

# **CHURCH AND STATE**

**Some Reflections on  
Church Establishment in England**

**R.M. Morris (editor)**

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Department of Political Science  
UCL (University College London)  
29-30 Tavistock Square  
London WC1H 9QU  
Tel: 020 7679 4977 Fax: 020 7679 4978  
Email: [constitution@ucl.ac.uk](mailto:constitution@ucl.ac.uk)  
Web: [www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/)  
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## Foreword

Preparatory to a seminar taking place in July 2006, the Constitution Unit published in April 2006 *Church and State: a mapping exercise* – known as the *Mapping* document or paper. This work described how the state and the Church of England were connected and how the relationship worked. It also explained the history of establishment throughout the British Isles, and looked at the very differing church/state relationships throughout the European Union, with particular reference to Scandinavia.

For the seminar itself, a number of participants were invited to submit contributions giving their views on the situation described in the *Mapping* document. It is these that are now published in this volume together with a paper prepared by the Church of England after the seminar. The Unit is very grateful to the authors for making papers available in this way. It is also grateful to the Joseph Rowntree Charitable Trust for a grant which funded the seminar held at St Katherine's, Limehouse, and which underpins the cost of this publication. The staff of St Katherine's were unfailingly helpful and efficient throughout, facts which meant that the seminar could be conducted in entirely relaxed as well as pleasant surroundings.

Because the seminar was held under Chatham House rules, no record of the proceedings may be made available, and it is partly in recognition of that fact that the Church of England paper in this collection was prepared since otherwise that voice would not be represented on this occasion. It has also to be borne in mind both that the Church of England and all the other papers were composed *before* the Prime Minister in July 2007 proposed in *The Governance of Britain* (Cm 7170) a number of changes to the way in which Crown appointments to episcopal and other clerical posts in the Church are made. At the time of writing, these proposals remain undetermined, although it seems likely that they will result in some withdrawal of government ministers from active involvement in such appointments.

Those qualifications made, this publication and its predecessor, the *Mapping* document, will jointly constitute a resource in the public domain for those interested in church establishment. In addition, in a separate exercise, the Unit plans to seek a publisher for a work which, as well as covering similar ground, goes on to review the options for the future not only of church establishment but also how the modern state should engage with what has become the pluralized condition of *religious* belief as opposed to pluralized forms of *Christian* belief, bearing in mind the growing salience also of *non-belief*.

R.M.Morris (editor)  
Honorary Senior Research Fellow  
Constitution Unit  
UCL

March 2008



## Executive Summary

The papers begin at Chapter 1 with a response to the *Mapping* document from Dr Edward Norman. He raises questions about how establishment should be viewed, the extent to which nowadays the state's moral basis is in fact a form of secularized Christianity, and how far the state understands the implications of its own policies in respect of multiculturalism.

Chapters 2-4 offer the perspectives of Christian dissenters, respectively Baptists, the United Reformed Church and Quakers. Historically, each suffered persecution in the days when the state still tried to enforce religious uniformity. Whilst ancient urgent asperities have faded as state toleration matured into a more positive acceptance of religious freedom, each retains serious, principled reservations about the state and the position of the Church of England in relation to it. In all cases, however, actively pressing for changes is not high on their agendas. On the other hand, all have thought-provoking points to make about the place of religion in modern civic life.

Whilst the *Mapping* paper spent a good deal of time at looking at church/state relations in Scotland and Scandinavia because they were analogous to, if in detail different from, the system in England, it omitted to consider the arrangements in southern Europe's most catholic societies. The balance is redressed by Javier Oliva's review at Chapter 5 of the situation in Spain and Italy. There, although one church is notably dominant, the legal forms addressing its position have evolved distinct patterns.

The two papers from non-religious organizations – the British Humanist Association and the National Secular Society – at Chapters 6 and 7 argue the case for a thoroughly secular as opposed to a merely more tolerant society. Whilst notably different in tone and emphasis, they argue essentially for the abolition of the legal privileges of the Church of England and for the entire separation of the state and religion.

Finally, in Chapter 8, William Fittall offers a view from the Church of England which reminds that establishment has drawbacks as well as advantages for that Church, and contends that thorough-going disestablishment would leave gaps in public life that would need addressing.





# Chapter 1

## Notes on *Church and State: A Mapping Exercise*

Dr E R Norman

The nature of an 'Establishment' of religion is broad: It exists when the State - and its subordinate institutions - sustains a relationship between law and religious opinion. This may derive originally from a customary relationship, in which case the law itself may express the nature of the link between government and religious bodies, or a single religious body, without a systematic or coherent statement of its purpose. The religious Establishment in England is rather like this. It was assumed that the relationship of Christianity and public life in medieval England presupposed an exclusive protection of the Catholic Faith; only at the time of the Reformation, when the jurisdiction of Rome was abandoned, and the State in consequence needed to re-define its religious responsibilities, was it necessary for a legislative structure to spell out the exact form of Church and State relations. Thereafter the word 'Protestant' could only mean, in legislative terms, 'the Protestant Church by law Established'. Alternatively, the link between religious opinion and government may derive from conscious constitutional construction. And in this case it may also indicate a desire by the State to withdraw from formal sponsorship of ecclesiastical institutions or from apparent endorsement of confessional bodies. Gwyn's submission to the Cecil Commission, set up in 1930, has been to some extent accepted as a guideline in *Church and State: A mapping exercise* - at least in following his test of Establishment as involving the State's recognition of 'a particular Church from other Churches', and according it to 'a greater or less degree a privileged position'.

The broader view of the nature of Establishment began to be posited, paradoxically, in an attempt to reject the type of definition Gwyn came to endorse. The First Amendment of the U.S. Federal Constitution, ratified in 1792, declared 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof'. The intention here was not to prevent legal support of the widely-accepted Christian character of the American Republic but to make it unconstitutional for one denomination to be given legal precedence over others. The due process clause of the Fourteenth Amendment applied this to the individual states, and the Supreme Court has always ruled that the establishment of religion is unlawful in them. Nineteenth-century practice made it plain that American public life expected, and achieved, legal acceptance of the recognition of Christianity in many areas of public policy - and Congress itself, indeed, begins each session with prayers. The development of secular and libertarian lobbies in the middle years of the twentieth century persuaded the Supreme Court to reinterpret the intentions of the Founding Fathers, however, so that a stricter understanding of the separation of Church and State now prevails - as do many anomalies. The point the American example makes very clearly is that 'establishment' has in practice a much wider application in modern polity than merely the legal sponsorship by the State of a given Church or Churches. If there was no other reason for this - and there are others - the rise of the collectivist state would have required it. Agencies of the state, and direct government action, now systematically involve themselves in the details of social provision and ethical definition (in medical ethics, for example) which were once the more or less exclusive preserve of the Churches. It is also true that the modern state progressively expresses its moral justification for policy in confessional terms, even though the confessional basis - the philosophical or theoretical basis of its action - is left undefined. That basis is plainly secular and largely derives from an unconscious Humanism. The modern state is as confessional as ever: it is just that the sacral values have been in practice secularised. This, too,

illustrates how a narrow definition of 'establishment' is inadequate as a description of public policy in its relation to the philosophical assumptions which lie at the basis of state authority.

As an alternative it may well be more satisfactory to define 'religious establishment' as any condition which exists when there is a connexion between law and religious opinion. Thus establishment can be taken to exist when one or more Churches are involved, or where religious ideas which are found in society or public perception (but which are not particularly associated with any single Church) are promoted by government - in educational curricula, for example. The connexion with the state does not necessarily have to be beneficial to the religious bodies involved: Mexico, under Juarez in the 1850s, had a Catholic established Church as part of the constitution which the state nevertheless persistently assailed, even dismantling and secularizing its essential institutions in an attempt to obliterate its social influence. There, indeed, the provision of establishment was consciously retained in order to give the state the legal basis to attack it. The pragmatism of English constitutional development has meant that here, during the piecemeal nineteenth-century broadening of the meaning of establishment, public policy - unlike public debate, especially as inspired by religious Dissent - eschewed theoretical questions where it could. Adjustments in the relationship of Church and State, and the consequent diminution of exclusivity, were achieved in parliamentary debates which were largely about property, incomes, and endowments. Hence the concept of 'concurrent endowment': the title in whose name the state extended its sanction, through grants of money, to Christian denominations outside the Church of England, both in England itself and in the colonial administrations.

Establishment defined as a connexion of law and religious opinion does not require any kind of financial support, however. Nor does it necessarily involve privileges. It is to be distinguished, on the other hand, from benefits which are equally available to all claimants, whether religious or not. The modern interpretation of the charity laws signals this. Churches will require the protection of law for their property, but this, too, is of universal application. *Not* to provide such protection, or such participation in general legal benefits, would constitute a discrimination by the state against religious institutions because they are religious, and would amount to the establishment by the state of secular ideology - whose exponents would constitute, in consequence, a species of secular 'establishment'. Such negative considerations are not just academic: if severance of the connexions of religion and the state is ever contemplated the precise nature of secularity would itself require definition. The chance survival of an Establishment in England actually has the utility of allowing public policy to proceed, in at least some areas, without the hugely difficult task of having to clarify the moral basis of the State. Although it is appreciated that the *Mapping* paper concerns itself explicitly only with the constitutional position of the Church of England, as it operates in the conditions currently existing, it may be possible to question whether the narrower definition of 'establishment' material to this actually leaves the kinds of questions raised in public debate on a whole range of issues unaddressed - issues, furthermore, which have historically been unfolded in a religious context. Many of these issues, additionally, are new: the sanctioning of medical research by state appointed committees, for example. Discussing the *de facto* legal position of the Church of England independently of wider considerations of state promotion of ethically sensitive areas - which is most areas in reality - is somewhat artificial. The Establishment of the Church meant something very different in 1900 from what it had meant in 1800; so, today, the evolution of its meaning, within its inherited legal framework, is rather arbitrarily viewed if it is cut off, for analysis, from its organic adaptation. Taking a wider definition - the connexion of law and religious opinion - incorporates what is anyway happening: the inclusion of non-Christian religious bodies within the sponsorship of the state. This has proceeded, so far, with characteristic English pragmatism; no institution in society falls over itself to endorse this development so readily as the Established Church of England itself.

That a broader application of 'establishment' principles is a current issue in England is being exemplified in government policy towards Islam. The state is now engaged in active support for 'moderate' Islamic bodies and in explicit discouragement of 'extremist' ones. Since the various agencies involved will require the expenditure of public funds, even if only to meet the expenses of the participants, this is also a modern example of 'concurrent endowment'. A register of approved mosques also appears to be envisaged. The purpose, of course, is national security; this action by the state derives from its campaign against terrorism. But however laudable the intention, and however balanced the approach, the result is strangely out of step with general developments in the separation of government from religious bodies -except in the highly formal remnants of the historic legacy of the National Church and the various subsidies to faith schools. For in discriminating between one version of Islam and another, both of which have adherents who insist that theirs is the authentic representation of the religion, the state is acting as it did in preceding centuries: it is 'confessing' a religious preference based upon constructions of religious teaching. As it happens the 'extremist' Islam being discouraged by the state probably corresponds much more closely to Islam as practised in most countries of the world where it is the majority religion than does the 'moderate' version now receiving state patronage. The latter looks rather like a western artefact, characterized by adaptation of the sacral values of western liberalism and democratic practice, with extensive omissions of ideas and practices regarded as inseparable from Islamic observance in Islamic societies. Such considerations are not relevant in the present context, however: it is the state's sponsorship of an approved version of Islam itself which indicates an unexpected vitality in the ancient concept of established religion.

The strange preference of the Government for traditional confessionalism, in a seeming departure from the constitutional developments of the last two centuries, has been very clearly expressed in its recent policies towards state involvement with Islam. The motive derived from reaction to the London bombings of July 2005. The State is now actively engaged in interpreting the nature of Islamic teaching in a manner that would be regarded as constitutionally unacceptable if it was applied in relation to Christianity. It demonstrates the Establishment principle in a particularly straightforward way: state sponsorship or promotion of one set of religious opinions as against another. For the constructions of the Islamic teaching involved are all highly controversial within the Islamic communities.

In December 2005 the Government dropped a plan to close down 'extremist' Mosques; the legal difficulties were presumably regarded as too great. The ideological difficulty did not seem relevant: how was the state to determine which body of Islamic teaching was to be given exclusive protection as authentic Islamic scripture and tradition? At the same time the Government abandoned a scheme to introduce a 'Britishness' test for Muslim clergy entering the country. But the reason was not because such a test would involve the exercise of an improper relationship of religion and the State but because it discriminated between the clergy and other potential entrants. It was, that is to say, determined in relation to a body of opinion concerned with civil liberties rather than with the principles of religious Establishment.

Direct grants of state financial aid to Islamic groups are now becoming common. These involve what nineteenth-century public debate on the Establishment question - especially among Dissenters - would instantly have recognized as core 'Church and State' issues. In February 2006 the Government announced that £7 million was to be allocated to 578 Faith Groups to promote 'community integration'. The money went to Churches, Mosques, Synagogues and so forth. The Christians received £2.1 million, the Islamic communities £1.4 million - figures surprisingly out of proportion to the numerical size of the different faith communities as revealed in the 2001 Census. These grants of public money to promote ideas held by religious groups for religious reasons are plain evidence of 'Establishment' principles at work. In January the state had also,

through the Home Office, used tax-payers' money to set up a *Christian Muslim Forum*. The inaugural meeting of this body was presided over by the Archbishop of Canterbury; it has no less than eight presidents, and a wide reference - the Archbishop declared its purpose as the exploration of 'issues affecting us all'. The constitutional or philosophical basis of this connexion of Church and state was left unstated.

On the 16 February 2006 the Government announced its intention of encouraging Islamic schools in England which propagated 'moderate' Islamic teachings. In May a review of teaching Islam in the universities was announced, in an attempt to provide social cohesion. These are doubtless laudable intentions, but how is the State to achieve the competence to determine which Islamic teaching, in schools and universities, is authentic? It is in practice acting according to the canons of extremely traditional state confessionalism. It is the Establishment principle, a connexion of government and religious opinion, in a very unadorned manner.

The phenomenon of multiculturalism, referred to in a couple of places in the paper [i.e. the *Mapping* document], is also extremely pertinent when evaluating the reality of religious establishment. Establishment considered as the preference by the state for one religion over another - in however formal a sense - is plainly incompatible with the general tenor of the ideas espoused by advocates of multiculturalism. These advocates, furthermore, include influential sections of the intelligentsia, the educational establishment, the broadcasting media, the Church of England, and the political establishment. It expresses, indeed, a consensus. And yet the existence of multiculturalism does not represent a coherent policy, it is not the product of past decisions by government or of social planning. There is not, therefore, a blueprint or ideology or set of references by which its operations and social effects may be judged, and which, as a result, can be brought to bear upon the crucial question of how the state decides the nature of its own philosophical and theoretical basis. Once that basis was the state's capability of determining religious truth. Hence the establishment of the Church, which originally rested not on the basis of majority assent in society but because the state itself could determine the nature of religious truth. There has been a long intellectual debate about whether a wholly *secular* state is ever really a possibility, or whether, since all organization of civilized society requires moral sanction for its legitimacy, there has to be a preference, expressed in law, for sacral values of one sort or another. The second view has prevailed. But how does a state which confesses the virtues of a plural and multicultural society, existing under the protection of state power, determine what are its moral bases? The question has scarcely been raised in the modern British state largely, presumably, because of widespread supposition among the governing elites that some sacral values are self-evidently true. These make up the secular catechism of Human Rights ideology and are, indeed, of great merit. But there is no guidance here on what to do about an establishment of religion - only an inevitable inclination to calculate that *any* preference by the state for one religion rather than another is incompatible with the virtues inherent in the acceptance of a society of genuine multiculturalism. It is a matter of judgment how convincingly the figures of religious profession, yielded by the 2001 census and reproduced at the beginning of the paper, establish the existence of a society sufficiently divided in religious belief as to constitute a level of multiculturalism incompatible with state patronage of a single religious tradition. The democratisation of government has ended the possibility or desirability that the ancient doctrine whereby the state could sponsor a Church on the basis of its inherent truth has any surviving value. Truth does not depend upon numbers. Modern debate rests on the view, originally professed by Whig politicians in the first half of the nineteenth century, that religious establishment can only be defended on the basis of majority assent in the body of the nation. Such a view, however, conflicts with multiculturalism as at present envisaged: pluralism is *de facto*, and each community, regardless of numerical strength, is a legitimate participant. The danger of multiculturalism is cultural relativism, and the subordination of excellence to numbers; the virtue is social justice and an enhanced measure of mutual respect.

The issues raised by official espousal of multiculturalism are profound and reach into the essential principles of the philosophical basis of the state's existence. In our own day, however, they are largely ignored. The relationship of the state to religious opinion is clearly involved. What is the philosophical foundation of the state's purpose and authority? It is not a question which public men and women care to address, being content, evidently, with a cheerful pragmatism and a verbal dexterity in avoidance of principled debate - and where principles do become unavoidable they are expressed in the language of Human Rights or 'common sense' Humanism. Thus in January 2006 Government proposals for dealing with prostitution were announced: a moderate legalization in controlled conditions. The Minister, when asked by journalists on what principles the proposals were based, declined to discuss anything but practicalities. She would not, she insisted, discuss *moral* questions. The proposals were about protecting women. Now the legal establishment of a link between the state and prostitution is actually the same in kind as a link between the state and religious opinion: issues of morality and the ideological basis of public action are certainly involved. There are confusions and incoherence everywhere. In January 2006, on the same day on which a prominent Liberal Democrat MP felt obliged to resign from the Liberal Democrat front-bench, because the press had revealed homosexual encounters, the police were investigating supposedly anti-gay remarks made by a leading Muslim cleric. In such a climate of uncertain moral authority it is extraordinary to find the state setting up links between government and religious bodies. On 15 May the Government announced its intention of introducing compulsory instruction in 'core British values' in the Schools National Curriculum. It was simultaneously made clear that these included the contribution made by different ethnic communities and cultures. How is this grand vision to receive any kind of philosophical content? A state which sets out to endorse different cultural views may find that it disqualifies itself from having any of its own. Yet the same state is apparently capable of determining which of a number of competing understandings of Islam is authentic.

Nowhere is anything indicated about established Churches or the degree of state support for any body of religious opinion as such. The purpose of the *Mapping* paper, in its enquiry as to what the existing constitutional provision of the Church of England establishment amounts to in modern conditions, is admirably met, and is clearly of enormous utility within its terms of reference. But any judgment made about what the legal position means, in existing circumstances, and about how the other components of the plural society are to see its validity, remains suspended. The terms of reference allow no alternative. Yet there is an enormous divergence between the meaning of the Church of England's establishment as it survives - more or less intact, if shot through with anomalies - and its real place in society at any level, political or social. The paper is right, again in view of its terms, to consider the operation of the Establishment as it affects the Church. The more pertinent issue, however, which remains largely unexplained, is how it affects the *state*.



## Chapter 2

### A View from One of the Free Churches<sup>1</sup>

**Nigel G Wright**

Travellers passing from Continental Europe into England might swiftly notice some architectural differences. Chief among these is the number and variety of ecclesiastical buildings. Perhaps every village in Europe has a church building and every town several, serving the various parishes within its boundaries. This reflects the incontestable historical fact that Christianity is the formative religion of the European peoples. But in Continental Europe many villages have only one building representing one dominant church tradition. England by contrast is notable for the sheer number and variety of church buildings that might be found even in the smallest villages.

Parish churches there will certainly be, but observant travellers will find more: ancient and simple chapels belonging to the traditions of so-called Old Dissent, the Baptists, the Congregationalists, the Presbyterians; Quaker meeting houses; Methodist chapels originating in the eighteenth century Evangelical Revival or reflecting the multiple denominations into which Methodism later fragmented before partially re-uniting in the twentieth century; Unitarian chapels reflecting the religious rationalism of the Enlightenment; Salvation Army citadels and Gospel Halls for the Exclusive or Open Brethren; Pentecostal tabernacles of Apostolic, Elim or Assemblies of God kind. Then there are the newer movements: the bold and confident worship centres of the numerous African or Afro-Caribbean churches, some proudly traditional, others stunningly entrepreneurial; the hi-tech Christian centres of the so-called new-churches; and, of course, the community halls, schools and public buildings which, certainly in London, are home to congregations which cannot afford premises of their own or choose to forego them. Behind this immense variety lies the long and sometimes conflict-ridden history of religious debate and disagreement which has formed the English and their society in large measure into what it now is.

English history is a story of ‘church and chapel’. These differing religious traditions have historically held different ways of understanding the relationship between church, civil society and state. No account of the social teaching of the Christian churches will be complete therefore if it does not take into account the English Free Church tradition which has not only shaped the political character of this country but that of other nations. In this chapter the intention is to describe that tradition, give an account of the logic that lies behind it and apply its historical perspectives to the kind of society we now inhabit.

Although the nature and value of ‘establishment’ is part of what is under discussion in this seminar, there is one meaning of the word that we might quickly agree on: the Christian faith has been and, if the last census is to be believed, continues to be the established religion of the English people whether its form be Anglican, Roman or Free Church.<sup>2</sup> It is surely accurate to agree with Paul Weller that England can now be characterised as multi-dimensional: Christian, secular and religiously plural (Weller 2005: 183-219). But it remains a matter of fact that the English, even in secular mode, are in large measure a product of the Christian faith that has

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<sup>1</sup> This contribution to the Constitution Unit seminar in July 2006 is an altered and adapted version of a lecture delivered as part of the Liddon Lectures, 2003 at St Mary-le-Strand Church, London. The Liddon Lectures were instituted in memory of the Anglo-Catholic H. P. Liddon, Canon of St Paul's Cathedral and a popular Victorian preacher. The original lecture was later published as ‘A Dissenting Perspective on Establishment’ in *Crucible* (April/June, 2005), 19-27.

<sup>2</sup> Hereafter, when this word is used with an initial capital it refers to formal Establishment as part of the constitution. Otherwise, it refers to the Christian faith as an established part of social existence even if this is not part of the constitution

inhabited their country since Roman times. The English Church<sup>3</sup> is the oldest of all English institutions. Yet England also has been a hotbed of religious contest as competing versions of what it means to be faithfully Christian and faithfully church have struggled with each other and in the process shaped and modified each other and their environment.

