(2011) 13 Ecc LJ 274–286 © Ecclesiastical Law Society
doi:10.1017/S0956618X11000408

Religion in the Public Forum

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Must the state be neutral to all religious and philosophical positions? This article argues that that is an impossibility and that the most basic principles of our democratic society, such as our belief in the importance of individual freedom and equality, are Christian in origin and need their Christian roots. The relevance of recent judgments in the European Court of Human Rights and in English courts is discussed. In particular, exception is taken to views of religious belief that see it as subjective, irrational and arbitrary. It is argued that religion needs to take its place in the public arena, and that the national recognition of the Church of England through establishment is an important means to that end.[1]

A CHRISTIAN HERITAGE?

Is England a Christian country? There are many possible answers to this question and many of them will stray down sociological paths, perhaps noting the decline of church-going in recent years. In a time of rapid change, such observations, though significant, may not help in deciding more basic questions of historical and legal identity. It is hazardous to draw large conclusions about the nature of a constitutional settlement on the basis of historical contingencies that may themselves be short-lived. Deciding constitutional matters by opinion poll will produce radically different answers on different occasions; thus there seems something contradictory about deciding a lasting constitutional framework in the light of temporary popular enthusiasms or fashions that may pass. We need the firmer ground of philosophical principle. The alternative is a harmful relativism that maintains that certain things are justified simply because we (whoever 'we' may be) think they are.

The Founders of the United States had differing religious views, ranging from the orthodox Christian to a more radical Unitarian version, as espoused by Thomas Jefferson.[2] Nevertheless, they were united in basing their vision of natural rights on the idea of a Creator. The famous words at the beginning of the Declaration of Independence sum up their collective position: 'We hold these truths to be self-evident, that all men are created equal; that they are

1 This is a revised version of a paper delivered at the Ecclesiastical Law Society's Conference on Establishment, Leeds, April 2011.

2 See V Munoz, *God and the Founders: Madison, Washington and Jefferson* (Cambridge, 2009).

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

endowed by their Creator with certain inalienable rights …'. In other words, equality is a gift of God, as are other rights. We are equal because we are equal in the sight of our Creator.

This view was in line with the understanding of the early Enlightenment, which emphasised both freedom and reason but gave them a theological background. Thomas Jefferson was strongly influenced by the views of John Locke, whose portrait hung at Jefferson's home in Monticello, Virginia. Locke preached toleration but his views on equality had a definite Christian basis. As Jeremy Waldron puts it, 'Locke accorded basic equality the strongest grounding that a principle could have: it was an axiom of theology.'[3] This was not surprising as Locke was a loyal member of the Church of England and had been much influenced himself by the so-called Christian Platonists, based in Cambridge in the mid-seventeenth century. They were at the forefront of upholding the power of human reason, and were active at the birth of modern science and the founding of the Royal Society. Yet they also saw that reason was not intrinsically opposed to religion but was itself founded on it. This was summed up in the famous aphorism that 'reason is the candle of the Lord', a saying preserved in stained glass in a window of the chapel of Emmanuel College, Cambridge. Reason was thus not autonomous, let alone atheistic, but the later eighteenth-century Enlightenment, particularly in France, came to see it in that way.

The French ideals of *liberté, égalité, fraternité* resounded around Europe and challenged the traditional authoritarian tendencies of the Roman Catholic Church. This is not a mere historical observation, as the Council of Europe is still liable to make pronouncements about secularity that are coloured by anti-religious sentiment. For example, in a 2007 report on 'intercultural and inter-religious dialogue' in Europe, the assumption running throughout the report is that human rights and religion are somehow opposed to each other. We read that states may not allow 'the dissemination of religious principles, which, if put into practice, would violate human rights'.[4] The statement continues, in case there is any doubt about what is meant, 'States must require religious leaders to take an unambiguous stand in favour of the precedence of human rights, as set forth in the European Convention on Human Rights, over any religious principle.'

