and freedoms of others."³² Individuals, they say, should not be able, without express statutory provision, to manifest a personal belief, including religious beliefs, in order to deny others access to public services. The Committee seems to want a new *Bill of Rights and Freedoms* in effect to downgrade the importance of religious freedom, when its exercise is liable to cut across the will of the state. Yet it is precisely at such a time that the right to such freedom means something. A freedom merely to conform is no great freedom.

Such a position would make it likely that some people involved in the provision of public services would sometimes have to make a choice between their profession and their conscience. We have seen how adoption agencies and civil registrars can face difficulties, but so might others, particularly in medicine. Pharmacists, nurses and doctors may often feel they are being called upon to act against their deepest convictions. Students can wonder if their religious convictions and the practice of contemporary medicine are even compatible. To take what may seem at the moment an extreme – but perfectly possible – example, euthanasia could be legalized, and doctors expected in some circumstances to kill people even if it went against their deepest convictions to do so. That would not be religious freedom.

As it is, many medical practitioners with a strong religious belief, could find themselves at odds with public policy on a wide range of issues. The provision of contraception, especially to those under-age, and the availability of abortion virtually on demand, are controversial issues which barely scratch the surface of the major ethical arguments that arise because of scientific developments, involving, say, the manipulation of genes, and the production of "designer babies", amongst many other possibilities. It is no answer to say that people have religious freedom because they can choose not to become doctors. Once again, religious belief and practice is made to carry too great a cost, to the individual

and also to the society which loses dedicated doctors. Public policy has to take more account of the right to practice a religion. If it goes against religious belief, it should at least be prepared to accommodate it. Problems, of course, arise if too few practitioners are willing to implement public policy, but that would be a strong argument against having the policy anyway. There may well be something wrong with a policy if a significant number of professionals find it objectionable.

All too often it is made to appear that religion and human rights are somehow at war. A neutral state can see it as its duty to uphold rights in the face of an allegedly over-bearing and authoritarian religion. Yet the reality is that different rights can pull us in different directions. Religious freedom matters as much as, arguably more than, many other nominated human rights. Any government that wishes simply to override it, without making any effort to accommodate it, is behaving as totalitarian governments do.

conclusion: the religious roots of our freedoms

The struggle for freedom of religion has long been justly regarded as a cornerstone of British democracy. Indeed, it has been a driving force behind the emergence of the modern democratic state. As we have seen, this can be misleadingly portrayed as the emergence of freedom from the shackles of religion.

Freedom from religion, however, is not the same as freedom for religion. The aim over the centuries in England has been gradually to carve out a space in which individuals can practise religion (or reject all religion), as they wish. It has not been to “cleanse” the public sphere of all religious influence. Religion must itself be seen as a bulwark of freedom and toleration. Some religion may not be, but the specifically Christian heritage of this country has shaped it in ways which encourage and defend such freedom. There is a very real question whether society can survive for many generations without the respect for human dignity, and the scepticism towards human power, that are powerful legacies of our Christian past.

The framework of the UK is still recognisably Christian, despite the fact that powerful pressures may be calling that framework into question. Institutions are important in providing an atmosphere in which freedom and justice can be honoured and taught. They can themselves be stabilising influences. Sudden and substantial

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change, perhaps at the behest of unrepresentative pressure groups, always runs the risk of producing unintended consequences that are desired by no one.

This is not say that institutions can, or will, remain unchanged, once there has been a major, and permanent, shift in the beliefs and character of a people. Christian institutions make no sense without a critical mass of Christian believers. Britain will, in the end, reflect, for good or ill, the evolving character of its citizens, even though its institutions can also play their part in guiding and shaping them. At the moment, however, there is considerable confusion and fluidity in personal belief. It is far too early to tell if the domestic secularising trends of the later twentieth century signify an irreversible change or whether they are transient and illusory, and if the global de-secularisation of the same period is, in fact, a portent of the future.

All our laws, our very understanding of toleration and our respect for justice have grown out of a specific history.

As we shall see in chapter two, religious impulses are buried deep in human nature. Religion, in various forms, is rapidly growing in influence in most parts of the world, whether in China, India, Africa or South America. Only in the countries of Western Europe, and perhaps countries such as Canada and Australia,

is secularism in the ascendancy. It certainly is not in the United States. The drift away from organised religion in Western Europe can easily be seen as a temporary aberration, rather than as a predictor of the course of future human development.

Even if Establishment, the specific recognition of these Christian principles in England and Scotland, is taken out of the equation, all our laws, our very understanding of toleration and our respect for justice have grown out of a specific history. That history is Christian and this is not an accident. Some may wish this were not so. Some may justly point out that there have been times when Christian principles have been betrayed, and that it took a very long time to develop a full understanding of the implications of the doctrine of free-will for individuals in society. Similarly, full democracy took a long time to mature. Nevertheless, that does not alter the fact that ideas about the absolute importance of each individual, and the concomitant concepts of freedom and equality, had to come from somewhere. It was the Christian religion which nurtured them. Subtract Christianity, and it is far from clear that the ideas can live on or, more importantly, provide people with the motivation to subordinate their own interests to those of others or to the common good. It is one thing to proclaim human dignity but we all must also be willing to respect it even when it is expedient not to.