I have made clear one use of the word establishment which no 'Dissenter' would find particularly problematic: Christianity as the historically formative religion of European history. However, within this faith, there are those who have refused to accept the discipline of the Church of England and have for reasons of conscience refused to conform to its worship and prescriptions. The terms 'Dissenter' or 'Nonconformist' have a peculiarly English character to them, although they now sound dated and perhaps irrelevant. Indeed, Dissenters and Nonconformists have felt this themselves since at least the nineteenth century at which time they began for preference to define their convictions as 'Free Church'. Dissent and Nonconformity were negative terms, concepts which allowed that against which they were a protest to define what they were. 'Free Church' by contrast was an attempt at positive self-definition: the church of Jesus Christ was to be free, most especially in that it was founded upon free profession of faith and that it was free to govern itself under Christ who alone is supreme governor and head of the church. This conviction is grounded in what are sometimes called 'the crown rights of the Redeemer': Christ alone has the right to rule and no human being can usurp this right, most of all when it comes to church government. As the church is called to be free so also it seeks its own image in civil society by derivation: society is to be free, free from religious compulsion, discrimination and penalty; free for the exercise of the informed conscience; free also from dictatorship and domination. A 'free church in a free state' encapsulates the essence of the Free Church vision as it did that of various political movements of the nineteenth century.<sup>4</sup>

If the term 'Free Church' brings us close to the essence or genius of this tradition, the words Dissent and Nonconformity help to trace the historical route that led to it. These words refer to the particular experiences of some Christians within the English context. The historian John Coffey has traced this transition in some detail (Coffey 2000). In the Elizabethan age religious uniformity was considered an essential good for the preservation of English religious, national and political identity. Within this there was a close interweaving of religious and political concerns. Those who would threaten uniformity either by attempting to return to Roman Catholicism or by moving towards radical Puritanism were severely dealt with. Failure to conform to the practices of the Church of England and non-attendance at or departure from its liturgies, were penalised. The use of coercive measures to preserve Christendom had long been practised with the approval of the Church and had been given powerful theological justification by St Augustine. It came to be taken as the norm. The peace of the world, that is to say its power to coerce in order to preserve peace, was rightly if reluctantly to be used by the authorities to preserve the peace of the Church. Admittedly, this was emphatically seen by Augustine as a disciplinary rather than a punitive measure, but it came with time to be used as an instrument for rooting out those who were perceived as threats to religious uniformity and so to political well-being. Dissenters of any kind were harshly dealt with during the Reformation era and beyond. The high point of the attempt to achieve uniformity came after the restoration of the monarchy and the publication in 1662 of the Book of Common Prayer. After years of struggle and debate

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<sup>3</sup> The word 'church' is used so variously in this paper that for the sake of clarity, and contrary to common usage, I use it without a capital when it refers to the universal community or the local congregation. With an initial capital it refers either to the Established Church or, as here, is part of a proper noun or title.

<sup>4</sup> The 'free church in a free state' formula used by advocates of the separation of church and state is attributed to Camillo Cavour (1810-61), Piedmontese statesman and first prime minister of a united Italy. He saw the liberty of the Roman Catholic Church that would result from its separation from the Italian state as a positive move which would be the means of the world's renewal and the revival of humankind: *Encyclopaedia Britannica* (1992: 976-978). By contrast, Jürgen Moltmann attributes the term to his fellow-countryman Giuseppe Mazzini (1805-72) – (Moltmann 1992: 107). See also Wright 2005.



over the nature and direction of the English Church, years which included the political and religious conflicts of the English Civil War, a defining moment had arrived. Those who could not or would not submit to the Prayer Book's regulation were ejected from the Church and were known thereafter as Dissenters and Nonconformists. Even if the worst persecutions were brought to a close by the Act of Toleration in 1689, other penalties and exclusions were to remain in force for many years to come.

The cost of such coercion to social cohesion meant that uniformity was in time to prove impossible and indeed unfruitful to sustain over time, alienating as it did so many otherwise upright members of society. It gave way to the search first for comprehension in which the Church of England might embrace a wider range of theological convictions and then to toleration of those who excluded themselves from the Church's ministrations or for whom the Church could find no place within the bounds of Christian orthodoxy. From the belief that uniformity was necessary to preserve the well-being of society experience had led, with many fits and starts, to the contrary belief that toleration alone could achieve this.

English Dissent is the product of this historical experience and contributed significantly by its resilience to the emergence of toleration. However, nothing actually happens in a straight line. There is a reading of English history which has argued that left-wing Puritanism, closely identified with Dissent, 'laid down the key principles of modern democracy, including individualism, egalitarianism, and the separation of church and state' (Coffey 2000: 3). Whatever the truth here, and there is much, it is not simply true. Dissent, if it eventually became identified with religious freedom and hostility to Establishment, did not uniformly begin as such. Rather it was a struggle over which version of the Christian religion should constitute the Establishment. Specifically, there was the contest between Episcopalianism and Presbyterianism. For a brief time during the English Civil War, Presbyterianism was the Established Church with the result that, to cite John Milton, 'new Presbyter was but old Priest writ large' (Visiak 1952: 73). In Scotland, Presbyterianism triumphed and relegated the Episcopalians to the status of Dissenters and Nonconformists. The equation of Dissent and opposition to Establishment is not as straightforward as might be assumed. So-called Dissenters have sometimes wanted freedom for their own version of religion in order that, in the name of truth and God, they might deny that freedom to others who were, by their lights, in error. Even those Congregationalists who sought refuge in the New World found the coercive ways of Christendom a hard habit to break.

It was only slowly that primarily on the left wing of Dissent the position that Coffey calls 'radical tolerationism' began to emerge in the writings of such as John Milton and Roger Williams and was to do so by means of sharp debate with more conservative Separatists and Independents who were by no means averse to the magistrates punishing deviation in religion. Radical tolerationists advocated full liberty of conscience to all religions. They broke with the Augustinian tradition by insisting that 'coercion could never be used to advance true religion' (Coffey 2000: 55). The first such call in the English language for full religious freedom was from the pen of the Baptist Thomas Helwys, founder in 1612 of the first Baptist church in England, who wrote: 'Let them be heritickes, Turcks, Jewes or whatsoever it apperteynes not to the earthly power to punish them in the least measure' (Helwys 1612: 69).

We owe much to the pioneers of radical tolerationism. What once was a dangerously radical position has become, of course, the standard orthodoxy both in the Western churches and in Western democracies. Much has grown out of what the English twentieth-century writer, D. H. Lawrence, himself a product of Midlands Congregationalism, called the 'deep dung of Nonconformity'.<sup>5</sup> However our attention needs to shift away from the historical to the

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<sup>5</sup> Despite my best efforts I have yet to locate this phrase in Lawrence's work.

contemporary. Just as we must concede that the essential vision of a free church in a free state is not always synonymous with Dissent as we have viewed it historically, so we must also concede that Establishment need not of necessity mean religious coercion.

To look at the idea of an Established Church today it is necessary to go beyond the historical debates, to examine contemporary arguments for Establishment from those who are themselves fully persuaded about the case for religious freedom. Contemporary arguments root Establishment not in uniformity but in a kind of partnership of Church and state in which one particular denomination occupies a privileged position not as a way of advancing its own interests but as a representative of other Christian churches and indeed of other religious traditions. When part of what the Church represents is a complete commitment to religious freedom, this view of Establishment hardly ranks alongside previous understandings, even though it is undoubtedly an evolution from them. In this kind of argument, Establishment is seen as a particular stewardship of a national Church to be exercised representatively on behalf of all for the greater good of the state and society and in the fulfilment of that mission in which every aspect of life is in its potential claimed for God. It is a recognition that the state too has the duty of rendering obedience to God. This is to express the matter theologically. In less overtly religious terms, no system of government can function without reference to a framework of values and in a country where the established (small 'e') religion is Christian, this fact should at least provide the starting point for debate. How does a Dissenter or Free Church person respond to this reformulation of an Established Church?

My first aim is to interpret the Free Church mind. I need for honesty's sake to record that just as there are those within the Church of England who are strongly opposed to the Established status of their own Church, so there are within the Free Churches those who are not unhappy with the current status and arrangements of the Church of England. The Free Churches have not only long since enjoyed toleration they have also in the course of the nineteenth century overcome the remnants of the civil discrimination to which they were subject. It would not occur to them to think that they were not equal citizens under the law. This is apt to change how Establishment is viewed. There are those, as we have noted, whose denominational histories have been able to countenance some kind of Establishment, but even some who are in more radical traditions might be inclined to view an Established Church within the constitution as at least some kind of bulwark against secularism (on which see more below) and indeed as an opportunity for Christian mission. For these reasons, Establishment is far from being a burning issue among the heirs of Dissent in England.

Generally, however, Dissenters are more inclined to see church and state as in principle incommensurate with each other. Any alliance or partnership between them is therefore the bringing together of forces that are at best awkward bed-fellows and at worst mutually subversive. It is not that the church is an unblemished institution. It too participates in the fallenness of all human structures. But it is a community orientated towards a kingdom that is not of this world. The more the Christian way is viewed as a costly and demanding, if freely chosen, following-after a crucified Messiah, the more incongruous and implausible a partnership of church and state comes to seem.

Dissenters are used to employing a disjunctive rather than a conjunctive logic. Conjunctive logic has at times in the history of church-state thinking been used to justify monarchy: there is one God, and so there should correspondingly be one Pope, and one Emperor. So, divine monarchy validates political monarchy and the ecclesiastical monarchical episcopate. Dissenting, disjunctive logic however has tended in the opposite direction to the monarchical approach. Because the Lord is King, there can be no other King. Divine kingship does not validate human kingship but

calls it radically into question since God has no rivals. It is this disjunctive logic that we find Jesus employing in Matthew 23: 8 – 12 (New Revised Standard Version):

But you are not to be called rabbi, for you have one teacher, and you are all students. And call no one your father on earth, for you have one Father – the one in heaven. Nor are you to be called instructors, for you have one instructor, the Messiah. The greatest among you will be your servant. All who exalt themselves will be humbled, and all who humble themselves will be exalted.

In these words the supreme claim of God and God's Messiah overwhelms, relativises and subverts all other claims, whatever initial validity they may seem to have. Although Dissenters would certainly agree that the state is ordained by God as part of the order of preservation, the means whereby human life is kept from chaos and anarchy, they would not deduce from this that it is anything like an equal partner with the church in God's purposes for creation. The state, whatever form it happens to take, is a limited, this-worldly reality with a constant tendency to self-exaltation. It is closely associated in the biblical tradition with idolatry. Its role is to be acknowledged, respected and constructively enhanced, but also watched, criticised and sometimes resisted since as a fallen power in possession of immense coercive potential it has the greatest difficulty in minding the things of God and seeking God's kingdom in any shape or form.

The Dissenting mind I am representing certainly gives a more negative, I would say penetrating, analysis of human power systems than those who favour Establishment might at first sight do. It stresses the disjunction between church and state, the fact that ultimately the state deals in coercion while the church acts by persuasion. To confuse these realms is fatal. In Free Church history this negative view has been balanced by a doctrine of creation and of the cultural mandate, the duty to build culture as part of what it means to be created in the divine image. It is not an attempt to demonise the state since it too belongs to the realm of creation and is providentially over-ruled by God for the preservation of humanity. But the Dissenting view is certainly ambivalent about the state and for that reason in place of some kind of identity or partnership it espouses a doctrine of the separation of church and state. The distinctiveness of the church requires it to maintain a critical distance from the state in order that it might remain faithful to its own calling and identity and not become inappropriately entangled. Separation of church and state does not however mean separation of church and society. The church is fully involved in society, doing its best to serve and shape it. The state is entrusted with the monopoly of coercive power as a hedge against disorder and anarchy. As church, it is inappropriate for the church to be in partnership at this point, but individual Christians are certainly at liberty in their capacity as citizens to serve within the legislature, the executive or the enforcement services. They bring their Christian perspectives to bear but do not formally represent the church as church in these capacities. Like others, they struggle conscientiously to do what is right.

This brings me to an area that Dissenters find most difficult and, indeed, offensive and it concerns the government of the Church of England. I have noted that historic Dissent is not one simple entity and there are certainly those within the tradition who might countenance, for instance, the notion of a 'national' Church. The Church of Scotland defines itself in these terms and is an example of an alternative way of being for the Church in relation to the state. The Church of Scotland exists somewhere between an Established church and a Free Church in this regard, having full autonomy and correspondingly not having certain privileges, such as seats in the House of Lords. The Sovereign is not its governor. A national church along these lines might be conceivable by some in the tradition of Dissent. But all Dissenters would, in my judgement, resist the arrangement by which the Sovereign appoints the Church of England Bishops, and some others, on the advice of the British Prime Minister, thereby according the secular government a decisive role in the government of the Church. In effect, the Prime Minister has

final power of appointment of the Church's leading figures, whatever may be the nature of the Prime Minister's religious convictions or lack of them. The political justification for this is that since Bishops may hold seats in the House of Lords, the Prime Minister should have at least some say as to who these members of Parliament might be. The theological justification is hard to fathom.

At this point the prevailing arrangement usually receives a defence that seeks to show how restricted the Prime Minister's room for manoeuvre actually is, how the Church really controls the process and how the convention is that the first name of two suggested by the Commission should be appointed. It strikes me as the strangest kind of argument to justify these arrangements on the basis of how little they apply. If this really were a good system one might expect that it would be good to have more of it. The fact that we want to make it as minimal as possible suggests that really we know that it is not a good system.

Early in the twentieth century the great historian and sociologist Ernst Troeltsch produced his classic work entitled *The Social Teaching of the Christian Churches*. In it he advanced a typology of Christian teachings concerning church-state relations and within that typology he famously distinguished between the ideal types which he called the 'church-type' and the 'sect-type'. Dissenters represent the sect-type. Of course it needs to be made clear that Troeltsch's language is unfortunate from the Dissenting perspective. His categories are intended to be precisely sociological in nature but it is hard to hear this language without prejudice. The word 'church' used theologically carries great prestige whereas the word 'sect' is quite the opposite. Despite this, understood sociologically the types are instructive. According to Troeltsch, the church-type aspires to universality, the urge to encompass a population and all the orders of life within itself. It thus runs the danger of diluting its distinctive beliefs and convictions, of accommodating itself to and being assimilated into the general religiosity of humankind, of being at the service of forces which however broadly religious are minimally Christian. By contrast, the sect-type aspires to intensity, to remain true to the distinctive values and beliefs and forms of discipleship which are rooted in Jesus Christ rather than the generalities of human religion (Troeltsch 1931: 335-7). Inevitably such intensity leads to a degree of alienation from the prevailing value or power systems, but it is this critical distance that allows the church to maintain a distinctive and prophetic edge.

It would be characteristic of the contemporary world to be distrustful of intense religion of the sect-type. Is it not religious intensity that is at the root of some of our immediate fears and problems? In response the Dissenter argues that if intensity means close and faithful adherence to the way of Jesus Christ, this is not something to fear since what the world needs is not more religion but more Christ-like living. More greatly to be feared is the power of religious nationalism, when religious identities are so closely identified with ethnic or national interests that the two become both fused and confused. Moreover, the Christian faith in its origin was one which expressly rejected the identification of the people of God with a racial or ethnic identity in favour of a radical openness to all peoples. God's church is an international project which whilst scattered among the nations breaks free from too close an association with any one ethnicity or nationhood in order to find its highest priority in the kingdom of God and the love of God for all peoples.

Dissent and Nonconformity as I have described them can be seen to have taken their character from particular experiences in the English context. But at the same time they bear witness to something that belongs to original and normative Christianity. In its origins the Christian faith was a movement of both religious and political Dissent. It dissented religiously within the established religion of its point of origin, Judaism, because of its belief that the Messiah had come in Jesus. It dissented politically because of its belief that Caesar was not Lord, since only Christ

could be Lord. This was the ground of its earliest persecution. The story of English Dissent captures something that belongs to the essence of the Christian faith, and to lose what belongs to this story would be to leave Christianity hugely the poorer.

I alluded to the fact that modern Free Church people no longer tend to feel deep anxiety about the fact of an established church and that they are more likely now to fear the encroachment of secularism upon the institutions of national life and upon their own freedoms. This is a discussion that needs some unpacking and is relevant to this seminar. Interestingly, the architectural references with which I began this chapter also have relevance here. In Red Lion Square in London stands Conway Hall, the home of the National Secular Society and of South Place Ethical Society. Conway Hall began life as a General Baptist church which in the eighteenth century embraced Unitarianism and in the following century rejected any form of supernaturalism and became solidly secularist, now acting as a centre of secularism. From this we might deduce that the origins of a Free Church vision of church and society and the origins of modern secularism are related. Common concerns include the rejection of privileged status for any one religious denomination or religious tradition, the unacceptability of 'compulsory religion' and the existence of the state as a properly secular and non-sectarian agent which secures equality and freedom for all rather than acting as the arm of any religious interest. Free Church perspectives might then be deemed to have much in common with a secular agenda as with the traditional political expectations of orthodox Christian churches. Without diminishing the commitment to orthodox Christianity their social teaching leads them to be more comfortable than some church traditions with pluralism and the idea of a secular state.

The debate here concerns what is meant by 'secularism' and is brought, at least for this observer, into sharp focus by the contrast between the papers submitted to the seminar respectively by the British Humanist Association and the National Secular Society. The former develops the theme of an 'open' society and paints a picture of secularism as an hospitable, if religiously neutral, civic arrangement designed to create space for all religious and non-religious perspectives with fairness to all and favour to none. The latter paper appears more concerned to root out religious privilege, especially that enjoyed by the national Church. However the paper of the National Secular Society as presented is preceded by a list of NSS associates whose hostility towards and contempt for religion in general and Christianity in particular is a matter of public record. Names such as Richard Dawkins, Polly Toynbee, and Philip Pullman do very little to inspire any degree of confidence that the secularism espoused by this document is intended to be hospitable towards religious faith, and means that the rest of the document is read through the rhetoric that such names are known to employ, most especially the desire to drive religion into the 'private' sphere.

The fact is that, despite claims from the British Humanist Association and the National Secular Society to be singing from the same hymn-sheet (to use an unlikely turn of phrase), there are different kinds of secularism, as there are different kinds of Christianity. In one expression secularism is simply an alternative name for atheism. When the claim is made that the public sphere should be secular this sounds like a strategy to make atheism the national ideology. In other words, one established religion is replaced by another. Free Church Christians will oppose this as vigorously as they have opposed other Establishments. An alternative meaning is that secularism is simply a civic strategy for plural societies and can be held as a political doctrine by religious believers and unbelievers alike. The difference between the secularisms can be characterised as that between 'hard' and 'soft', or 'programmatic' and 'process'. In a Free Church reading, hard and programmatic secularism is no friend of freedom, as history has consistently demonstrated, but soft and process secularism might prove to be political strategies with which it is possible to do constructive business.

One way or another, it is not only the religious traditions that need to think hard and long about the future of their social teaching in modern Britain, but secularism. One hopes for an increasingly intelligent, and perhaps sympathetic, debate across these divides.

## Chapter 3

### View of A Critical Friend – From the United Reformed Church

**Geoffrey Roper**

This contribution in its original form was presented at the Church and State seminar in July 2006 organised by the Constitution Unit, UCL. The seminar's purpose was to review

- relations between the Church of England and the state
- the Church of England's structural relationship with the modern state
- establishment's present meaning in the political environment,

and – while conceding the Government is not the same as the state – the *Mapping* exercise was principally concerned with the relation of the established Church with the United Kingdom government, the Crown and the Westminster parliament.

#### Not a Gripping Issue Despite Centuries as Outsiders

For one who belongs to the United Reformed Church (a small denomination, no more than a tenth the size of the Church of England on any measure, but present in all three nations of Great Britain) the exercise does not engender the amount of interest it might have held for our nonconformist and puritan predecessors of 1906, 1806, 1706 or 1606.<sup>1</sup> But notwithstanding its long pedigree and prolonged experience of playing unicorn to the Anglican lion the United Reformed Church is a new creation, formed in 1972 when Congregationalists and Presbyterians came together, with assistance from an enabling act of parliament resisted by both Tony Benn and Ian Paisley. Before reaching the end of this paper, readers may not believe that the old hang-ups about establishment have evaporated but the truth is that current members of the United Reformed Church do not appear to give much attention to the matter.

#### Prior Questions: Faith and Society

It might be better to preface these comments by tackling prior questions about the relations between faith and community, and between culture and belief. It would be worth examining some of the principles assumed – perhaps too easily – as common currency in present-day dialogue about politics, about human rights, about equality and diversity and about the role of state education in regard to faith as well as the distinctions drawn nowadays between public and private spheres. All these matters are relevant to church establishment. We may feel that crucial issues arise at the interface between political institutions and personal life in respect of the public understanding of marriage, the role of religious education and collective worship in tax-funded schools, the evolution/creationism debate, pro-Life/pro-Choice tension over beginning- and end-of-life issues, keeping Sunday special, the role of chaplaincy in institutions, civil religion in its national, municipal and media manifestations, the public repute of Christianity and of viewpoints characterised as 'Christian'. We might indeed discuss whether the Human Rights Convention

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<sup>1</sup> Nonconformists and puritans at the start of four centuries: In 1906 the Free Churches reached their peak adult membership, strength, political influence and enthusiasm for disestablishment. In the first decade of the 19th century dissenters were anxious to show their loyalty and to dissociate themselves from the taint of revolutionary sympathies with republican French or Americans. As the 17th century became the 18th puritans were politically active behind the scenes, fearful of any coming intensification of their disabilities while some were still hopeful of church reunion or 'comprehension' as the project was named (Goldie 2007). In 1606 the puritans were disappointed at their failure to make progress with the new king of England at the Hampton Court Conference but at least participated in producing an official version of the Bible derived from the English translations which had already appeared.

right of freedom to hold and manifest religion and belief, individually and collectively<sup>2</sup> (interpreted by many a Jobsworth as a right to freedom *from* religion) has led to suppression of religious observations in the public arena. Major questions about faith and religion in society, long banished on the ground that such things are private matters, have ambushed the West in recent years.

In this context of un-settled questions regarding religion we are discussing the relation of the Church of England to the UK state; our conclusions will need to be influenced by our view of the significance of Christianity, and particularly the Anglican version of it, to the British people. Perhaps it is typical of a Reformed approach, in contrast to Anglican gradualism, to want to look at major issues of principle before tackling the institutional relationships of yesterday and today.

