

COMMISSION ON RELIGION AND BELIEF IN BRITISH PUBLIC LIFE

Personal Memorandum of Evidence from David Pollock¹

NB: Parts of this memorandum draw on my submission to the Equality and Human Rights Commission for their enquiry on religion and belief in employment etc. Other parts are more or less closely derived from the submission I wrote on behalf of the European Humanist Federation to the EU-sponsored Religare project²; from my paper on conscientious objection³, and from a submission I wrote on behalf of the British Humanist Association to the Charity Commission⁴.

The Nature of Religion or Belief

Before responding to some of the topics highlighted for consultation by the Commission - from which I shall concentrate on social change, the law (particularly as regards the “public square” and employment) and education - I make some remarks on the nature of religion or belief. As is set out in the consultation paper the phrase has a wide embrace, taking in both theistic and non-theistic religions and secular beliefs such as Humanism. (In law it includes also denial of any of these beliefs or any aspect of them.) What do they have in common? Can there be a definition of “religion or belief” as a single concept? I suggest there can, so long as it is a functional definition rather than one that depends on the content of the beliefs. What they all have in common is:

- 1 – that they makes claims about the nature of the world we live in and of human life; and
- 2 – that they draw implications from those claims for the way one should live – typically establishing a basis of morality and values.

A single word that might substitute for the phrase is “lifestance”. I have elsewhere⁵ written at greater length on this, suggesting a definition that might be legally acceptable:

A collective belief that attains a sufficient level of cogency, seriousness, cohesion

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² See <http://david-pollock.org.uk/religion/religion-in-society/>

³ See <http://david-pollock.org.uk/religion/the-limits-to-legal-accommodation-of-conscientious-objection/>

⁴ See <http://david-pollock.org.uk/religion/religion-and-non-religious-beliefs-in-charity-law/>

⁵ In a paper for the Charity Commission - see <http://david-pollock.org.uk/religion/religion-and-non-religious-beliefs-in-charity-law/>

and importance and that relates the nature of life and the world to morality, values and/or the way its believers should live.

Be that as it may, “religion or belief” has taken its place in equality law alongside such other strands as gender, sexuality, disability and ethnicity. It is important to note, however, that it is very much the odd one out among these strands in that it always has contentious intellectual content. The consequences are many and profound:

- Religions and beliefs, unlike the other strands (race, gender, sexuality etc), can be chosen or put aside (though not at will).
- Religions and beliefs make extensive and often mutually incompatible claims about the nature of life and the world - claims that can legitimately be appraised and argued over. There is no parallel for the other strands.
- Religions in particular, unlike the other strands, set out to and usually do influence their followers’ attitudes and behaviour, often in ways which can be similarly controversial.
- Religions and beliefs are in principle and often in practice in competition with each other: evangelists come to our front doors, set up television and radio stations and run crusades to make converts. This is plainly untrue of the other strands.
- Religions and beliefs are expressed through organisations, some of which are wealthy and powerful. Religions exercise that power in the name of their faith far outside the realm of religion - in influencing social attitudes and national and international policies (e.g. on free speech and on sexual and reproductive health and rights). This controversial influence has little or no parallel in the other strands.
- Religious believers often feel under a duty to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable. This has little parallel in any of the other strands.

Thus religions and beliefs impose discrimination as well as attracting it, which again has no parallel in any other strand. So religions, sometimes regarded as a social glue, are more accurately seen as binding only a parts of society together and tending to alienate much of the rest. Both these tendencies - to bind and to alienate - need to be taken into account in considering religion’s place in society. Taken together, indeed, by binding co-religionists together and alienating those of other beliefs, these effects of religion can become socially divisive to a serious extent, so that people live segregated lives with little knowledge and correspondingly much misunderstanding and suspicion of people of other beliefs. The dangers are vividly illustrated in Northern Ireland, where despite the end of violence the two communities remain almost as far apart as ever.

Religion is often inseparable from culture, which is especially relevant given that orthodoxy of belief or practice is no longer⁶ regarded as essential in legal claims of breach of the freedom of religion or belief. Moreover, within their own “communities” religions are sometimes run in more or less authoritarian ways justified by the unique access the (often exclusively male and

⁶ Following the European Court of Human Rights’ judgement in *Eweida and others v UK*.

sometimes celibate) hierarchy claims to all-important truths. The degree of consent by members of such communities is questionable: it is difficult for anyone to shed beliefs in which he or she has been brought up but especially so when interaction with non-members is discouraged and/or education is narrowly limited in faith schools, especially privately run schools - for example, those of the small Hasidic Jewish communities where the education of boys of secondary age is totally confined to religion (see below).

Indeed, not all religion or culture is admirable: to quote Lord Justice Munby “Some things are ... beyond the pale: forced marriages ..., female genital mutilation and so-called, if grotesquely misnamed, ‘honour-based’ domestic violence.”⁷ More recently Richard Chartres, the Bishop of London, has said “Much religion is really dangerous and I would say lethal.”⁸

Another most important preliminary point is that, despite their claims to eternal verities, religions change over time. Christianity long ago forgot much of the law laid down in *Leviticus* and most churches are already far more open-minded and tolerant than in the recent past: only a few decades ago even the Church of England was characterised by moralistic intolerance of those who strayed from its narrow code of sexual ethics and the idea of an atheist being allowed to broadcast caused outrage.⁹ Today’s liberal Christianity is a recent development (and still far from universal) and there is no reason to think Christianity is not still evolving under pressure from growing demands for tolerance from secular society. Indulgence of religious intolerance by way of legal exemptions will tend to delay this process.

/ . . . Social Change

⁷ See his 2014 Michael Farmer Memorial Lecture (10 October 2014) on 21st Century Family Law - <http://www.judiciary.gov.uk/wp-content/uploads/2014/10/munby-speech-bangor-10102014.pdf>

⁸ See <http://www.independent.co.uk/news/uk/home-news/religion-can-be-dangerous-and-lethal-warns-bishop-of-london-9747353.html>

⁹ Callum Brown: ‘The Unholy Mrs Knight’ and the BBC: Secular Humanism and the Threat to the ‘Christian Nation’, c.1945–60, *English Historical Review* (2012) - see <http://ehr.oxfordjournals.org/content/CXXVII/525/345.full>

Social Change

We live in a time of rapid change. Features of note in the context of religion or belief are:

- the rapid decline in the importance of religion, exemplified by
 - statistics of belief (British Social Attitudes now finds that a majority of people have no religion¹⁰ and already in 2008 it found only 24% who thought being Christian was at all important to “being truly British”¹¹)
 - statistics of churchgoing (only 5.8%¹²)
 - the declining intensity of belief (even the Archbishop of Canterbury admits to occasional doubts about the existence of God¹³)
 - the declining significance of religion in people’s lives (the Archbishop of York talks of people’s attitude being not so much hostile as dismissive¹⁴)
 - growing ignorance of the basic tenets of Christianity even among those who call themselves Christian¹⁵, and
 - the recent disconnection of morality from religion (55% believe that atheists are just as moral as the religious, including 69% of Jews and 60% of Christians. One in eight British people say that atheists are more moral and just

¹⁰ British Social Attitudes 31 - http://www.bsa-31.natcen.ac.uk/media/38202/bsa31_full_report.pdf

¹¹ British Social Attitudes 26 - http://www.britisocat.com/BodyTwoCol_rpt.aspx?control=CCESDMarginals&MapID=relbrit&SeriesID=12

¹² Sunday attendance in England, 2010 - Peter Brierley, *UK Church Statistics 2* (Tonbridge:ADCB Publishers, 2014), table 16.8.

¹³ In a BBC interview, September 2014 - see <http://www.bbc.co.uk/news/uk-england-29255792>

¹⁴ “The viewpoint could be expressed in a variety of non-verbal ways: the shrug of indifference, the rolled eyes of embarrassment, the yawn of boredom”: Archbishop Sentamu reported in November 2013 - see <http://www.telegraph.co.uk/news/religion/10458380/Christianity-at-risk-of-dying-out-in-a-generation-warns-Lord-Carey.html>. See also a YouGov report for the Centre for the Modern Family “[O]nly 40 per cent of people say [religion] has an impact on the way they lead their lives” - see http://reference.scottishwidows.co.uk/docs/cmf_report_dec_2011.pdf.