There is an ominous tone to that word 'require'. What is apparent, however, is that 'human rights' are judged to have a life of their own, rather than belonging, as Locke and the American Founders thought, in a nature created by God. They become a form of secular religion. A rights-based democracy seems to need no

3 J Waldron, *God, Locke and Equality: Christian foundations in Locke's political thought* (Cambridge, 2002), p 11.

4 *State, Religion, Secularity and Human Rights*, Report to the Parliamentary Assembly of the Council of Europe, doc 11298, 8 June 2007, para 16, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11298.htm>, accessed 1 June 2011.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

validation. We believe in it because we do. Yet that is an intrinsically unstable position. A belief in the importance of the freedom and equality has to be taught to future generations, and must be given a justification that is more than sociological. We must be able to address those (and there are many in the contemporary world) who do not believe in human rights with reasons as to why they are wrong. Even if we do not change their minds, we know why those rights are worth striving for.

Not only does the Council of Europe appear to believe that human rights do not need any religious validation, but it assumes that much religion is likely to be in conflict with ideas of rights. Religion is a threatening force to be controlled, rather than the source of all our beliefs about freedom and equality. The implicit repudiation of the Christian heritage of Europe is of a piece with the resistance of some countries to any specific reference to it in the Preamble to the Lisbon Treaty. The latter now draws vague inspiration 'from the cultural, religious and humanist inheritance of Europe'. It says that from this have developed the 'universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law'. This shirks the question of justification and also fails to address the point that all three elements of the slogan of the French Revolution themselves make little sense outside the background of a Christian heritage. We are free because God gave us free will, we are equal because we are equal in God's sight and we are brothers (or sisters) because we all have the same Father.

IS SECULARISM NEUTRAL?

What must be faced is not the empirical question as to how far England is a Christian country, but the question of principle as to whether it *should* be. There are many pressures pushing for state neutrality to all religion. The idea is that, because democracy is of its nature pluralistic with many diverging views, the state should not ally itself with any. Otherwise, some citizens will be made to feel second-class citizens or worse. They will not feel that they truly belong to a country that espouses positions with which they disagree. The European Court of Human Rights often explicitly espouses a support for 'pluralism' and the neutrality of the state. For example it has said that

> the Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society.[5]

5 *Leyla Sahin v Turkey* [2005] ECHR 4474/98 at para 107.

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Yet this idea of neutrality is far from clear. Does it mean (as in France, with its policy of *laïcité*) that the state must stand clear of all religion? Religion is then a completely private matter and cannot be officially allowed in any guise in the public space. Alternatively, with the European Court's conception of a 'margin of appreciation', can issues about the relationship of church and state (and also religion and society) be left to the judgments and particular circumstances of particular countries? Some judgments in recent years have seemed to advocate total state neutrality. In *Folgerø v Norway*, a case concerning the place of Christianity in Norway's schools, the Grand Chamber of the European Court, in a close vote, objected to the fact that there were 'not only quantitative but even qualitative differences applied to the teaching of Christianity as compared to that of other religions and philosophies'.[6] The requirement of 'pluralism' meant that there had to be equal treatment of all beliefs. This judgment has fed into a wider controversy in Norway about the constitutional position of the established Church of Norway. Should a state align itself publicly with any particular religion or church? Might this not somehow undermine its democratic credentials and its commitment to the pluralism espoused by the Court?

Substantive questions are in play about how children should be educated and whether the religious identity of a people, as enshrined in its history, should be preserved. One case about the public display of a religious symbol in state schools took on great symbolic significance and, in effect, stood proxy for the wider argument about the place of religion in general (and Christianity in particular) in European public spaces and culture. Following a previous controversial finding at Chamber level to the effect that the display of a crucifix in Italian schools was a breach of human rights, a further hearing by the Grand Chamber reversed the decision, by a majority of 15 to 2, in March 2011.[7] Ten European governments, mainly from the Orthodox east of Europe, had intervened to express their concern at the previous judgment. In particular, it was reported in the judgment that, in the governments' views, 'the Chamber's reasoning had been based on a misunderstanding of the concept of neutrality, which the Chamber had confused with "secularism"'.[8] The argument was that the Chamber had not just wanted to nourish 'pluralism' but that their position was expressing a particular view, namely 'the values of a secular state'. So far from secularism embodying neutrality – a view that many take for granted – it was suggested that a state that supported the secular as opposed to the religious was not being neutral.