### **An Approach Rooted in European Reformed Tradition: ‘Everywhere Spoken Against’**

The United Reformed Church is rooted in a strand of Christianity which valued highly two concepts whose very names are boo-words to their cultured despisers: puritanism and the thought of Jean Calvin. Both *puritan* and *Calvinist* crop up frequently in English writing as terms of disapproval, *puritan* usually in the sense of ‘kill-joy’ or prefixed to the phrase *work ethic* and *Calvinist* usually with the connotations ‘harsh’ and ‘strict’ (Cunningham 1975). Rather than disentangle these misconceptions from the truth, what it is significant to our present discussion is to emphasize that followers of Calvin’s doctrine are by no means tied to a view of State-Church relations expressed in the customary portrayals of Genevan theocracy nor in church government by aristocracy. The United Reformed Church asserts at ordinations and inductions of ministers or elders:

The United Reformed Church declares that the Lord Jesus Christ, the only ruler and head of the Church, has therein appointed a government distinct from civil government and in things spiritual not subordinate thereto, and that civil authorities, being always subject to the rule of God, ought to respect the rights of conscience and of religious belief and to serve God's will of justice and peace for all humankind.<sup>3</sup>

This reflects Calvin’s teaching – both by asserting the independence of church government in specifically churchly matters and by insisting the state has divinely-ordained duties – but it has also been shaped by Scottish presbyterian formulations.<sup>4</sup>

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<sup>2</sup> Article 9 European Convention on Human Rights: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.’ This was incorporated in the Human Rights Act 1998 with the special provision in Section 13: ‘(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right. (2) In this section "court" includes a tribunal.’

<sup>3</sup> *Basis of Union* (1972). A modernised wording often used reads: ‘We believe that Christ gives his Church a government distinct from the government of the state. In things that affect obedience to God the Church is not subordinate to the state, but must serve the Lord Jesus Christ, its only Ruler and Head. Civil authorities are called to serve God's will of justice and peace for all humankind, and to respect the rights of conscience and belief: while we ourselves are servants in the world as citizens of God's eternal kingdom.’

<sup>4</sup> As found in Thompson (1990): ‘Recognition by civil authority of the separate and independent government and jurisdiction of this Church in matters spiritual, in whatever manner such recognition be expressed, does not in any way affect the character of this government and jurisdiction as derived from the Divine Head of the Church alone, or give to the civil authority any right of interference with the proceedings or judgments of the Church within the sphere of its spiritual government and jurisdiction.’ *Church of Scotland Declaratory Articles 1921*. But compare and contrast *Westminster Confession XXIII: Of the Civil Magistrate* which gave the [Cromwellian] government the duty to ensure peace and unity in the Church, suppress heresy and to call and participate in Synods. Over against this the



## A History of Suppression and Exclusion

The United Reformed Church's approach was also conditioned by decades of suppression, followed by approximately two centuries of disadvantage, now succeeded by marginalisation. Attitudes formed when lord-bishops and churchwardens were the state's enforcers of religious conformity still survive in the folk memory and feelings of numerous British Free Church people. Past class rivalries and social discrimination colour many Free Church people's opinions even now.<sup>5</sup> The report to Methodist Conference by its Faith and Order Committee (Methodist Church 2004) gives evidence of similar feelings and attitudes in another Free Church with a shorter history which though it lacks direct historical connection to the bloody events of the 1640s and the 1662 clamp-down nonetheless remembers parish churches dominated by 'the squire and his relations'<sup>6</sup>.

## What Business is it of Ours?

Endeavouring to leave aside engrained prejudices and out-dated resentments, a commentator from the United Reformed Church has to say it feels somewhat intrusive to comment in much detail on the governance of the Church of England merely because, for historic reasons, the canon law and other sources of ecclesiastical law by which it is ordered form part of the law of England. As regards participation in the Second Chamber of the Westminster parliament, however, we are entitled to take a view. We may think the near-monopoly given to Church of England dignitaries and ceremonials for state occasions inappropriate. The system of crown appointment to internal Anglican posts may seem to us quaint, erastian and un-theological but we do not work up much fervour over it at the present time. If there were a realistic prospect of organic unity with the Church of England that would be a different matter. We could not countenance state involvement in appointing ministers to serve and lead Christian congregations or synods. On the other hand, appointments of chaplains to civil institutions (prisons, defence establishments, hospitals, schools and colleges) may properly involve the relevant authorities - though there can be some loss of pastoral effectiveness if the chaplain is too closely bound into an institution's management.

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alternative [Independent i.e. Congregational] version also honoured by the United Reformed Church, the *Savoy Declaration* explicitly varies from the *Confession's* stance by stating:

'...in such differences about the doctrines of the gospel, or ways of the worship of God, as may befall men exercising a good conscience, manifesting it in their conversation, and holding the foundation, not disturbing others in their ways or worship that differ from them; there is no warrant for the magistrate under the gospel to abridge them of their liberty.'

<sup>5</sup> *Non-constitutional aspects of establishment* - What impinged on the personal experiences of those now living was to be treated as 'second-class', dismissed from church parade to the 'other denominations' pen, welcomed politely - and even generously - at important symbolic observances in national cathedrals but always as guests rather than members of the home team. National institutions, Ox-bridge colleges, the main public schools and their private-school imitators, some local authorities and other bodies stick with the ways of the established church and with its clergy in a manner which tends to marginalize and give out a message that there is one official church into which our people ought really to let themselves be co-opted. Owing to these pressures and because the 'British Schools' were all transferred to the county school/community school category by 1902, while church schools continued and continue to educate a significant proportion of the population, the Free Church denominations have become increasingly invisible and ignored. If people in the United Reformed Church mind about establishment it is mostly because of these tendencies rather than the main institutional matters laid out in the mapping exercise.

<sup>6</sup> 'O let us love our occupations.  
Bless the Squire and his relations.  
Live upon our daily rations.  
And always know our proper stations'

Dickens (1850), but thought by some to have an earlier origin, perhaps even worked into an 18<sup>th</sup> century sampler.

## The Accession Oath

There will doubtless be a variety of views among members of the United Reformed Church about the monarch's oath to uphold the protestant reformed religion and there may be a range of views (not necessarily corresponding to the former) about the provisions of the Act of Settlement. The denomination has never formally considered either matter. It may be some who think about the oaths take comfort in the historic link to protestant Christianity and hear the word *reformed* as if capitalised *Reformed* - thereby identifying the British nation with that element of the Reformation led by Calvin and Zwingli and associated particularly with historic churches of the Netherlands, Scotland, many Swiss cantons and German Länder. Those members of our Church who think at all about history probably claim to be heirs of the 16<sup>th</sup> and 17<sup>th</sup> century English and Scottish reformations as strongly as do any members of the Church of England, but what we are derives from the European Reformation more than from the transactions of Henry VIII, Edward VI and Elizabeth I. As UK citizens our church members would claim as much right to participate in any decision to modify provisions entrenched – as deep as anything in the British Constitution is entrenched – in the Treaty of Union and the Act of Union. But it is not easy to place much weight on these speculations. If people think at all about the accession oath or about the stipulations of the Act of Settlement 1701 that neither a Roman Catholic nor someone married to a Roman Catholic may succeed to the throne, they probably take the view of many members of the Scottish parliament (MSPs) that such religious discrimination should be ended. If you turned the question round and asked whether Britain should cease to claim at the heart of its constitutional monarchy to be a protestant Christian country, who knows what they would say? Since the last accession was 54 years back and the Coronation 53 years behind us, it is not likely many have thought recently about the implications for the rituals with which a reign is inaugurated.

## Christianity Embedded in the Constitution

Present day discourse emphasizes equality, diversity and total freedom to believe or disbelieve. Yet at the core of the UK state's very being are:

- a royal arms with the motto *Dieu et mon droit*
- an anointed sovereign sworn to uphold protestant reformed religion
- the royal title *Fidei Defensor*
- an anthem praying 'God save the Queen'
- legislation by lords spiritual as well as temporal.

Other features consonant with these include an established church in England, a national church guaranteed presbyterian government in Scotland, a blasphemy law which is sometimes interpreted by the courts as safeguarding only the Anglican version of Christianity, daily prayers for the legislators in both houses of the Westminster parliament as well as services of worship for many of our institutions and their special occasions: the UK Government, parliaments, judges, local government, remembrance, commemorations, celebrations and disasters. The mapping exercise paper painstakingly, lucidly and as completely as can be expected, sets out the specifically Church of England aspects. In this account we see our Free Church history 'through the looking-glass'.

## Anti-establishment Theology

Some Free Church people are principled disestablishmentarians (Sell 2002). A theological current once powerful in the Congregational stream that flowed into the United Reformed Church was expressed forcefully by the 19<sup>th</sup> Century Birmingham minister R. W. Dale as he looked back to the 16<sup>th</sup> Century Elizabethan Settlement: 'When "by one blast of Queen Elizabeth's trumpet" all

Englishmen were made members of the national Church, and were required under penalty to attend its services, the complaint of the Congregationalists was not that the Queen had trampled on the personal rights and violated the freedom of the English people, but that she had usurped the authority of Christ' (Dale 1899: 217). The Independents (Congregationalists) were not complaining because of state interference in a private self-governing society but because such intervention usurps divine authority.

The power [the Church] possesses no prince or prelate can confer, and none can take away. It is a power which does not accrue from some natural right belonging to its members separately, or in their corporate capacity, but comes directly from the presence of Christ Himself in accordance with His own promise. Christ is wherever his saints meet in His name, and the presence of Christ makes the Church, and gives its decision validity and force' (Rogers 1881: 235).

Such uncompromising theologising may sound strange to today's students of political principles, for the very concepts the London minister Guinness Rogers denounced in those few lines are what contemporary political thought recognize: the rights of individuals separately and collectively to manifest their religious belief through self-governing religious associations voluntarily composed and self-sustaining. The Free Churches probably want it both ways: they claim those rights in the civic arena only to rebut them in their internal religious discourse.

### **A Public Service: Nationally Provided, Locally Delivered**

This brings us near to one of the central issues we need to confront when dealing with the nature of an established church: it *is* more than a voluntary association composed of and sustained by its members. That will be true of almost any church in its self-understanding, its ecclesiology. The Church of England was designated by the state to be available to every inhabitant of England and does not disappear automatically if no citizen chooses to take up its facilities. It offers a public service (the parallels though not exact contain elements of truth) like a hospital, library, road, railway, bridge or, indeed, a public broadcasting service. Even if an extraordinary day comes when there are no patients, no readers, no travellers, no passengers, and no listeners or viewers the public services are still provided. It is because the established church was at one time organised by the state and has inherited the ancient buildings as well as the framework and procedures provided as a public service in bygone times that some of the legislature still think they have a right and responsibility to exercise their restraining hand on proposed changes and that some in government think it proper to put effort into the appointments process. Whether the established church is seen as providing opportunities for spiritual refreshment, as a place for meditation, as a school of prayer or, more dynamically as a mechanism for presenting the gospel and transforming lives, a channel of worship, a focus for social action and multiple opportunities for the arts, it is perceived as a facility offered to all citizens to avail themselves if they choose. Most other churches would claim to do these things but they exist as social institutions only through the choice of their members; in the absence of participants they would, by and large, close their doors. The principle that religious charities provide a public benefit is based on the fact that they offer public worship of which all may avail themselves. The distinction between established church and free church may have become wafer thin – and in some local ecumenical partnerships has been abolished altogether – but there are still options whether to be exclusive or inclusive. The choice for Free Church people who think seriously about establishment is whether to follow the logic of 19<sup>th</sup> Century forbears and maintain their objection on principle or instead seek to share in the religious 'public service' just described on the assumption that could be achieved on terms they would find acceptable. We consider disestablishment first; the second option is dealt with below in *Is a broader Christian inclusion possible?*

## **Liberation – or a Bad Move for Religious Morale?**

This view wants to see the Church of England rescued and set free<sup>7</sup> by a legislated velvet divorce. Undoubtedly one source of reservations about that course is the inference which might be drawn that a state which disowns its connection to the Church devalues that Church and its gospel. It would be interesting to ask Swedes whether that is how the severing of their State Church's ties was seen at the turn of the millennium. Would people feel 'The official public view is that religion doesn't matter' differently and more strongly than the way they may perceive it at the present time?

This question of the public impact of disestablishment is an issue for the Church and for all the Churches. People who take a secular, agnostic or atheist view and many who think the state should be neutral between different faiths and life-stances may see such change of perception as unimportant or positively beneficial.

But other Christians would not welcome a change which would give the impression of downgrading Christianity. We would probably welcome a transformation which gave positive affirmation to the Anglican Church by giving it freedom. Just as the assertion of the Church of Scotland's freedom and independence was enacted in 1921 to enable church reunion with those Scottish Presbyterians who had stood out against patronage and state control, so bodies such as the United Reformed Church which at its formation committed itself to seek wider Christian union would welcome such a liberation act if it brought visible organic union nearer. The United Reformed Church committed itself in 1982, not without some trauma, to a covenant for unity with the Church of England, the Methodist Church and the Moravian Church. That covenant scheme collapsed at the final approval stage where it required support in all three houses of the General Synod simultaneously. A brief outsider's comment on church politics follows. Consideration of establishment and ecumenism continues at *Is a broader Christian inclusion possible?*

## **The Effect of Establishment on Anglican Church Politics**

The experience of the 1982 English Covenant's failure spotlights the politics of the Church of England. There has to be a powerful set of brakes so that no one ecclesiastical party can steer the Church far in their preferred direction, but these brakes are so powerful that a minority party can block change. And even when a new move has the requisite agreement in all three houses (bishops, clergy, laity) if it requires a change in the civil law, the Ecclesiastical Committee of the state comes into play. Church parties sometimes activate their MPs and peers to insist on modifications. Observers suggest that financial compensation for resigning clerical opponents to the priestly ordination of women and the provision of alternative episcopal oversight for those who opposed such ordination but remained as well as provisions about churchwardens were all shaped the way they were because of resistance focused on the Ecclesiastical Committee<sup>8</sup>. Parliament thus plays an effective part in the political process by which the Church of England is governed. The shadow of the Ecclesiastical Committee may have hung over proposals to modify the parson's freehold when redefining clergy terms of service. The way this element operates is not easily pinned down: draft measures may be modified in advance from the shape their proposers really want so as be likely to get through the Ecclesiastical Committee. Thus the degree

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<sup>7</sup> The chief organisation campaigning for disestablishment was called the Liberation Society (the Society for Liberating the Church from the State) from 1853, having originally been the Anti-State-Church Association from its formation in 1844.

<sup>8</sup> The role of the Ecclesiastical Committee described above implies that the Committee also caused changes to be made to the Church of England (Pensions) Measure.

of freedom of the Church of England or the lack of it are not clear either to outside observers or to church members.

Much of the politics of the Church of England turn on the main bipolar tension between Catholic and Evangelical parties. After the mid 19<sup>th</sup> century outbreak precipitated by the Tractarian movement and reactions to it, patronage trusts created ‘facts on the ground’ guaranteeing that certain parishes would remain loyal to the party then in local control. Twentieth century reforms included provisions of various kinds preventing change of control or at least granting veto powers to elected lay persons. Governments, which in past centuries (*vide* Trollope) might have favoured one ecclesiastical party over another, nowadays try to keep the peace when making crown appointments. It cannot be doubted that Archbishops of Canterbury have been taken alternately from the two parties over the last half-century (as the sequence Ramsey – Coggan – Runcie – Carey – Williams clearly demonstrates). To what extent have successive governments ensured this alternation?

### **The British State and the Church of England – a Symbiotic Relationship?**

An observer from outside the Church of England can probably not assess accurately the symbiotic nature of the relationship between the established Church and political institutions, but it needs to be considered. Central officials in Westminster apparently have a readier *entrée* to government departments than do those of other Churches. On the other hand the Church’s voice is not noticeably constrained: the General Synod does not seem to pull any punches when its members or its committees wish to express themselves on political issues. Bishops do speak candidly from pulpits, in the media or in the House of Lords. Those diocesan bishops with seats in the Lords do get a readier response from departmental ministers than leaders of other Churches: as legislators they are entitled to a ministerial reply while others have to take their chance and sometimes get fobbed off with a delayed and standardised response. To what extent is the relationship symbiotic? What advantage has it for Government? Not a great deal, though Ministers, lords lieutenant and civic leaders may be grateful that when they sit in an official pew they can be confident that nothing too disturbing will occur in a Church of England church and they can emerge through the West door with composure undisturbed. Since the Crown has appointed the bishop, the dean, the archdeacon, some canons and quite possibly the vicar or rector as well, most clergy respond by treating their appointing power gently and respectfully. Having chosen the white-surpliced, purple-breasted tribe of Christianity, the authorities can, in general, leave it to them to lay on a dignified ceremonial in their old stone shrines, though doing it just right is walking a minefield<sup>9</sup>.

### **Is a Broader Christian Inclusion Possible?**

Would the United Reformed Church and other Free Churches want to have any part in the privileged position, such as it is, which pertains to the Christian religion in the British state, and more specifically to the English section of it, in the 21<sup>st</sup> century. Would they abjure any part in campaigning for disestablishment if that were perceived as a disavowal of religion?

The Churches have become losers in relation to the prevailing culture or cultures of our time.<sup>10</sup> As has often been true, institutions of religion are seen by many as belonging to the past (they *do*, of

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<sup>9</sup> Issues still have to be negotiated between the authorities who have ‘commissioned’ a special service and the clergy of the shrine where it is to be held. In what way will the whole UK aspect be expressed by the Church of only one of its constituent countries? The ethnic mix? How will women’s voices be heard? – the solution to that in recent years, pending the advance of women priests to senior positions has been found either by selecting a Free Church woman minister or a lay woman’s voice. How can other faiths be represented in a worshipful setting?

<sup>10</sup> Perhaps this comment ought to be more sanguine. Church leaders are still welcome if they come commending charitable good works. Cardinal, archbishop and even moderator are listened to if they commend merciful alms

course, but they are seen as nineteenth-century, sixteenth-century or mediaeval rather than first-century). They are seen as prohibiting, inhibiting, clergy-dominated, socially skewed, comic, and opposed to all that is modern and still more “post-modern”, contrary to the science-based, the morally autonomous, the consumer-oriented.

The Free Churches find this particularly difficult to cope with. We evolved a position which rejected the identification of parish with community. Experience taught us to refuse co-option by the clerical establishment. If the vicar said ‘All right-minded people think...’ our first instinct was to respond ‘no, they don’t’ and our second is probably to translate the sentence as ‘The squire thinks that and the vicar has to agree with him’. In recent years many Free Church preachers (and many Anglicans) have been close to the liberal consensus. Some say we are *Guardian* reading ministers preaching to *Telegraph* or *Mail* reading congregations.

What kind of future would someone from the United Reformed Church favour? A few years ago it became the consensus of Free Church ecumenists that they would be happy for any emerging united Christian church to have the standing the Church of Scotland has in that country. We would not want any state role in church appointments but would be happy with a pastoral role for the nation and a chance to express Christian voices on community issues.

### **The Role of Religious Leaders in Parliament**

If the future second chamber of parliament is to have some non-elected members then church leaders along with authentic representatives of other faiths could play useful and effective roles. They add value to the national debate and the legislative process if their contribution is directed by their theology. Their place is justified by the principle of *inclusion*. Many citizens identify themselves more strongly as believers – members of their faith community – than by party membership or adherence. These people will feel more involved if their faith representatives are part of the political process.

The present arrangements for lords spiritual need examination. Five senior prelates and the 21 who have been bishops of dioceses in England longest serve until they retire. Generally this means that 26 men aged between about 55 and 70 attend parliament on a rota basis and certain bishops make a point of attending if they can get free from other duties when a subject they are interested in is on the order paper. Sometimes bishops serve on Committees but active participation in the legislative process puts heavy strain on those whose dioceses are far from London. There is never a block vote of 26 bishops present for a division and, if there were, some would be in the opposite lobby to the others; there is no bishops’ whip (though they are briefed in detail on the progress of legislation). In fact a handful of other former Anglican bishops are members of the Lords as life peers (Habgood, Carey, Hope, Eames and Harries) and two or three Anglican clergy who are also peers. Recently the number of Methodist ministers who are life peers rose to three. About thirty years ago, and again about five years ago, it was proposed to reduce the number of diocesan bishops in the Lords to sixteen but there has been official Church of England resistance to any great reduction on the ground that a smaller number would not be able to cover the business adequately while earthed in active pastoral leadership of a specific area of England. Truro, Carlisle and Newcastle are not as accessible to Westminster as Guildford, Chelmsford and St Albans.

Such sporadic participation in the second chamber of parliament may be acceptable while the House remains as large as it does; it was viable when many other peers inherited their seats and

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towards the obviously deserving. Persistent church support for the Jubilee 2000 and Make Poverty History were welcomed in some government quarters and much of the media.

could be amateurs in politics. If the House is to be reduced in size and proportions are to be specified for each party and for the cross-bench members, the presence of about thirty-five clergy from two denominations in covenant relationship<sup>11</sup> would be highly questionable. If the Second Chamber becomes an all-elected body there will be no place for church appointees. If a part-elected Chamber is introduced, the allocation of any places for religious leaders or representatives is likely to be sparing. There will be pressure on religious bodies to provide active participants in the twin tasks of legislation and of calling Government to account. People will ask what distinctive element religious participants bring to politics that other cross-bench 'people of goodwill' do not.

The unique contribution a religious leader brings is the theology and principles of his faith community – not that that theology or those principles may not be brought to parliament by any member of the same faith or even of another - but when the religious leader speaks people have reason to trust they are hearing an authentic voice of that community of faith. Our society is not one where followers of a faith are going to treat the pronouncement of their religious leaders like a three-line whip, so there is no danger of clerical rule (mis-called 'theocracy'). The roles of the theologically, and politically, informed religious leader are to urge the practical implications of the doctrine of their faith and to challenge Government, Opposition and society with their prophetic voice.