¹⁵ A poll by Ipsos-MORI of people who said they had answered “Christian” in the 2011 census found that 49% not gone to church in the past 12 months of whom 56% had not gone for more than 10 years and 24% never; over half had not read the Bible for 3 years (15% never); offered a choice of Matthew, Genesis, Acts & Psalms, only 35% chose Matthew as the first book of the New Testament; only 44% agreed Jesus was the son of God; only 10% picked religion as a source for decisions on what was right or wrong. Asked what Christianity meant to them, 40% said “I try to be a good person”, 24% “It is how I was brought up” and only 22% chose either of the two “religious” answers. - see <http://richarddawkinsfoundation.org/>

6% say they are less moral)¹⁶;

- the new plurality of religions: our laws and customs were shaped around a dominant Christian tradition with a small and unassertive Jewish minority but today even nominal Christians in the Census have fallen in number since 2001 by 11% (to 59% of the total) while those with no religion have risen by 83% (to 25%), Muslims by 75% (to 5%) and other religions taken together by 39% (to 4%);
- the emergence of a small but significant minority of people for whom their religion is a major part of their identity and overwhelmingly important. This is especially true of some Muslims and of a Christian fringe including both some Roman Catholics and some evangelicals, particularly in the “black” and Pentecostal churches, and is manifest in society in energetic “pro-life” and allied movements;
- the persistence of the historical privilege and inherited influence if not direct power of religion, dating from long before the age of equality and so discriminating in favour of mainstream Christianity. Combined with the traditional false equation of Christianity with morality this promotes the tendency to indulgence of Christian (and hence - maybe inadvertently - other religious) demands for special treatment;
- the little-noticed arrival in Europe of wealthy American religious organisations, both Roman Catholic and evangelical, determined defend the privileges given to religion by the US Supreme Court (both traditionally and in some significant recent cases¹⁷) by advancing their front line of defence into Europe and defeating at source any unwanted influence from the European Court of Human Rights. The European Centre for Law and Justice, based in Strasbourg, has been particularly influential (it is funded by the American televangelist Pat Robertson but works closely with the Holy See) but the Alliance Defending Freedom is also active in Europe, and American influence can be seen in other such organisations.¹⁸

This is the background to the much publicised protests from a religious minority, predominantly Christian, of marginalisation, discrimination, intolerance or even persecution. Marginalisation

¹⁶ See Survation poll reported at http://www.huffingtonpost.co.uk/2014/11/03/religion-beyond-belief_n_6094442.html

¹⁷ Such as *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012) and *Burwell, Secretary of Health and Human Services, et al. v. Hobby Lobby Stores, Inc., et al.* (2014).

¹⁸ Valuable background to this growing influence is provided by two reports: *Lobbying for Faith and Family: A Study of Religious NGOs at the United Nations* commissioned and published by the Norwegian Foreign Office in 2013 (ISBN 978-82-7548-685-9) - see <http://www.norad.no/en/tools-and-publications/publications/norad-reports/publication?key=401801>, and *Redefining Religious Liberty: The Covert Campaign against Civil Rights* by Jay Michaelson (Political Research Associates, 2013) - see <http://www.politicalresearch.org/2013/03/21/redefining-religious-liberty-the-covert-campaign-against-civil-rights/>

may be real but it comes from people finding religion irrelevant, not from any secularist plot, but if the other allegations were true, it would be a matter of grave concern. Happily, most of them seem to be wildly exaggerated and to emerge from a limited number of voices such as Ann Widdecombe¹⁹, retired bishop Michael Nazir-Ali²⁰ or former Archbishop Lord Carey²¹, firmly refuted by former Archbishop of Canterbury, Lord Rowan Williams²².

These critics see religion as the fundamental paradigm. This cannot be justified when religion is patently a matter of substantial indifference for the majority of people. Even many believers have freestanding moral principles and values that are independent of their religion. It is to these shared values that we need to look if we seek concepts that can bind today's society together. Here the useful surveys conducted by the European Union's Eurobarometer surveys come to our aid.

When asked to pick up to three from a list of twelve "values" as being important to them personally, people in the UK placed religion next to last: only 7% chose it. Their choices (and those of people across the EU's then 27 members) are shown in the table on the following page.²³ These surveys have been conducted often over many years and show only small variations in the order of priorities. Consistently they have demonstrated that the values which people, both in the UK and the rest of Europe, recognise as important to them personally are respect for human life, human rights, peace, equality, individual freedom, the rule of law, respect for other cultures, democracy, and tolerance. Here without doubt is what now binds us together - our new social glue. These are essentially humanist values. They are not unproblematic, since they sometimes conflict with each other, but they all bend towards freedom, tolerance and non-discrimination.

¹⁹ "Christians now have quite a lot of problems, whether it's that you can't display even very discreet small symbols of your faith at work, that you can't say 'God bless you', you can't offer to pray for somebody, if it's an even bigger stance on conscience that you're taking, some of the equality laws can actually bring you to the attention of the police themselves." - <http://www.westernmorningnews.co.uk/Militant-secularism-make-hard-Christian-modern/story-21206087-detail/story.html#ixzz34G0QR7Cr> - 8 June 2014.

²⁰ "There is discrimination in this country for wearing the Cross, for praying in the workplace, for supporting the family. This is typically how it [persecution] starts." - <http://www.thetimes.co.uk/tto/faith/article3420864.ece>

²¹ "Christians in the NHS, for example, are told that they cannot wear crucifixes, yet Muslims are allowed to wear headscarves." - <http://www.dailymail.co.uk/debate/article-2482441/An-age-faiths-equal-Christianity-As-judge-says-Christian-morality-place-courts-stinging-riposte-Archbishop-Canterbury.html#ixzz2jgXFjKoZ>

²² "When you have any contact with real persecuted minorities you learn to use the word persecuted very chastely. Persecution is not being made to feel mildly uncomfortable. I am always very uneasy when people sometimes in this country or the United States talk about persecution of Christians or rather believers. I think we are made to feel uncomfortable at times. We're made to feel as if we're idiots - perish the thought! But that kind of level of not being taken very seriously or being made fun of; I mean for goodness sake, grow up. You have to earn respect if you want to be taken seriously in society. But don't confuse it with the systematic brutality and often murderous hostility which means that every morning you get up wondering if you and your children are going to make it through the day. That is different, it's real. It's not quite what we're facing in Western society." - <http://www.telegraph.co.uk/news/religion/10244716/Persecuted-British-Christians-need-to-grow-up-says-for-mer-Archbishop-Rowan-Williams.html>

²³ See Standard Eurobarometer 79 European Citizenship – Spring 2013 - http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_anx_en.pdf

	UK	EU27
Respect for human life	42	37
Human Rights	35	41
Peace	33	39
Equality	29	21
Individual freedom	25	24
The Rule of Law	24	18
Respect for other cultures	20	11
Democracy	20	26
Tolerance	18	16
Self fulfilment	7	9
Religion	7	5
Solidarity, support for others	5	17
None of these	2	1
Don't know	3	1

/ ... The Law

The Law

The law provides the arena for most controversy concerning religion or belief. Here I focus on the public square and employment before dealing separately with education.

The Public Square: Secularism

Any commitment to freedom of religion or belief can only be within the framework of a commitment to human rights and to the principles of equality and non-discrimination. The consistent position of religion in the Eurobarometer polls close to or at the bottom of the list of personal values is significant, not because anyone wishes to deny or limit that freedom but because it is indicative of the priority religion should have (other things being equal) when freedom of religion or belief clashes with other human rights - as it does not infrequently as a result of its contentious intellectual content illustrated above.

That said, our aim should be that the constraints on freedom of religion or belief should be the minimum compatible with the survival of a liberal, tolerant, democratic, open society. From this it appears to follow necessarily that the state, the law and the public institutions we all share must be neutral as between different religions and beliefs.²⁴ On religious questions of profound disagreement and deep sensitivity where there is no agreed way to establish the truth or falsehood of the claims made variously by Christians, Muslims, atheists and everyone else, it is quite wrong that the state should throw its weight behind any one particular religion or belief. This neutrality is what we mean by secularism.²⁵ Here I refer to a secular state, not a secular society: a secular state may be supported by religious believers and be the home of widespread religious belief, whereas the phrase “a secular society” suggests one that has distanced itself from religion. (In Britain we have the anomaly of a largely secular society in a constitutionally religious state.)

Now there is a common riposte to this demand for secularism: that neutrality is impossible, that a secular state in fact imposes liberal, secular values on everyone.²⁶ But this is playing with words. Laws, governments and institutions that do not impose or assume any religion or belief on the part of any individual citizen leave the individual free to hold any religion or belief or none. Is it dictatorial to remove chains from contented prisoners? They need not leave their cells if they prefer to stay. By contrast, those who reject secularism seek to fit everyone with their own style of shackles. This is not an enhancement of the freedom of the dominant religious group but a curtailment of that of all the minorities. Secularism is in fact the best

²⁴ This neutrality may not apply when - quite exceptionally - a religion or belief is seen by the government as fundamentally inimical to public safety, public order, health or morals, or the rights and freedoms of others.

²⁵ The implications of secularism in this sense (I concede that others may use the word differently) are not the same as those of the words “secular” or “secularisation”, which typically have to do with the extent to which society is or becomes “less religious”. Support for secularism, by contrast, is entirely compatible with religious belief - indeed, it has its origins in the late mediaeval church’s assertion of their independence from “secular” government.

²⁶ As, for example, in the submission in the case of *Lautsi v Italy* to the European Court of Human Rights of a group of law professors organised by the Becket Fund: “An empty wall in an Italian classroom is no more neutral—indeed, it is far less so—than is a wall with a crucifix upon it.” - see <http://www.iclrs.org/content/blurb/files/writtencomments.pdf>.

possible guarantor of freedom of religion or belief for everyone.

Objectors often allege that secularists wish to drive the religious from the public square. Not so. Secularism applies to state institutions and their officials, not to citizens in their private capacity. After all, atheism and Humanism are no less “religions or beliefs” than Islam or Christianity: if Christians were banned from the public square, so would be Humanists and atheists.