Whatever peoples' personal beliefs, the structures of our society are imbued with Christianity. We may be living off the spiritual capital of previous generations, and it might be a diminishing resource, but for the moment, it is still there. Taking away Christianity

from our public life, however, may transform society in unforeseeable ways. Much could be destabilised, from our constitutional settlement at its most general level, to how we respect each other as individuals. Humanists may hope that we could continue to value human dignity as much as before, but it remains to be seen whether a general benevolence to human beings is enough to overcome the ingrained self-centredness which neo-Darwinism makes clear is part of our biological inheritance. (The theological word would be “sin”.) Why other people matter, even when they are unrelated to us, and cannot reciprocate favours, is none too clear without a religious explanation.

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A Government which “respects” all religions by distancing itself from all equally is in fact failing to take any religion seriously. Ultimately, so far from showing respect, such a view is, intentionally or not, teaching that religion is irrelevant to public life, wholly dispensable and, therefore, ultimately of little account.³³ That sends out worrying messages to people of all religions. Many adherents of non-Christian religions come to Britain expecting to find a Christian country. They expect to be treated with respect and to have freedom, but they know that that is more likely to happen in a country that is committed to its own historically-based religion, whilst respecting freedom of conscience, and coercing no one. The widely remarked readiness of Muslims in England and elsewhere to send their children to a school of another religion rather than to a state “secular” school says it all. They know that the greatest threat to their own religion is the contempt and indifference of a wholly secular society. Unless the Christian roots of our society continue to be nourished, we will all be at the mercy of the fashions of the moment.

chapter 1 - references

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22. *Ibid.* #D1. It says in this context that "it is not relevant for the purposes of charity law whether the substance of religious doctrines can be proven to be 'true'"The very fact that the word 'true' is put in quotes, raises, perhaps unintentionally, the question whether religion is the kind of thing that can claim truth. Such a philosophical position, contentious though it is, is another way of marginalising religion, and of assuming it is outside the scope of public reasoning. See Roger Trigg, *Religion in Public Life: Must Faith Be Privatized?*, Oxford University Press, Oxford, 2007, Chapter 10.
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judging for religious freedom

Recognising the Christian foundations for our freedom and, in particular, our religious freedom, might be the best way of preserving and protecting those freedoms. Yet however important such freedom is, we have already seen that not all religious practices can be allowed simply because they are religious. We still have to distinguish between what can be tolerated in our society and what must not be. However much we wish to respect people's consciences, all human rights charters recognise that there must be some limitations, if only because we have to protect others' rights. That does not mean that religious freedom must be automatically subordinated to other rights, but it would be foolish to think that it must itself always be respected no matter the practices that are advocated. We have to know what principles to adopt when rights conflict. Talking of the "absolute" demands of human rights gets us nowhere. We still have to decide, for example, whether, or when, equality trumps religious freedom.

In her report about the United Kingdom, the U.N. Special Rapporteur for Freedom of Religion or Belief faced the issue of balancing competing rights, and suggested that "there exists no hierarchy of discrimination grounds".¹ There is, in other words, no algorithm to decide between the claims of gender, sexual orientation, religious belief, race and so on. Her solution is that a clash of different rights "can only be decided on a case-by-case basis taking into account the particular circumstances and implications of the case."

This places a tremendous responsibility on the courts and the opinions of individual judges, and leaves too much to them. What she says may be a useful antidote to those who wish to "trump" claims to religious freedom, with demands for a ban on all discrimination. Taken to extremes, the latter view could stop the Roman Catholic Church ordaining only male priests, if it was thought that public policy about gender equality demanded it. Yet, perhaps unintentionally, her view fails to assert the importance of religious freedom as a positive contribution to democracy. As clashes between religious belief and the views of secular society increase, religious freedom becomes more and more challenged, and there is a case for "ring-fencing" certain activities. For instance, legislation should sometimes be more explicit in accommodating those who would be reluctant to enforce it because of religious principle.

The test of a free and tolerant society is not the rigorous enforcement of rules against discrimination, or the imposition of fashionable standards of equality. It is the acknowledgement that there are different beliefs, and estimates, of how people ought to be treated. Within limits, these differences are the very foundation of a democratic society, and must be allowed. The upholding of freedom is not constituted by the enforcement of norms, however well meant. It involves tolerating what we may not agree with. The manifestations of different religious beliefs must be accommodated in a fair way, and one that does not merely rule them out because they are from an alien tradition, or fail to conform to contemporary prejudices about what is right.