There should therefore be a small number of religious leaders in a reformed Second Chamber unless the ultimate decision is to be for an all-elected House. No preference should be given to the established Church of England in allotting places. All streams of religion in the United Kingdom should be capable of providing such leaders and they should be enabled to spend sufficient time at Westminster to participate effectively. Should unbelief, scepticism and humanism also be allotted their spokes-people in parliament? No case has been made for such a spurious concept. Religion expresses identity, commitment and belief for large numbers of people in Britain whom the political process has until recently neglected. Many in the media and political life who were used to assigning religion small (single figure) percentages of the population were astonished by the 2001 census figures for religion. Agnosticism, pragmatism and rationalism have been the philosophy of much discourse throughout Westminster and Whitehall. They deserve to be countered by thorough-going and thoughtful belief. If people's religious commitments are ignored and unheard they are liable to emerge in unlooked-for ways.

## **Some Conclusions**

To sum up these reflections from one who speaks from within the United Reformed Church – but without any official backing for the conclusions reached:

- There would be a welcome for moves by which the Church of England sought to discard the state connection.
- The role of the Ecclesiastical Committee should be reviewed and modified, especially in the light of any moves suggested immediately above.
- Unless further reform of the second chamber of parliament makes it a wholly elected body, it should include a small number of religious leaders/representatives appointed for the expected standard period 15 years on a similar footing to other independent members of the reformed House – but by arrangements established after consulting with the faith communities.

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<sup>11</sup> The Church of England and the British Methodist Church entered into a covenant of mutual affirmations and commitments on 1 November 2003 – see <http://www.anglican-methodist.org.uk> (accessed 11 March 2007).

- Religious marriages should be available in England and Wales under arrangements which no longer make special provision for the Church of England and Church in Wales and, as in Scotland, should be possible at venues off church premises.
- Management of worship services for national acts of celebration, commemoration or mourning should no longer be dominated by dignitaries of the Church of England.
- A distinction needs to be drawn between Government dealings with faith communities (sections of society typified by adherence to a common religion) and communities of faith (church denominations and associations of mosques, temples, gurdwaras, synagogues etc) so that moves to strengthen social cohesion are distinguished from dealings with communities of belief. Both are legitimate activities for Governments to undertake and religious leaders may properly engage in both, but the distinction between the two should be clearly drawn and religious leaders need to recognize they are not always the right people to represent their adherents in political and social matters.



## Chapter 4

### A Quaker Point of View<sup>1</sup>

Nicholas A Sims

#### Reflections on the *Mapping Exercise*

This *Mapping* exercise reminds us how the history and current position of any established or national church (the latter being the more inclusive term) reflect two things. One is the unique experience of each national context, that is to say the nation's own history and its self-awareness at any given point in time. The other is the ecclesiology of each church, which will have been shaped by the unique national experience but will also include features which extend beyond the nation's borders to a wider, transnational, tradition in which the nature of the church is to be understood.

Frank Cranmer's account within of the diverse Lutheranisms of the national churches in the north of Europe, from Iceland through Scandinavia to Estonia, illustrates this point most effectively. It provides a vivid comparative backdrop against which the many particularities of church-state relations in England show up all the more sharply. The same is true of the valuable accounts of the Church of Scotland and of disestablishment in the very different cases (yet again) of Ireland and Wales contributed by Bob Morris and John Lucas.

This outsider, looking at the Church of England with the benefit of these comparative perspectives, is impressed by how the two halves – English national experience and Anglican ecclesiological tradition – are held in balance. Anglicans hardly need to be told that any attempt at 'tidying-up' church-state relationships in England runs the risk of upsetting this balance.

Yet constitutional reform of the English state (more correctly, the UK state as experienced in England, at a stage in our history when – conveniently for memorizing, and for easy arithmetic – England contributes 50 million of the UK's 60 million population) almost inescapably favours simplification; and church-state relationships as an aspect of the constitution cannot altogether escape the current pressure to simplify. Simplification sometimes requires the abolition of structures which have fallen into desuetude, or which duplicate one another's work, or which perform functions no longer seen as necessary or desirable.

#### Some Quaker Perspectives

Quakers have a natural inclination to favour opening up and simplifying constitutional structures and practices, and have made strenuous efforts (still continuing) to simplify their own. The attempt by Quakers faithfully to follow 'Gospel order' had led their Society through many organizational changes already in its first three hundred years (Doncaster 1958), and since the 1950s proposals for further modification of church government have followed in an almost continuous stream. Adapting Quaker structures in Britain in quest of improved representation, communication and accountability<sup>2</sup> has not been quickly or easily achieved. So in the light of their own recent experience Quakers are in no danger of underestimating the difficulty, for others whose constitutions are of much greater public importance, of identifying and then effecting constitutional reforms which are broadly acceptable to those involved. The balance between

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<sup>1</sup> This paper carries the responsibility of its author alone. It is not an official Quaker statement.

<sup>2</sup> Representation, Communication and Accountability in our Structures (RECAST) was the title of a working group active from 2002 to 2005 for Britain Yearly Meeting of the Religious Society of Friends (Quakers).

adapting to new requirements and retaining the best of the past is never easy to secure; even with the exercise of much patience and mutual tolerance it is hard to avoid some disunity and more frustration along the way. Quakers in Britain are still busy trying to get the right structures for their Religious Society, suited to the conditions of the early 21<sup>st</sup> century. This includes simplifying structures, with fewer levels of organization and a smaller body of trustees.<sup>3</sup>

In seeking unity on these changes, Quakers struggle with the concepts of authority and accountability, discernment and trusteeship, and with the committee structures which can best give them institutional form. Human frailties obtrude, to remind busy Quakers of their constant need for God's grace and guidance.

Quakers' own ecclesiology accommodates wide variation, from seeing the Religious Society of Friends as 'a Christian church' to 'part of the church' to 'a branch of the Christian tree' and variants on similar imagery of roots, evolution and heritage – though most nowadays would stop short of claiming to be '*the church*' with the certainty of 17<sup>th</sup> century Quakers, not least because of its unpalatable implications for superiority, exclusion and monopoly of truth. In practical terms Quakers in Britain today cooperate well enough with others who embrace a wide range of ecclesiologies, concentrating more on 'life and work' than 'faith and order' (to use the conventional distinction, named from the parallel streams of ecumenical conferences in the first half of the 20<sup>th</sup> century whose confluence made possible the World Council of Churches in 1948). Quakers' wider ecumenical relationships nowadays have an interfaith as well as an interchurch dimension, reflected in the title of the Quaker Committee for Christian and Interfaith Relations.

Quakers in Britain commonly look back on the 18<sup>th</sup> century as their 'quietist' period, although their historians now qualify this with a 'so-called' (Heron 1997: 6). In the 19<sup>th</sup> and even more in the 20<sup>th</sup> century they came to engage fully with the world and its political and social life<sup>4</sup> and in the 21<sup>st</sup> century they embrace the realm of public policy with few reservations, seeking – often in partnership with other churches – to shape it for the better. Through their *Advices and Queries* they regularly encourage one another:

Remember your responsibilities as a citizen for the conduct of local, national and international affairs. Do not shrink from the time and effort your involvement may demand.<sup>5</sup>

This may sometimes involve working with a UK Government department to bring about social change, without letting it take over the agenda. Up to 2002 this included, for example, Quaker work on vocational training in Lebanon with the UK Department for International Development. In recent years the relationship with the Home Office in launching and sustaining Circles of Support and Accountability for certain sex-offenders after release from prison provides

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<sup>3</sup> The RECAST report and its follow-up occupied many sessions of Britain Yearly Meeting at York in August 2005 and London in May 2006, and seem likely to do the same in May 2007. Yearly Meeting in session is the final constitutional authority of the Religious Society of Friends (Quakers) in England, Scotland, Wales, the Channel Islands and the Isle of Man. It is open to all members. It was styled 'London Yearly Meeting' through most of the 20<sup>th</sup> century: its present name dates from 1995.

<sup>4</sup> Among many histories of Quakers in Britain, I owe a particular debt of gratitude to Harold Loukes (Loukes 1960). A more recent analysis by a professor of social history - Walvin (1997) - is highly recommended for the 18<sup>th</sup> and 19<sup>th</sup> centuries.

<sup>5</sup> *Advices and Queries*, 34. The *Advices and Queries* comprise the opening chapter of *Quaker faith & practice* but are also printed as a separate booklet, from which extracts are read regularly in Quaker meetings for worship. They are 'intended for use in our meetings, for private devotion and reflection, as a challenge and inspiration to us as Friends in our personal lives and in our life as a religious community, and as a concise expression of our faith and practice readily available to enquirers and to the wider world.' *Quaker Faith & Practice*, the Book of Christian Discipline of Quakers in Britain (Britain Yearly Meeting of the Religious Society of Friends, London, 1995, 1999, 2005), section 1.05.

a high-profile example in England (and one with a good success rate in terms of no repeat-offending). Here, Quakers have been fulfilling something of the same role as Mennonites in Ontario where the Circles project was pioneered. Partnerships of this kind have not jeopardized the Society's independence, or discouraged support or criticism of particular UK Government policies. Quakers have had plenty to say in recent years about *Trident* replacement, and the national lottery, and legislation ranging from the regulation of gambling to civil partnership and charity law reform. There is a lively interest in parliamentary business, and invitations to submit memoranda to ministers or to parliamentary committees on matters of public policy are frequently accepted

One of the most often repeated sayings of William Penn, from 1682,

True godliness don't turn men out of the world, but enables them to live better in it, and excites their endeavours to mend it.<sup>6</sup>

captures well the outlook of 'well-concerned' Quakers in Britain in this and many generations past, who would also readily unite with Edward Burrough's (1659)

We are not for names, nor men, nor titles of Government, nor are we for this party nor against the other... but we are for justice and mercy and truth and peace and true freedom, that these may be exalted in our nation, and that goodness, righteousness, meekness, temperance, peace and unity with God, and with one another, that these things may abound.<sup>7</sup>

## Policy Outcomes and Constitutional Reform

This tradition may incline them to concentrate on policy outcomes and more often than not to refrain from promoting particular constitutional initiatives or wider constitutional reform. True, some have been active in Faiths Forums and the like, associated with channelling advice from churches and other religious bodies to the regional assemblies in England; but by and large there has not been a strong Quaker movement in favour of regional government. (The obvious contrast is with the prominence of recent Bishops of Durham and Liverpool in chairing their respective regionalist movements.) Nor have most Quakers been active in such other areas of the constitutional reform agenda as advocating change in electoral systems, or postal voting, or lowering the voting age to 16 or MPs' minimum age to 18. (An exception was incorporation of the European Human Rights Convention which received Quaker support some dozen years before the Human Rights Act 1998 and again when that legislation was going through Parliament.)

Quakers have, however, favoured Lords reform. There is no evidence of a wish to be represented within the new 'other denominations' segment which the report of the Wakeham Royal Commission on the House of Lords in 2000 might have opened up as a possibility by reducing the Episcopal Bench from 26 to 16 members. Indeed it would be presumptuous of such a small denomination as the Religious Society of Friends to expect even indirect representation. (Geoffrey Roper refers within to the United Reformed Church (URC) as a small denomination, no more than a tenth the size of the Church of England on any measure' but the Society is only a fifth of the size of the URC.<sup>8</sup>) What *had* been recommended to Wakeham in

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<sup>6</sup> *Quaker Faith & Practice*, section 23.02. The attribution is to William Penn's *No Cross, No Crown*, 2<sup>nd</sup> edn, 1682.

<sup>7</sup> *Quaker Faith & Practice*, section 23.11. The attribution is to Edward Burrough's *To the present distracted and broken nation*, 1659.

<sup>8</sup> Britain Yearly Meeting of the Religious Society of Friends (Quakers) had (2005) 14,590 members in England and Wales, 711 in Scotland, 45 in the Channel Islands and 18 in the Isle of Man. Subtracting the Crown Dependencies but adding Northern Ireland (where 873 members of the Yearly Meeting of Friends in Ireland live) yields a total for the UK of 16,174. Nationwide there are also some 9,000 regular attenders at Quaker meetings, not in membership.

1999 was ‘provision for representation of diversity of opinion in any spiritual element in the Upper House’ with ‘recognition of the principle of parity of esteem for different faith communities’. This, the Parliamentary Liaison Secretary of Quakers in Britain noted in his submission, ‘could be a symbol of both ecumenical co-operation and openness to other faiths’. It could be achieved through nomination of individuals for appointment, by an independent appointments commission, with the aim of constituting ‘an Upper House which would be more representative of the United Kingdom as a whole, culturally, regionally and economically’.<sup>9</sup> A follow-up submission in 2002 recommended that ‘nominations from religious bodies can be considered on similar criteria to those from any other body’.<sup>10</sup> Quakers’ own standing representative body had included a member of the House of Lords up to 1999<sup>11</sup> and, through its parliamentary liaison staff, has had good reason to appreciate the parliamentary service of those individual Quakers who sit as life peers on party-political nomination<sup>12</sup> all the more so since the long history of Quaker MPs came to a (perhaps temporary) end at the general election of 2001.<sup>13</sup> On the whole, the engagement with Parliament (including helpful members of both Houses) has had to do much more with policy outcomes than with constitutional reform.

It may be pertinent here to observe that one of the consistent themes in Quaker representations on public policy has been to recommend that any privileges enjoyed by the churches should be extended to the adherents of non-Christian faiths. For example, in the context of charity law reform, the Society responded to the Government’s proposal to abolish Excepted Status (as privileging the churches over other faiths) by suggesting in 2002 its extension to other faith communities. It shared the Government’s objection to an instance of implied religious discrimination but encouraged a more inclusive remedy. The Quaker view was that the benefits of Excepted Status should be more widely enjoyed, with other faith communities also trusted to regulate their own affairs within the constraints of charity law but without having to register as charities. Unfortunately it did not prevail, and Excepted Status is being phased out under the Charities Act 2006.<sup>14</sup> But the point remains valid that constitutional reform should be careful to embrace non-Christian faith communities, as well as the churches. The Wakeham Royal Commission was in sympathy with this point (which, as noted above, had been made on behalf of Quakers) in 2000, and saw both ‘constituencies’ – other churches *and* other faiths - benefiting

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<sup>9</sup> Michael Bartlet (Parliamentary Liaison Secretary), ‘Submission to consultation paper on Reform of the House of Lords’, 29 April 1999, unpublished.

<sup>10</sup> Michael Bartlet (Parliamentary Liaison Secretary), ‘Submission on a Reformed Second Chamber’, 14 January 2002, unpublished.

<sup>11</sup> The late Lord Taylor of Gryfe (1912-2001), as Thomas Taylor of St Andrews Meeting, represented East of Scotland on the standing representative body. He was a Labour & Cooperative life peer from 1968 and remained active in the House of Lords until 2000.

<sup>12</sup> David Shutt, as Lord Shutt of Greetland (peerage created in 2000), is a Liberal Democrat life peer and has been the most active Quaker member of the House of Lords since the death of Lord Taylor of Gryfe. Thanks to his and others’ efforts the Charities Act 2006 included a concession to accommodate Quaker practice in decision-making other than by majority vote, and allow charity trustees to take decisions accordingly. This was achieved through an agreed interpretation of the words ‘a decision taken without a vote and without any expression of dissent’ (Hansard, Commons, Standing Committee A, 11 July 2006, cols 231-234), confirmed in a letter of 19 July 2006 from the Minister for the Third Sector to the Recording Clerk of the Society.

<sup>13</sup> Sir Richard Body (Conservative, Billericay, 1955-1959, Holland with Boston, 1966-1997, and Boston and Skegness, 1997-2001) was the last Quaker MP, although Sue Doughty (Liberal Democrat, Guildford, 2001-2005) was an attender at a Quaker meeting for worship.

<sup>14</sup> The review of the law and regulation of charities and other not-for-profit organisations in England and Wales which the prime minister commissioned his Strategy Unit to carry out in July 2001 was published in September 2002 as *Private Action, Public Benefit*. The Quaker response of December 2002 is printed in *Britain Yearly Meeting Proceedings 2003* at ‘Quaker Work in 2002’ pp 80-81. The Government’s response *Charities and Not-for-Profits: A Modern Legal Framework* was published by the Home Office on 16 July 2003 and includes (pp 34-35) a summary of responses received in the consultation on *Private Action, Public Benefit* and the Government’s acceptance of the Review’s argument ‘that there is no longer a principled justification for keeping the classes of charity that are currently excepted outside registration with the Commission’. This view was reflected in subsequent Charities Bills and in the Charities Act 2006.

from the reduction in Church of England episcopal representation from 26 to 16 which was among its recommendations.

During the July 2006 seminar it was remarked that there is a proper hesitation on the part of Quakers to adopt potentially divisive positions in the name of the Society as a whole: a reticence which other churches, it was suggested, might usefully emulate. Be that as it may, it is true that the Society has been wary of taking an official stance where its members' views are widely dispersed. For example, in the run-up to the UK referendum of 1975 which voted two-to-one to stay in the EEC on the terms renegotiated by Harold Wilson's government, it was evident that most of those speaking in the relevant Yearly Meeting session favoured a Yes vote. However, the (then) two Quaker MPs, Guy Barnett (Labour, Greenwich) and Richard Body (Conservative, Holland with Boston), were busy drafting a cross-party manifesto for the Noes. It has even been claimed that the No manifesto originated with the two of them. This was clearly one occasion when it would have been inadvisable to attempt a statement of 'the Quaker view'.

## Governance of the Church of England

Again, with Geoffrey Roper within (p. 25 above), it is fair to say that

...it feels somewhat intrusive to comment in much detail on the governance of the Church of England merely because, for historic reasons, the canon law and other sources of ecclesiastical law by which it is ordered form part of the law of England.

The *Mapping* exercise traces in fascinating detail the intricacies of Establishment. It is tempting to comment on many aspects, but from an outsider just the following observations may be in order:

- a. The precise roles of the Sovereign and the prime minister in ecclesiastical appointments are matters primarily for the Church of England, and a persuasive case is advanced for the Church of England to take the initiative rather than look to the state to propose changes (since ministers have neither the legislative space nor, perhaps, the inclination to initiate such changes from their side); but it seems clear that there must be *some* involvement of both Sovereign and prime minister as long as the Supreme Governorship and Establishment itself are not to be emptied of meaning. This does not preclude further development of vacancy-in-see consultation procedures and indeed wider consultations: representatives of the Religious Society of Friends were glad to be consulted, in 1991, following the retirement of Robert Runcie, over the qualities to be sought in the next Archbishop of Canterbury, and assumed that other churches were being similarly consulted, always without prejudice to the choice being that of the Sovereign on the advice of the prime minister. (The retirement of George Carey in 2002 saw a similar pattern of consultation.)
- b. In the relationship between Parliament and Synod, again this is a matter for the Church of England into which an outside observer is reluctant to intrude, but the concept of *devolution* might be helpful in any modification of the legislative process as between the Ecclesiastical Committee and the General Synod. In the UK constitutional reforms of 1997-1999 devolution was *territorial*. Why should it not also be *sectoral*? Or are concepts of subsidiarity or co-decision, often associated with European Union institutions, more serviceable than devolution in conceptualizing change within this sector? As the Government of Wales Act 2006 shows, a territorial devolution can be subsequently extended; something similar might be applied *sectorally* in renegotiating the respective roles in the legislative process of Parliament and Synod to the advantage of the latter. This would be a sectoral devolution of Parliamentary powers to the Church's own synodical government, and could be extended further in due course by agreement.

Establishment in England has long ceased to entail legal disabilities or social and political exclusion for non-established churches and their members. The ‘Timeline’ account in the *Mapping* exercise (pp.43-8) is a healthy reminder of how much former discrimination has been dismantled (as well as a sobering reminder of how many centuries it took). It would be surprising if this historical record had left no residual suspicion of Establishment, but it is a legacy of diminishing significance in the 21<sup>st</sup> century. This theme is further developed in the Conclusion section below.

## **The Church of England as ‘the Gateway for all Providers to Government’**

What matters much more in practice is how the Church of England and other churches relate to one another on the ground, in parish and sector ministries. This is more loosely connected to Establishment than are the core constitutional issues. It has to do with ‘soft’ Establishment at most. Yet some points of relevance to church-state relations arise.

Bob Morris offers a useful concept, or framework for analysis, when he writes of the Church of England that it

...acts as in effect the gateway for all providers to government in the case of the disciplined services, where it is required to provide chaplaincy services by law, for example, under prisons legislation (Cranmer et al. 2006: 11).

This concept of ‘the gateway for all providers to government’ is a handy way in to considering the sector ministries (in the disciplined services *and* in less disciplined settings such as hospitals and higher education institutions) and how far the lead role of the Church of England chaplain is a matter of law, or custom, or simple predominance in numbers.

Quakers in Britain, although many of them work in the National Health Service and a few in the Police Service, have no tradition of hospital or police chaplaincy; and it will come as no surprise to anyone that there are no Quaker chaplains to the armed forces. But Quakers do play an active part in many higher education institution (HEI) chaplaincy teams, and also in prison ministry. (They designate Prison Ministers in England and Wales, Prison Chaplains in Scotland.) Both HEI and prison ministries are recognised in the current Book of Christian Discipline as ‘varieties of religious service’ and advice and regulations are gathered together under that heading.<sup>15</sup>

In most HEIs (excepting, naturally, the various Anglican foundations) there is no legal requirement for the Church of England to provide chaplaincy services. This means that the lead role rests on a non-statutory basis. If the Church of England puts in more people, puts them in earlier, and spends more money on HEI chaplaincy work than other churches do, then it is hardly surprising that it retains a lead role in this sector ministry. It would be interesting to know how common it is for HEI chaplaincy committees to be chaired by the Church of England chaplain, and to speculate on whether – since this must be occurring by custom, not law – it relates at all to Establishment. The fact that in this context all the churches are in effect voluntary agencies, offering their pastoral and liturgical services to the university or college community, places them on a different footing from when the Church of England is ‘the gateway for all providers’ as of right.

Prison ministry is very different; but Quakers in Britain have been pleased to note a shift over time in the role of the statutorily-appointed Church of England prison chaplain from gatekeeper in an exclusionary mode to gateway in an enabling mode. Structurally this means that senior

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<sup>15</sup> *Quaker Faith & Practice*, sections 13.44-13.56.

positions in chaplaincy teams are becoming available to other denominations. Quakers are responding to this new opportunity by introducing a higher-level training course at Woodbrooke (the Quaker study centre in Birmingham). This will be additional to the main training course for Quaker Prison Ministers and is an investment in training provision intended to qualify experienced Quaker Prison Ministers for more senior positions. It cannot, of course, guarantee that any will be appointed; but it should ensure that they become eligible for consideration.