What, rather, secularists do say is that in debates on public policy purely religious arguments should carry no weight. In a Voltaire-like defence of freedom of expression, we absolutely do not wish to suppress or to forbid such arguments being voiced - but we do say that it would be better if they were not, and that if voiced then by convention they should count for nothing in the minds of politicians and decision-makers. By all means let the religious argue (say) against assisted dying with warnings of a slippery slope - an argument we can all understand and assess - but if they argue that life is the gift of God and that it is not for us to take it away, then in the process of public decision-making their words should be ignored. They can advance such arguments to each other and exert group pressures of approval or disapproval if they wish, but if they advance purely religious arguments in public debate they should be ignored: such considerations cannot be legitimately admitted in a society where there are so many competing beliefs that reject their very premises. Still less should laws or policies be adopted that are supported only by religious arguments.

Let the religious draw their motivation from their religion, let them encourage each other by citing its doctrines, but let them in the public square speak in a language everyone can understand. Similarly, no atheist should expect any attention to arguments premised on the non-existence of God.

The religious complain that this amounts to a privatisation of religion. In a sense it does - but not in a sense about which they can legitimately complain. It requires that religious injunctions about the governance of society²⁷ are addressed only to those who share their premises. But it does *not* demand that believers should cease manifesting their religion in public, nor that they should deny their motivation in their public-spirited work, still less that they should cease from engagement in public life.

Secularism may be a relatively recent and western development but it is a deeply moral position and concept. Anyone who opposes it has to accept the difficult moral task of justifying their departure from its implicit principles of equality and non-discrimination.

This applies not least to those who defend or claim privileges for Christianity in our polity. When David Cameron claimed that Britain was a Christian country²⁸ he failed to make his claim at least defensible by qualifying it with words such as “culturally” or “historically” or “constitutionally”. In terms of the beliefs and values of a large part of the British people it is patently not true - yet he used the claim to justify “expand[ing] the role of faith and faith

²⁷ But not, of course, legitimate proselytisation - and the British Humanist Association supported reform of section 5 of the Public Order Act 1986 to prevent the recurrence of recent police threats to and oppressive prosecutions of street preachers and others.

²⁸ See <https://www.gov.uk/government/speeches/easter-reception-at-downing-street-2014>

organisations in our country”, including in schools.

Religion and Intolerance

The law now protects all religions equally, without discriminating between them and without attempting to determine which are forces for good and which are not. Not only that, it also protects other belief systems, such as humanism and pacifism, and we have dropped any requirement that these be “similar” to religion. It also protects the lack of a religion or belief. In other words, while it protects freedom of thought, it does not give any special protection to religion as such . . .

- so Lady Hale²⁹, who notices suggestions in some quarters of separate legal treatment for religion - building on the definition of religion in the recent Scientology case³⁰ which included the words “a spiritual or non-secular belief system” - and concedes that “Many believers do believe that their faith has a different quality from the secular beliefs of others” before concluding nevertheless that “if the law is going to protect freedom of religion and belief it has to accept that all religions and beliefs and none are equal”.

This equality is partially delivered by the laws on equality and non-discrimination - but these very laws are the origin of many of the complaints from religious quarters of unfairness verging on persecution. Many of these complaints are in fact about the loss of accustomed privileges no longer acceptable in a community where there are now many religions, where the Church of England in particular is in rapid decline and where even in the Census as many as one in four people acknowledged no religion. But safeguarding the rights of others can seem hostile to religious groups. The previous Pope, surely with the United Kingdom in mind, criticised “countries which accord great importance to pluralism and tolerance” because moving towards equality and non-discrimination results in religion “increasingly being marginalized”.³¹ He was mistaking the cause for the effect: the marginalisation came first, the laws on equality were made possible by it.

What is the true position? As stated above, religion or belief is different from the other strands recognised in equality law because of its contentious intellectual content. In essence, it dresses up its doctrines and prejudices as principles and may even glory in them or the opprobrium they incur. It is entirely unsurprising, therefore, if religion provokes an intolerant reaction from time to time, given that it often incites just such an attitude towards others.

The intolerance associated with religion may indeed be

- intolerance by others in society against a religion or belief

²⁹ In the Annual Human Rights Lecture on Freedom of Religion and Belief for the Law Society of Ireland (13 June 2014) - see <http://supremecourt.uk/docs/speech-140613.pdf>

³⁰ *R (Hodkin & another) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77

³¹ Address to the diplomatic corps, 10 January 2011, available at <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2011/01/10/0017/00042.html>.

but it also includes

- intolerance by a religion or belief against another religion or belief, or
- intolerance by a religion or belief against other groups in society.

I shall deal first and briefly with these latter types of religious intolerance.

Interreligious intolerance is happily at a low ebb in Britain by comparison with elsewhere in the world, but sectarian conflict is still found in Scotland between Catholics and Protestants while there remains a small risk of localised hostility between Islam and Christianity (although much that may look like it is in fact disguised racism).

Intolerance by a religion or belief against other groups in society is in practice usually based on religious intolerance of people as characterised by the factors identified in the other strands of discrimination law. This intolerance dates back over the centuries, examples being Christian endorsement of slavery as justified by the inferiority of non-white races or of women as the daughters of Eve, the source of original sin. The churches until recently self-righteously discriminated against single mothers, divorced people and “illegitimate” children and they continue (with increasing embarrassment) to discriminate against women and to seek and defend legal exemptions for discrimination against (notably) LGBTI people.

The law endorses such anti-gay discrimination by churches even when it is merely “for the purpose of avoiding conflict with the strongly held religious convictions of a significant number of the religion's followers” as distinct from being needed “to comply with the doctrines of the religion”³². It is far from obvious why discrimination on grounds of sexuality should be unlawful if it is based on a simple “yuck” factor but permitted if the “yuck” feeling is backed by centuries of intolerant preaching. It is equally not obvious why religious intolerance of LGBTI people is acceptable but religious intolerance of black people is not. If the Dutch Reformed Church of apartheid South Africa staged a revival in Britain today, should we give it legal exemption from the laws on race discrimination? If not, why should we endorse discrimination against gays and lesbians?

Discrimination against anyone on the basis of his or her religion or belief is already unlawful in most contexts. Jobs are not advertised with the rider “No Christians”, nor hotels with the proviso “No Muslims”. Moreover, the Human Rights Act guarantees to everyone the rights to freedom of expression and freedom of assembly - and once these have been guaranteed, most of freedom of religion or belief is already delivered. What is left is the internal realm of belief that is ultimately anyway unpoliceable and the need for society to adapt to individuals and organised bodies promoting strong claims about some aspects of reality (e.g., young earth creationism) and strong opinions about some aspects of behaviour (e.g., dietary rules).

Some complaints made by religious advocates are about lack of respect for their beliefs. Cartoons may mock them or commentators judge religious behaviour by secular standards. These complaints amount to either a request for greater restraint in the exercise of freedom of expression or a demand for legal limits to be placed on that freedom. The former is a

³² Equality Act 2010, schedule 3, para. 29.

permissible if fugitive attitude in an open society; the latter entirely inadmissible. The law may legitimately protect individual believers from persecution or from incitement of hatred (given adequate safeguards) but their beliefs as such must never be protected from the mockery or robust criticism that are part of the essentials of a free society. This is part of the price of freedom.

Employment, occupation and training

Most of the cases about religious discrimination or failure to recognise freedom of religion that have reached the courts have arisen in the context of employment. What is complained about as intolerance or discrimination by some religious people is usually not direct discrimination but indirect in the shape of a failure by employers or service providers to make sufficient allowance for their wish (in human rights language) to manifest their religion. Examples include Muslim warehousemen refusing to handle alcohol or pork products, Hindus similarly with beef, people of various religions wishing to wear religious clothing or symbols, Jews wanting to leave work early on Fridays to observe the Sabbath, and so on.

In employment, occupation and training, discrimination on the basis of religion or belief should no more be acceptable than discrimination based on race, sex or any other protected characteristic. This is of course already EU law in the form of the framework directive on equal treatment in employment and occupation (2000/78/EC), which uses a wide definition of discrimination, including not only indirect discrimination but also harassment based on religion or belief and victimisation for making complaints of discrimination.

The Directive allows for exceptions in relation to all protected characteristics if these constitute a “genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate”, a provision that allows any employer to limit a particular job to people of a specified religion (or having another protected characteristic) if it is essential to the work - for example, a theatre company that aims to showcase the acting skills of people with disabilities can limit its employment of actors to such people. In the field of religion or belief, a secular employer of a chaplain for a particular religious group would be covered.

It allows for further exceptions in organisations with an ethos based on religion or belief where “a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos”. The directive specifies, however, that this exception “should not justify discrimination on another ground”. This allows, for example, Christian charities to restrict key posts to Christians. However, this exception is not infrequently abused. Some EU member states have incorrectly transposed the directive into national law, among them the United Kingdom. Our regulations permit religious organisations to discriminate on grounds of sexuality despite the plain stipulation in the directive against “discrimination on another ground”³³.

