

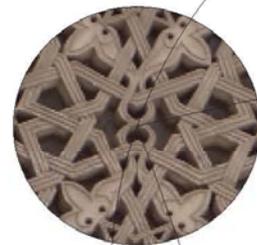


Copenhagen University Islam Lecture Series

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The impact of Islam of the UK's law on religion

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The impact of Islam on the UK's law of religion

I. Islam and English Law

Muslims have been permanently present in the United Kingdom in small numbers for well over a century, but underwent a rapid rise after the Second World War mainly as a result of immigration from the Indian sub-continent, with smaller numbers via Africa. Until the 2001 national census, which included for the first time since 1851 a question about religious affiliation, there was considerable uncertainty as to the number of Muslims. That census gave us a figure of just under 1.6 million, but the figure is growing fast, with a 2008 Government estimate of 2.4 million and one recent estimate of 2.9 million. Muslims are by far the largest religious minority in the UK.

We can conveniently divide the immediate legal response to Islam into three categories: assimilation, disturbance and rejection.

In the category of assimilation we could put, for example, the formation of mosques as voluntary charitable organisations, benefitting from central and local tax exemptions. Already by about 1870, and thus before the arrival of Islam in organized form, the law had removed any limits to the religion which could be recognized in this way. There might be some practical obstacles, such as finding enough people with the knowledge to register a charity, or run a committee and so on, but as far as the law was concerned, there was no question of principle with a major monotheistic world religion taking the same legal form as other non-established Christian and Jewish groups. Imams and clerics too could benefit from a similar employment status as ministers of Christian churches. The courts rather assumed that they were similar. And again there was no problem in principle with the recognition of Muslim chaplains in public institutions such as the armed forces, prisons and hospitals, as well as provision for special dietary and dress needs. Admittedly, the practical problems here were rather greater. It is inconvenient to arrange a chaplaincy or a special diet for a new minority. Does one really have to bother? And this did result in resistance to accommodating personal religious requirements. At the edges of this resistance were some more principled concerns about the reasons for uniformity of provision – particularly in relation to dress. If there is reason to require motorcycle riders to wear helmets, then there is reason to require all of them to do so, regardless of their faith. But the boundaries had already been pushed in the 19th century by Roman Catholics in relation to chaplaincies, in the early 20th century by Jews in relation to diet and holy days, and in the mid-20th century by Sikhs in relation to dress and symbols.

So little argument really needed to be made that sooner or later Muslims should be accommodated in similar respects as well. It was simply part of the ongoing story of the religious equality of English law, which had started with Catholic and Jewish emancipation in the mid-19th century.

By disturbance, I mean those cases in which Muslims were able to make arguments against current legal distinctions in terms which ought to have been politically acceptable, but which were covertly or even overtly resisted. The first, and most obvious, of these was perhaps more symbolic than practical. It was the response to Salman Rushdie's publication in 1988 of *Satanic Verses*, not in terms of book burning and *fatwa*, but in an immediate legal action to secure a public prosecution for blasphemy. It did not take the lawyers long to work out (what all of us knew) that the ancient common law offence of blasphemous libel only protected elements common

to the Christian religion, of which the special status of Muhammad is not one. Perhaps more surprisingly, the enforcement organs of the European Convention on Human Rights managed to create space for a Christian law of blasphemy by finding that the state had a right to criminalise blasphemy if it wished, but no individual had a right to secure such a prosecution. Where, then was religious equality? So the Muslim campaign to criminalise Satanic Verses gave new life to an old debate within the Law Commission from the mid-1980s. A majority had argued on good libertarian grounds for the abolition of blasphemy as a criminal offence, and a minority had argued for its restatement as a general religious hate speech law. One suspects that the quiet, unspoken resistance to legal change came from a residual attachment to a notion of establishment. The law of blasphemy was a largely symbolic reminder of the country's Christian heritage, and not a serious or problematic, or even principled, restriction on free expression.