Yet no individual, and no state, can be totally neutral. We must all start from somewhere. This is where the Christian basis of our freedoms is particularly useful. Supporting Christian standards simply because they are entwined with our history as a nation may be attractive to some, but that hardly constitutes a sufficient reason. A postmodernist could happily stop at that and say that that is just *our* way of doing things. In contrast, the Christian principles mediated by our history are not simply local, because they point to universal truths about the human condition. Many can join in seeing the validity of human rights, but Christianity has been highly influential in pointing to the inherent dignity of human beings, on which the idea of rights depends. Such dignity may not always be respected, but it belongs to all humans everywhere. No law can take it away from them, unlike their privacy which can be denied them legally, say in a prison. Yet why do human beings matter equally in this way? It is not enough to say that humans do respect each other, because it is an incontrovertible fact that often they do not. We all need to understand why we ought to value each other.

We must have an understanding about human dignity, and to do this we have to have particular beliefs about the importance of humans in the world.² These can have a variety of sources, and people of different beliefs can find agreement in this area. Humanists, by definition, value human beings, although they may find it difficult to explain why they are important. It is, however, undeniable that a powerful source of belief in human dignity, and the concomitant importance of human freedom and equality, is rooted in religion, and not just any religion, but Christianity in particular. Critics can easily point to dark periods in Christian history where its adherents have failed to live up to its deepest principles, conveniently ignoring the many instances when the opposite has been true, and the fact that the concept of the importance of all humans is central to the Judaeo-Christian belief that we are made in the image of God. It is not surprising that President Obama in his Inaugural Address was able, unselfconsciously, to refer to “the God-given promise that all are equal, all are free”.

Human nature is something we all share. We all have the same basic needs and interests, and these are facts that all religions have to deal with. Tuberculosis in cows is as much a health threat to Hindus as to Christians. Muslim women have the same abilities and needs as Christian women. Indeed, the major religions can agree to a large extent about what is conducive to human flourishing. Starvation, poverty and inadequate healthcare are all evils they can join in condemning. The same diseases kill anyone regardless of religious belief. Many religions join in upholding the value of family life, and the importance of parental responsibility for their children. It is not surprising that the rhetoric of human rights has found a ready audience across the world, as it relates to our common humanity and to our similar needs and interests as human beings. Of these, our need for freedom is as basic as anything. We cannot act as human beings in an autonomous way without it. We cannot become what we ought to be. Without it, we become objects to be coerced and manipulated. If human beings matter at all, this is wrong.

The easy relativism of an over-tolerant respect for diversity could involve refusing to give the protection of the law to those who need it.

Talk of human rights, however, cuts across talk of respecting other people's culture, including their religion, simply because it is theirs. The easy relativism of an over-tolerant respect for diversity may seem admirable in refusing to judge others, or to apply our standards to them. In fact, though, it backs away from hard choices and, in particular, it could involve refusing to give the protection of the law to those who need it. There is no reason why communities cannot choose to live by their own

standards, but that has to be within limits, and those limits in the United Kingdom must be those set by British law. We all have to arrive at a common understanding of what is good for everyone, and conducive to human flourishing. Often there can be agreement between religions, and between religious and non-religious people. Sometimes, however, there will be disagreement, and our society still has to stand somewhere unless it allows itself to be merely subject to the rapidly shifting moods of public opinion.

We may be, individually and collectively, committed to the importance of the principles of a modern, secular democracy, such as liberty, equality and the wrongness of discrimination, yet have little idea of what they are based on, or how respect for them can be inculcated, and passed on to future generations. Traditional attitudes can give us basic insights, which can be shared by other faiths, about what constitutes what is good and bad for humans. We have to be very careful that, if they are to be given up, or significantly modified, they can be replaced with equally durable principles which have a firm basis in reality, and a firm link with a definite conception of human nature. Otherwise, the philosophical vacuum left will inevitably result in an unintended decline in human well-being, even judged by the widest of criteria.

Evidence, for example, mounts of the damage done to children by the progressive breakdown of settled family structures, and by the selfishness of adults. The so-called 'Good Childhood Inquiry' in February 2009 reported, as a result of a wide-ranging, independent survey, the deleterious effects on children of changes in our society.³ It refers to the harm caused by "the decline of religious, and more recently, even secular belief, in any kind of social obligation". It is hard, in the face of such facts, to argue that nothing changes when people feel less constrained by the demands of a morality which may hold them back from sacrificing the interests of others in pursuit of their own wishes. Any society which thinks that it can safely ignore the experience of many generations, particularly, though not exclusively, as articulated through religious views, is ignoring one of its most important resources.

religious impulses and human nature

Religious beliefs typically concern what is of central importance to human beings. They articulate views about why human beings matter, and what their place in the world is. They make assertions about what is good and bad for humans. Many people seem to regard moral injunctions stemming from religion as a set of arbitrary and inconsequential demands with as little point to them as silly points of etiquette in a highly formal society. At most they are there as a badge of belonging to a religion. Yet this is seriously to underestimate the force and point of many religious demands. Almost universally, religions draw a close connection between their behavioural requirements and human flourishing. Religious demands that self-evidently increase the sum of human suffering must be suspect. There should be some connection between a believer's obedience to God and furthering human good.