More widely, religious requirements for jobs are often imposed where they are far from

³³ This matter was the subject of a complaint of breach of the Directive on which the UK government has, so far as I can tell, not yet responded to the EU Commission’s reasoned opinion of November 2009 - see http://europa.eu/rapid/press-release_IP-09-1778_en.htm

genuine, legitimate, justified and occupational - each of which words carries significant legal import. There is no occupational requirement for a telephonist, a clerk or a cleaner to share the religion or belief of an organisation - it has nothing to do with their occupation.

The general principle of deploring any discrimination that is irrelevant to performance of a job must be respected, and in almost every case religion or belief is irrelevant. But the situation is complex, and the difficulties derive from the need to make decisions where there is potential conflict between the rights of different people including not only:

- religious employees

but also:

- other employees
- clients, service users etc, and
- employers and service managers.

With the prospect of potentially clashing claims, in most cases resort to the law or even to legal arguments will not be the best way of finding practical solutions. There is a need instead for flexibility and goodwill - but it should not be one-way. There is certainly scope for alternative methods of dispute resolution, but care is needed that these methods do not result in abuse of the rights of others in the face of the dominant position or voice of one religion or belief.

The human right to manifest one's religion or belief save in narrowly prescribed circumstances points to the desirability of workplaces making compromises - as it might be put, offering "reasonable accommodation" - as a practical and pragmatic way of resolving problems as they occur. Such accommodation may amount to (potentially unlawful) positive discrimination but sometimes it may be justified. It is already legally required, of course, in respect of disability, and it is appropriate that it casts religion in some light as a disability that requires accommodation: their religion disables some people from performing as others do in employment - or elsewhere. Other "streams" do not require such accommodation or do so only minimally (e.g., in requiring separate toilet or changing provision for men and women).

Accommodation incurs some costs, and it is not just the employer whose costs are relevant – but neither is it just the religious employee's. The impact of accommodating religious demands on such third parties as other employees, customers, and users of services needs to be taken into account. Reasonable accommodation for the believer may ride roughshod over other people's equality or human rights.

Moreover, reasonable accommodation, sensible as it may be as a practical approach, is not an acceptable legal principle, for the reasons given below, and employers should be aware in broad terms of the legal background, cast as it is in terms of indirect discrimination, and should not depart from it without explicitly acknowledging and pointing out to those involved that whatever agreed accommodation is applied may not stand up if challenged in court.

A key problem with "reasonable accommodation" as a legal principle lies in defining what is reasonable. As the report *Clearing the Ground* from Christians in Parliament observed:

most of the accommodation required in the [case of disability] is functional, meaning that buildings need to be adapted, or work practices changed. If reasonable accommodation was used in relation to religion, the meaning of such accommodation would be harder to assess because it is likely that the impact may be more subjective and difficult to quantify.³⁴

Without a clear definition the employer would be defenceless against unpredictable personal demands from an intransigent employee. This is unlike indirect discrimination, which looks objectively at whether a practice bears more heavily on a particular religious group than on the generality of employees. By contrast, reasonable accommodation is essentially a process of compromise, of splitting the difference. There are circumstances where this may in practice be sensible, but it is an unprincipled process: the more excessive the demands made, the more the concessions needed to reach accommodation.

In the face of some demands, it is proper to say “no”. Religion should not necessarily be a free ride. Priests accept some limitations on their freedom as result of their occupation – why should devout believers not do the same? Conscientious objectors in wartime do not get off scot-free: they have to do alternative war work or else go to jail. And in any case why should we indulge religion-based requests for special treatment above others? If I need to leave work early on Friday afternoons because my childminder has to leave at four o’clock every Friday, why should my Jewish colleague have a legal right to time off to observe the Sabbath but I no right to time off to look after my child? If I have a secular belief that alcohol is baneful, why should my conscience be ignored but a colleague whose shunning of alcohol is based on religion be indulged?

Some specific religious complaints

Against this background I make some remarks below on some of the types of complaint commonly heard.

Time off work for religion or belief reasons: In theory there can be no objection to an employer giving Muslim or other staff time off to say obligatory prayers, subject to the interests of the other parties involved. For example, if some staff are regularly given time off for prayers, they should make up the time or simply not be paid for prayer time: other staff should not be expected to cover for them or work longer hours. The same arrangements are often made for staff taking breaks to smoke cigarettes.

Accommodation of a wish by some employees to observe holy days or religious festivals may sometimes impose a burden on others who have to cover for them. It is not acceptable to expect non-Christian staff always to have to work over Christmas (which is also considered an important time for the family by most non-Christians). Normally, religious holidays should be accommodated by use of personal holiday entitlements. (It is often observed that secular society follows what is in origin a Christian calendar, and of course it is true that the weekend covers the holy days of Christianity and Judaism but not Islam, but it should be noted that only two Christian holy days are public or bank holidays.)

³⁴ See <http://www.eauk.org/current-affairs/publications/upload/Clearing-the-ground.pdf>

Provision of facilities for religious observance: Similarly, while it may sometimes be sensible that employers should provide facilities for prayers, they should take care that if staff recreation or rest rooms are used, they are not monopolised by members of a religious group, and should be aware that the display of religious objects may be offensive to people of other religions and to people with non-religious beliefs, even deterring them from using the room. Employers should also be prepared to deal with demands for screens to divide such a room between men and women.

None of these concessions should be mandated by law. At most, employees should be given a statutory right to request accommodation of their religious duties, on the model of the right to request flexible hours.

Dress codes and wearing of religious symbols: These can properly be seen as a variety of non-verbal freedom of expression. Wearing a religious symbol is akin to advocacy and a matter of personal freedom. In an open, secular society there should be no controls on what one wears or says in the street or similar public spaces (always excepting justified restrictions on hate speech etc) and equally there should be no controls on wearing of religious dress or symbols. The upholding by the European Court of Human Rights of the French ban on public wearing of the burka is to be deplored. (It is worth noting that France's strongly secularist *Fédération Nationale de la Libre Pensée* was from the start vigorously opposed to the ban on public wearing of the burka³⁵).

At work, the situation is similar: those who recognise a religious duty to wear particular forms of dress - principally Jews, Muslims and Sikhs - should be accommodated so far as possible. There are strictly limited circumstances in which this may not be appropriate or proportionate, mainly involving considerations of effectiveness and efficiency and of health and safety. This appears to be the approach taken by the courts to religious dress.

A fortiori there should as a general rule be no restrictions on wearing badges or symbols such as a Christian cross - but the same must apply to non-religious symbols also, such as a CND or gay rights badge. The European Court of Human Rights decided sensibly in the cases of *Eweida* and *Chaplin*³⁶, endorsing the claim that an employer has no unconditional right to make rules on the wearing of religious symbols but finding that there were legitimate reasons why rules might sometimes be justified - in Chaplin's case those of health and safety.

An employer, I suggest, might have legitimate grounds for arguing the proportionality of a ban on wearing religious dress or symbols in three types of circumstance:

- (i) where there are considerations of safety (as in *Chaplin*) or efficiency (as in

³⁵ See <http://librepensee04.over-blog.com/article-interdiction-de-la-burqa-et-du-niqab-les-masques-tombent--43806748.html>. It is worth noting that in a recent case the Belgian Council of State ruled against "blanket" bans on religious dress in schools - see <http://strasbourgobservers.com/2014/11/04/religious-signs-in-public-schools-belgian-council-of-state-shows-judicial-bravery/>

³⁶ *Eweida and Others v. the United Kingdom* [2013] ECHR 37 - see <http://www.bailii.org/eu/cases/ECHR/2013/37.html>

*Azmi v Kirklees Borough Council*³⁷),

(ii) where a uniform is reasonably required - a requirement that will almost always be apparent before someone applies for a relevant post. Nevertheless, some adaptation of uniforms may be possible and should be welcomed - Sikh turbans and Muslim veils being cases in point; and

(iii) where - in the case of the wearing of symbols or badges - there is a risk of a role (especially an authoritative role as, for example, a public official or a representative of an employer) being appropriated to make a private statement, which might be about religion or belief or perhaps about politics.

As to this third case, it is reasonable that employees appearing in public and in some sense representing their employer should not be allowed to take advantage of their position to advance a religion or belief. Employers are not required to impose restrictions but it should be legitimate for them to do so if they wish: for example, banning wearing religious symbols or political badges or forbidding religious speech while in one's representative role.³⁸

There is the added risk that members of the public or fellow employees may experience the symbols or speech as religious harassment or discrimination. Suppose, for example, that there is a local state of tension between the followers of two religions who make up a significant proportion of the employees or the local population – maybe importing the strife in some foreign clash point. Wearing religious symbols might then be seen as a provocative act that threatened the peace and efficiency of the workplace or its reputation among clients and the public.

That said, a tolerant attitude is to be encouraged so long as individuals do not abuse their positions, and any resulting ban must be equally applied to all. Once again, however, there appears to be no need for any legislative interference with the flexibility any sensible employer will deploy to find sensible solutions to problems that present themselves.