The arguments around blasphemy and religious hate speech were not the only equality-based disturbances to legal conventions. When the race relations legislation was created in the 1960s and 70s it used as one of the protected characteristics the idea of 'ethnicity'. In an important case involving a Sikh schoolboy who had been expelled for failing to comply with a uniform requirement to remove his turban, the House of Lords held in 1983 that ethnicity embraced those religions with a strong racial component such as Judaism and Sikhism, but not those more universal religions such as Islam and Christianity. This meant that discrimination in employment, education and the public provision of goods and services was not unlawful unless a specifically racial component (e.g. Pakistani, Bengali) could be identified. For Muslims for whom the religious component of their identity was more significant, this was perceived as an inequality. Again, this was disturbing, because underneath the resistance to this apparently plausible argument was a sense that religion *shouldn't* matter that much. It shouldn't be the subject of legal protection in the same way as race. The one place in the United Kingdom where we did have religious equality legislation was Northern Ireland, where tribal religious affiliation was exactly the problem we were trying to resolve!

And then there was the issue of faith-schools. The United Kingdom has a strong tradition of independent (fee-paying) schooling, and there was never any significant legal problem with the creation of independent Islamic schools. Again, the argument was one of equality. There are also substantial numbers of church-based faith schools in the public sector, yet the Conservative government until 1997 always managed to resist cases for the recognition of new faith-based Islamic schools. Behind that resistance, was in many cases a sense that faith-based public education was a mere historical legacy of late 19th and early 20th century compromises. 'Faith' in this context had largely become attenuated and dissolved in a general mildly-culturally-Christian background. In that sense a state-maintained church school was not really a faith school. And in any case we didn't want any more of them.

So here we had growing throughout the 1980s and 1990s a series of arguments for equal treatment met by a certain unspoken and inchoate resistance.

In my third category, I put those cases in which Muslim requests for certain legal rights were met with simple hostility and rejection. There was a small indicator of this in 1992, when Dr. Kalim Siddiqui announced the formation of a 'Muslim Parliament'

to adopt ‘a high-profile, confrontational approach in its championing of Islamic causes’. If the title was intended to be provocative it certainly succeeded. Parliament? There is only one Parliament in which we are all represented, Muslim and non-Muslim alike. What is this agenda of separation, this bid to establish parallel political and legal institutions?

Of course, the noisiest and most recent instance of rejection came from the Archbishop of Canterbury’s characteristically tentative suggestion early in 2008 that there might be a place for some recognition of Muslim personal law. This has a particular salience for many British Muslims, because of course the acceptance of systems of personal law had been a part of British colonial policy in the Indian subcontinent for the duration of the British Raj. Personal law covered both family law and family property law and operated according to a form of anglicized Shariah. As far as the United Kingdom was concerned, it had been proposed already in 1976 by a body called the Union of Muslim Organisations, but it fell on deaf ears then. In fact, at around that time the courts had just been tightening up elements of personal law which had been able to survive within the United Kingdom by way of private international law. For those immigrant British who had not yet acquired permanent resident status it was for a while possible to marry and divorce in the United Kingdom by forms acceptable to their country of origin.

There was ignorance, misunderstanding and remarkable outrage at the Archbishop’s suggestion – and that itself is an interesting phenomenon. But briefly to clear up the ignorance first, it is true that examples of plural religious community laws are very hard to find in any of the domestic British legal systems. When Menasseh ben Israel petitioned for the readmission of the Jews in 1655, he asked for a separate court system under the oversight of the royal courts. He was unsuccessful. In the 19th century British Judaism started to take on some of the institutional forms of Protestant Christianity, in some respects deliberately as part of a programme of social acceptance. The Chief Rabbi is a very English sort of Jewish bishop. The Board of Deputies of British Jews was modelled on the successful non-conformist campaign against 18th century Anglican establishment. Having gained social acceptance (and indeed government gratitude for its heroic care of wave after wave of Jewish immigrants in the late 19th and early 20th centuries), British Jewry was able to win a few legal concessions, for example around animal slaughter methods and Sunday trading. Here we find little islands of community self-regulation. In addition, the formalities concerning the marriage of Jews have largely been excepted from state regulation, as they are for Quakers. And just as any parties to a contract can consent to arbitrate before a private tribunal, so one can seek a religious arbitration according to religious law.