Religion and, in particular, a belief in God as Creator, is thus concerned with human nature. The precepts of Christianity cannot be divorced from the view that they are conducive to the common good. Yet there is more to religion than the importance for any society of its content. Some will still ask what is special about religion, and hence freedom of religion, in contrast to a more general freedom of conscience and freedom of expression. Cannot the law simply take account of the necessity for freedom of thought and action in a democracy? Why must it get involved at all with "religion", let alone pick it out for special attention? It may in fact be in tune with secularizing tendencies to say that all beliefs are important if people care about them. We should, it may seem, respect everyone's views and opinions, without making a special case for religion.

This marginalizes religion, but some would welcome that, and suggest that it is not important for people's lives or the life of the nation. The current tendency to widen the notion of religion into "religion and belief" merely serves to suggest the dispensability of religion as a specific category, in a way in which the Constitution of the United States

certainly does not. The First Amendment to the Constitution talks of a more general freedom of speech, but it first specifically picks out religion, in saying that the US Congress “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁴

It thus sees religion as central enough to human interests to give it explicit and special protection. The fact, too, that it receives explicit mention demonstrates not only the importance given by the Founders of the United States to the role of religion, but their acceptance that it would have a permanent place in human life.

Adding “belief” to the notion of religion is, in part, intended to cover the rejection of religion, and the right of people to live according to an atheist or agnostic world-view. The word, however, introduces a further vagueness into the definition which courts have to wrestle with. The problem is that the more the category covers, the more limitations will be found legally necessary. An absolute right to freedom of a wide range of belief will have to be balanced by further restrictions in law on the “manifestation” of those beliefs. The more outlandish the beliefs tolerated, the more a society will have to be careful about how they are expressed.

Perhaps, therefore, religion is not special at all, or at least no more special than other wide-ranging views about the place of human beings in the scheme of things. Is it wrong to think of singling out religion for any special protection? Is it wrong to imagine that religious freedom is particularly precious? This is the nub of the problem. Yet there is a simple answer, which has been somewhat obscured in recent years by the secularisation of Western Europe.

In many ways this secularisation must be seen as an aberration – and probably a temporary one – when set against the backdrop of human nature. Not only current experience in the rest of the world, but also scientific research into the roots of human nature, suggests that the impulses which give rise to religion are universal. They can be seen across cultures and time, as anthropology bears witness. They can be seen in the development of young children, as psychologists are demonstrating. A readiness to detect agency, even of a supernatural kind; a willingness to see purpose and goal-directedness in the material world; a readiness to attribute mental capacities to other people which may survive death; and an acceptance from an early age that intentional agents can have ‘super-powers’ such as the ability to know everything – these are not just the building blocks of religion, they are basic characteristics that are built into the very fact of being human.

A new discipline, the cognitive science of religion, is showing just how central and “natural” religion is in human development. The issue is not whether all religion, or a particular religion, can claim any truth. That is a different question. The point is that

religion is there in the lives of all of us. It always has been, and it is reasonable to assume that it always will be, for good or ill, a force to be reckoned with. As Justin Barrett, Senior Researcher at Oxford University's Centre for Anthropology and Mind, and currently working on the cognitive science of religion in Oxford, has remarked, "Belief in gods in human groups may be an inevitable consequence of the sorts of minds we are born with in the sort of world we are born into."⁵ He adds that a belief in one god may be selectively privileged, but that is more controversial.

Scott Atran, author of *In Gods We Trust: The Evolutionary Landscape of Religion*, summarizes the position by saying that, "religion ensues from the ordinary workings of the human mind."⁶ He considers that it involves the "extraordinary use of ordinary cognitive processes."⁷ His eventual conclusion is that "for better or worse, religious belief in the supernatural seems here to stay."⁸ Indeed the ease with which religion has re-emerged in Eastern Europe, despite years of Communist oppression, illustrates this. Atran, along with other researchers in this area also stresses the role of religion as a source of moral authority. The idea of supernatural agency, he claims, can provide a more lasting support for a morality than can any secular ideology.⁹ For that reason, too, religion is likely to persist.

Science has always been much less likely to develop in any society than religion.

This idea that religion is to an extent "natural" is echoed in the work of the anthropologist Pascal Boyer, another influential figure in this field. He intriguingly contrasts religion with science, and suggests that because religious ideas "recruit the resources of mental systems that would be there, religion or not...religion is a *likely* thing."¹⁰ Conversely, he says, "scientific activity is quite unnatural given our cognitive dispositions."¹¹ Boyer quotes philosopher Robert McCauley as saying that "science is every bit as 'unnatural' to the human mind as religion is 'natural!'"¹² In other words science is at the level of abstruse theological reflection, rather than ordinary religious belief. We must conclude, as in fact is the case, that science has always been much less likely to develop in any society than religion. Science, however important, is not as deeply entwined with human nature as is religion.