The display of a Christian symbol may have been seen by many as the espousal by Italy of a particular religious tradition, and so it was. Yet the forced

6 *Folgerø and others v Norway* [2007] ECHR 15472/02 at para 95.
7 See P Ronchi, 'Crucifixes, margin of appreciation and consensus: the Grand Chamber ruling in *Lautsi v Italy*' (2011) 13 Ecc LJ 287–297.
8 *Lautsi and others v Italy* [2011] ECHR 30814/06 at para 47.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

removal of the crucifix was also the expression of a definite attitude, namely that of an aggressive secularism, that saw no role for religion in public life and no possibility even for the acknowledgment of the historical traditions and identity of a state, if they were religious. Unfortunately, the judgment did not find favour with the protestant churches of Italy, which saw a crucifix as a specifically catholic symbol. However, the case was brought because of its broader religious significance. The objection was that it was a Christian, even a religious, symbol, and not just a catholic one. The case could easily have created a precedent that meant that the public display of crosses anywhere was to be forbidden, even on national flags, such as those of Scandinavian countries or the Union Flag. Here, as so often, Christian disunity did not help the cause of religion in the public square.

The Grand Chamber found that the perpetuation of a tradition falls within the margin of appreciation of a state, and noted the absence of any European consensus in the issue of religious symbols in schools.[9] One of the judges, Judge Bonello, in a concurring judgment, put the position more baldly. He said of the European Convention on Human Rights that it 'has given this Court the remit to enforce freedom of religion and of conscience, but has not empowered it to bully states into secularism or to coerce countries into schemes of religious neutrality'.[10] He distinguished 'freedom of religion that is a basic human right from values not protected by the Convention such as secularism, pluralism, the separation of Church and State [and] religious neutrality'.[11]

The result of this ruling must place discretion about the public role of a religion and its traditions squarely back with individual countries. The principles of the later Enlightenment, as interpreted in France, do not have to be imposed on other countries. One of the insights of Locke, and those he influenced, is that such freedom should not be in the gift of the state but is a fundamental part of human nature. We are not allowed to be free by the gracious act of a state that ultimately controls us. We belong to a state through consent, and our basic freedoms and rights have to be recognised. That ought to be the message of any doctrine of human rights, but all too often it can be combined with an assumption that the state is the ultimate authority and has to make the final decision about how far rights can be properly exercised.

IS RELIGIOUS FAITH 'SUBJECTIVE'?

In England, the cross on top of the crown, coupled with the symbolism of the Coronation service, demonstrates the fact that temporal power is not the final

9 Ibid at para 68.
10 Concurring judgment of Judge Bonello in ibid at para 2.3.
11 Ibid at para 2.2.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

source of authority but is itself answerable to a higher power. The Queen, personifying all government in this land, is subject to principles and standards that are not the making of herself or her ministers. All are under the ultimate judgement of the God who created all. Denying that is to make something else – whether the interest of the stronger, or the fickle will of the people – an untrustworthy guide.

Christianity and its assumptions have been built into the law and politics of England for well over a thousand years. The Coronation service is but one witness to that. Yet contemporary judges and politicians seem suddenly to imagine that we live in a secular democracy. No doubt some think that by saying that often enough they can make it a reality. There is, however, a worrying tendency for many to slide from sociological generalisations about the current state of religion in England to assertions about what ought to be happening. England may give the appearance of an increasingly secular country, in that religion plays less of a part in the lives of many than used to be the case. That can be exaggerated, but it does not answer the question as to whether a policy of aggressive secularism, driving religion out of public life, should be pursued.

Recent pronouncements in English courts have appeared to advocate state neutrality to religion, in a way that distances English law from the Christian principles that helped form it. Laws LJ made remarks in a judgment in 2010 that caused some consternation. He argued against giving any particular protection to 'a particular substantive moral position on the ground only that it is espoused by the adherents of particular faith'.[12] That may mean no more than that no-one should be privileged merely because, say, they are Christian. Courts must judge impartially and have no favourites. All are equal in the sight of the law. What the judge is saying, though, is that the law cannot protect the substance or content of any belief, merely because it is Christian (or presumably stemming from any other religion).