That is about the limit of plural religious law. But apart from ignoring both this and the fuller colonial heritage, the public outrage was driven, I would suggest, by a particular understanding of equality before the law. A few months later, in July 2008, Lord Phillips, the Master of the Rolls and therefore the most senior civil judge, gave a lecture at the East London Muslim Centre entitled ‘Equality before the Law’. The location and title are significant, because his argument was that just as his own Jewish grandparents had arrived in the United Kingdom, and had found refuge and protection in both submitting to and shaping the common law applicable to all, so also that was the best policy for Muslims to pursue. Thus whether in the outrage of the Daily Mail

or the measured tones of Lord Phillips, the response to the proposal of a separate system of personal law was clear: rejection in the name of equality and the rule of law.

Thus we find assimilation (in the name of equality), disturbance (about the requirements of equality) and rejection (on grounds of equality). This might imply that, like Judaism a century or so earlier, Islam has simply had to shape itself according to its legal environment. And there is evidence that this has indeed happened to some extent. Muslim chaplaincy in state institutions is undoubtedly a Christianised phenomenon. But I want to suggest that Islam has also in paradoxical fashion shaped its environment. Paradoxical, because its principal impact has been to move English law in a direction directly contrary to its own natural legal expression. It has been a negative shaping. To see this we need to look first at the 20th century British constitutional settlement between the state and religion.

II. The 20th century constitutional settlement

It might seem odd to refer to a constitutional settlement in the case of a state which has no formal codified constitution, but with hindsight we can see that the 20th century saw a remarkably stable and consensual settlement around the relationship of law and religion. This settlement is best captured in the Church of Scotland Act 1921. This short Act ended two centuries of dispute and schism within Scottish presbyterianism about the extent to which the civil magistrate – we might say secular government – may interfere in the life of the church. The Act enabled a reunion of the main presbyterian churches to take place and it did so in a rather strange way. Instead of changing the law directly, the Act declares to be lawful certain articles drafted by the Church of Scotland itself. These articles set out its constitution in matters spiritual. We should not be misled by that term ‘spiritual’. Matters spiritual include matters as mundane as the disposition of church property and the terms on which its ministers are appointed. Article 4 states that the Church ‘has the right and power subject to no civil authority to legislate and [...] adjudicate finally in all matters of doctrine, worship, government and discipline.’ The Act states that this does not affect the jurisdiction of the civil courts in civil matters. Nor is it to prejudice the recognition of any other church protected in its spiritual functions.

The Church of Scotland Act gives content to the principles of religious liberty and religious equality. Religious liberty requires autonomy, or self-government, within a sphere defined as internal to the religion (‘spiritual matters’). Religious equality requires this sphere of autonomy to be available to all. Both liberty and equality point to a principle of secularity: that there is a sphere of civil matters, which the state may regulate in a way that is not religiously-distinctive, for the benefit of all. In short, religious liberty and religious equality depend on a separation of church and state.

This understanding of liberty and equality is powered by the view that religion provides an alternative source of authority for people above the authority of Government. But it is an authority that can be bounded for practical legal and political purposes within a particular social institution: the church. That is why the Act does not simply change the law directly. If it did that, it would imply that the state’s law governs everything. But nor does the church claim to govern everything either; religiously-neutral state law is a genuine possibility. So the Act takes the form of a treaty, or a concordat, between two sovereign entities: the church and its law, and the

state and its law. We call church law 'ecclesiastical' or 'canon' law - it is a system with its own sources of authority, rules, principles, courts and remedies. We call the state and its law, 'the law'. They accommodate each other.