Conscientious objection: While accommodating conscientious objection is *prima facie* desirable, it is gradually being realised that this is a far from simple matter. The European Convention on Human Rights protects “freedom of thought, conscience and religion” in Article 9(1) but manifestation of the dictates of religion falls under Article 9(2) which is subject to limitations “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”. The OSCE's Guidelines for Review of Legislation pertaining to Religion or Belief³⁹ state (my italics) that:

It is important . . . that specific statutory exemptions be drafted and applied in a way that is fair to those with conscientious objections *but without unduly*

³⁷ *Azmi v Kirklees Metropolitan Borough Council* [2007] UKEAT 0009_07_3003 - see http://www.bailii.org/uk/cases/UKEAT/2007/0009_07_3003.html

³⁸ With public officials representing public authorities or institutions the case for controls is stronger: as representatives of what should be a secular state they should not be allowed to infringe its neutrality.

³⁹ See <http://www.osce.org/odihr/13993>

burdening those who do not have such objections.

Most commentators focus exclusively on the individual conscience without regard to the consequences. The assumption is that only a few individuals with unusual, normally religious, beliefs are affected, and that society can afford to accommodate them. This was the case when a right to conscientious objection was granted in the First World War⁴⁰. It clearly marked an advance in civilised values that pacifists were allowed to apply to tribunals to prove that their objections were based on genuine religious or moral principles. Later, when after hard-fought campaigns abortion was legalised it was generally seen as a logical extension - and a politically useful concession - to allow doctors and nurses not to take part if they had conscientious objections.

But in recent years claims for conscientious objection have extended to many new contexts. Examples include magistrates refusing to handle adoptions by lesbian and gay couples; nurses refusing to take part in *in vitro* fertilisation; pharmacists refusing to dispense the “morning after” contraceptive pill; doctors refusing to reveal their conscientious objection to patients wanting an abortion or to refer them elsewhere; Exclusive Brethren refusing to allow their children to use computers or the Internet in school; Muslims refusing to allow their children to take part in physical education unless in single-sex groups and unless the girls especially are swathed in modesty-protecting garments, and so on.

The claims are made implicitly or explicitly on the presumption that conscientious objection, especially if religious, should always supervene over other considerations. This presumption found favour with two of the Strasbourg judges in a strongly worded minority judgement in the case of *Ladele*⁴¹. They argued that her case was not so much one of freedom of religious belief as one of freedom of conscience which (they suggested) was protected under Article 9.1 and not covered by (because not mentioned in) Article 9.2 on manifestation of religion or belief. Lady Hale (*op.cit.*) quotes and summarises them:

“Conscience – by which is meant moral conscience – is what enjoins a person at the appropriate moment to do good and avoid evil”. As such it was different from and superior to religious doctrine: John Henry Newman had said that “conscience may come into collision with the word of a Pope and is to be followed in spite of that word”. Once a genuine and serious case of conscientious objection was established, the State was obliged to respect it both positively and negatively. . .

This is an approach that would require the State to give unbridled rights of conscientious objection to everyone with not so much unpredictable consequences but consequences of dire unpredictability for employers of their employees’ behaviour. It displays ignorance of the social context outlined above and gives unjustified supremacy to whatever irrational feelings present themselves to anyone as being based on conscience. Assertion of an absolute right to

⁴⁰ Not in fact the first legal recognition of conscientious objection: the Vaccination Act of 1898 provided a conscience clause allowing exemptions from mandatory smallpox vaccination of infants under the 1853 Compulsory Vaccination Act - see <http://www.historyofvaccines.org/content/articles/vaccination-exemptions>.

⁴¹ *Eweida and Others v United Kingdom* [2013] ECHR 37 - see <http://www.bailii.org/eu/cases/ECHR/2013/37.html>

conscientious objection in all cases might easily risk public safety, public order, health or morals, and the rights and freedoms of others.

In particular, when it is the treatment of other people - e.g., gay or black or female people - that is in question, either they must have a guarantee of equal treatment or not: their treatment should not depend on the chance of whom they come into contact with.

A further complication is that conscientious objection seems often today to be asserted not as a result of deep moral feelings but as a political act of drawing attention to claims of underprivilege or persecution. There can even seem at times to be a competition between religions in claims of persecution: in the OSCE within the last decade the appointment of a rapporteur on anti-Semitism was followed by a successful demand for a parallel appointment to report on Islamophobia and then by a similar demand, also successful, for one on the newly conceived ill of Christianophobia. The idea of a single rapporteur to cover hatred and discrimination based on any religion or belief was apparently not entertained.

This highly political context is at odds with the implicit assumptions of most discussions about conscientious objection. The claims articulated by the European Centre for Law and Justice⁴² (see above) in the context of a recent debate in the Parliamentary Assembly of the Council of Europe are that conscientious objection applies not just to individuals but also to institutions (for example, hospitals run with public funding by the Roman Catholic church), to indirect as well as direct participation in the objectionable action, and even when referral to another provider is impossible; it includes complete immunity from liability and from action for discrimination; and it cannot be balanced with any rights patients have to treatment.⁴³ Such concessions to a minority religious view would be totally deplorable.

There is in fact a need for rules about when conscientious objection is admissible and when not. This was the main finding of the paper by Christine McCafferty's 2010 report to the

⁴² "Memorandum on the PACE Report, Doc. 12347, 20 July 2010, . . ." Grégor Puppincck and Kris J. Wenberg, (European Centre for Law and Justice, Strasbourg, September 2010) - see http://eclj.org/pdf/ECLJ_MEMO_COUNCIL_OF_EUROPE_CONSCIENTIOUS_OBJECTION_McCafferty_EN_Puppincck.pdf

⁴³ The result the ECLJ and its allies appear to hope for is that, whether or not such treatments are lawful, they will in practice become unavailable. There are two routes to this end: by one, hospitals are increasingly taken over by religious institutions that impose total bans on such treatments, even by staff willing to provide them. This happened in the Belgian city of Mechelen where all the hospitals came under the control of Roman Catholic bodies that banned all abortions. In this case the town authorities were so incensed that they opened their own abortion clinic - a recourse that will rarely be possible. (Source: address by the Mayor of Mechelen to the European Parliament Platform for Secularism in Politics, 17 March 2010 - see <http://humanistfederation.eu/ckfinder/userfiles/files/our-work/EHF%20and%20EPPSP%20meeting%202005-2012.pdf>). (What if Jehovah's Witnesses ran a hospital under an NHS contract but banned blood transfusions for everyone?) By the other, enough individuals concerned, even remotely, will be pressurised into exercising their individual rights to conscientious objection to make provision of treatments impossible. Thus, by 2007 in Italy nearly 70% of gynaecologists and over 50% of anaesthetists refused to perform or assist with abortions - proportions that had risen sharply in the previous four years in a process that if continued (I have no later information) would soon have ended with a few doctors finding their lives intolerably dominated by providing abortions and therefore themselves pretending conscientious objection and opting out. Thus a lawful service ceases to be available by means of essentially dishonest use of the right of conscientious objection.

Parliamentary Assembly of the Council of Europe⁴⁴ that gave rise to the objections from the ECLJ cited above. A paper of my own explores the terms in which these rules might be cast.⁴⁵

Freedom of expression: This is an area where context is all-important. Preachers in the street or on underground trains, albeit they breach normal standards of behaviour, must have nothing to fear from the law but can expect some reaction, even if it is only to be studiously ignored. But in an everyday work setting ostentatious “statement making” by ardent religious employees may well not be acceptable if it is an annoyance to other employees or to third parties such as clients. It might at the extreme amount to harassment on grounds of religion or belief and hence fall within the legal definition of discrimination - but it would far more sensibly be made the subject of a workplace disciplinary rule: there should be ample scope for commonsense arrangements being made by an employer if problems arise.

There are two relevant distinctions to be made: whether it is possible to walk away (easy in the street, probably not possible at work) and whether the speaker is in a position of authority (for example, a superior at work or a doctor or teacher) so that it is metaphorically difficult to walk away.

These distinctions are relevant also in the case of offering of an inappropriate service - e.g. praying or offering to pray for someone, which should be seen as inadmissible from any person in a position of authority such as a doctor⁴⁶ with a patient or any public official with a member of the public. Apparent consent in such circumstances may be no more than deference or obedience.

Restrictions on, or refusal of, a service: These include the case of the pharmacist who refuses to dispense emergency contraception and the doctor who refuses a patient an abortion. The principle here, I suggest, should be that the exercise of conscience by the pharmacist, doctor or anyone in an analogous situation should leave the other party - the person refused the service - no worse off or at worst suffering only a minor inconvenience. If another pharmacist is available to fulfil the prescription, or another pharmacy is easily accessible by the person concerned, or if the doctor is willing to refer the patient to another doctor who is willing to perform the abortion, then the pharmacist’s or the doctor’s conscience might be indulged. But some doctors and pharmacists refuse even to acknowledge the real reason for their refusal, in their own eyes presumably “doing good by stealth” by forcing their own code on the person seeking their help. Yet in these cases (in this country at least) they are being paid from public funds to provide a service. They should be required to refer their clients to a willing and available service provider, and in the last analysis they should be required to provide the service themselves.