Laws LJ then expounds in a few sentences the thinking that lies behind his assertion. He is opposed to giving any legal protection to moral views with a Christian basis because 'it imposes compulsory law not to advance the general good on objective grounds, but to give effect to the force of subjective opinion'.[13] He continues:

> This must be so, since, in the eye of everyone save the believer, religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence. It may of course, be true, but the ascertainment of such a truth lies beyond the means by which laws are made in a reasonable

12 *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880 at para 21.
13 Ibid.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

> society. Therefore it lies only in the heart of the believer who is alone bound by it.[14]

In case the message has not been made clear, the judge says that

> The promulgation of law for the protection of a position held purely on religious grounds cannot therefore be justified; it is irrational, as preferring the subjective over the objective, but it is also divisive, capricious and arbitrary.[15]

The tenor of these remarks suggests that the judge has been influenced by the liberalism of writers such as John Rawls, with his notion of 'public reason',[16] but they go much further than that. They dismiss any notion that religion can be a rational matter, on the grounds that it is wholly subjective, valid only for the believer. The admission that religious beliefs may still be true is highly curious, since, in any ordinary meaning of the word 'truth', they cannot then be subjective. They must refer to an objective reality, even of a transcendental kind, which is in principle accessible to everyone. If they purport to refer, and fail, they are false. Yet the judge's pronouncement, with its emphasis on the subjective and irrational nature of religious faith, seems to rule out both rational discussion about religion and all possibility of either truth or falsehood.

The idea that religious faith is incommunicable 'by any kind of proof or evidence' rests on a caricature of faith, which assumes that it is somehow a fact about an individual and is not about objective reality. That position restricts the idea of proof and of evidence in the way that the logical positivists once did. They (and AJ Ayer was a prime example[17]) thought that there was only 'analytic' truth (truths such as those of mathematics, true by definition) and 'synthetic' truth (empirical truths accessible to human experience, and hence to human science). Religion, along with all 'metaphysical' claims, could not be understood as making claims to truth or to be accessible to reason in the form of public verification. Science alone could set the standards of truth, not only settling what was true but even determining what could be true. Anything beyond its reach was unverifiable and hence meaningless.

For the last fifty years it has been recognised in the philosophy of science that such positivism, linking the possibility of reality to human experience, cannot

14 Ibid.
15 Ibid at para 22.
16 For a discussion of this in connection with religion, see articles in N Biggar and L Hogan (eds), *Religious Voices in Public Places* (Oxford, 2009) and also R Trigg, *Rationality and Religion: does faith need reason?* (Oxford, 1998), ch 1.
17 See A Ayer, *Language, Truth and Logic* (second edition, London, 1946).

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

account for much of what science itself wants to assert.[18] Physics makes much of theoretical entities that are in principle beyond the reach of empirical verification, such as the interior of black holes and even, perhaps, multiple universes. There may be reasons for holding such theories and accepting what they postulate, but at times the entities invoked seem as metaphysical, and far beyond human experience, as God. Brandishing narrow ideas of proof and evidence, and assuming that they constitute rationality, does not do justice to science. It cannot be used as a quick way of defining religion out of any claim for rational consideration. Many, are, perhaps unconsciously, still influenced by positivist claims about the centrality of science, but such claims take us to basic philosophical questions about the character of reality that cannot be bypassed.

The idea that 'faith' is subjective underestimates the fact that all faith, whether in God or in more mundane matters – such as the strength of a bridge we want to cross – depends on beliefs about a reality that may be different from our conceptions of it. Our faith may be totally misplaced. Faith must always be 'in' something, or somebody, and once we start specifying the object of our faith, reason comes into play, since faith without reason is blind. Anglican theology has always seen faith as the interplay of dependence on scripture, tradition and reason. It has, for example, maintained a strong attachment to 'natural theology', reasoning to God from the nature of the world around us. The Cambridge Platonists' stress on reason stemming from 'the Lord' shows how English theology has typically assumed that faith and reason have to be in harness. One can redefine 'reason' to exclude faith, so that faith is subjective rather than objective, but this is itself both arbitrary and high-handed, ignoring the many discussions, past and present, about this central issue for the philosophy of religion.