This is of interest as an example of a change in thinking, and in practice, with (indirectly) constitutional implications. Until a few years ago the Church of England monopoly on senior positions in prison chaplaincy was, perhaps unconsciously, taken for granted: prisons are elemental manifestations of the power of the state, so it must follow that prison chaplaincy is run by the Established Church. The problem with this logic was that it could leave non-Anglican prison chaplains feeling marginalized or unwelcome. Attitudes and practice are changing, without detriment to the statutory entrenchment of the Church of England as the only church legally obliged to make chaplaincy provision.

The wider questions this opens up are whether relations between the Church of England and other churches are becoming less unequal in sector ministries generally, and what is happening to the expression of 'soft' Establishment through statutory and non-statutory chaplaincies alike. Even when it is the Church of England alone which is under a legal obligation to make provision, it can be a gateway which enables other providers to join in as members of a chaplaincy team, rather than a gatekeeper which excludes them or admits them only on sufferance.

To the extent that this happens, it modifies church-state relations because the lead provider role of the Church of England is an aspect of the overall relationship, albeit in terms of 'soft' rather than 'hard' establishment.

Too much, however, should not be made of this: the investment of resources by the Church of England in prison chaplaincy as in the other chaplaincies and sector ministries generally is so much greater than that of other providers that it will take time for its lead role to be modified. The point being made here is only that, as it comes to rest on foundations other than monopoly as of right, it affects the assumptions of Establishment and the implications which flow from a particular understanding of church-state relations.

## **Conclusion: Establishment and Privilege in a Plural Society**

Early Quakers' objections to Establishment as the alliance of church and state authorities were undoubtedly reinforced by their immediate experience of persecution (especially during the reign of Charles II) at the hands of both. When priests and magistrates were equally energetic in trying to bring early Quakers to heel, their alliance was bound to be seen as malign, and its victims preached enthusiastically against the excesses of both. Despite the ending of discrimination, history casts a long shadow and out of the experience of distant centuries there may have come down to the present day a certain apprehensive reaction whenever church and state get too close, or the state takes too intrusive an interest in religion.

Quakers are generally comfortable with the plural character of modern British society, however critical they are of other features of that society. This is not to say that religious practice is understood as an exclusively private matter for the individual, but rather that religious bodies (whether Christian or other) should be active participants with many other voluntary associations in the life of civil society – and with few<sup>16</sup> if any privileges by virtue of their religious character.

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<sup>16</sup> Reference has been made in an unpublished UCL paper for the July 2006 seminar ('Options for Development') to the inclusion of Quakers in the historic category of Privileged Bodies. This did not connote political influence but

(The unsuccessful attempt in 2002-03 to have Excepted Status extended rather than abolished in charity law reform has already been noted. Quakers in England and Wales are now preparing for some aspects of the special status that the solemnisation of marriages according to Quaker usage has long enjoyed in English law – most recently enshrined in the Marriage Act 1949 – to be made available more generally, along the lines already accepted without difficulty by Quakers in Scotland under the Marriage (Scotland) Act 1977.) The plural society of modern Britain is one in which freedom of religion is as important as ever but privilege by reason of religion is a different matter; and it is against this background that aspects of Establishment have to be considered.

Eighty years ago Quakers were still explicit in their opposition to Establishment, as the following statement demonstrates:

It is a hindrance to the cause of religion that any religious community should be placed by law in a position of special privilege. From the days of Constantine onwards the Christian Church has suffered loss through the attempt to secure a State establishment of religion. Our highest allegiance as Christians is not to the State but to the Kingdom of God. But this does not mean that we have not duties, as Christians, towards the State and the nation to which we belong, or that our attitude toward the State should be a negative one, or one of indifference. Wholeheartedly should we rejoice when rulers and magistrates show by word and deed that they draw their inspiration from our Master, and from loyalty to His church we must work and pray for the welfare of our nation, as well as for the wider commonwealth of humanity.<sup>17</sup>

This statement on The Church and the State was adopted in 1925 as part of the updating of the Book of Christian Discipline (which is subject to a full-scale revision process by Quakers in Britain usually once in each generation). The revisers were concentrating at that stage in the cycle on the volume called *Christian practice*.

The first two sentences express the historic Quaker opposition to ‘a State establishment of religion’ and do so because of its effect on ‘the cause of religion’ and specifically on ‘the Christian Church’ in its post-Constantinian condition. The rest of the statement moves into what might loosely be called ‘God and Caesar’ territory; and it is this part of the statement alone that in essence has survived, reworded by successive revisers of the Book of Christian Discipline, under such headings as ‘The State’s authority and the individual’.

When the 1925 *Christian practice* was revised (1954-1959) and amalgamated with another volume of the Book of Christian Discipline there was no mention of Establishment anywhere in the resulting volume *Christian faith and practice*.<sup>18</sup> The next Revision Committee after that (1986-1994) did not even consider it.

This does not mean that Quakers in Britain have consciously dropped their opposition to ‘a State establishment of religion’ or repudiated the statement of 1925; but rather that, in comparison with more salient issues and urgent problems of national and international life, it has ceased to matter one way or the other, most of the time.

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rather a ceremonial relationship with the Sovereign as head of state to whom deputations of the Society, as of the other Privileged Bodies, present addresses at the Accession and on special occasions throughout the reign (most recently during the Golden Jubilee in 2002). Much care goes into drafting the distinctively Quaker content of these addresses to the Sovereign. The address delivered on 21 March 2002 is printed in *Britain Yearly Meeting Proceedings 2003* at ‘Quaker Work in 2002’ pp 13-14.

<sup>17</sup> *Christian practice* ‘being the second part of the Christian Discipline of the Religious Society of Friends in Great Britain approved and adopted by the Yearly Meeting, 1925’ (Friends’ Book Centre, London, 1925), pp 36-37: The Life of the Church, section 16.)

<sup>18</sup> *Christian Faith and Practice* (London Yearly Meeting of the Religious Society of Friends, London, 1959). Sections 583-590 comprised extracts of Quaker writings on ‘The State’s authority and the individual’.



## Chapter 5

### Public Authorities and Religious Denominations in Italy and Spain

Javier García Oliva<sup>1</sup>

#### Introduction

Italy and Spain share common legal, social, cultural and religious values (Alberca de Castro and García Oliva 2004). Both countries belong to the same legal tradition, and Spanish Ecclesiastical Law<sup>2</sup> has undoubtedly been influenced by its Italian counterpart. From an Ecclesiastical Law point of view, both jurisdictions may be regarded as cooperationist. This brings these two countries together with Germany, Portugal, Austria and Belgium, amongst others. In this category, there is an acknowledgment of the separation between the State and religious denominations, but at the same time this recognition is made compatible through a healthy collaboration between both institutions (García Oliva 2001: 360). The cooperationist model is the result of two different features:

- In these countries, a denomination had been traditionally regarded as the official faith of the State: this was the case in Italy and Spain with the Catholic Church or with both the Protestant Federation and the Catholic Church in Germany. On these grounds, and despite having embraced the principles of freedom and non-discrimination, the legal systems of these States have chosen to maintain a special relationship with the majority Church, whilst rejecting the uniformity of the separatist system.
- Furthermore, this model is clearly influenced by the principles of the so-called social State, in particular with regard to the protection and promotion of human rights.

Generally speaking, alongside the cooperationist system, there are two other broad categories in terms of Church/State relationships in Europe. The cooperationist formula has been regarded as a hybrid because it displays features of the following two categories (Robbers 2005b: 578):

- *National Church systems* in which there are strong links between the State and one or more denominations.<sup>3</sup> This entails the recognition of one (or more) faith as 'official', notwithstanding that protection of religious freedom and non-discrimination on religious grounds is enshrined in national law. In the United Kingdom, both England and Scotland fit into this category. Outside the British Isles, countries such as Denmark, Greece and Finland are National Church systems, even though the links between public authorities and religious denominations are very different from one country to another.<sup>4</sup>
- *Separatist systems* (García Oliva 2001: 359 note 4) - They regard religion as an exclusively private matter, and religious denominations are all subject to the common/general law of

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<sup>1</sup> I would like to express my gratitude to Professor Norman Doe, Director of the Centre for Law and Religion for his comments on this paper; Dr Juan Antonio Alberca de Castro (Cadiz University, Spain), Dr Alessandro Ferrari (Como University, Italy) and Dr Cristiana Cianitto (Milan University, Italy) for their suggestions. Furthermore, I would like to thank my colleague at Bangor Law School, Richard Caddell, for his assistance with editing this paper.

<sup>2</sup> This concept is used to refer to that branch of State law concerning the relationships between public authorities and religious denominations. Therefore, it is an area within Public Law, as opposed to the internal laws of religious bodies.

<sup>3</sup> For instance, in Finland, there are two established faiths, namely the Lutheran and the Orthodox Churches.

<sup>4</sup> In the context of Europe, the Danish National Church in Denmark is the clearest example of a State Church. Its dependence on the public authorities is remarkable. At the other end of the spectrum, the bonds of the Church of Scotland with both the British and Scottish authorities are mainly symbolic and the State does not interfere in the religious affairs of the Church.

the State on public freedoms. Theoretically, separatism is symptomatic of government indifference towards religion because public bodies and religious denominations do not need to cooperate with each other. However, this is difficult to achieve and even France, which is undoubtedly the pattern of separatism in Europe<sup>5</sup>, in the last few decades has witnessed transformations towards some kind of collaboration with religious bodies.<sup>6</sup> This is known as *laïcité positive*.

## The Italian Model of Ecclesiastical Law<sup>7</sup>

The Italian Constitution,<sup>8</sup> in a break with historical practice, has stressed the non confessionality of the State and has highlighted the significance of the principle of religious freedom concerning both individuals and religious denominations. With regard to the former, Article 19<sup>9</sup> does not make any distinction on the grounds of nationality; in relation to the latter, the principle of separation of jurisdictions is recognized by its Highest Law.<sup>10</sup> Moreover, Article 20<sup>11</sup> prohibits discrimination on the grounds of religion.

A distinction between *three categories of religious denominations* should be made:

### The Catholic Church

The relationship between the Italian State and the Catholic Church<sup>12</sup> is regulated by *Patti Lateranensi* (1929) and their legislative modifications (Finocchiaro 2006: 70),<sup>13</sup> especially the *Accordi di Villa Madama* 1984. In recent years there has been a very interesting debate among Italian commentators over whether or not these latter Agreements are protected by the constitutional provisions,<sup>14</sup> which in principle only refer explicitly to the *Patti Lateranensi*.

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<sup>5</sup> Alongside France, the Republic of Ireland belongs to this category. This has been pointed out by commentators in order to emphasize the very theoretical nature of the distinction between National Church/cooperationist/separatist systems.

<sup>6</sup> Interestingly, the majority of the countries which joined the European Union in 2004 have been classified as separatist systems, although most of the different legal frameworks of these former communist countries recognize some degree of cooperation or collaboration with religious bodies. See Ferrari and Cole Durham (2003).

<sup>7</sup> Roman Catholicism is by far the most popular religion in the country. According to estimates by a number of bodies (CIA World Fact Book 2005, Italian polls, Adherents.com, BBC News and others), it is safe to conclude that 87% of the Italian population self-identify as Roman Catholic, whereas the remainder of the population identify with either other religions or with no religion at all.

<sup>8</sup> *La Costituzione della Repubblica Italiana*, which is the Supreme Law of Italy, was approved by the Constituent Assembly on 22 December 1947 and it came into force on 1 January 1948.

<sup>9</sup> Article 19 Italian Constitution: 'Everyone is entitled to freely profess religious beliefs in any form, individually or with others, to promote them, and to celebrate rites in public or in private, provided they are not offensive to public morality'.

<sup>10</sup> Article 8.1 Italian Constitution: 'Religious denominations are equally free before the law'.

<sup>11</sup> Article 20 Italian Constitution: 'For associations or institutions, their religious character or religious or confessional aims do not justify special limitations or fiscal burdens regarding their establishment, legal capacity or activities'.

<sup>12</sup> Article 7.1 Italian Constitution: 'State and Catholic Church are, each within their own regions independent and sovereign'. This area has been consistently studied by Italian commentators: see Barberini (2005) whose article clearly demonstrates the independence of the Catholic Church and its sovereignty as an institution. A host of sociological and historical reasons lie behind the inclusion of this provision.

<sup>13</sup> According to this author, it is undeniable that *gli Accordi di Villa Madama* are much more than a simple modification of the *Patti Lateranensi*. Despite the fact that even *gli Accordi* regard themselves as a modification or an amendment – in order to meet the constitutional expectations – they are in reality an almost completely new agreement. It should borne in mind that significant transformations had taken place in the Italian society since the signature of the *Patti Lateranensi* in 1929 and expectations on the part of both Church and State had changed.

<sup>14</sup> Article 7.2 Italian Constitution: 'Their relationship (*the State and the Catholic Church*) is regulated by the Lateran pacts. Amendments to these pacts which are accepted by both parties do not require the procedure of constitutional amendments'.

According to Finocchiaro (2006: 72), the legal framework seems to strongly support an answer in the affirmative.

The long-established Christian tradition of Italy has received a proper acknowledgment in its Fundamental Law (Alberca de Castro and García Oliva. 2004: 55). In fact, elements such as the significance of family values and the respect for life are amongst the key pillars of Italian society. In this general framework, the State and faith denominations are brought together in a productive exchange in order to achieve a peaceful coexistence and the development of national culture.

### **Religious Denominations which have Signed an Intesa (Agreement) with the State**

Setting aside the Catholic Church, all other religions are entitled to sign agreements – known as *intese* – with the State.<sup>15</sup> The agreements with minority religious denominations are unquestionably one of the fundamental features of a cooperationist system. In fact, the absence of such instruments<sup>16</sup> would be somewhat surprising and incompatible with a system where equality<sup>17</sup> is supposed to be pivotal.

In compliance with this constitutional provision, the agreement reached with the religious denomination must be recognized by a subsequent statute (Barberini 2005: 101)<sup>18</sup>. Even though public authorities do not have a say in relation to either of these legal instruments - *intesa* and an Act of Parliament - the actual signature of the *intesa* and the enactment of the law are certainly matters of discretion on the part of the State, and the Constitution does not list requirements which should be met by the religious body in order to be provided with the above instruments. The criticisms made by religious minorities that have neither been approached by the State nor received any encouragement to conduct such negotiations with public authorities are therefore perfectly understandable, and the generality of Article 8.3 of the Italian Constitution may be excessive. Once a law is enacted, it can be modified only if the *intesa* on which is based receives prior revision (Finocchiaro 2006: 75). This is crucial for the religious denomination itself because any changes or transformations concerning its status will require the approval of the religious denomination.

Furthermore, there has been some discussion with regard to the exact juridical nature of the law which approves an *intesa*, bearing in mind that, in order to amend or repeal the latter, the consent of the religious denomination will be required. Rightly, Italian commentators have defined the former as *riforzanti* or *fonti atipiche* since somehow they are beyond the will of the Parliament.

The constitutional recognition of the *intese* significantly predates their implementation as distinct judicial instruments, with the State having been slow to elaborate such agreements in practice. Indeed, the first agreement with a religious minority (*Tavola Valdese*) was signed as late as 1984.<sup>19</sup> Subsequently, several *intese* have been signed with different religious groups.<sup>20</sup> The structure and

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<sup>15</sup> Article 8.3 Italian Constitution: ‘Their relationship with the State is regulated by law, based on agreements with their representatives’.

<sup>16</sup> In contrast, however, the Spanish Constitution does not impose a duty on public authorities to sign agreements with minority denominations. According to the constitutional provisions, this is a matter of choice on the part of the State. Nevertheless, the practice of the Spanish Government has been to promote such agreements of its own volition.

<sup>17</sup> Article 3. 1 Italian Constitution: ‘All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions’.

<sup>18</sup> This author has defined an ‘*intesa*’ as a precondition of legislative entitlement: In fact, the ordinary legislature could not enact a statute without such a previous agreement with the religious denomination.

<sup>19</sup> The *intesa* with *Tavola Valdese* was signed on 21 February 1984 and it was approved by *Legge 449/1984*. Subsequently the *intesa* was modified on 25 January 1993 and approved by *Legge 409/1993*.

<sup>20</sup> The following denominations have signed *intese* with the Italian State and have been approved by subsequent legislation: *Assamblee di Dio in Italia (ADI)*, *Unione delle Chiese Cristiane Avventiste del 7 Giorno*, *Unione Comunità Ebraiche in*

contents of these agreements seem to be very similar and, as a result, the initial enthusiasm on the part of religious minorities has evaporated into a certain degree of bewilderment and frustration.<sup>21</sup> The Italian State, like any other democratic country in Europe, takes pride in its pluralistic nature; yet this is difficult to achieve when there is failure to recognise the radically different needs of certain organizations.

## Other Denominations

All other religious bodies<sup>22</sup> are regulated by common law (*Legge 24 June 1929, n. 1159* and the *Regio Decreto 28 February 1930, n. 289*). These legislative instruments recognize freedom of religion and the entitlement of religious bodies to establish themselves, appoint their ministers and celebrate marriage according to religious rites.

Some of the areas of cooperation between public authorities and religious denominations in Italy should be indicated (Ferrari 2005). This section does not aim to provide a comprehensive analysis of the different fields in which both the State and faiths are brought together since such a task falls outside the scope of this paper. However, two areas have been chosen that clearly show the close collaboration between both entities and, for comparative purposes, the same two fields will be studied in relation to Spain:

- *Religious education in State schools:* In compliance with the provisions of the Treaty of Villa Madama, the Catholic religion must be taught in all State schools. Teachers of this subject are proposed by the diocesan bishop and appointed and paid by the educational authorities. Because of the non-confessional nature of the Italian State, the Catholic religion is optional for all students and those who profess other faiths, as well as atheists and agnostics, can opt out. If so, they will be offered an alternative choice. Religious minorities which have signed *intese* with the State can provide religious education of their own denomination but, unlike teachers of the Catholic religion, their staff will not be paid out of monies of the State.
- *Religion and employment:* Those religious denominations that have signed '*intese*' usually receive an additional tier of support from the State, which extends some degree of protection for religious convictions in the workplace. For instance, a clause in the *intesa* with the *Unione Comunita Ebraiche in Italia (UCEI)* has recognized the Sabbath - the right to rest on Saturday. The framework is more fragile for those individuals who profess a faith (e.g. Islam) which has not achieved/aimed to sign this sort of agreement with public authorities. In these situations, it is up to the employer to respect religious convictions, within the limits of the principle of equality amongst citizens and European Union legislation concerning discrimination in the workplace (Pacillo 2003).

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*Italia (UCEI)*, *Unione Cristiana Evangelica Battista d'Italia (UCEBI)* and *Chiesa Evangelica Luterana in Italia (CELI)*. Furthermore, there is a series of *intese* which has not yet received approval by the Italian Parliament, including the modification of previous *intese* signed with *Tavola Valdese* and *Unione delle Chiese Cristiane Avventiste del 7 Giorno*, as well as two new agreements with both *Unione Buddhista Italiana (UBI)* and *Congregazione cristiana dei testimoni di Geova*.

<sup>21</sup> It is particularly worrying that both *intese* with *Unione Buddhista Italiana (UBI)* and *Congregazione cristiana dei testimoni di Geova* were signed on 20 March 2000 and they have not been subsequently ratified [passed] by Parliamentary laws. Berlusconi's Government did not seem to show any interest in putting this forward though at the time of writing the situation is expected to change.

<sup>22</sup> Whilst the concept of religious denomination has not been defined by the legislature, the Italian Constitution clearly refers to it. When the Italian State agrees to sign an '*intesa*' with a religious body, it is implicitly acknowledging its nature, but what happens if a religious body does not want to sign that agreement or the public authorities do not even consider it? Bearing in mind that this is a public law definition, it is irrelevant whether or not the group regard itself as a religious body. In compliance with a judicial decision of the *Corte Costituzionale* (sent. n. 195/1993), in order to decide whether or not a body can be considered as a denomination, the following questions should be addressed: Have there been previous public recognitions? If so, what are the characteristics of that body according to its internal regulations?

## The Spanish Model of Ecclesiastical Law<sup>23</sup>

The Spanish Constitution 1978<sup>24</sup> is the basis of the current system of Ecclesiastical Law. The Fundamental Law recognises the non-confessional nature of the State,<sup>25</sup> as well as the principles of religious freedom<sup>26</sup> and cooperation.<sup>27</sup> The explicit mention of the Catholic Church - which has been controversial - seems to be simply a sign of its historical and sociological importance (Iban 2005a: 145; Bernardez Canton 1989: 403), because the equality with other denominations is immediately emphasized too.

Furthermore, the Constitution declares the principle of equality of all Spaniards irrespective of their religion,<sup>28</sup> on several other grounds. As stated by Martínez Torrón (2006: IX), there is no doubt that the solution of the 'religious question' in the Spanish Constitution of 1978 was one of the key aspects behind the success of the democratic transition.

However, it seems clear that religious freedom cannot be considered in isolation from other fundamental freedoms. Souto Paz (2003: 247) has emphasized that it is one of the elements of a wider freedom of cosmovision (a stance towards the universe), which comprises freedom of thought, conscience and ideological freedom. Also from this wider perspective, Llamazares (2002: 286) has highlighted that religious freedom must be understood as an important branch within the concept of freedom of conscience, as formulated by Article 16.1 and 2 of the Constitution. This freedom refers to both individuals and groups (general associations and specific groups, including political groups and religious denominations). Both authors present an innovative approach to the discipline of Ecclesiastical Law of the State, whilst rejecting an isolated analysis of religious freedom.

Religious freedom as contemplated by Article 16 of the Spanish Constitution has been developed by the *Ley Orgánica de Libertad Religiosa* 1980.<sup>29</sup> Surprisingly, this significant piece of legislation has

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<sup>23</sup> According to a survey carried out by the *Centro de Investigaciones Sociológicas* (Survey n 2474 of December 2002), the Spanish religious make-up is as follows: Catholics (80.3%), other religious believers (1.9%), non-believers (10.6%), atheists (5.2%) and no answer given (2.1%).

<sup>24</sup> Passed by the Cortes Generales in Plenary sittings of the Congress and the Senate held on October 31, 1978; ratified by referendum of the Spanish people on December 7, 1978 and sanctioned by His Majesty the King before the Cortes Generales on December 27, 1978. In order to incorporate some of the provisions of the Treaty of Maastricht, it was modified by the Cortes Generales in the Plenary sittings of the Congress held on July 22, 1992 and of the Senate held on July 30, 1992 and sanctioned by His Majesty the King on August 27, 1992.