Public contracts to deliver services: The same considerations apply in the case of procurement

⁴⁴ “Women’s access to lawful medical care: the problem of unregulated use of conscientious objection” - <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12506&Language=EN>

⁴⁵ “The Limits to Legal Accommodation of Conscientious Objection” - see <http://david-pollock.org.uk/religion/the-limits-to-legal-accommodation-of-conscientious-objection/>

⁴⁶ See for example the recent case before the Medical Practitioners Tribunal of a psychiatrist at a Cambridge hospital - <http://www.cambridge-news.co.uk/Fulbourn-Hospital-locum-given-warning-imposing/story-24108034-detail/story.html>

or funding issues: organisations seeking public contracts or funding for the delivery of services should not expect to be allowed to apply religious tests to the work they contract to undertake. The purpose of such contracts is to deliver a service to the public, not to everyone except some section of the public excluded on religious grounds by the contractor. In this context it is highly regrettable that the courts' unwarrantedly narrow definition of "public authority" in section 6 of the Human Rights Act has been allowed to stand so long.⁴⁷

Exemptions from equality law: Similarly no concession should be made to those who claim that businesses should be able to claim exemptions from the Equality Acts on grounds of religion or conscience. If the demands of hotel keepers who wish to be allowed to ban gay couples from their premises were conceded, why should not other hotels or boarding houses ban Jews, blacks or the Irish as they did until the law stepped in a few decades ago? From there it is a short step to other businesses putting up signs telling gays, Muslims or blacks they are unwelcome. As Lady Justice Rafferty said when the case of *Bull v Hall*⁴⁸ reached the Court of Appeal: "I do not consider that the defendants face any difficulty in manifesting their religious beliefs, they are merely prohibited from doing so in the commercial context they have chosen". (It is relevant to note that the law already allows an exception for letting part of one's own home to lodgers who share some facilities.)

Hostile environments: Beyond specific acts or practices that can be seen as indirect discrimination, there is a tendency for devout believers to complain of a general atmosphere of intolerance or scepticism or mild mockery of religion. If it is intense and severe, it may in the right context be serious enough to amount to legal discrimination based on harassment. If it is not so serious, then the law should disregard it. It may well be a matter for codes of practice or rules laid down by an employer, but it should not be a matter for the law. Perceptions of such hostility are generally one-sided, and strong believers are not among those most noted for tolerance of those with whom they disagree. One can feel a measure of sympathy but it is difficult for the non-religious who have to live with religion's intrusive presence on public occasions and its extensive privileges in the law not to feel a measure of *schadenfreude* and to respond in the words of Lord (Rowan) Williams quoted above: "for goodness sake, grow up".

Discrimination against the Non-Religious

Indeed, it is worth noting that it is the non-religious above all who pay the price for the privileges and exemptions already given to religion. As a group they lack a clear identity and do not therefore suffer much discrimination of an overt nature - though if they campaign for secularism, they will certainly be called militant, aggressive and intolerant! Yet they are the people who are not eligible for up to one in five teaching posts (especially senior posts) because the employer is a religious organisation. They are the gay couple who risk being turned away at a hotel or registry office, or who are split up in a retirement home contracted out to a religious charity because it disapproves of their "inherently disordered condition". They are

⁴⁷ The only proviso to this general position is where a service is designed to be delivered to a particular group who are "hard to reach" or who are unable or unwilling to access the general services - but this must be genuinely exceptional and care is needed not to promote community division and the balkanisation of public services.

⁴⁸ *Bull & Bull v Hall & Preddy* [2012] EWCA Civ 83 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2012/83.html>

the parents who find the only school available to them is a religious one, or who cannot get their children into the local school because it is religious. They are the children who are required to attend acts of collective worship at school even though they have no religion. They are the servicemen who are told there is no chaplaincy service for the non-religious but that the Church of England padre will look after them. They are the sick patients who find their nurse praying over and for them. They are the painfully and terminally ill who cannot end their lives because the churches - in England specifically the bishops sitting *ex officio* in the House of Lords - forbid it. More generally, they are the people who resent the assumption - still all too common in religious and political commentary - that religion is identical with virtue and that there is therefore something not respectable about opposing any demand made by the churches or about criticising anything labelled "religion".

And they are the people - a large and growing proportion of the population, probably a majority already, who generally speaking do not complain, who are ready to give and take, to be tolerant, but who increasingly do indeed regard religion as out of date and somewhat odd. Their sympathy for further concessions to religious consciences is limited.

Among the detailed questions raised by the consultation paper is indeed one that asks whether equal respect is shown for religious and non-religious beliefs. Although the law makes no differentiation, sadly society still does. Government generally makes efforts - not always successful - to use inclusive language but others frequently imply by their words (such as "multi-faith" or "interfaith") that everyone has a religion; the word "godless" is still used as a synonym for "wicked", while more specifically :

- national events are usually marked by Christian religious services. This may sometimes be dictated by the constitution (as, for example, with a coronation) but in other cases it is increasingly inappropriate for the nation to mark (say) a disaster with a service in an Anglican cathedral. Sometimes representatives of other religions are invited to take a limited and somewhat uncomfortable part in such services, and on one occasion (in 2005, to commemorate those who died in the tsunami) the British Humanist Association was similarly invited. However, when later that year a prominent humanist died in the 7/7 bombings no such invitation was received. The key such event is the annual Remembrance Day ceremony at the Cenotaph. This was in origin a completely secular event, but the Church of England quickly ensured it took a central place⁴⁹ and now many other religions are routinely represented. However, requests from the British Humanist Association and from Defence Humanists to take part have been repeatedly rejected despite the fact that members of the latter body in the armed services outnumber by a factor of eight those from all minority religions together;
- religious chaplains are provided and usually paid out of public funds in the armed services, prisons and hospitals - and even in schools (see below). Too often the response to the non-religious is that the Anglican

⁴⁹ Norman Bonney: *The Cenotaph: A consensual and contested monument of remembrance* - see <http://www.secularism.org.uk/uploads/cenotaph-a-consensual-and-contested-monument-of-remembrance.pdf>

chaplain can provide a service if required;

- all schools continue to be required by law to conduct daily collective worship - even those that have no religious character have to organise worship “wholly or mainly of a broadly Christian character”, while non-religious parents in many areas continue to be served only by religious schools, especially at the sensitive primary level (on this see further below);
- non-religious teachers find themselves ineligible for senior posts in one-third of schools because these have a religious character - and indeed for any posts at all in those voluntary aided schools and academies that make use of the exemptions in the School Standards and Framework Act 1998 that allow religious tests for all posts - even non-teaching posts;
- the BBC refuses to provide any programming about humanism while providing on radio 4 alone over three hours a week of broadcasting from Christians about Christianity addressed to Christians. In particular it insists on keeping *Thought for the Day* as an exclusively religious slot, mainly Christian but open to speakers from minority religious groups who in total represent no more than 8.4 percent of the population. The clear implication, both false and insulting, is that the ancient and flourishing tradition of non-religious philosophy, morality and literature can provide no valuable thoughts at all.

These examples do not include the twenty-six *ex officio* seats in Parliament for bishops nor the continuing enforcement of laws based on Christian doctrine such as the ban on assisted suicide inherited from more religious times, let alone the intractable constitutional issues of establishment of the Church of England.

/... Education

Education

The European Humanist Federation has an admirable general policy on education:

General principles

- *Education should fit the individual for life as a full participant in society, and teach self-respect and respect for the dignity of others.*
- *Education should promote intellectual honesty. It should foster a love of learning and an appreciation of the supremacy of reason and the scientific method in the search.*
- *Education for citizenship should be based on a framework of human rights and responsibilities and should impart the knowledge, cultivate the understanding, and foster the critical skills essential for individual engagement with society and politics.*
- *It should fit children and young people for life in a democratic society underpinned by empathy, human rights and the rule of law.*

Lifestance education

- *Education should ensure that children are informed about a range of religious and nonreligious lifestances and have autonomy in their choice of their own lifestance.*
- *The school should bring an academic discipline to bear in presenting the beliefs, practices and values of different lifestances as well as assisting pupils to develop their own responses to them.*
- *Publicly funded schools should not promote one particular religious or non-religious lifestance as the only correct one but teach about the various lifestances (including Humanism) factually and in an objective way. Where parents or young people are offered an option of education into a particular lifestance, Humanism must be one option alongside the religions.*
- *Education directed at fostering inter-cultural understanding that includes religious viewpoints should also include Humanism as a non-religious lifestance and include the perspectives and culture of non-religious people.*

My comments on education are consistent with this policy, save that I reject the legitimacy of an option within the publicly funded school system of “education into a particular lifestance”.

Religion and belief impinge on education in three ways, which I shall address in turn:

- the funding of the churches or other religious sponsors to provide roughly one-third of state schools;
- religious education in all schools;
- daily collective worship - required by law even in community schools and others without a religious designation.