English law has never seen such a clear statement of principle, either in respect of the Church of England or any other religious body. However, until very recently this model has consistently characterised developments in English law as well. It is no exaggeration to say that from 1688 onwards – our last constitutional revolution – whenever change in the relationship between law and religion has occurred, it has almost always occurred in this direction. The middle decades of the 19th century were formative in this respect. Non-conformist Protestant campaigners were powered by the conviction that religion should be voluntary, but that the state is fundamentally coercive. So they had to separate the two: getting the Church of England out of the business of Government and getting Government out of the business of the Church of England. It meant creating new civil registration authorities for births, marriages and deaths. It meant abolishing the remaining civil jurisdiction of ecclesiastical courts in defamation, matrimonial and testamentary causes. It meant making church rates voluntary. It meant opening up the ancient universities to students of all religions and none. It meant disentangling local parish charities between those for church purposes and those for the benefit of the local community. It meant disestablishing the minority Anglican church in Ireland and Wales. It meant giving the Church of England the ability to initiate legislation for itself. Already by the early 1870s that programme was substantially complete, and by the 1920s it was normal and no longer even politically controversial.

From this perspective, there was of course, unfinished business, most obviously the residual position of the Church of England as established by law. But this should not mask the extent of the non-conformist success. Apart from some very obvious and high-level connections between the Church of England and the state, the legal position on the ground had become very similar indeed. Anglican dominance was now social rather than legal. And there was one obvious failure: education. Between 1828 and 1870 successive Governments had sought to achieve universal elementary education by supporting church schools. In 1870 that funding ceased, and the first state elementary schools were opened instead. By the time of the Education Act 1902, the church schools were desperately short of money, but the state could not afford to kill them off – they were still educating almost half of all children. So a deal was done, and the foundations of the modern pluralist approach to faith schools were laid down. Even here though there was a clear divide in the law between religious education (that is, instruction and worship) which was controlled by the relevant church authority and was voluntary, and secular education which was controlled by the local government authority and compulsory.

This separation mentality also characterised those other small areas of overlap between church and state in chaplaincies and social welfare provision. As far as the former was concerned, chaplaincies in prisons and hospitals were conceived of as islands of independent church jurisdiction, to one side of the normal hierarchies of authority. (Armed forces chaplains were a bit different). As far as welfare provision is concerned, the story is similar to that of schools, albeit half a century later. Victorian social welfare was almost exclusively a religious and charitable enterprise. In the first half of the 20th century, the state became involved in financial redistribution

(pensions, unemployment and incapacity benefits) but only made a sustained and widescale attempt to provide personal social services after the Second World War. Again, resource limitations meant that in practice state welfare and religious charitable welfare carved up the work between themselves, thus for example child services (orphanages, fostering and adoption) were largely provided by private endeavour assisted financially by the state, as was overseas aid and development.

A small part of this story was the rise of religious liberty as an individual right. The rooting of religion in individual conscience has a long history in Western thought. After all, the Toleration Act 1689 was designed to offer relief to 'tender consciences'. But its solution was essentially collective, and from a legal perspective the protection of the individual conscience has been until recent times a relatively minor theme. The law only gradually made a transition from exemptions for specified religious groups to more general provisions in favour of the individual religious (or even non-religious) conscience. It was a late 19th and 20th century development, but a powerful one, because it could explain both the formation of voluntary religious associations and the existence of legal exceptions from general obligations. It is reflected pre-eminently in the international human rights documents of the second half of the century, which protect 'freedom of thought, conscience and religion' and then refer to the subsidiary right to manifest religion or belief either individually or in community with others.

Thus the underlying understanding of the nature of religious freedom and religious equality within the law in the 20th century was remarkably stable. It became normal. Even the litigation died out. There is a part of civil society which is distinctively and uniquely free from state legal intervention. Religious freedom means self-government under one's own law within the limited domain of 'church'. The state itself should be secular, that is, religiously neutral, or accessible and fair to people of all religions and none. And these two poles should be followed through into the small number of areas of concurrent jurisdiction, areas of overlap: chaplaincies, schools, welfare. You work out who does the 'religious' bit and who does the 'secular' bit. Where the individual him or herself is concerned, self-government manifests as a decision of conscience, likewise to be respected if at all possible.