<sup>25</sup> Article 16.3 Spanish Constitution: 'There shall be no State religion [...]. According to Souto Paz (2003: 250-251), the acknowledgment in 1978 of the non-confessional nature of the Spanish State was a near total innovation, which had only taken place once before - during the Second Republic - and, unlike on that occasion, it was accepted peacefully. The new framework was strongly supported by different political and social sectors and the hierarchy of the Catholic Church, in compliance with the doctrine of the Council Vatican II, which proclaimed the separation between Church and State. In any case, the recognition of the non-confessional nature of the State does not imply an antireligious stance on the part of public authorities. On the contrary, the Highest Law provides different mechanisms to guarantee a productive and fruitful collaboration between the State and religious denominations. See also Suárez Pertierra (2006).

<sup>26</sup> Article 16.1 Spanish Constitution: 'Freedom of ideology, religion and worship of individual and communities is guaranteed, with no other restrictions on their expressions than may be necessary to maintain public order as protected by law'.

<sup>27</sup> Article 16.3 Spanish Constitution: '[...] The public authorities shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate co-operation with the Catholic Church and other confessions'. See Navarro-Valls (2006: 31-42).

<sup>28</sup> Article 14 Spanish Constitution: 'Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance'.

<sup>29</sup> *Ley Orgánica 1980, de 5 de Julio, de Libertad Religiosa*, which recognises the right of Churches and other religious denominations to establish places of worship with religious purposes, the right to nominate and prepare their own

ignored ideological freedom (Souto Paz 2003: 254)<sup>30</sup>, despite the fact that that freedom has been treated at the same level as religious freedom by the Constitution and different international treaties, such as the Universal Declaration of Human Rights.

The relevant provisions of the *Ley Orgánica* are as follows:

- On the one hand, Article 5<sup>31</sup> declares that the recognition of legal personality is dependent upon registration with the corresponding public Registry created for this purpose and kept in the Ministry of Justice.
- On the other hand, Article 7<sup>32</sup> announces that the State may conclude agreements of cooperation with religious denominations as long as some requirements are met.

In order to study the different denominations recognized by the Spanish legal framework, a distinction between *three categories of religious bodies* should be made:

### The Catholic Church

Just a few days after the enactment of the Spanish Constitution and replacing the Concordat of 1953, four Agreements were signed by the Spanish State and the Holy See.<sup>33</sup> Due to the juridical personality of the Holy See, the four Agreements have international status<sup>34</sup> and the consent of both the Spanish State and the Vatican is required for their amendment or repeal. As previously stated, the *Ley Orgánica, de 5 de Julio, de Libertad Religiosa* 1980 enables public authorities to sign agreements with religious denominations. With the exception of specific matters that have not been addressed in the Agreements of 1979, the 1980 law does not extend to the Catholic Church. The lack of applicability to this denomination is unsurprising because, by the time the *Ley Orgánica* was passed in 1980, the Catholic Church had its own legal framework, as regulated by the four above Agreements. Its distinctive legal treatment has given rise to some anxieties amongst members of minority denominations (Alberca de Castro and García Oliva 2004: 65).

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religious ministers, proselitism of their faiths and the right to maintain relationships with other organizations or religious bodies, either in Spain or abroad.

<sup>30</sup> Article 3.2 of *Ley Orgánica, de 5 de Julio, de Libertad Religiosa* states as follows: ‘Activities, purposes and Entities relating to or engaging in the study of and experimentation with psychic or parapsychological phenomena or the dissemination of humanistic or spiritualistic values or other similar non-religious aims do not qualify for the protection provided in this Act’.

<sup>31</sup> This will be examined below when we shall look at the concept of religious denomination and the legal framework of those faiths which have not signed an agreement with the Spanish State. Article 5 of *Ley Orgánica, de 5 de Julio, de Libertad Religiosa*: ‘1. Churches, Faiths and religious communities and their Federations shall acquire legal personality once registered in the corresponding public Registry created for this purpose and kept in the Ministry of Justice. 2. Registration shall be granted by virtue of an application together with an authentic document containing notice of the foundation or establishment of the organisation in Spain, declaration of religious purpose, denomination and other particulars of identity, rules of procedure and representative bodies, including such body’s power and requisites for valid designation thereof. 3. Entries relating to a give religious Entity may only be cancelled at the request of its representative bodies or in compliance with a final court sentence’.

<sup>32</sup> This provision is discussed in detail below. Article 7 states as follows: ‘1. The State, taking into account of the religious beliefs existing in Spanish society, shall establish, as appropriate, co-operation agreements or conventions with the Churches, Faiths or religious communities enrolled in the Registry where warranted by their notorious influence in Spanish society, due to their domain or number of followers. Such Agreements shall, in any case, be subject to approval by an Act of Parliament. 2. Subject to the principle of equality, such Agreements or Conventions may confer upon Churches, Faiths and religious communities the tax benefits applied by ordinary legislation to non-profit entities and other charitable organizations’.

<sup>33</sup> Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning educational and cultural affairs; Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning economic affairs; Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning religious attendance of the Armed Forces and the military service of clergymen and members of religious orders; Instrument of Ratification, dated 4 December 1979, of the Agreement of 3 January 1979, between the Spanish State and the Holy See concerning legal affairs.

<sup>34</sup> See Sentence of the Constitutional Court 66/1982, reasoning 5.

There is no doubt that Catholicism is still the faith professed by the vast majority of Spaniards and, because of historical and sociological reasons, the Catholic Church may be perceived as a model or pattern for other denominations (Doe and García Oliva 2002). However, it has to be pointed out that such a presumption could never be justified where the distinct circumstances of other faiths and their ability to meet the various criteria are not taken into consideration.

The present position of the various faith groups is as follows:

### **Religious Denominations which have Signed an Agreement with the State**

The Spanish model of Ecclesiastical Law is based on the principles of religious freedom, equality and cooperation. Unlike Italy – where the devices of cooperation with the Catholic Church and other religious denominations are explicitly detailed by its Highest Law – the Spanish constitutional provisions (Article 16.3) allow its public authorities a huge degree of discretion with regard to the formulation of the instruments required to put the principle of cooperation into practice. The above article simply maintains that ‘the public authorities shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate co-operation with the Catholic Church and other religious denominations’. This mandate is extremely general and there were no obligations whatsoever on the part of the Spanish public authorities to either conclude international treaties with the Catholic Church - see above - or choose ‘the Italian formula’ (*intese*) in relation to religious minorities. Therefore, putting forward this mechanism does not only show an undeniable influence of the Italian model on the Spanish legal framework, but also a willingness to guarantee the pluralism which is recognized by the *Norma Normarum*.<sup>35</sup>

Article 16.3 of the Spanish Constitution has been developed by Article 7.1 of the *Ley Orgánica de Libertad Religiosa* 1980. The legislature has limited the degree of discretion on the part of the Government – the authority that finally subscribes the agreement or *acuerdo* – establishing two requirements for its signature: first, the religious denomination must be registered; secondly, it must be *deeply rooted* in the Spanish society. The second condition has been criticised because, strictly speaking, only the Catholic Church can be regarded as a *deeply rooted* denomination in Spain. Obviously, public authorities have interpreted this concept very generously and have taken historic reasons into account in order to sign agreements with the *Federación de Entidades Evangélicas de España*, *la Federación de Comunidades Israelitas de España* and *la Comisión Islámica de España*. Those *acuerdos* with Protestants, Jews and Muslims were not signed until 1992, twelve years after the enactment of the *Ley Orgánica de Libertad Religiosa*. This length of time is disappointing, to say the very least.

In compliance with Article 7.1 of the *Ley Orgánica* the agreements with *deeply rooted* minority denominations must be subsequently approved by Acts of Parliament.<sup>36</sup> Similarly to Italy, there have been interesting discussions about the nature of the *acuerdos* and the Acts of Parliament that have approved them. In Spain, according to the first additional provisions of the three agreements, ‘the Government shall notify any legislative initiative that may affect the contents of this Agreement to the Federation of Israelite Communities of Spain / Federation of Evangelical

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<sup>35</sup> Article 1 of the Spanish Constitution declares as higher values of its legal order, liberty, justice, equality and political pluralism. Consequently, general pluralism is not included, whereas a wide interpretation of this last concept would seem to be advisable.

<sup>36</sup> Law 24/1992, of 10 November, approving the Agreement of Cooperation between the State and the Federation of Evangelical Religious Entities of Spain; Law 25/1992, of 10 November, approving the Agreement of Cooperation between the State and Israelite Communities of Spain and Law 26/1992, of 10 November, approving the Agreement of Cooperation between the State and the Islamic Commission of Spain.

Religious Entities of Spain / the Islamic Commission of Spain'. Consequently, unlike Italy, public authorities alone decide whether or not to modify or repeal the laws which contain the agreements (as annexes), and notification to the three religious communities would be sufficient without their consent.

These Acts of Parliament can be regarded as laws of internal Public Law and they are obviously different from the international treaties with the Holy See. According to Llamazares (2002: 341), they are unilateral sources, despite the fact that their contents are based on previous bilateral agreements reached with religious denominations. Furthermore, in compliance with Article 2.2 of the Spanish Civil Code, the special nature of these laws requires, in the case of derogation, an explicit mention of the subsequent Act of Parliament, as opposed to a less formal mechanism of implicit repeal.

### Other Denominations

In addition to the Catholic Church and those denominations which have signed agreements with the Spanish State, there are many other religious bodies that have also received a response from the legal framework. As stated by *la Ley Orgánica de Libertad Religiosa* 1980, 'Churches, Faiths and religious communities and their federations shall acquire legal personality once registered in the corresponding public Registry created for this purpose and kept in the Ministry of Justice.'<sup>37</sup> [being the procedure regulated by the same Article.<sup>38</sup>] The independence of these denominations is declared immediately afterwards.<sup>39</sup> The recognition of legal personality provides those groups with certain benefits from the State, but obviously a lesser range of entitlements in comparison with those that have signed agreements. Having said that, the request for recognition of legal personality is a matter of choice on the part of each individual group and there may certainly be groups that decide not to apply for this process.

Granted the elective character of the arrangement, public authorities seem uneasy about their involvement in this procedure. Indeed, the declaration of religious purpose as a requirement listed by Article 5.2 *Ley Orgánica de Libertad Religiosa* 1980 in order to provide a group with the acquisition of legal personality cannot be other than procedural. Otherwise the Registry would end up defining what a religion is (see also Polo 2002).

At this point, for comparative purposes with Italy, the same areas of cooperation between public authorities and religious denominations in Spain will be analysed as follows:

- *Religious education in State schools*<sup>40</sup> - The Catholic religion must be offered in State schools in compliance with Art II of the Agreement of 3 January of 1979, concerning educational and cultural affairs<sup>41</sup>, and the *Disposición Adicional Segunda* of the *Ley Orgánica de Libertad*

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<sup>37</sup> See Article 5.1 *Ley Orgánica 1980, de 5 de Julio, de Libertad Religiosa*.

<sup>38</sup> Article 5.2

<sup>39</sup> Article 6.1

<sup>40</sup> Education is undoubtedly one of the most controversial areas in Church/State relations. The teaching of the Catholic religion in State school does not seem to have reached a straightforward solution. See García Oliva (2005): 199-201; 204-205).

<sup>41</sup> The Holy Father, Benedict XV, in a meeting with the new Ambassador of Spain before the Holy See, Francisco Vázquez, held in Rome on 20 May 2006 reminded the Government of its duties concerning the teaching of Catholic religion, as recognized by the Agreement on Educational Affairs (see [elmundo.es](http://elmundo.es) 20 May 2006 – accessed 12 February 2007).



*Religiosa* 1980. It is an optional subject, because the Spanish State is non-confessional. Having been proposed by the diocesan bishop, teachers of the Catholic religion are appointed and paid by the educational authorities. Students who profess other faiths, as well as atheists and agnostics, may choose an alternative subject. Furthermore, religious minorities that have signed agreements with the State have also been granted access to school premises in order to teach their tenets. The teachers of the Muslim religion, for instance, are also paid by the State, although they are not public employees. In compliance with the *Resolución de 23 de abril de 1996* they receive a monetary contribution as opposed to a salary.

- *Religion and employment* - This area, dealt with in the different agreements signed by the Spanish State with the religious denominations, is in a constant process of reform. It is clear that religious bodies have some specific features which require a response from the public authorities and the protection of religious beliefs in the workplace has created a certain amount of case law, as recognized by a number of commentators (Iban 2005: 151).

## **Conclusions: Comparing the Italian and the Spanish Models of Ecclesiastical Law**

- In Ecclesiastical Law terms – the law of the State concerning religious bodies – there are three models of relationships between public authorities and religious denominations throughout Europe: national Church, separatist and cooperationist systems. Both Italy and Spain fit into the same cooperationist category.
- In both countries there is a legal recognition of the special position of a specific denomination, the Catholic Church, on sociological and historic grounds.
- This status is perfectly compatible with the respect for religious freedom and equality – crucial elements of a democratic society – in these two countries.
- There has been an increase in the number of members of minority denominations in Italy and Spain, but the overwhelming majority of Italians and Spaniards are still Catholics, despite the increasing degree of secularisation in these two societies.
- In Italy, the principle of cooperation is recognized by its Constitution, which mandates the reaching of agreements with both the Catholic Church and other religious denominations. In Spain, on the contrary, although cooperation is expected in the Constitution, public authorities have a degree of freedom to choose the most appropriate instruments. The Spanish Government has pursued agreements with both the Catholic Church and other religious denominations, but it could have decided not to do so.
- The relationships with the Catholic Church are regulated through international treaties: the Treaty of *Villa Madama* (1984) in Italy, which replaces the *Patti Lateranensi*; and four international *Acuerdos* between the Spanish State and the Holy See (1979), which were substituted for the old Concordat of 1953. Because they are international treaties, they cannot be modified unilaterally by either Italy/Spain or the Vatican.
- In Spain, according to Article 7 *Ley Orgánica de Libertad Religiosa* 1980, only *deeply rooted* denominations are entitled to sign *acuerdos* with the State. This prerequisite is not contemplated by the Italian framework.
- In Italy several agreements – *intese* – with religious minorities have been signed. Individual Protestant Churches such as the *Valdesi* and *la Chiesa Evangelica Luterana in Italia* have successfully negotiated such instruments. In Spain, all Protestant groups have been brought under a common umbrella, the Federation of Evangelical Religious Entities.
- In both countries, the agreements with minority denominations may require further development. Moreover, the similarity between their content is remarkable. This is

particularly worrying because it contradicts pluralism as a legitimate goal of a democratic society.

- There is a crucial difference in relation to the legal status of agreements with religious minorities and the Acts of Parliament which approve them. In Italy, modifications concerning the *intese* require the consent of the specific religious denomination and subsequent approval of another law to replace the former statute. As a result of these requirements, the bilateral nature of the agreements and the laws is unquestionable. In Spain, on the contrary, the modification or repeal of the laws that have recognized the current three agreements simply require notification to those religious federations and not their consent. Therefore, these Acts of Parliament are certainly not bilateral, notwithstanding the previous agreement reached with the specific religious bodies.
- In both States religious denominations that do not enjoy the advantages of an agreement can still receive a certain number of benefits. Moreover, in both countries, the judiciary and legal commentators have been wondering what a specific group must prove in order to be regarded as religious and enjoy a legal status.
- It is undeniable that the legal framework of the Catholic Church, as contemplated by the different international treaties, is substantially different from the provisions contained for religious minorities in the *intese* or *acuerdos*. A clear example in Spain is the presence of a greater number of Catholic members than representatives of other faiths in the *Comisión Asesora de Libertad Religiosa*.
- Only two examples of cooperation or collaboration between the State and religious denominations in Italy and Spain have been mentioned: education and labour/work conditions. In these fields the difference in treatment between the Catholic Church and other religious groups is clear. However, the differences are not less significant in other areas, such as religious observance, financial provisions and marriage: (a) a much more stable mechanism is provided for the Catholic Church in terms of religious observance in schools, prisons, hospitals and armed forces; (b) the Catholic Church undoubtedly receives stronger financial support from the State; and (c) the regulation of canonical marriage is different from marriages celebrated according to other religious rites in Spain.
- Despite the similarities that have been continuously highlighted between both models of Ecclesiastical Law, the latter two areas (financial provisions and marriage) are more egalitarian in Italy than in Spain. Hopefully, the Spanish framework will be influenced by the reforms in the neighbouring country.
- This praise for some aspects of the Italian model of Ecclesiastical Law should not lead to complacency about the Italian system. In fact, religious minorities seem to be rather frustrated by the uniformity of the *intese* - in a similar way to the Spanish situation - and the slowness of legislative developments in the last few years. The overwhelming presence of the Catholic Church in Italian society and its links with the political establishment are undeniable. In this context, the types of reforms in terms of Church/State relations that have taken place in Spain under José Luis Rodríguez Zapatero are very unlikely to happen under Italian governments.
- Even though equality does not amount to uniformity, in compliance with different judicial decisions in both countries, the principle of equality amongst religious denominations and the fulfilment of religious freedom are incompatible with a situation which without proper justification concedes supremacy to the Catholic Church. A certain degree of distinction may be justifiable on sociological and historical grounds, but proportionality and reasonableness should be guiding principles to work as buttresses against violations of the principle of equality.

## Chapter 6

### Religion and the State in an Open Society

Andrew Copson and David Pollock

The British Humanist Association (BHA) is rooted in a tradition that respects freedom of religion and belief<sup>1</sup> as a human right, advocates a secular state to protect this freedom, and prizes the civic equality that this can bring. That aim is enshrined in our commitment to the model of the open society and is the foundation of our thinking on matters of religion and the state.

As an organisation that represents not just the non-religious in general, but people who, as humanists, have deeply held ethical beliefs of their own, we recognise the importance that such convictions have for people, and how profoundly their worldviews motivate and inspire their actions – not just in private life, but also in the public sphere. Indeed, it is precisely because people’s profound religious or non-religious convictions are so important to them, and because agreement about such fundamental beliefs is impossible, that no one religion or non-religious belief must be privileged. Everyone’s status (actual and perceived) as a citizen must be independent of his or her adherence to any particular religious or non-religious worldview.

Of course, this is not to say that people whose inspiration or drive comes from their religious beliefs should be under any constraint about expressing that motivation if they so choose. But it does mean that when they enter the public realm and seek to influence policy, they cannot rely on the vocabulary and premises of their own worldview but must rely on a shared vocabulary – and the same conditions pertain for the non-religious.

For all citizens to feel free to enter this public realm, not only must the means of discourse be shared, but the framework that supports it must be common to all. The neutrality of that framework must be apparent and genuine.<sup>2</sup> Such a neutral framework is what we call a secular one.<sup>3</sup> Our secularism is a strategy for the establishment of a public sphere in which the negotiations vital to an open society can be held in a way that is accessible to all. It takes democracy and human rights as its foundation and it operates with a genuine neutrality to create the space for politics to conduct the debates necessary to our shared life.

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<sup>1</sup> Generally in this paper *belief* is used to denote those non-religious worldviews that are legally analogous to religions in the human rights framework created by instruments such as the European Convention on Human Rights. Following *Arrowsmith v UK* (1978) 3 EHRR 110 and *Kokkinakis v Greece* (1994) 17 EHRR 397, ‘belief’ includes non-religious beliefs such as Humanism. The English word *belief* is unfortunately weak compared with the French equivalent of *convictions* or the German *Weltanschauung*.

<sup>2</sup> We must counter the bogus argument that such neutrality is not possible, as religious critics of secularism sometimes claim. It seems that they mistake the idea of the neutrality of the framework with a proposal that the whole of society should somehow be ethically neutral overall – an obviously ridiculous proposition.

<sup>3</sup> The fashionable criticism that a secular society outlaws religious discourse and therefore under-privileges believers needs to be resisted. No-one is prevented from expressing their religious beliefs whenever they wish, but arguments based on religious doctrine lack persuasion outside the specific religious community and rely for influence only on the exaggerated respect still shown for religion. The secular society proposes only that *specifically* religious arguments be discounted and disregarded: if believers can support their proposals on grounds that are wider than their religious beliefs they are acting within the terms of the secular society. Religious critics of the secular society need also to be challenged to state what they propose instead: it can logically only be some form of theocracy. Almost invariably legislative proposals based on religion are illiberal: they seek restrictions on behaviour, not extensions of freedom. Restricting the freedom of everyone solely on the basis of the religious beliefs of a particular group cannot be accepted and what the secular society requires is that any such restriction be justified in dialogue based on shared premises and that the religious and non-religious learn to live together and make accommodations for each other.

## The Diversity of the UK Today

The UK, in matters of religion and belief, is heterogeneous in a way unimaginable to previous generations. The 2001 census was notably deficient in its gathering of data on religion<sup>4</sup> (not only asking the leading question, ‘What is your religion?’ but placing the question itself in the context of ethnicity) but even so, the results of the census can give a preliminary picture. 72 per cent of respondents responded ‘Christian’; the second largest group was those responding ‘no religion’ (15.5 per cent); and the third group was those who chose not to respond at all (eight per cent). Beyond these larger categories, within the remaining four and a half per cent, there was great diversity. Respondents here gave religious self-definitions (in order of frequency) of Muslim, Hindu, Sikh, Jewish, Buddhist, Spiritualist, Pagan, Jain, Wicca, Rastafarian, Bahai, and Zoroastrian.

The census tells us how people respond to a particular question in a particular context; other surveys give a different picture. From 31 per cent<sup>5</sup> to 56 per cent<sup>6</sup> of people in some polls, for example, do not profess a belief in god(s), and one very recent poll puts the number of those who say they are ‘not religious’ at 63 per cent.<sup>7</sup> Within religions great diversity in belief and practice, and not only along denominational lines, may be concealed by identical self-definitions. Also concealed behind simple religious labels is a wide variation in levels of observance and commitment. Research for the Home Office (O’Beirne 2004: 18, 20) reveals that religion is only the ninth most cited characteristic that respondents believe says ‘something important’ about them, after family, employment, age, interests, level of education, nationality, gender, and level of income. For Christians it is tenth. The fact that regular church attendance is now under seven per cent of the population was reported in Religious Trends 2005-6 and is well known, but an ICM poll of 2005 found that 24 per cent of those describing themselves as Muslim never attended a mosque and 51 per cent of self-described Jews never attended a synagogue. The information provided by people’s religious self-identification is in fact very limited and subject to heavy qualifications. Even so, well-founded research such as that of David Voas and Alasdair Crockett (Crockett and Voas 2005) has demonstrated a long-term trend of decline in religious belief, practice, and self-identification. At the very least, we can assert that there is no single dominant religion or belief professed by the majority of the UK today and that a sizeable proportion of the population is not religious.