Religious schools

There is a strong tendency to see religious schools through rose-tinted spectacles. This is quite unjustified, both in terms of history and present effect. In the nineteenth century and to a more limited degree in the first half of the twentieth education was held back in England and Wales by sectarian battles between the Anglican church and the Nonconformists, the former in particular being intransigently opposed to the non-denominational religious instruction favoured by the Free Churches and to any conscience clause for non-Anglican parents of children at Church of England schools, the only ones available in many areas. Any move by Parliament to improve the school system or indeed to set up schools not controlled by the churches was subject to hostile scrutiny in case it gave an advantage to their sectarian rivals. This is the verdict given by two experts, themselves broadly sympathetic to religious schools: Marjorie Cruickshank in her 1964 history of church schools said: "Attempts to secure State intervention were baulked for many years by religious antagonisms"⁵⁰ while Brian Gates has written "Arguably, it was the tussling between [the Anglican and Nonconformist school societies] that delayed the introduction of a fully comprehensive school system funded by public taxation."⁵¹

The 1944 Act, carefully negotiated by Rab Butler, brought a period of peace but at the price of public funding of religious schools that has now in effect reached 100% of their costs. Sadly, competition has returned in a new, 21st century form as many non-Christian religions as well as the Roman Catholic Church, Church of England and various evangelical and fundamentalist groups seek to open or take over schools so as to propagate their own beliefs at public expense.

The Church of England in particular is explicit about this: the Chadwick report of 2012 spoke of its schools "standing at the centre of the Church's mission to the nation" and providing "a life-enhancing encounter with the Christian faith and the person of Jesus Christ"⁵² and it sees its schools as a key way to reach not only the pupils but also their parents. Indeed it boasts that its schools are not faith schools but church schools, by which it means that most of its schools admit all-comers rather than being aimed only at those of the relevant faith like most other religious schools in the system. Back in 2001 the Dearing report⁵³ adopted the mantra that the role of the Church's schools was to "Nourish those of the faith; Encourage those of other faiths; Challenge those who have no faith" - an intensely objectionable aim for those non-faith parents - and children - with their own, settled non-religious beliefs, such as Humanism.

It is therefore open to stronger criticism for evangelising than those religions whose schools are principally for the children of their own members: it is seeking - to a large extent at public

⁵⁰ Marjorie Cruickshank: *Church and State in English Education - 1870 to the Present Day* (London: Macmillan, 1964)

⁵¹ Brian Gates in *Faith Schools - Consensus or Conflict?* ed. Gardner, Cairns, Lawton (London, RoutledgeFalmer, 2005)

⁵² Chadwick *et al*: *The Church School of the Future Review* (Church of England Archbishops' Council, March 2012), paras. 1.6-1.8 - see <https://www.churchofengland.org/media/1418393/the%20church%20school%20of%20the%20future%20review%20-%20march%202012%5B1%5D.pdf>

⁵³ *The Way Ahead - Church of England schools in the new millennium* (London: Church House Publishing, 2001) - see <http://www.churchofengland.org/media/1118777/way%20ahead%20-%20whole.pdf>

expense - to preach to and if possible convert non-Christians - and indeed, non-Anglican Christians - as the best way of filling its pews with (for example) parents anxious to qualify their children for places at oversubscribed schools. Similarly it is increasingly employing full-time chaplains in its schools, almost all of whom are directly funded from the school's budget, that is from public funds.⁵⁴

It is almost equally objectionable that the power of the state should be lent to the families and faiths of children already being brought up in a religion, denying them the wider perspective of an educational approach to religion and belief. The objection to such a wider perspective is demonstrated by the outraged protests from Christian, Jewish and Muslim religious schools at the recently revised Independent School Standards for requiring that they “actively promote . . . mutual respect and tolerance of those with different faiths and beliefs”.⁵⁵

None of this is to question the right of parents to bring up their children in their own religion or belief, as guaranteed by Article 2 of the first protocol to the European Convention on Human Rights⁵⁶, but that right does not entail any requirement on the state to help them do so. Parents should, in other words, be entitled, with the assistance if they wish of the churches or other religious institutions, to exercise their right to bring up their children within a particular religious or other tradition (the ECHR protocol is, if nothing else, a valuable defence against an overpowerful state) but they should *not* have the assistance of the public education system in doing it for them.⁵⁷ (It is notable that the widely condemned “extreme” religious character

⁵⁴ A recent report from the Church records that 58 schools of 72 surveyed had a designated chaplain (26 were full-time, 23 part-time, 8 volunteers) or else a chaplaincy team - see *The Public Face of God - Chaplaincy in Anglican Secondary Schools and Academies in England and Wales* (Archbishops' Council Education Division, 2014) - <https://www.churchofengland.org/media/1989177/nschaplaincyreport.pdf>

⁵⁵ For the regulations, see http://www.legislation.gov.uk/ukxi/2014/2374/pdfs/ukxi_20142374_en.pdf. For protests see *The Independent*, 25 October 2014 (“Christian school claims it faces closure for failing to invite imams to assembly in line with new government policy promoting ‘British values’”) and the Jewish Chronicle, 23 October 2014 (“Faith schools’ battle over British values”).

⁵⁶ This says in part: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” Amnesty International UK, in *Amnesty* (September – October 2000), stated: “This article guarantees people the right to access to existing educational institutions; it does not require the government to establish or fund a particular type of education. The requirement to respect parents’ convictions is intended to prevent indoctrination by the state. However schools can teach about religion and philosophy if they do so in an objective, critical, and pluralistic manner.”

⁵⁷ That said, the state has a duty to ensure that even private or home schooling reaches a minimum standard of efficiency in equipping young people to live independently in society - especially if they later leave the closed communities that often insist on running such schools. This duty is not always fulfilled, as witness the report of a recent meeting of the All Party Parliamentary Humanist Group - see <https://humanism.org.uk/2014/10/23/parliamentary-humanist-group-hears-trojan-horse-whistleblowers/> - where a former pupil at an unregistered Charedi school in Stamford Hill in Hackney outlined how he grew up speaking almost no English, receiving just thirty minutes of a ‘normal’ curriculum each day as the rest of the day was spent studying religious texts. He described the difficulty people had in leaving the community as they are trapped by their lack of education or even ability to speak English and feel unable to survive in the wider world. He said there were large numbers of Charedi (Hasidic) religious schools in Hackney that are not registered with the Department for Education despite the legal requirement to do so. Their pupils are denied the basic quality of education, health and safety, and protection against corporal punishment to which all pupils in all English schools are entitled. He said the Charedi schools started failing Ofsted inspections around 2007, but then Ofsted began hiring Charedi

imposed on the so-called “Trojan horse” schools in Birmingham would have been completely unexceptional if the schools had been faith schools.) Rather, the public education system should not promote any religion or belief but should adopt an educational approach so that children are not left in ignorance of the variety of beliefs they will encounter as adults in society and of the fact that their own beliefs are not shared by others.

There is besides a legal principle that the law cannot rule on the validity of religious claims⁵⁸, meaning that government is in difficulties if it wishes to discriminate between religions for which it is willing to support schools and those it rejects. Once, then, it pays for Christian schools it is more or less obliged to pay for those of any other religion that has the capacity to set them up and run them. The Government is already paying for the Maharishi School of the Age of Enlightenment (transcendental meditation) and for schools run by the Steiner movement (which endorses homeopathy and opposes inoculation). They would have great difficulty in law defending a decision not to support schools run by, for example, the Church of Scientology or the Unification Church (“Moonies”).

Yet it has been the policy of all recent governments to expand the number of schools in the state system run by religious bodies whose fundamental rationale can only be to ensure that children join or remain within their religion. That rationale runs contrary to the human-rights-based principles - principles that should hold sway in an open secular and democratic society - of respecting the autonomy of children in the education system, giving them the knowledge and skills to handle questions of religion and belief, and allowing them to make up their own minds. Government policy instead appears to be based on using its power over children’s education to lend support to one or another religion - or many, giving each, in some perversion of democracy, a “fair share” of schools where they can try their hands at bringing children into their belief. But for the state to promote any particular religion or belief in schools is to infringe the autonomy of children and young people, making it difficult for them to come to their own conclusions on these “ultimate questions”, which is almost certainly contrary to Article 14 of the Convention on the Rights of the Child.⁵⁹

This is not only hostile to the whole concept of a free, liberal and secular society, it is also contrary to the best interests of the child and of society. The proper aim of a public education system, paid for by us all, is to equip children with the knowledge and skills they need to

inspectors and the schools’ results improved. This problem has existed for years, with Ofsted, Hackney Council and the DfE passing the buck between them for fear of accusations of anti-Semitism. The Department for Education’s register of independent schools shows over 300 boys in Jewish independent schools in Hackney at ages from 3 to 10 but only 24, 13 and either one or two at ages 13 and 14 and 15; girls at those ages total 206, 211 and 177. The boys decidedly do not move to maintained schools!

⁵⁸ “In principle, the right to freedom of religion as understood in the Convention rules out any appreciation by the state of the legitimacy of religious beliefs or of the manner in which these are expressed” – *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, 335, para 117. - see <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59985>

⁵⁹ Article 14 says: “1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

function as citizens in an open society, to relate harmoniously and productively with their fellow citizens and to lead lives that they find fulfilling. To this end it needs to foster the autonomy of the individual child, on the basis that the ability to think independently for oneself is an essential condition for adult life as a responsible citizen.

These arguments of principle against state funding of religious schools are backed up by the fact that such schools are

- religiously divisive by their very natures
- socially divisive through admissions policies open to exploitation by the better off
- ethnically divisive by the demographics of religious belief
- no more successful academically than is completely explicable by their admissions policies; and
- not supported by public opinion.⁶⁰

I leave it to others to provide you with the ample research evidence supporting these claims.