III. Developments after the turn of the millennium

A number of events around the turn of the millennium have come together to challenge radically the 20th century constitutional settlement. The key ones must be the landslide election of New Labour in 1997 with an agenda of social inclusion, constitutional reform, equality and multiculturalism; the coming into force of the Human Rights Act in 2000 with its rights of religious liberty and non-discrimination; the EU Equal Treatment Directive, passed on the basis of the new power in art. 13 Treaty of Amsterdam to take action to remove discrimination on various new grounds, including religion. And then 9/11, and the London and Madrid bombings. Suddenly, after a century of quiet irrelevance, religion is a big political issue again.

The legal response can be seen most dramatically in the Anti-Terrorism, Crime and Security Bill that was rapidly introduced into Parliament in late 2001. As well as new and remarkable powers to detain terrorist (i.e. Islamist) suspects, it contained new offences of incitement to religious hatred and religiously aggravated public order offences. In other words it accepted the Muslim argument that the old racial public

order offences were inadequate. The hate speech law was too controversial at the time and was dropped, but later re-introduced and has now replaced the old Christian law of blasphemy. What we see here is a classic combination of acceptance and control, of carrots and sticks.

Let's look at some more of the 'carrots'.

In 1998 the Government passed legislation containing a general framework for faith schools. Almost immediately the first Islamic state school were approved, and the number (although small) has grown steadily. The Government also strongly encouraged more partnership and funding at the local level. 2004 and 2008 saw two major Government reports on working together with faith communities. The latter adopted a phrase of Lord Sacks, the Chief Rabbi, and is entitled *Face to Face and Side by Side: a framework for partnership in our multi faith society*. It has a clear agenda of encouraging and funding welfare projects which include elements of interfaith cooperation.

Associated with the promotion of faith-based welfare, is the recent growth of multi faith consultation bodies. Individual government departments have always maintained links with religious bodies in the rare areas of overlap between religion and the state. In 2006 the old Inner Cities Religious Council from 1992 was relaunched as the Faith Communities Consultative Council and based in the new Department for Communities and Local Government. It is chaired by a Parliamentary Under-Secretary of State and contains representatives from nine main religions. 'Communities' no longer means just 'local communities', it also includes 'faith communities'.

Even more significant is the rapid rise of local and regional multi faith forums, and their funding by Government. There are now ten regional multi-faith forums in England and Wales which typically have as their role the provision of information, training, consultation and input into regional governmental structures. All of these have been established since 2000. In the most recent listing of over 200 local inter-faith or multi-faith bodies in England and Wales, about 60% say that 'advice and assistance to public bodies' and 'acting as a consultation forum for local government' are two of their roles. About 30% of these groups are actually funded by local authorities.

Equality legislation passed in 2003, 2006 and 2010 (just before the election was lost) now extends the whole range of anti-discrimination law to grounds of religion. This applies in the field of employment and education and the provision of goods and services. It includes direct and indirect discrimination, harassment and victimisation as well as a new public sector duty positively to promote equality on grounds of religion (not yet in force).

However, and here we move to the 'sticks', coupled with this growing public recognition of religion has been a remarkable loss of autonomy and self-government. We see this in three broad domains: within the domain of the state, within the domain of organized religion, and within the life of the individual.

Once equality law was extended to cover religion or belief in education and employment, a series of exceptions became necessary to allow schools with a specific religious ethos to continue to preserve that ethos. This has applied to both the maintained and the independent sectors. So there is now an official designation procedure whereby schools identify their religious ethos. This requires formal consultation with sponsoring bodies within the different religions concerned. Designation 'switches on' the ability to prefer staff and pupils on grounds of religion, and to structure the curriculum and religious worship accordingly.

The litigation concerning the admissions policy of the Jews Free School in London illustrates the limits of these exceptions well. Being oversubscribed, the School prefers Jewish pupils. In working out whether a potential pupil is Jewish, it defers to the judgment of the court of the Chief Rabbi. The Chief Rabbi, who is orthodox, takes the view that Jewishness is a matter of matrilineal descent, which in cases where the mother converted, raises questions about the validity of the conversion. A number of practising Jewish boys were not admitted on account of flaws in their mothers' conversions, while non-practising Jews are often admitted. That survived challenge in the High Court, but the Court of Appeal and Supreme Court held that it represented unlawful discrimination on grounds of ethnicity. You may be religious, but what it means to be religious is now carefully confined. It has nothing to do with your race.