PRINCIPLED LAW?

It is deeply disturbing that an English judge can adopt an extreme position in the philosophy of religion with a few quick assertions, and then draw conclusions about the character of English law from it. These were not throwaway remarks of no consequence, and they have been quoted with approval by other judges. In a case in the Administrative Court about fostering, Munby LJ and Beatson J follow Laws LJ, and also uphold the Strasbourg Court's stress on neutrality and impartiality. As a result, they feel able to distance the common law from any religious, or indeed specifically Christian, basis. They talk of 'what ought to be, but seemingly are not, well understood principles regulating the relationship of religion and law in our society'.[19]

18 See R Trigg, *Rationality and Science: can science explain everything?* (Oxford, 1993), ch 1.
19 *R (Johns) v Derby City Council* [2011] EWHC 375 (Admin) at para 36.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

They preface their remarks 'with the obvious point that we live in this country in a democratic and pluralist society, in a secular state not a theocracy'.[20] Just as with making it true by definition that religious faith cannot be a matter of reason, this assertion merely assumes what it wants to prove. It is, in any case, by no means obvious that a theocracy (such as Iran?) and a secular state (such as France?) are the only alternatives. It is possible to guarantee freedom of religion without espousing an aggressive secularism, which can in any case be unsympathetic to such freedom. There are many forms of secularism and merely referring to a 'secular state' begs all kinds of questions.

Concluding that England (or the United Kingdom) is a secular state is to take up a position about the status of law and its grounding that needs more than a few pieces of social commentary. The judges talk of 'enormous changes in the social and religious life of our country',[21] but that does not address the more basic issue of the rational grounding of our legal principles. Making it true by definition that religious faith is subjective, and hence not a matter of reason, is an effective way of immediately driving religion from the public forum. It is thereby prohibited from contributing to any public rational discussion, let alone providing any substantive grounding for our beliefs in, for example, equality and freedom.

The judgment continues as follows:

> We sit as secular judges serving a multi-cultural community of many faiths. We are sworn (we quote the judicial oath) to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'. But the laws and usages of the realm do not include Christianity in whatever form. The aphorism that 'Christianity is part of the common law of England' is mere rhetoric.[22]

There seems to be much confusion here. Judges should treat everyone equally 'without fear or favour' and in that sense be religiously neutral, not favouring those with whom they may personally be more in sympathy. Yet the application of justice in the court is not the same as the derivation of the principles being applied. The law has to be implemented fairly, and from a neutral point of view, just as a referee or umpire has to apply the rules of a game from a neutral position. Yet that does not mean that the rules, or laws, being applied have no reason for their character and existence. It may perhaps be difficult to 'justify' the laws of cricket, though one may see how the game could be improved or harmed by tinkering with them. The laws of the land are not like

20 Ibid at para 36.
21 Ibid at para 38.
22 Ibid at para 39.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

that, however. Their mere existence may restrict the freedom of individuals and constrain their choices, and we need good reasons to do that. One of the functions of Parliament is precisely to debate such issues.

In the end, it is not enough to see what the law is. There ought to be a consistent set of principles underlying all law. At the most general level, we accept the law to be just and fair, to respect individual liberty and, as the judges insist, to treat everyone equally. Where do these principles come from? Some judges seem preoccupied with the 'pluralist' nature of our society. As Laws LJ says, 'we do not live in a society where all the people share uniform religious beliefs'. His conclusion is that 'the precepts of any one religion, any belief system, cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other'.[23] Thus it seems that we can no longer appeal to theological grounding for beliefs in freedom and equality, or the inherent dignity of the individual. We cannot import Christian ideas of justice and compassion into our law. Perhaps more controversially, we should not necessarily keep to Christian conceptions of monogamy or the sanctity of life.