Debate over religion and belief and the state must be set against the reality of such pluralism and we turn now to consider some of the specifics – not only as they relate to the established church, but as they relate to religion more widely. In many ways the establishment of the Church of England impinges only slightly on the lives of British citizens, and our society has been free for some time of any coercive theocracy. But we are also far from living out the model of an open society in which all can feel included and free. Religious people may feel that their viewpoint is neglected by an increasingly non-religious society, but the non-religious feel similarly when confronted with the vestiges of establishment within social institutions, the pervasive assumption of a default Christianity, and modes of discourse that exclude them by use of a ‘multi-faith’ approach (often lazily assumed, not least by government departments, to be inclusive of all).

By virtue of its long historical association with the state, the Church of England is the most obvious obstacle to the development of a secular society. There are minutiae of structural establishment which must of course be resolved, but the technicalities of how these are to be untangled are not our concern here. Instead we focus on the three most obvious areas of Church

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<sup>4</sup> Revealing, for example, that there are more Jedis than Jews or Sikhs in the UK.

<sup>5</sup> British Social Attitudes survey, 1992

<sup>6</sup> YouGov poll, 2004

<sup>7</sup> ICM poll, 2006

of England supremacy in British society: the presence of its representatives in the legislature, its state-funded schools, and its state-funded chaplaincy.<sup>8</sup> We discern not only the continued privileging of the Church, but also see how this privilege of one religious denomination encourages, in the wider context of a society increasingly infused with the spirit of non-discrimination, demands for the equal privileging of other religions, and how this disadvantages the growing population of non-religious people. Not just the role of church and state, but the wider question of religion and the state will therefore be relevant in all three areas. We will see that establishment itself is an incoherent idea in those three areas where we examine it, just as it is unsustainable in light of the diversity of the UK and the long-term trend of secularisation evident amongst the UK population.

## **Bishops in the House of Lords**

The British Humanist Association has taken every opportunity offered<sup>9</sup> to state its opposition to the presence of bishops as of right in the House of Lords. In an open society it is unthinkable that seats in the legislature should be accorded as of right to men (and we are speaking, of course, only about men) by virtue of the religious faith they profess. Such a constitutional provision compromises the neutrality of the political framework that is essential for the peaceful coexistence of people of all religions and beliefs.

It is not just the fact of the presence of one religious denomination as of right that offends but also what it implies (or, often in the mouths of the defenders of the institution, what it means explicitly). The presence of Church of England bishops in the Lords implies that such people are uniquely qualified to provide ethical and spiritual insight.<sup>10</sup> It suggests (and this suggestion is endorsed by claims made for a ‘hospitable establishment’) that bishops, as a part of this ethical and spiritual remit, can speak for the whole population in such matters. In fact people from many walks of life, such as philosophy or medicine, are equally or more qualified so to do, and they may be religious believers or not. The views of the protestant bishops may in fact be controversial and rejected by a clear majority of people in the UK with equally sincerely held convictions – even by a majority of those who define themselves as protestants. A pertinent example is the recent vote on the Assisted Dying for the Terminally Ill Bill, where polls show that 81 per cent of protestants ‘think that a person who is suffering unbearably from a terminal illness should be allowed by law to receive medical help to die, if that is what they want’<sup>11</sup> but the bishops turned out in force against the Bill.

The idea that public expression of ethical considerations can be restricted to one religious

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<sup>8</sup> The other egregious privilege enjoyed by the Christian religion is its favoured position in the BBC’s output, but this is less a matter of church and state than of BBC traditionalism in defiance of its requirements of section 264 of the Communications Act 2003 and of their agreement under the new charter with the Secretary of State for Culture, Media and Sport.

<sup>9</sup> Most recently objecting to the proposals in the February 2007 White Paper (Cm 7027) on Lords reform that would not only retain the bishops but also extend religious representation to other groups as well as making submissions to the Lord Chancellor in January 2002, the Joint Committee of both Houses in May 2002, and to the Department for Constitutional Affairs in December 2003 – available at [www.humanism.org.uk](http://www.humanism.org.uk)

<sup>10</sup> For example, ‘religious representation helps in the recognition of the part that moral, philosophical, and theological considerations have to play in debating political and social issues’ (Cm 5291: 83); ‘The Bishops often make a valuable contribution in the House because of their particular perspective and experience.’ (Cm 4183 1999: 39); ‘The way in which the Church of England’s representation in the House of Lords has been manifested over at least the past 100 years has served to acknowledge the importance of philosophical, moral and spiritual considerations – not just religious ones – in the conduct of public affairs’ (Wakeham Commission 2000: 152).

<sup>11</sup> NOP poll, 9 September 2004

denomination is ludicrous in light of the diversity of our society<sup>12</sup>, and the idea that bishops can be genuinely representative of the diversity of opinion that exists even in their own religion is plainly questionable. Nor can the problem of bishops be solved by the introduction of representatives of other religions or denominations into the legislature as of right. Such a proposal has been thoroughly discredited (for example, by Professor Iain McLean of Nuffield College in his response to the recommendations of the Wakeham Commission), largely owing to the unfeasibly large number of religious representatives that would be required for such a reform to be genuinely representative of the population. It should also be rejected on other grounds, not only the impossibility (highlighted in the single example of assisted dying above) of having religious representatives who were genuinely representative of their co-religionists in the population at large, but also the exclusion from such a system of the non-religious.

Naturally, individuals of many and diverse religions and beliefs should continue to be appointed or elected to the House of Lords, and these may well include bishops, rabbis and other religious leaders selected on their own merits, but there should be no question of any religion or belief having places there as of right. The presence of Church representatives in the legislature has ceased to be an accurate reflection of UK society and, indeed, increasing numbers of people are opposed to political privileges for religion – ‘Religious groups and leaders’ are the domestic group that people are most likely to believe has too much influence on government.<sup>13</sup>

Even if beliefs such as Humanism were to be included within the representation granted in the House of Lords, we would reject such a reform. We do not advocate a system, as obtains in some European countries, organised on confessional lines with taxes distributed to a limited number of religious and (sometimes) humanist bodies and with some social services provided through such bodies. Such a system privileges a selected group of dominant beliefs and tends to ossify society around them. It places artificial limits on choices, and bolsters the historically and conventionally dominant group in subsidising it by virtue of its ‘default position’ long after it may have lost the genuine support of the majority of its nominal adherents. The need is for a chamber accessible to all on the basis of merit, which embodies a public commitment to religious neutrality.

## **State-Funded Religious Schools**

In an open society, the principle of secularism should apply to state-funded schools as much as to other state institutions. Currently, however, schools with a religious character – one in three schools overall, but including half the primary schools in the north-west and over sixty per cent of primary schools in several local authorities – do not have to live up to this model.<sup>14</sup> State schools with a religious character<sup>15</sup> may discriminate in their admissions policies and in their employment policies; their ethos and values can be exclusive; and voluntary-aided schools with a religious character are not obliged to teach the same sort of broad and balanced (though still imperfect) Religious Education that has evolved as the aspirational curriculum for community schools.

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<sup>12</sup> It should be noted that the public consultation following the Wakeham Commission showed that if those who did not specifically mention bishops but did want a wholly elected House are included, 90 per cent of respondents were against bishops having any seats as of right.

<sup>13</sup> Ipsos MORI, 2006

<sup>14</sup> Nor, theoretically, are community schools since the law still requires that pupils participate in a daily act of ‘collective worship’. Happily this law is not widely observed in secondary schools though in primary schools compliance with the law is more common and it remains a great concern for humanist and other non-Christian parents.

<sup>15</sup> Entirely paid for by public funds except for ten per cent of building costs – and even this is waived for the current ‘Building Schools for the Future’ programme.

It is a stated aim of recent national guidelines on Religious Education (QCA 2004) that the subject be inclusive of and respect the beliefs and values of the non-religious. The Church of England's guidance to its schools on RE, however, is not so inclusive (CofE 2005). It states that 'the secular assumption that there is no reality beyond the physical world is ultimately sterile.' and it singles out the non-religious specifically when it endorses the purpose of a Church school as being to 'to nourish those of the faith; to encourage those of other faiths; to challenge those who have no faith' and says that the teaching will enable '...pupils from other faith backgrounds to understand and be encouraged in their faith; pupils with no religious background to face the challenge of the Christian faith'.<sup>16</sup> The growing number of religious schools of a non-Christian character (the justification for which is often that it would be discriminatory not to allow schools for other religions when one in three publicly funded schools is Christian) are likewise not obliged to treat children of varying religions and beliefs equally or to allow a place in their curriculum for their expression.

In an open society, schools should be inclusive of all children in a shared framework that models the social framework of the wider community in which they must take their place as citizens. In 2002, the British Humanist Association published policies on religion and schools under the title of *Better Way Forward* (Mason 2002), which recommended a new style of inclusive and accommodating community schools to meet the needs of today's society. Although this is not the place to go into the minutiae of the policy, the innovative schools framework promoted by the BHA can be briefly sketched, and the full document is recommended to anyone with an interest in the field. The policy proceeded on the assumption that '[i]n a pluralist, multi-cultural society, the state must promote the tolerance and recognition of different values, religious beliefs and non-religious beliefs...' (Humanist Philosophers' Group 2001: 36) and that the current privileging of religion and in particular Christianity in education law (for example in the requirement for a daily act of worship in all state schools), and the continued existence of state-funded schools with a religious character are matters that require reform.

Under the proposals of *A Better Way Forward*, all state-funded schools would hold inclusive assemblies that, while they might draw on religious stories as on humanist ones, would not include worship as at present mandated by law; impartial, fair and balanced teaching about all major worldviews, including non-religious ones, would be the entitlement of all children in lieu of the present RE which is still usually exclusively religious; no school would privilege the children of adherents of a certain religion or belief in their admissions, nor discriminate on grounds of religion or belief in their employment policies.

The schools proposed by the BHA are not just inclusive, however; they are also designed to be accommodating of the distinctive needs, relating to religion or belief, of all pupils. Reasonable time and designated places for optional prayers and worship should be provided for religious groups and individuals within the school community, and for reflection for the non-religious. Optional faith-based religious instruction classes should be allowed on school premises, subject to pupil<sup>17</sup> demand, and outside of the timetable. Other proposals included revision of the school calendar to observe a wider range of religious festivals and days of secular importance and a raft of minor reforms designed to respect cultural and religious requirements in food and uniform.

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<sup>16</sup> These illiberal views pale before those expressed by the head of the Islamia school in Nottingham in *Beyond Belief* (Radio 4, March 2003): 'the essential purpose of the Islamia school as with all Islamic schools is to inculcate profound religious belief in the children'. Asked did that mean he was in the business of indoctrination, he replied: 'I would say so, yes; I mean we are quite unashamed about that really. The reason that parents send their children to our school is that they want them to grow up to be very good Muslims.' Asked again if that meant that Islam was a given and was never challenged, he said, 'That's right.'

<sup>17</sup> It is a great educational scandal that the entitlement of children to the human right of 'freedom of religion or belief' is paid so little heed in English education law where almost all rights reside with the parent.

The system of schools proposed was a microcosm of the secular, open model endorsed by the BHA as its aim for our wider society. Acknowledging that religions and beliefs do have a place in schools, because it is important in a diverse society that we learn about each other's beliefs and because of the centrality of their religion to the lives of some believers, the policy maintained a neutral framework common to all children in which confessional religion, as in religious instruction and worship, would always be optional and be offered without the endorsement of the school's authority. The introduction of such a regime in all state schools has as its obvious corollary the phasing out of public funding for schools run by the churches and non-Christian religions unless they too could meet the new requirements.

This policy recognises that social change since the 'dual' system of schools was established as a compact between the state and the Church of England and the Roman Catholic and non-conformist churches have made such a system unsustainable. Rather than responding to diversity in a way that establishes many new and separate categories of school, as with the current expansion of the range of religious schools, the secular model endorsed here, as with the secular model for the House of Lords, offers a common framework in which all can be accommodated.

## **Chaplaincy**

The state does not fund priests to go about their business in the community at large and so the obvious question is why it should fund them in prisons, hospitals, or the armed forces. The obvious answer is that the provision of chaplaincy in these circumstances reflects the particular needs that are thought to exist at these points: prisoners, patients, service personnel, and their families have distinctive needs. This is reflected in what chaplaincy in these sectors is said to be for.

In the NHS chaplains 'offer a service of spiritual care to all patients, their carers, friends and family as well as the staff of the NHS' and the work of the chaplain is defined as that which 'enables individuals and groups in a healthcare setting to respond to spiritual and emotional need and to the experiences of life and death, illness and injury' ([www.nhscareers.nhs.uk](http://www.nhscareers.nhs.uk)).

The Diocese of Worcester gives the role of prison chaplains as to 'support [prisoners] in their spiritual needs and in times of crisis' because their 'lives are . . . complicated by the loss of freedom and control over their own lives not to mention the feelings of guilt, hopelessness and helplessness that many experience' and further that prison chaplains 'act as a reminder of the community's responsibilities toward those held in prison' ([www.cofe-worcester.org.uk](http://www.cofe-worcester.org.uk)).

These worthy aims can clearly be fulfilled by dedicated and compassionate people regardless of religion or belief and, in a society as diverse as ours, should be. The presumption that the individual fulfilling the role of a chaplain will be Christian, or an Anglican specifically, or religious at all, cannot be sustained.

These chaplaincy systems are gradually becoming multi-faith, but that is not sufficient since the non-religious are the second largest group in the population. But in spite of the fact that the non-religious make up a larger proportion of the population than the adherents of all the non-Christian religions combined, it is the non-Christian religions that benefit from the extension of services that have in the past had a Christian character – not the non-religious. Currently, chaplaincy teams in hospitals do not include the non-religious, save in one or two places as volunteers, and there are no non-religious chaplains in the armed forces or in prisons. The Ministry of Defence now has chaplains for Sikhs, Hindus, Buddhists and Muslims in the armed services. The Minister at the time that this innovation was made (John Reid MP) was quoted as saying that they would provide 'spiritual, moral and pastoral support' to forces personnel of a



non-Christian religion. 'One of the important things about service men and women,' he said, 'is the importance that is attached to morale. It is not just a matter of being happy, it is not just a matter of trust and comradeship, it is also a matter of spiritual fulfilment... We want to make sure that people of all faiths in this country recognise that the British Armed Forces really truly are the Armed Forces of Britain.'<sup>18</sup> The spiritual, moral and pastoral needs of the non-religious received no mention but a Sikh chaplain has been employed to cater to the needs of just 85 Sikh servicemen. The Ministry of Defence's Religious Advisory Panel includes a Muslim (representing three per cent of the population), a Hindu (one per cent), a Sikh (less than one per cent), a Jew (half a per cent), and a Buddhist (less than half a per cent) but no non-religious representative.

It would be wrong to say that those who do not have a religion do not need this sort of care, or that their needs are not distinctive. Those members of the BHA who visit hospices as part of the teams that help meet the needs of people who are terminally ill, or who otherwise work with the terminally ill, attest that this is not the case. Humanist funeral officiants, who are sometimes involved in assisting terminally ill people in planning their own funerals, often find themselves providing much needed general support and spiritual care. This work suggests to us that a humanist approach for some patients is very much needed, and likewise for prisoners and service personnel.

It is in fact quite wrong for the state to continue to rely on the Church of England, or on the Christian churches generally, to meet the wide chaplaincy role as the role is described above. Even the multi-faith chaplaincy that is now boasted by the Ministry of Defence and the prison and health services fails to meet the requirements of the non-religious. In general, these policies are often seen by humanists as using public institutions and finance to bolster the idea that the non-religious lack values and personal resources and at times of crisis may therefore be expected to turn to religion. As with schools, specifically religious support should ideally be the role of the churches, not the state and Anglican provision in these areas should certainly not be the default position. In the provision of these services the need is for a framework that is inclusive, not a framework which fetishises religion as the key marker of identity and fails to recognise the pluralism of British society today.

## Conclusion

The areas explored in this paper are necessarily incomplete but the approach, hopefully, is clear. Discussion of such areas as chaplaincy shows how we would treat analogous services in terms of religion and belief, and our discussion of Bishops and of schools should show how we would apply the twin policies of removing the privileges currently enjoyed by Christianity, or by religions generally, while accommodating the religious or belief-oriented needs of individuals (where necessary) within a framework common to all. We believe these policies should be applied not only in the areas explored in this paper but generally: the conduct of public or state events<sup>19</sup>, the timetabling of national holidays, the law on marriage, the definition of charity, anti-discrimination law, and consultation arrangements in some government departments are all areas where religion in general or one religion or belief in particular is privileged, and where the need for a secular approach is evident.

Sadly, the current government's policy, for which no justification in principle has ever been offered, is to go in the opposite direction. The government is responsible for expanding the

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<sup>18</sup> <http://news.bbc.co.uk/1/hi/uk/4440360.stm>

<sup>19</sup> The core function of which is to be inclusive of everyone, which prohibits their being conducted along the lines of any particular religion or belief. It is outrageous, for example, that the London bombings, one of whose victims was a prominent humanist, were marked by a cathedral service to which no humanist representative was invited, and also that eminent atheists are all too often commemorated by religious memorial services.

religious sector in schools, refusing specific measures to correct discrimination against the non-religious in charity law, marriage law, education, chaplaincy services and so on, extending unwarranted exemptions from non-discrimination laws to religious organisations, and proposing to entrench for another century or more the position of Anglican bishops in the Lords. Even as these words go to press a new push is beginning under the auspices of the Department for Work and Pensions to transfer various public services of the welfare state (such as the employment service) to religious groups.

The uncoupling of church and state is a priority for most humanists. The basis of this is not anti-Anglican animus, but a commitment to the open society that recognises the privileging of any one religious denomination (especially against a social backdrop of massive heterogeneity) as a real inequality. For many pragmatic reasons and also on principle, because it excludes the large and growing non-religious population, it is not acceptable to move from the establishment of one denomination to an effective co-establishment of all religions. At present the continued establishment of the Church of England encourages demands for the equal privileging of other religions<sup>20</sup> – demands impossible to meet. In none of the contexts where it is demanded is the solution ever to extend establishment privileges to all religions: it is to remove the privileges of the established church and any other denomination or religion currently enjoying unwarranted favours<sup>21</sup>. The extension of religious privilege that is threatened by the current government in fact runs counter to the best long-term interests of British society. The only equitable framework in which we may conduct our community life to ensure that diversity does not lead to conflict is a secular one<sup>22</sup>.

Secularism is not atheism and it is not anti-religious – in fact it benefits both the religious and the non-religious in their aspect as members of a single society. It provides a genuinely neutral framework within which we can express ourselves as a community, and in a diverse society it is a necessity. The achievement of a secular society should be the priority with which we approach all questions of religion and the state.

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<sup>20</sup> One example not explored here but worthy of mention is the antique relic that is the criminal offence of blasphemy, which has led some Muslims to demand a blasphemy law for their own religion.

<sup>21</sup> We do not include here justified specific provisions in the anti-discrimination laws.

<sup>22</sup> But not secular in the anti-clerical French tradition, which in principle ignores and excludes the religious much as the non-religious are excluded and ignored here.

# Chapter 7

## The National Secular Society

### Keith Porteous Wood

This chapter is a response on behalf of the National Secular Society (NSS) to the invitation to review the present relations between the Church of England (hereinafter simply ‘Church’) and the state, and to consider how they may develop in the future.<sup>1</sup> It is confined, primarily, to the Society’s views in relation to that Church (a summary of the Society’s recommendations is appended to the end of this chapter). It should, however, be made clear that the Society’s objections to what we see as privileged religious influence in the public sphere are not limited to manifestations of such influence by the established Church. In a recent public opinion poll, 53 per cent of UK respondents agreed that ‘the place of religion in our society is too important’ while only 38 per cent disagreed<sup>2</sup>. This suggests the Society is far from being a lone voice in asserting these perspectives.

### Aims of the National Secular Society (NSS)

The NSS was founded in 1866 with the objective of eliminating religious privileges. To quote its Articles of Association, it ‘demands the complete separation of Church and State and the abolition of all privileges granted to religious organisations’.

The NSS therefore calls for disestablishment of the Church and for its privileges to be withdrawn. The State should be entirely neutral in dealing with the philosophical or belief systems of its citizens. The NSS seeks to secure equal rights for the non-religious.

At the same time, the NSS acknowledges that many in the Church have performed selfless acts of charity and kindness, especially in deprived areas, and that they have often been motivated to do so by their faith. Nevertheless such acts, which are not exclusive to the religious, neither justify the present relationship between Church and State nor its continuation or expansion in the future.

What follows concentrates on the principal constitutional and legal questions, recognising that the Church/State relationship is more complex and deep rooted than allowed for by the limited treatment that follows. The NSS is quite aware that complete separation between Church and State would not be an easy or swift object to achieve in practice, but asserts that this difficulty should not postpone the start of the process. What follows examines: establishment; the constitutional position of archbishops and bishops; the relationship of monarchy, coronation and oath; the Government’s role resulting from the monarch’s position as the head of both Church and State; and the relationship between Church and the law. In addition, the role of the Church in Parliament, education and chaplaincy is also mentioned.

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<sup>1</sup> An earlier version of this chapter was submitted as a paper to the UCL organised seminar in July 2006, and a fuller version is available on the NSS website – [www.secularism.org.uk](http://www.secularism.org.uk).

<sup>2</sup> Source: TNS Opinion & Social for the European Commission – Eurobarometer 66. Survey conducted in 2006. [www.ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_highlights\\_en.pdf](http://www.ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf) page 40 (accessed 16 March 2007).

## Some Preliminary Considerations

### The Place of Religion In Modern Life

The NSS challenges the significance the Government attaches to the finding of the 2001 Census that 72 per cent of the population define themselves as Christian. If the Census result is read uncritically, it gives an entirely exaggerated picture of Christian adherence in the UK.