The problem was emphasised in 2007 when the Muslim Council of Britain published *Towards greater Understanding: meeting the needs of Muslim pupils in state schools*. It sets out what a school would need to do if it were to take social inclusion for Muslims seriously: provision for modest dress, including sportswear that covers completely, permission for beards and religious amulets, halal meals, provision for prayers including private washing facilities, special exemptions for Ramadan such as refraining from sport, sex education that respects Islamic morals, celebration of Islamic festivals, segregated sports, no communal showering, no dance, no use of religious images in art or worship, teaching of Arabic, no raffles, no alcohol and much more. It caused a bit of a stir! The document exposes the extent to which the current law of education is still locked into a Christian paradigm, in which 'religion' means personal belief and church attendance, and only affects specifically religious instruction and collective worship. That is the old division of 'church' and 'state' within the school: you have religious education (i.e. instruction and worship) which is voluntary and not subject to Government control and you have secular education which is compulsory and state-regulated.

We see the same thing going on in social welfare. At the same time as collaboration with faith communities is being promoted, the legal environment in which welfare services may be offered is narrowing down the ways in which religion can affect provision. The clearest example of this is the impact on Catholic adoption agencies. These cannot operate unless they commit to providing advice to same-sex couples on an equal basis as married couples. There is a marked contrast between the broad exceptions for religion or belief in the Equality Act 2006 and the narrow exceptions for sexual orientation discrimination in its Regulations. Thus while there is a relatively wide scope for religious pluralism in education and welfare services, there is much less scope for pluralism in sexual ethics. Or rather, what it means to be religious is partly defined by excluding sexual ethics from its scope. Catholic

adoption agencies can be Catholic in some sense of the word, but they cannot act on the basis of a Catholic family and sexual ethic.

And as far as state chaplaincies are concerned, commentators have noted a significant growth and professionalization over the last ten years. 10% of clergy are employed by the state as chaplains, and these chaplains are becoming a separate pastoral branch, detached from their church backgrounds, employed to provide religious services according to secular managerial techniques such as targets, and key performance indicators.

In the internal life of organized religions, there have been major shifts in employment law as well as in charity regulation. As far as ministers of religion are concerned, the law until recently treated them as office-holders employed according to the rules of their church (internal law). In fact, by the end of the 20th century it became almost impossible for a clergyperson to bring legal action in state courts against their own religious denomination.

Then, in 2003, the Employment Equality Regulations came into force. These extend beyond employment in the narrow sense to office-holding, and the explanatory memorandum suggests that they cover ministers of religion. In 2005, the House of Lords decided *Percy v Board of National Mission of the Church of Scotland*. Helen Percy had resigned under pressure after having had an affair with a parishioner. She wanted to argue unlawful discrimination on grounds of sex. Quite simply (she alleged) a male minister would have got away with it. As she went up through the court system the answer came back: internal spiritual matter – nothing to do with us. And then the House of Lords decided by a 4-1 majority that an associate minister in the Church of Scotland was appointed under a contract ‘personally to execute any work or labour’ within the scope of the Sex Discrimination Act 1975 and the jurisdiction of the Employment Tribunal. Furthermore, the court rejected the Church’s other argument that the claim was within the exclusive spiritual jurisdiction of the Church under the Church of Scotland Act 1921. Whatever the exclusive spiritual jurisdiction of the Church is, it doesn’t cover unlawful discrimination.

This has been followed in subsequent cases, so we have moved rapidly from a position in which religious bodies were autonomous in the terms and conditions under which their ministers worked, to a position in which they are subject to the general secular employment law, with its growing body of standards and expectations, and its rather constrained acceptance of religious difference.

Trusts for the advancement of religion in ways which confer a public benefit are charitable (i.e. tax exempt). Until recently the law reflected the assumption that any lawful religion is better than none, and that more religion is better than less. So trusts for the advancement of religion were presumed to confer a public benefit. The religion in question still needed to be demonstrably advanced: so closed monastic orders or purely private rites failed to qualify as charitable. But so long as there was some public access or contact with the religion, there was charity.