At one sweep, the historic grounding of England's law, even at the most general level, has been put into question. The unspoken assumption is that because people have to be respected and treated equally, and the court has to deal with all citizens on a neutral basis, so the diverse beliefs of citizens in a multicultural and multi-religious society have to be given equal respect. No one set of principles must be given any privileged position. We must not favour beliefs that all are equal over beliefs that some (perhaps women) are not. We should not value ideals of freedom that some even in our society may hold in contempt. We seem to be getting into a nonsensical position. The law must respect people but it cannot be neutral to all beliefs. The whole point of law is to restrain some behaviour even if it is motivated by sincere belief. The recognition from a sociological point of view of a current pluralism of belief cannot become an acceptance of relativism,[24] holding that there is no difference between truth and falsity, only different people holding that certain things are valid for them. The state would simply be left with nowhere to stand but it would have no reason to interfere with those who refuse to accept the basic assumptions of democracy. It would not even be left with any reason for teaching future generations ideals of freedom and equality. Indeed, all beliefs that are only valid because 'we' hold them are of their very nature unstable and liable to abrupt change as fashion dictates. 'We' may change our minds.

23 *McFarlane* at para 22.

24 I wrote against different forms of relativism, and their internal inconsistencies, in R Trigg, *Reason and Commitment* (Cambridge, 1973).

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

ESTABLISHMENT AND PUBLIC LIFE

The historical grounding of our law may not be irrelevant to our current situation. Indeed, the more diversity, even confusion, of belief there is, the more we may need basic principles to guide us. Without them everything could change in unpredictable and unpalatable ways. The establishment of the Church of England, and its place in national and local life, should not be regarded as mere historical curiosity, a hang-over from a more religious age. It is a recognition in institutional form that there can be a place in the public forum for religion. The willingness of non-Christian religious leaders to support the idea of establishment expresses an awareness that the issue is no longer one of the superiority of one religious institution over another. They want official understanding that religious voices have as much right to contribute to public debate in a democratic society as any others. The Established Church can offer an umbrella under which other religions can also shelter.

Establishment in England does not bring financial advantage but the right to some public and political recognition. In the well-known case, concerning chancel repairs in the church at Aston Cantlow, just outside Stratford-upon-Avon, Lord Hope concluded that the Church of England was not a part of government, saying, 'The relationship which the state has with the Church of England is one of recognition, not of the devolution to it of any of the powers or functions of government'.[25] That, one might add, underlies the distinction in role between a parochial church council and the parish council. Such public recognition is a bulwark against all religion being pushed into the private sphere, which would result in freedom of religion being seen as merely a matter of individuals personally practising their religion. Instead, there must also be a role for public religious institutions. There is always the danger that when atheist leaders contribute to public debate that is viewed as democratic freedom, but when religious leaders do so it is regarded with suspicion.

Religion has always been vulnerable to attack, and even persecution. It is not surprising that all human rights documents see the need for religion to be offered protection. One reason for the vulnerability of religion is that it points to principles and standards that are beyond the control of those in power, and may be inconvenient or positively threatening to them. Totalitarian regimes can never tolerate freedom of religion. The historical role, and opportunity, provided by the public recognition of the Church of England, has ensured that, at least in theory, the state always has to recognise that there are principles, and indeed a Power, that lies beyond the reach of government, and by which government can be judged.

Much is made at the present day of the concepts of freedom and equality, and it is sometimes maintained that establishment somehow runs foul of one or

25 *Parochial Church Council of Aston Cantlow v Wallbank* [2004] 1 AC 546 HL at para 61.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

both by granting privileges to one institution that others may not always share. In particular, the idea of equality itself seems to be ignored, it may be said. In a recent book on establishment, Morris accepts that freedom is not threatened. He continues, 'What is however more questionable is how far establishment is compatible with religious equality, a different question and still a live issue in the United Kingdom'.[26] Yet, as we have seen, treating people equally is not the same as retreating to a relativism that insists that the state must be neutral towards all religious beliefs.