The contemporary urge to squeeze religion out of public life and to set up a secular society, which treats religion as an unimportant private enthusiasm, is probably doomed to the same sort of failure as greeted more militant attempts to do so in the twentieth century.¹³ Religion, in its various forms, and the impulses that nourish it, are too deeply rooted in human nature. Atheism is not the default position. Religious belief always has been, and presumably always will be the norm. It will not disappear, and trying to eradicate it, or just ignore it, fails to take account of a deep feature of what it is to be human. We can argue about whether that is a good or bad thing. What we cannot do is pretend that religion, in all its forms, is going to disappear or that it can be treated as a

minor and unimportant feature of humanity. It is there, centre stage, as the situation in different continents today clearly demonstrates. To restrict the free exercise of religion is to attempt to strangle a prime motivator of human behaviour, and there is no more effective way of restricting human freedom. There is a scientific basis for the growing realisation over the centuries that the human freedom demanded by democracy must include religious freedom. Otherwise human beings are thwarted in acting in accordance with some of their most deeply rooted beliefs.

public policy and religion

Current public policy in the United Kingdom marginalises religion, making its exercise more difficult. Freedom of religion is a particularly important freedom since religion is vulnerable to the power of the state. Not only is it a source of energy which the state would like itself to control, but it can offer a collective view that will posit alternative sources of authority by which the state can be judged. It can at times be tempting for a government to regulate and control it, either for its own purposes, or in accord with current fashions in society. Even in a democratic society it can at times appear very vulnerable to prevailing prejudice. Many, for all kinds of reasons, are only too pleased to muzzle religious views which they may find challenging, and even offensive.

Religion can never be seen as a totally private affair. It is typically shared in a community, and its teaching often has moral and political implications. It is much healthier that those with a religious commitment are free to express and practice their views in public. The corollary is that such views must be subject to public, rational debate. Open argument, and freedom for religion to express itself, is always going to be preferable to restrictions, which have the effect of removing religion from the public sphere in ways that shield it unduly from critical examination. Whatever human rights documents say, religion cannot easily be split into private, conscientiously held beliefs, accorded absolute respect, and public manifestations which have to be subject to limitations. For many believers, there is no distinction between belief and practice, individual view and communal activity. Attempts to draw boundaries between “public and private”, “belief” and “practice” can often be seen as the artificial imposition of alien standards from outside the religion. For many, there is no clear line between “religious” activities, such as worship in a building, and “charitable” ones beyond it, and no distinction between a faith and actions expressing that faith.

Yet once whatever is regarded as religion gains protection, it becomes difficult to decide which activities are genuine manifestations of religion, and which have a looser connection with it. Does someone who refuses to serve alcohol as part of their job, or to sell lottery tickets, simply do so because of moral disapproval of drink or gambling? The previous argument about the importance of religion may suggest that such stances

deserve special respect if they are linked to a religious view. Does this mean that we have to accept that whatever someone consistently holds to be important for their religion must be accepted simply because it is their sincere religious view, conscientiously held? That would entail that anyone is free to claim anything as a “religious” view, or practice, which has to be respected, and that means the end of any search for universally applicable principles by which we can all abide.

There is no escape, in controversial cases for legislators and the courts, from beginning with certain broad principles, linked to conceptions of human flourishing, which show what is acceptable. That may mean siding with one religious outlook rather than another. In the United Kingdom, there should be no reluctance in acknowledging that our laws are informed by Christian insights about human nature and its needs. Neutrality is illusory, since every judgement has to come from somewhere, carrying its own presuppositions. Even in science there are no bare “facts”, but everything has to be viewed from the standpoint of some theory or another.¹⁴

***An atheist is no more
a second class citizen
under a government
that takes religion
especially seriously, than
a Conservative is under
a Labour Government.***

Dictatorships can try to stifle religion but its presence as a universal feature of human life, speaking out about what it regards as the most basic needs and interests of humanity, cannot finally be ignored. Religion is special, as governments through the centuries have recognised, because of its persistent grip on the hearts and minds of many of their citizens, and its influence on their lives. Its pervasive presence may not demonstrate its truth, but religion is at least a social fact, and law must take account of it. Indeed just because it arouses such deep feelings, and can, in some people’s eyes, be positively divisive in a society, it is inevitable that the law will take account of it, and regulate it, while making the presumption that freedom of religion is of vital importance. Nothing that important can be left to its own devices. Regulation, however, should not mean undue restrictions on freedom. It should aim at providing a social context in which religious freedom can be properly, and responsibly, exercised.