Under the Charities Act 2006, the conferment of a public benefit is no longer to be presumed. Of course, after an initial flurry of consultation, matters have settled down more or less where they were: the Government’s Charity Commission is not suddenly

going to start finding large numbers of religious charities non-charitable. The point is that the direction of travel has changed. This can be seen in the 2008 statutory guidance of the Charity Commission. There is a tendency to see religions in monolithic terms. This is best captured in a careless limitation of charitable status to 'recognised' religions, but is expressed in a variety of ways: hostility to distinctive individual positions within religions, suspicion of purposes based around only a few tenets of a religion, a limitation of relevant social welfare activities to those required by 'specific obligations' of the religion; worry about the 'abuse or misuse of religious teachings'. In the recent publications of the Commission there is a thinly-disguised sense that religions are often morally suspect – they are 'discriminatory', whatever that means in an undifferentiated sense. And there is a desire to instrumentalize religion: one needs to satisfy the public impact test that the religious worship taking place makes a worthwhile moral contribution to society as a whole. You come out a better person. There are even suggestions that religious organizations need to provide evidence of this. Finally, the self-regulation of all the major Christian denominations has been ended. The Strategy Review Unit report of July 2002 recommended the staged abolition of self-regulation and the Government agreed. The register was a national database of all charities and an important element of accountability. Regulatory oversight through annual monitoring was justified.

We also see a narrowing down in respect of individual religious liberty. It is interesting that nearly all of the cases that have been litigated under the Human Rights Act by religious believers have been lost. To my mind the most telling contrast is between the cases of Lydia Playfoot and Sarika Watkins-Singh. They are both school jewellery cases. Playfoot was an American-inspired Christian girl who wished to wear a silver chastity ring which was not permitted by school uniform rules. Watkins-Singh was a Sikh girl who wished to wear a kara bangle which was not permitted by school uniform rules. Playfoot took her case under the Human Rights Act and lost; Watkins-Singh took her case under the Employment Equality Regulations and won. One of the key hurdles for Christians is showing that they are under an obligation to do what they want to do. Most religious minorities can point to their community of practice. Of course, they might still not gain the accommodation they are looking for, but there is an inbuilt advantage for religions in which individual autonomy and discretion does not play so great a role.

In short, since the turn of the millennium, the 20th century constitutional settlement around church autonomy and individual conscience has been rapidly unravelling. Religion is present within the state as never before (no separation), but the state is also present in religion as well (no liberty).

IV. Conclusion

What role has Islam played in all this? Of course, Islamist terrorism is not the only ingredient in a new public hostility towards religion. The child sexual abuse scandals in the Roman Catholic Church have played their part (who wants autonomy if that is the price?), and this has been picked up by the new atheism, one should say, the old materialism, of Richard Dawkins, Christopher Hitchens, Sam Berry and others. Whereas until fairly recently one could say that the policy of the law towards religion was to encourage it, now the policy seems to be to regulate it. Religion is risky.

But putting the fear and hostility to one side, there is, I think, a genuine search for a new public ethic that can transcend the new religious diversity. Comfortable post-Christendom, with its quietly fudged solutions of a vaguely Protestant flavour, is coming to an end. The problem is that many seem to have grasped onto 'equality' as the proper new principled position, without realising that what is at stake is our *conception* of equality. This point, perhaps more than any other, was why the Archbishop touched a raw nerve with his reference to personal law and multiple jurisdictions. Because that too is a conception of liberty, equality and community with genuine political plausibility. It's a way of coping with diversity. Our difficulty is that having rejected the radical diversity of a *millet* system, or even a system of personal law, and having lost an earlier Christian social consensus around the proper form and limited social space for religion ('separation of church and state'), we are left with radical individualisation. The only supposedly common ground between people of all faiths and none is to reduce religious faith and practice to a purely individual meaning, which is not allowed to have any significant collective social or legal expression. This is, of course, the characteristic stance of communism. And the fact that, politically speaking, Islam may be pushing us into the arms of the atheists is an irony – no, a tragedy – few seem yet to appreciate.

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