Religious education

In 1944 part of the deal that Rab Butler cut with the churches was that religious instruction and daily collective worship (*see below*) should be mandatory in all schools, including the new non-religious county schools (now community schools). At that time society was far more uniformly Christian, but the arrangements, controversial from the start, were increasingly criticised in the 1970s and 1980s when the British Humanist Association led the move towards religious education that was objective, fair and balanced.⁶¹ Each of those three adjectives carries its own weight: teaching should be *objective* in the sense that it is educational rather than persuasive, *fair* in the sense that there is no bias in the selection of information about each belief; and *balanced* in the sense that the course as a whole needs to give a balanced and proportionate picture of the whole field of religion and belief.

This approach has become the majority view, endorsed by leaders in the world of religious education including the Religious Education Council⁶², and broadly supported by documents including the 2004 non-statutory national framework for religious education published by the Department for Education and Skills.⁶³ Something on these lines is in fact emerging as a European consensus, endorsed by the European Court of Human Rights in leading cases such

⁶⁰ A poll in June 2013 of over 4,000 people conducted for the Westminster Faith Debates by YouGov found that only one in three (32%) approved of state funding for faith schools; 45% disapproved, and the rest did not know - see http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/4vs1srt1h1/YG-Archive-University-of-Lancaster-Faith-Matters-Debate-full-results-180613-website.pdf

⁶¹ See *Objective, Fair and Balanced - a new law for religion in education* (British Humanist Association, 1975)

⁶² Religious Education Council of England and Wales: *Review of Religious Education in England* (October 2013) - see http://resubjectreview.recouncil.org.uk/media/file/RE_Review.pdf

⁶³ See http://webarchive.nationalarchives.gov.uk/20090903160937/http://qca.org.uk/libraryAssets/media/9817_re_national_framework_04.pdf

as *Kjeldsen & others v Denmark*⁶⁴ and *Folgerø and others v Norway*⁶⁵. It is also the approach endorsed by human rights bodies such as the Council of Europe and the OSCE - see in particular:

(a) the OSCE's *Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools* (OSCE, 2007: ISBN 83-60190-48-8)¹⁷, which were prepared by a panel of experts on education and human rights, especially freedom of religion or belief;⁶⁶

(b) the Council of Europe publication *Religious diversity and intercultural education: a reference book for schools* (Council of Europe, 2007: ISBN 978-92-871-6223-6);⁶⁷

(c) the Council of Europe recommendation CM/Rec(2008)12 to member states on the dimension of religions and non-religious convictions within intercultural education, adopted by the Committee of Ministers on 10 December 2008;⁶⁸

(d) the Council of Europe publication *Signposts - Policy and practice for teaching about religions and non-religious world views in intercultural education* (Council of Europe, August 2014: ISBN 978-92-871-7914-2)⁶⁹, in which a full chapter is devoted to "Non-religious convictions and world views".

These documents all call for an educational rather than a confessional approach and for treating non-religious beliefs equally with religions. This is indeed necessary for the approach to be educational, since the full range of lifestyles about which the subject has to deal must, if it is not to be partial and biased, encompass non-religious as well as religious beliefs.

It is deplorable, therefore, that the Government in its current consultation on the GCSE and A-level syllabuses for religious education pays at best lip service to the principle of equal treatment of religious and non-religious beliefs by limiting study to two religions from a list of seven, omitting and marginalising non-religious beliefs.

⁶⁴ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711 where the Court held that the state "must take care that information or knowledge included in this curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions." - see <http://www.bailii.org/eu/cases/ECHR/1976/6.html>

⁶⁵ *Folgerø and Others v. Norway* - 15472/02 [2007] ECHR 546, where the Court laid down that "... Article 2 of Protocol No. 1 implies . . . that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded." - see <http://www.bailii.org/eu/cases/ECHR/2011/2189.html>

⁶⁶ See <http://www.osce.org/odihr/29154>

⁶⁷ See <https://book.coe.int/eur/en/human-rights-education-intercultural-education/3691-religious-diversity-and-intercultural-education-a-reference-book-for-schools.html>

⁶⁸ See <https://wcd.coe.int/ViewDoc.jsp?id=1386911&Site=CM>

⁶⁹ See <https://book.coe.int/eur/en/human-rights-education-intercultural-education/6101-signposts-policy-and-practice-for-teaching-about-religions-and-non-religious-world-views-in-intercultural-education.html>

In fact, given factors such as

- (a) the personal unimportance of religion for most people today, despite:
- (b) the very high importance a small minority of people attach to it; and
- (c) the need to ensure cohesion in our multi-belief and multi-cultural communities, and
- (d) the problems associated with Islamist rhetoric and extremism both at home and abroad,

it is distinctly arguable that even the sort of reform to religious education envisaged in the Religious Education Council's recent review is no longer sufficient. Noone starting from scratch would propose religious education that was largely confined to sympathetic accounts of the six main world religions, broadly in their own terms, even with the addition of a similar account of Humanism. It is understandable that religious leaders should deplore the lack of "religious literacy" in today's society, and there is nothing objectionable about trying to teach children an understanding of religious concepts and language - save that the increasing irrelevance of that knowledge except for experts means that the exercise is almost certainly futile. Just so in pre-literate times it was useful knowledge that a figure with a lion must be St Mark and one with an ox St Luke, but irrelevance has rendered what was once common knowledge the preserve of specialists.

What is needed is a broader and more critical introduction to the history and current state of mankind's attempts to make sense of life and the universe, together with education in how to think about such matters and handle the concepts involved and apply them to moral problems. That this can be done even at an early age and that it also leads to better performance by children in other subjects has been demonstrated by the success of Philosophy for Children⁷⁰. Such a course would naturally include religion but would not treat it as a specialist subject without context or history but place it in the framework of world history, the history of ideas and the development of modern society and contemporary thought on philosophical and moral questions. Nor would it treat religions with kid gloves but would include, along with their beliefs and teachings, at least some reference to their origin and evolution, the location of power within them and their impact in different parts of the world.

Collective worship

Another regrettable innovation in the 1944 Act, again doubtless necessary at the time in order to win the cooperation of the churches, was the legal requirement that every school day should start with an act of non-denominational collective worship, assumed in those days necessarily to be Christian. This law was being widely ignored already in 1988 when it was renewed and reinforced for non-religious ("county") schools by section 7 of the Education Reform Act - which enacted the formula that worship should be "wholly or mainly of a broadly Christian character". More than one attempt has been made to reform the law in favour of school assemblies of an inspirational kind that are not rooted in a religion but may draw on religious material. All have failed.

⁷⁰ See for example <http://www.sapere.org.uk/Default.aspx?tabid=81>

Even so the legal requirement is again being ignored by some schools because its pretence that the school is a worshipping community is patently false (surveys show that two out of three teenagers have no religion⁷¹) but the law remains a blatant abuse of the state school system, undermining the educational impartiality of the school and its senior staff. It is saved from being a clear abuse of the European Convention on Human Rights only by the provision that parents may withdraw their children from it (and that pupils may themselves withdraw when they reach the sixth form) - a meaningless concession since the only parents willing to risk the damaging effect on their children of being so singled out from their classmates are those with a *dirigiste* religion of their own.

/... Conclusion

⁷¹ For example, see *Young People in Britain: The Attitudes and Experiences of 12 to 19 Year Olds* (DfES Research Report RR564, National Centre for Social Research 2004 - ISBN 1 84478 291 3) which showed that in response to the question "Do you regard yourself as belonging to any particular religion?" 65% said None and only 27% Christian, with small percentages for other religions.

Conclusion

Religion for some is inspirational and provides the foundation and purpose of their lives. It may prompt them to lives of unselfish service and provide them with a community beyond their families that supports them and can be an agent in society that multiplies the effect of their individual efforts. This is admirable and (with minor quibbles) to be wholeheartedly welcomed.

But religion can also provide negative experiences. The misery that beliefs sometimes bring on those who hold them is a matter for them alone, along with those who love them. But the effects of religion on those who do not believe or who have other beliefs are potentially a matter for society as a whole. Religion and non-religious beliefs are unique among the strands recognised in the law on equality and non-discrimination for their controversial intellectual content and in demanding behaviour that can adversely affect others. It is here in the public manifestation of belief that society can legitimately interfere to protect the interests of others or of society as a whole.

Such interference must be the minimum necessary to produce an appropriate balance between freedom of religion or belief and the rights and legitimate expectations of others. In a society that is increasingly indifferent to religion but where a minority remains fervent, where followers of many faiths co-exist but about a half of the population say they have no religion, human rights and equality and non-discrimination are the guiding principles in the difficult decisions to be made. They point towards secularism - official neutrality in all matters related to religion or belief. This involves no challenge to the freedom to believe what one will but it excludes legal privilege or favourable treatment for any religion or belief.

However, neutrality - equal treatment for all religions and beliefs - is sustainable in practice only by a policy of minimising the exemptions and privileges accorded to religion or belief, since the State has no lawful way to discriminate against undesirable or potentially damaging belief groups and a more generous policy will not only risk serious unpopularity but could also prove socially divisive and subversive of valued conventions.

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