Some may object that giving such prominence to religion in society involves discriminating against those who hold no religious beliefs. Whatever the deep springs of religion in human nature, it is undeniable that, particularly in sophisticated societies, many do come, and have come over the centuries, to the conclusion that such beliefs are unjustified. However tenacious religious beliefs can be, some would say that this simply shows the deep roots of superstition in human nature, and its ability to overcome rationality. This is a philosophical argument, and one that it is important to have. Even if, though, the settled conclusion was that all religion is irrational, it would probably still be

impossible to stamp it out, and the attempt to do so would involve an assault on every aspect of human freedom. What is important is that the freedom of those who wish to attack religion in this rational manner is itself protected, and the idea of freedom of religion should include the freedom of those who wish to deny its truth. It still remains true that religious beliefs are very often the most precious and important for an individual, informing their beliefs about what constitutes the common good. A democracy which fails to recognise that is not worthy of the name.

Some may continue to claim that a state which not only gives priority to protecting religion and its lawful manifestations but which may still use avowedly Christian principles to do so is itself giving priority to the beliefs of some of its citizens and, in effect, treating those, who do not share those principles as second class citizens. Yet as long as everyone can be given the same freedom to hold beliefs, to act on them, and to influence others, whether those beliefs are theist, atheist or agnostic, that is surely what matters. If I am free to act on my beliefs, I cannot also demand in a democracy that everyone not only respect that freedom but have the same beliefs. I cannot, either, assume that the state will always act as I wish. If I feel I am a "second-class citizen" merely because the actions of the government and the laws it passes do not reflect my views, many citizens in a democracy are likely to feel they are not full citizens most of the time. An atheist is no more a second-class citizen under a government that takes religion especially seriously, and gives special place to Christianity, than a Conservative is under a Labour Government. The corollary is of course that atheists are entitled to argue for, and work for, a totally secular state. In so doing, however, they have to be realistic about the importance of religion in many lives, and the consequences of restraining or ignoring it. They must, too, indicate the enduring basis for their own ideas of freedom.

chapter 2 - references

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conclusion: Christianity and democracy

Genuine religious liberty must allow all voices, including religious ones, on to the public stage. We must welcome all religions to take part in and contribute to our democracy. Otherwise, a major source of understanding about the needs of human nature and human society will be ignored, in a way that undermines democracy. A free society should never be in the business of muzzling religious voices, let alone in the name of democracy or feigned neutrality.

Yet not everything can be protected because it is allegedly “religious”. We cannot allow individuals to define for themselves what is to count as religious and hence in need of special protection. Behind all these debates, there lies a reluctant recognition not only that there can be spurious “religion” demanding undeserved protection, but also that genuine religion can result in attitudes and actions which are fundamentally at odds with the basic principles on which our society is organised. Above all there is the terrorist threat coming from certain, highly untypical, sections of Islam.

It is unfortunate in the current era of global terrorism that when suspicion is expressed about religion and its influence, all too often it is Islam or, more precisely, some forms of political Islamism, which people have in mind. They are afraid to appear to discriminate against a particular religion and its adherents, and therefore take up an even-handed approach that is hostile to *any* religious expression in societies. The desire of some organisations to restrict the wearing of religious symbols in public may affront Christians who wish to wear crosses, but it could well be the outcome of a more specific desire to restrict Islamic dress, with a fear of the extremism it may on occasion represent. When attacks are made on “faith schools”, some may wish to remove all religious influence from education. Another fear, however, is that particular schools may promote a narrow and fanatical outlook, whether Christian or Muslim. Even-handed restrictions on “religion” and “faith” may cloak specific concerns about particular kinds of faith.

The perceived threat from extremists governs many public attitudes to religion but often tends not to be mentioned explicitly because of the obvious injustice of blackening whole religions on account of the behaviour of some adherents. All religions, Christianity included, are highly vulnerable to that kind of criticism. Yet distancing government from all religion because of a threat from some forms of religion is to ignore the roots of our freedoms.

What should our response be to a generalised attack on religious freedom, motivated by specific fears? We live in a democracy, which should value religious freedom highly. The love of freedom is forever entwined, both in our national history and in the hearts of people, with the wish to live in accordance with our most deeply held beliefs. For many these will be religious in character. We will betray our own heritage if we do not welcome and respect those of many religious beliefs and of none.

Yet we also betray our heritage and make our present position precarious if we value freedom, but think that the Christian principles which have inspired the commitment of many to democratic ideals are somehow dispensable. Even in the United States, with its strictures against any form of Establishment, this danger is recognised. Barack Obama has written, with specific reference to the Democratic Party, that “in reaction to religious overreach, we equate tolerance with secularism, and forfeit the moral language that would help infuse our policies with a larger meaning.”¹

In the United Kingdom, too, there is the danger that in officially distancing ourselves from religion in general, and Christianity in particular, we begin to lose the moral resonance of terms such as “freedom”, “equality” and “human dignity”, which first were given persuasive power by Christians of various backgrounds.