This slide from treating the members of all religions and none as equal to treating all beliefs, particularly of a religious character, as of equal validity (or lack of it) is still apparent in recent pronouncements of the Parliamentary Assembly of the Council of Europe. It seems more conscious than it used to be of the positive contribution that religion can make to 'intercultural dialogue', but it continues to see human rights as somehow setting an external standard to which all religion must conform. It claims that 'Co-operation between state and religions occurs within a framework of guaranteed freedom of religion, state neutrality and equality of faiths.'[27] The assumption is that freedom of religion demands neutrality and an equality that can come to mean rather more than mere equality of treatment before the law. There is reluctance to accept that law itself needs a firm basis. From the political point of view, there may be a premium on a search for consensus. Simple agreement on rights may seem a more pressing issue than the search for any agreement about their source, but the result is to have such rights still floating free without any possibility of a firm justification.

Secularism may come in different guises, and 'secular' states can differ in character. One can think of the differences between Turkey, France and the United States, all of which lay some claim in their constitutions to a secularity that separates church and state, or religion and politics. Nevertheless, none of these countries can be said to be wholly 'neutral' to religion. Their attitudes are in each case formed by their history. 'Neutrality' is neither possible nor desirable. To revert to the philosophy of science, it is clear that what counts as a 'datum' will depend on the theory one holds. One has to have some idea of what is relevant to be able to pick out what is significant from surrounding 'noise'. Data are secondary to theory.[28] That is not to deny that there is a real world constraining our understanding, but what we pick out depends on what we are looking for. In the same way, when we are confronting society, what

26 R Morris (ed), *Church and State in 21st Century Britain: the future of church establishment* (Basingstoke, 2009).

27 *The Religious Dimension of Intercultural Dialogue*, Report to the Parliamentary Assembly of the Council of Europe, 25 March 2011, doc 12553, para 53, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc11/EDOC12553.htm>, accessed 1 June 2011.

28 See Trigg, *Rationality and Science*, especially ch. 5.

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press

we deem important and relevant and what we encourage will be determined by the principles and understanding that we bring to bear. The 'neutral' state will always be an impossibility and if it is neutral to all religion, distancing itself from religious principles, it is in effect saying that they are irrelevant to human co-operative endeavour. Religion is then a private choice, but of no account in the public world.

Establishment says the opposite. It maintains, through its recognition of a particular institution, that religion is important in human life, and that religions can contribute positively to our life together. Yet establishment is also the recognition of Christianity in particular. There are deep historical reasons for this in England, and the identity of the country would be severely challenged if its ancient links with Christianity were totally severed. But that is not the most important issue. Despite the recent pronouncements of some judges, Christianity is built into the fabric of our law, so that it its roots nourish our most basic legal principles. Freedom and equality serve as fundamental concepts for democracy. Yet in England since the seventeenth century those very concepts have been given life through Christian understandings of human nature. We have been given free will and ought to be allowed to exercise it. We are born equal in the sight of God, and that must be recognised. The idea of freedom of religion itself was born of these insights.

Any state must decide whether it wants to encourage freedom *from* religion, because religion is an ever present threat to civil society that has to be tightly controlled. The alternative is to provide freedom *for* religion, because it sees that Christian principles, in particular, can produce a framework in which a just society can be built. Why should we want to pursue justice when it may be to our own personal disadvantage? Plato wrestled with this problem long ago in his *Republic*. The continuing recognition of an institution providing a grounding for our beliefs about the importance of other human beings ensures that our society can hope to pass those beliefs on to future generations.

This suggestion will be controversial, but it is crucial to see why that is so. It is not because the Church of England is any longer claiming special privileges over others, including other Christians. It is because some are trying to expunge religion from public life and see all religious influence as inimical to their own aims. What is being asked is that, partly through an institutional presence, Christianity can still at the deepest level of principle contribute to public democratic debate and rational discussion. It is crucial that its role as a contributor to public life can still be recognised so that, with others, it is able to continue to safeguard and ground the most basic principles of our life together. The alternative is the imposition not of a benign neutrality but of a secular orthodoxy.[29]

29 For a further discussion of these issues see R Trigg, *Religion in Public Life: must faith be privatised?* (Oxford, 2007) and R Trigg, *Equality, Freedom, and Religion* (Oxford, forthcoming).

https://doi.org/10.1017/S0956618X11000408 Published online by Cambridge University Press