Democracy and the love of individual freedom are deeply entwined. Each depends on the other. We cannot be truly free unless we can have an influence, even in an indirect way, on decisions made about the laws we have to live by. There cannot be a strong system of democracy, able to resist the many challenges it will inevitably face, unless citizens value not only their own freedom but also that of others. Religion is often at the very centre of someone’s identity, providing the main context in which they live. Indeed, one of the reasons why there is so much current agonizing about what it is to be “British” is that a common allegiance to Christian principles is not as explicit as it used to be. Attempts are made to marginalise Christian institutions in public life.

Distancing government from all religion because of a threat from some forms of religion is to ignore the roots of our freedoms.

A common national loyalty has to involve more than living in the same place at the same time. Many want to uphold ideas of tolerance and “fair play” without the religious underpinning that gave those ideas life in Britain. Others look to the more universal doctrine of human rights, recognising that people of many cultures and religions are able to respond to them, and see appeals to them as answering something deep in human

nature. Yet even human rights need to be firmly based in a specific view of human dignity, and Christianity has been and remains a significant source of that. We are, it has traditionally been thought, not only a higher animal as neo-Darwinians would have us believe, but also, as the Psalmist claims, “a little lower than the angels.”²

Christianity has provided the soil in which freedom and democracy have flourished in Britain. Its understanding of humanity gives a powerful reason for respecting human rights. Treating it as one religion amongst others in an attempt not to “discriminate” is to confuse the way we treat people with the way we approach ideas and principles. Everyone is equal under the law, and has an equal right to live according to a particular religious or other outlook. That should not mean that collectively as a nation we cannot espouse any particular set of principles on the grounds that it would “exclude” those who do not share them. To take up that position is to pretend that nations, particularly as

Justice, fairness, human dignity, freedom, all are viewed as self-evident notions that need no history to explain their emergence, and no theological, or even philosophical, grounding to sustain them. That is at best contestable, and, at worst, just false.

represented by their governments, can operate without any principles or beliefs. Moreover, it is to suggest that none of the most basic principles by which a nation should be governed has anything to do with any religion. Justice, fairness, human dignity, freedom, all are viewed as self-evident notions that need no history to explain their emergence, and no theological, or even philosophical, grounding to sustain them. That is at best contestable, and, at worst, just false.

Christianity helps to sustain such ideas even to this day. If Britain becomes more resolutely secular, it is impossible to predict how much will change. Certainly things will not stay as they are. We are still, in many ways, a Christian country, and we should not be afraid to acknowledge that fact. Our respect

for religious freedom stems from that. Much of our hesitation in dealing with particular questions about religious freedom comes from reluctance on the part of Government and other agencies to acknowledge the undoubted fact of our Christian heritage and to take that as a starting point. That would not automatically solve every dilemma but it would offer explicit principles to use. We would respect the right of others to live according to their consciences, and we would be reluctant to subordinate their right to practise their religion to secular considerations. We would not, for example, as do some other countries, ban all public display of religious symbols or dress in pursuit of a secular vision of public space.

There are limits to what can be allowed as legitimate religious practice, and these limits must be drawn with reference to our own understanding of what is conducive to human flourishing. It is all very well simply referring to ideas of “public benefit”, “detriment”, and “harm”, as if the concepts were completely independent of any religious (or anti-religious) understanding. We have to stand somewhere in order to decide what is good or what is harmful, and in the UK these conceptions have traditionally been linked to the Christian faith. The danger is that without a consistent set of lasting principles, any government can be swayed by the passing fashions of transient public opinion or by short-term political considerations. Contentious questions can then be settled because of the influence of pressure groups, or even the need to pacify potentially dangerous minority groups. Christianity has informed British institutions and still influences more than we are sometimes given to believe. The government, for example, should be unwilling, even indirectly, to countenance or support polygamous relationships or forced marriages, just because they are accepted within certain religious and cultural traditions. Such practices are forbidden by British law because, as traditional Christian understanding has held, they are normally deeply harmful to the welfare of women.

Without a consistent set of lasting principles, any government can be swayed by the passing fashions of transient public opinion or by short-term political considerations.

There are many cases where it is right to accommodate people’s consciences, and respect their beliefs, even if, whether individually or collectively, we do not share them. Sabbath observance, dietary rules and forms of dress all provide examples where it might be inconvenient to accommodate people’s wishes. It might even cost employers money, for instance, in giving workers time off to attend worship. Yet a respect for genuine religious freedom should trump such considerations. Similarly, insensitive rules about school uniforms can fail to respect strongly held beliefs, even though, even here, in the face of obvious harm, it will be necessary to place limits on what can be worn. No school could be run properly if girls had their faces covered and could not be seen or identified. When the right to religious freedom clashes with other rights, a sensitive approach will, at the very least, attempt to accommodate religious beliefs and practices rather than simply override them.

There will always be difficult cases, but if religion is as important in human lives as it appears to be, the presumption should be that, except in some extreme cases, the manifestation of genuine beliefs, conscientiously held for religious reasons, ought to be protected. There are, as we have seen, problems in identifying what is a specifically religious practice. Can a girl who wishes to wear a “purity ring” in school because of her

Christian beliefs about the wrongness of sex outside marriage claim a “religious” freedom to do so, even if school rules forbid the wearing of jewellery? It is not a widely recognised Christian practice to wear one, but it is connected with clear Christian principles about the centrality of marriage, so in such circumstances there is perhaps a case for being sympathetic, and respecting what appears to be a religious conscience.

When the right to religious freedom clashes with other rights, a sensitive approach will, at the very least, attempt to accommodate religious beliefs and practices rather than simply override them.

We should not want to make everyone Christian, but it would be wrong not to order society according to well-tryed beliefs about how people ought to be treated, and what constitutes human welfare. Holding to principles, even when they may be explicitly derived from Christianity, is a protection for the freedoms of other genuine faiths, not a threat to them. The real threat to all religions comes from the attempt to marginalise them by applying “secular” standards across the board, even when it is none too clear what the source of the standards is, or how they are to be passed on to future generations. Religious freedom need not entail treating all

religions alike. That all too quickly becomes an equality of contempt, whereby all religions are seen as equally irrelevant to the life of the nation.

the central importance of religious freedom

Respect for religious freedom in the British Isles has been hard won over the centuries. There have been some sorry episodes, not least the English Civil War in the seventeenth century, when ideas about liberty became too easily translated into violence. Even different Christians have sometimes found it hard to reconcile divergent beliefs with their own strong belief of where truth lies. Even so the need for mutual toleration and respect has grown out of the Christian recognition that we each have a God-given freedom to decide for ourselves where truth lies. The basic ideas of human dignity and of consequent human rights have been indissolubly linked with insights that we are all equal in the sight of God, both here and in many other countries, not least the United States.

This is not, of course, to say that only Christians can believe in the intrinsic value of all human beings. That is a truth which ought to be open to anyone to recognise, just as the basic needs of human nature should be recognised by anyone. The message of human rights, including the right to religious freedom, has its own intrinsic attraction. Such rights, however, still need an intellectual grounding. Human worth has characteristically, even if not exclusively, been a Christian message, sustained and passed through the generations

by Christian teaching about the place of humanity in God's world. It is thus perverse in the extreme to appeal to human rights as justification for the marginalisation of Christianity in our society. To do that is to begin to dig up the roots of the belief in freedom which our democracy upholds. It is to challenge a major foundation of precisely those rights.

As a matter of historical and constitutional fact, the United Kingdom is not a *secular* democracy, despite the claims of some that it is. It has two Established Churches, and its Head of State plays a role, of different kinds, in both of them. Christianity has moulded all the nations of the British Isles. Its laws and the character of its peoples would be unimaginably different if this were not the case. Our history, our laws, our constitutional settlement, and the very shape of our society have all been influenced by Christianity. They still are. So far from enlarging our freedoms, any change could well have the opposite effect. Many religious people already feel the growth of intolerance towards them under new legal developments.

We have to nourish tolerance and a respect for other people's consciences, especially when they diverge from our own understanding. Yet such attitudes can overreach themselves. Mere respect for "diversity" and "pluralism" as ends in themselves, whether in education or the law, holds all beliefs to be equally valuable, and is eventually powerless even to uphold tolerance itself. It treats religious beliefs, of any kind, as having no more intrinsic importance than any other kind of belief. Religious views can then be easily "trumped" by whatever views happen to be fashionable. A slavish devotion to ideals of equality can result in thinking that all views are equally valuable, and may in the end result in the dismissal of all of them as equally worthless. Tolerance could be replaced by intolerance. It becomes too easy to disregard religious views if they appear to be obstacles to what appears at the moment to be socially or politically important.

Religion is not an easily dispensable part of human nature. The authors of the Constitution of the United States realised this, and made specific provision for the protection of religion in what became the First Amendment. They believed that religion was a permanent element in human life. In more recent years those, particularly in Europe, who have believed in the inevitable secularisation of human life, with the banishment of religion from human affairs, are being proved conclusively wrong. Religion, for better or worse, is always likely to be a strong influence in its various forms, and societies cannot behave as if it is not there, or as if it is no more important than any other kind of belief.

Everyone must be free to come to a personal decision about their commitment, or lack of one, to a religion. Precisely because of the centrality of religion for human nature, it is a crucial mark of individual liberty to be free to decide which religion to adhere to, or to reject all religion. If individuals matter, and Christian teaching says they do, that liberty should be respected. It is also crucial that, as far as possible, we are able to put our religious (and equivalent) beliefs into practice. Yet influential voices in our society,

including some sections of the media, are all too ready to treat religion as something of only private concern. They see the demands of religion as ones that can be subordinated to whatever are the pressing social concerns of the moment. The pursuit of "equality" is rated more highly than religious freedom. Yet we dare not give up a burning desire to protect such freedom, since it lies at the heart of all freedom.

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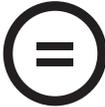
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ISBN-13 978-0-9562182-1-6