According to the 2001 Census, the non-religious constitute 16 per cent of the population (23 per cent if 'not stated' responses are included). The NSS Submission in 2005 to the Office of National Statistics on the 2011 Census draws on independent research<sup>3</sup> to conclude that the 72 per cent broadly represents the proportion of the population brought up in nominally Christian households but that many of these respondents no longer have any connection with any church.

The *Home Office Citizenship Survey*, carried out in the same year as the Census (O'Beirne 2004) confirms this and paints a starkly different picture. Indeed, the proportions of religious and non-religious almost change places. When asked 'what says something important about you if you were describing yourself', religion came just ninth in the list of priorities. Even more significantly, four times as many thought religion was not important to their identity as those who did.

The British Social Attitudes 23rd Report – *Perspectives on a changing society*, published 2007, confirms society's low and declining religiosity: 'In 1964, a quarter (26 per cent) either did not belong to a religion or [had] never attended a religious service. Now the same is true for over two-thirds (69 per cent). Even people who belong to a religion are less likely to attend services regularly, down from around three-quarters in 1964 to half now'.

### Marginalisation of the Non-Religious

A recent *Guardian* headline summed up this theme: '82% say faith causes tension in [the] country where two thirds are not religious'<sup>4</sup>. Whatever their exact numbers, the growing millions of non-religious people feel systematically ignored, while the religious are being increasingly courted by the present Government. An example of this mismatch is shown clearly over religious schools. The Government and the Church seek to justify the expansion of religious schools on the basis that they are popular. Whilst many are oversubscribed (as are some non-religious schools) there is no evidence to suggest their popularity derives from their religious character. Popularity comes from success and, in practice, the success of Church schools is a function in many cases of *de facto* (if not *de jure*) selection procedures that limit the numbers of children from disadvantaged backgrounds. The Prime Minister seemed shocked when confronted with a press corps vocally opposed to single faith schools, saying 'I hadn't realised that you all felt so strongly'<sup>5</sup>. This is despite one survey showing 96 per cent agreed that 'Tony Blair should end his support for faith schools'<sup>6</sup>. In 2005 an ICM survey made banner headlines in the *Guardian*, stating that 'Two thirds oppose state aided faith schools'<sup>7</sup>. This strongly suggests many of those who ticked the 'Christian'

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<sup>3</sup> *Possible Content of 2011 Census: Consultative Response to the Office of National Statistics*, August 2005 – [www.secularism.org.uk](http://www.secularism.org.uk)

<sup>4</sup> *Guardian* 23 December 2006 'Religion does more harm than good' [www.guardian.co.uk/frontpage/story/0,,1978046,00.html](http://www.guardian.co.uk/frontpage/story/0,,1978046,00.html) (accessed 16 March 2007)

<sup>5</sup> Prime Minister's Press Conference 26 July 2005 at [www.number-10.gov.uk/output/Page7999.asp](http://www.number-10.gov.uk/output/Page7999.asp) and <http://politics.guardian.co.uk/terrorism/story/0,15935,1536365,00.html> (accessed 16 March 2007)

<sup>6</sup> *New Statesman* on-line poll, 12 September 2005 <http://www.newstatesman.com/200509120001> (accessed 16 March 2007)

<sup>7</sup> 64 per cent of respondents thought 'Schools should be for everyone regardless of religion and the government should not be funding faith schools of any kind'. [www.icmresearch.co.uk/2005/guardian](http://www.icmresearch.co.uk/2005/guardian).

box in the Census are not consenting to the influence and centrality of religion in public life, particularly in relation to constitutional matters.

The non-religious were also pointedly overlooked in the Government's 1998 White Paper *Modernising Parliament - Reforming the House of Lords*. On the one hand, the existence of the non-religious was acknowledged: 'The Government also recognises the importance of the House of Lords reflecting more accurately the multicultural nature of modern British society in which there are citizens of many faiths, *and of none*' (Cm 4183: para 22; emphasis added). Yet the same White Paper proposed that the bishops should remain in the House of Lords, and that representatives of other faiths be appointed. Notably, no representation was suggested for the remaining 'and none'. The same disregard for the non-religious has been perpetuated in the latest Government proposals (Cm 7027) for Lords reform: this is addressed separately below. Logically, the Lords could become more representative either through the appointment of specifically non-religious representatives or, as is the NSS preference, by achieving balance by not having any (essentially duplicate) religious representation at all.

Many religious bodies openly debate, preach and practise discrimination against homosexuals and women. They also discriminate on the grounds of faith in the recruitment, remuneration, promotion and dismissal of staff in taxpayer-funded schools and other organisations claiming a religious ethos. The NSS believes the religious exemptions granted under equality legislation, often granted as a result of demands from religious bodies, to be far in excess of what is equitable. These exemptions are particularly regrettable because (a) they are granted without any consideration being given to the adverse affects on those who they give licence to discriminate against; and (b) are granted to those most likely to want to discriminate. Such widespread exemptions lead to dismay amongst the non-religious because they fatally undermine the very objective of anti-discrimination legislation and also the universal human rights and human dignity that are supposed to be at the core of our society.

It is within this context that the non-religious feel increasingly marginalised when the relationship of Church to State is debated. This feeling is strengthened by the apparent presumption that religion is to remain, in perpetuity, at the core of the State. This, in itself, seems to the non-religious to be unjustified when the increasing majority of people (as demonstrated below) do not practise any religion in a serious way, if at all.

An example of religion (and by extension religious leaders) being promoted as contributing something very superior comes from the Home Office website: 'Home Office Minister Fiona Mactaggart said the information in the 2001 Home Office Citizenship Survey, along with the *Working Together* report published in March [2004], would help the government to take account of religious affiliation when it develops policy. "For many people, their religious affiliation is important to their sense of self-identity. Our job is to take account of this in our policy making"'<sup>8</sup>.

The survey showed that religion is ranked only *ninth* in a list of characteristics regarded as important to respondents' identity. The NSS does, however, acknowledge that religion featured higher in the Survey for most minority ethnic groups; and that, in recent decades, minorities have tended to change their own self-identity from being based on geography to being based on religion. Nevertheless, the Minister's comments were selective and were, therefore, a highly misleading use of the Survey she was purporting to describe. This selectivity comes as no surprise, given the Government's tendency to over-emphasise the importance of religions and

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<sup>8</sup> [www.directgov.uk/N11/Newsroom/NewsroomArticles/fs/en?CONTENT\\_ID=4013439&chk=IfMVQ7](http://www.directgov.uk/N11/Newsroom/NewsroomArticles/fs/en?CONTENT_ID=4013439&chk=IfMVQ7) (accessed 29 May 2006)

religious 'leaders' (who are not elected in any democratic sense) at the expense of the non-religious.

Multiculturalism, increasingly a euphemism for 'multi-faithism', has fed this sense of isolation felt by the non-religious, as the Government increasingly addresses the population, particularly those from minority ethnic groups, through leaders of the so-called 'faith communities'. The present Government continues to place great importance on religion and seeks out the views of the religious, in spite of the evidence cited above.

Similarly, the Prince of Wales has expressed the wish to be Defender of Faith (as opposed to *the* Faith)<sup>9</sup>. Non-believers could be forgiven for wondering whether the heir apparent considered those of faith to be more deserving of his protection or patronage.

### **The Present Claims and the Likely Future of the Church of England**

The Constitution Unit's *Mapping* document contained the passage: 'The Church of England continues to assume responsibility – without prior conditions of active or formal membership – for ministering to the whole population whenever members of that population come to it...it is this commitment to a national mission in partnership with the State which results in the Church of England's involvement with public affairs in a variety of ways' (Cranmer et al. 2006: 10-11).

As part of the debate on the future structure of the House of Lords, Bishop Gladwin (of Chelmsford) said of the 26 Church of England bishops and archbishops in the Lords: 'We have been entrusted with the spiritual well-being of the people of this country. Over many centuries, it has been thought and practised that, in shaping our laws and customs in the character of governance of our country, Parliament should take account of our spiritual inheritance.'<sup>10</sup> Even more portentously, Bishop Wright (of Durham) told Radio 4's Sunday programme that 'the Lords Spiritual were not there to hang on to some archaic public privilege, but to speak for God in the public domain'.<sup>11</sup> Furthermore, in 2000 the report of the Wakeham Commission (which included a Church bishop) made a somewhat grandiloquent claim: 'With nearly 25 million baptised *members*, the Church of England...' (Wakeham Commission 2000: 155; emphasis added). The source of this figure, however, refers to the figure as 'baptised *population*' (Brierley 1999a: Table 8.14; emphasis added). Yet the *actual* confirmed membership shown by another table (Brierley 1999a: Table 8.2.2) is around a twentieth of the figure, at 1.280 million. Given this low figure, offering Church services 'without prior conditions of active or formal membership' would seem more of a financial necessity than a selfless act of duty.

When the Commission proposed a reduction of *ex officio* Church bishops in the Lords from 26 to 16, the Church was having none of it, claiming in 2002: 'We do not believe the proposed reduction is in the interests of the parliamentary service of bishops, nor in the interests of an effective second chamber committed to reflecting the spiritual life of the nation'.<sup>12</sup>

Church membership is only a third of what it was in 1930: less than 2 per cent of the population attend its services on a normal Sunday. Normal Sunday attendance was expected to drop by 23 per cent from 968,000 in 1980 to an estimated 748,000 in 2005, with the proportional rate of decline accelerating (Brierley 2000: Table 2.14.1). The same source estimated that the Church's

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<sup>9</sup> *Daily Telegraph*, 12 February 2003.

<sup>10</sup> Hansard, Lords, 12 March 2007, col. 475

<sup>11</sup> As reported in the *Church Times* 16 March 2007

<sup>12</sup> [www.dca.gov.uk/constitution/holref/holrefresp/org/church\\_of\\_england\\_archbishops\\_council.pdf](http://www.dca.gov.uk/constitution/holref/holrefresp/org/church_of_england_archbishops_council.pdf) (accessed 16 March 2007). Letter from Archbishops' Council to Lord Chancellor 31 January 2002, last page of appendix.

communicants at Easter, regarded as Christianity's most important festival, have fallen over the last 100 years from over 9 per cent of the population to less than 2 per cent. The proportion of all marriages performed by the Church has fallen over the last 100 years from 64 per cent to around 18 per cent (Brierley 2000 and 2006). This reflects a significant change from a century ago, when non-Anglicans were often married in the Anglican Church, to the present situation in which even Anglicans are often married in civil ceremonies.

It is not tenable to suggest that the Church speaks for the nation. While the population has become less religious and more tolerant, the Church is widely thought to have become less tolerant and more evangelical, orthodox or even fundamentalist.<sup>13</sup> Most of the Anglican churches abroad are even less moderate and their growing numbers of adherents give their leaders increasing power over the organisation as a whole.

Despite widespread public support for voluntary euthanasia, the bishops in the Lords voted *en bloc* to oppose even the most conservative version of this – the proposal to allow self-administered suicide by competent terminally ill adults after careful checks by doctors. The bishops directly contributed 14 of the 48 votes by which the Assisted Dying Bill failed and further debate was curtailed, thereby also depriving the elected chamber from having its say on this matter of great public interest.<sup>14</sup>

Another symptom of this trend of being at odds with the public, on whose behalf the Church is so keen to speak, is the internal warfare – waged over almost half a century – over women and homosexuals as priests and, more recently, as bishops. The intensity of this fight over women and homosexuality, apparently heading for schism, is viewed by the British public with growing incredulity, feeding its conviction that the Church has become increasingly out of touch and irrelevant.

The claim attributed to Archbishop William Temple that 'the Church is the only society that exists for the benefit of those who are not its members' rings rather hollow today. As demonstrated above, while the public have become less and less religious, the Church has become increasingly evangelical and orthodox. This trend may also lie behind a much greater emphasis on religion – proselytisation – in Church schools, which are being vigorously expanded. It is widely suspected in secularist circles that the Church's new found expansion in education, largely paid for by the State, is motivated by it being perceived as its only hope of long-term survival.

### **What Does the Future Hold for the Church?**

The only realistic prospect of reversing more than 75 years of declining membership and attendance would come from a burgeoning involvement of young people. But the proportion of English churchgoers dropped between 1979 and 1998 for *all* age categories under 30 years old, while the proportion of over 65s increased from 18 per cent to 25 per cent. According to a National Centre for Social Research study<sup>15</sup>: Two thirds [of 12–19 year olds] did not regard themselves as belonging to any religion, an increase of ten percentage points in as many years (from 55 per cent in 1994 to 65 per cent in 2003). The comparison with 2003 shows how rapidly

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<sup>13</sup> *Guardian* 27 May 2006 <http://www.guardian.co.uk/comment/story/0,1784172,00.html> (Extracted 16 March 2007) (experience of doorstep collectors for Christian Aid confirms this, but not specifically about Church of England)

<sup>14</sup> Assisted Dying for the Terminally Ill Bill (Second Reading) Hansard, Lords, 12 May 2006, col. 1295. '76 per cent still thought that medically assisted dying should be a legal right for those that want it'. You Gov poll [www.dignityindying.org.uk/information/surveys.asp?id=198](http://www.dignityindying.org.uk/information/surveys.asp?id=198) (accessed 8 May 2006).

<sup>15</sup> [www.dfes.gov.uk/research/data/uploadfiles/RR564.pdf](http://www.dfes.gov.uk/research/data/uploadfiles/RR564.pdf) 'Young People in Britain: The Attitudes and Experiences of 12 to 19 year Olds' (2004) (London, National Centre for Social Research) p. 10.

adherence is dissolving. Another major source of new congregants is, or rather, was, Sunday schools. A century ago there were around 2,400 Church Sunday schools, but this had dropped to fewer than 100 by the year 2000 (Brierley 2000: Table 2.15). If the rate of decline has continued, there will be fewer than 50 by now. In 1999 A *Daily Telegraph* headline<sup>16</sup> proclaimed: ‘The Archbishop of Canterbury has been forced to move a Millennium youth service intended for Wembley Arena to a marquee in his garden’.

Lord Carey appeared to accept the stark reality of such figures when he stated, as Archbishop of Canterbury in 1999, that the nation ‘has an allergy to religion’.<sup>17</sup> He did so in the context of reviewing the Decade of Evangelism which failed to stem the decline. The turn-of-the-millennium UK church-attendance figures confirmed what many believed all along: that the church is still in decline, or as George Carey so dramatically put it in 1998, ‘bleeding to death’<sup>18</sup>.

Such comments are understandable given the projection by Christian Research in *Religious Trends* (Brierley 2006: Section 12). UK Church membership was 1,815 million in 1980, 1,259 million in 2005 and is projected to drop to 0.544 million in 2040. Similarly, the percentage of the population who attend all churches in England on a normal Sunday plummeted from 11 per cent of the population in 1980 to less than 7 per cent in 2005, and is forecast by Christian Research to drop to 2 per cent in 2040. And the churches? Around 10,000 Anglican churches – more than half of the total now in existence – are projected to close by 2040. This would make the ‘national mission ... carried out on behalf of the state’ – the mission that entitles the Church to establishment – all but impossible to deliver in practice.

According to *Religious Trends*, the churches may be heading for extinction by 2040 and the average age of congregations rising to 64. Its special report, *The Future of the Church*, says ‘total membership of all the denominations will fall from 9.4 per cent of the population to under five per cent by 2040<sup>19</sup>, and 18,000 more churches will close.’ The Bishop of Manchester, Dr Nigel McCulloch, is not the first senior church leader to use the word “extinct” in talking about the scale of the problem facing Christianity in Britain<sup>20</sup>. In September 2001 the head of the Roman Catholic Church in England and Wales, Cardinal Cormac Murphy O’Connor, told a conference of priests in Leeds that traditional Christian faith could be vanquished unless they took their vocation seriously.<sup>21</sup> An important implication of the almost *de facto* schism is that these diminishing future numbers will be divided into two distinct groups, only one of which will be the established church. Another even more serious aspect of the *de facto* schism, however, concerns who will decide which of the two very different churches is to prevail and to carry off the ‘trophy’ of recognition as the country’s established church (if this status is preserved). This absolutely fundamental decision will not be made by the electorate, or even by the elected Government. It will be decided by the outcome of a power struggle, much of it being exercised outside the UK by those with little regard for human rights as understood in the West. Prominent in this struggle are Nigerian bishops with an obsessive hatred of homosexuality and any other form of western liberalism.

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<sup>16</sup> *Daily Telegraph* 16 February 1999.

<sup>17</sup> Address by the Archbishop of Canterbury to the Anglican Conference on Evangelism Swanwick, 9 March 1999 [www.archbishopofcanterbury.org/carey/speeches/990309.htm](http://www.archbishopofcanterbury.org/carey/speeches/990309.htm) (accessed 16 March 2007).

<sup>18</sup> From a review of Furlong M. (2000) *CofE: The State It's In* (London, Hodder), [www.amazon.co.uk/exec/obidos/ASIN/0340746351/202-0502066-5573429](http://www.amazon.co.uk/exec/obidos/ASIN/0340746351/202-0502066-5573429) (accessed 16 March 2007)

<sup>19</sup> [www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/09/03/nchurch03.xml](http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/09/03/nchurch03.xml) (accessed 16 March 2007)

<sup>20</sup> [www.ekklesia.co.uk/content/news\\_syndication/article\\_051014carey.shtml](http://www.ekklesia.co.uk/content/news_syndication/article_051014carey.shtml) (accessed 16 March 2007)

<sup>21</sup> *Ekklesia* website article 5 September 2005 [www.ekklesia.co.uk/content/news\\_syndication/article\\_05095cro.shtml](http://www.ekklesia.co.uk/content/news_syndication/article_05095cro.shtml) (accessed 16 March 2007)



The wing of the Church that is more moderate, and more representative of the majority of English opinion, is being cowed into submission by the conservative faction that the Archbishop of Canterbury has opted to support. He does so to preserve an illusion of unity at all costs, even at the cost of going against his personal convictions and compromising any commitment to upholding human rights. That the country should be yoked to an established church whose future is being controlled by such a tug of war is a constitutional outrage.

## **Establishment and Disestablishment**

### **How the Church Justifies Establishment**

According to the *Mapping* document:

...the fact that the Church of England expresses a mission to the English nation as a whole is not a condition of establishment but, rather, the result of the Church of England's own volition... It is this commitment to a national mission in partnership with the state which results in the Church of England's involvement with public affairs in a variety of ways (Cranmer et al. 2005: 10).

Both of these statements embody the very antithesis of secularist principles, and appear to be self-contradictory. The first contends the Church is entitled to establishment, even without the offer of a national mission, provided on the basis of its beneficence. The second suggests this national mission is carried out on behalf of the State, and that this entitles it to 'involvement' – a series of privileges which come with the status of Establishment, including a privileged *entrée* to the corridors of power.

An example of such privilege is demonstrated by the following extract from the Church of England Gazette<sup>22</sup>:

As with all of the Lords Spiritual, Bishop Herbert [Bishop of St Albans, the Rt Rev Christopher Herbert] values being able to hold ministers accountable in a way that few outside Parliament could do. 'I am listened to because of the position I occupy,' he says. 'And if I write to a minister on House of Lords notepaper protocol dictates that I receive a reply, and speedily'.

### **Why the Church should be Disestablished**

The main reasons are:

- It is not a legitimate function of the State to engage in a national religious mission, whether in partnership with the Church or any other body or bodies.
- Even if the population were enthusiastic about the Church providing a 'national mission', which they are not, this should not entitle the Church to a privileged status and *entrée* to the corridors of power. The Government is keen to promote choice in other situations and should do so in mission and worship. There seems no shortage of religious bodies and officials happy to offer their services.
- There is plenty of evidence elsewhere in this chapter to suggest the Church commands so little support, is so unrepresentative and has become so remote that it does not merit the huge privilege of establishment.
- Other European nations have recently recognised the changing circumstances that make establishment increasingly inappropriate and, after a mature debate, they have acted accordingly. The Church of Sweden became 'disestablished' with effect from the

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<sup>22</sup> *Church of England Gazette* Volume 3 Edition 4 *A place in the Lords?* 2003 (p. 5)

start of 2000. Negotiations are taking place in Norway with the same objective. (See the separate chapter *Church-State Relations in Scandinavia* for more detail.)

- In the UK, the present Government holds excessive and uncritical esteem for religion. It is a dereliction of the Government's duty to the electorate to leave the Church to take the initiative on whatever is in the best interests of the country. With its vested interest, the Church should be the last body to be put in this position. In the absence of an initiative from Whitehall, the NSS commends the Church to at least signify its willingness to the Government for disestablishment to proceed. If it does not do so, it will inevitably find that the process is precipitated by some crisis and conducted in a manner and at a speed much less to its liking.
- One of the most visible and powerful manifestations of Establishment is the Bishops' Bench which the NSS does not consider to be legitimate for reasons as set out below.

A privilege, such as establishment, can be eliminated either by withdrawing it, or by extending the privilege to all, in which case it ceases to become a privilege. In practice the latter would be all but impossible. To extend privileges enjoyed by the Church to *some* other denominations and *some* other faiths would not create parity. It would if anything heighten the isolation of the non-religious (at least half the population), thus exacerbating the present anomalous situation. Yet that is just what the Prime Minister, Tony Blair, called for in 1998: 'We shall be looking for ways of increasing the representation in the Lords of other religious traditions' (Cm 4183, para 22).

If a decision were made to disestablish, then the guiding principle must be one of complete disestablishment and not one in which the Church could cherry pick only those aspects which might suit its own purposes. When disestablishment is considered in detail many more aspects will need to be examined than there is space to address here.

### **Episcopal Representation in the House of Lords**

The main arguments against episcopal representation are:

- Its presence gives religion an unjustified double, or duplicate, and privileged representation in the legislature.
- The bishops are unrepresentative. They are all male, middle class and disproportionately white, and come only from dioceses in England.
- Neither the bishops, nor other religious representatives, are needed to present a religious view. The religious are already well represented among the 'Lords Temporal', partly as a result of the higher age profile, and also the appointment of former bishops and other religious functionaries as life peers. Many lay peers declare their religious motivation during debates. The NSS is convinced that the proportion of religious believers in the Lords, even without the bishops, far exceeds that in the population as a whole.
- Similarly bishops, or other specifically religious representatives, are not needed in order to present a 'moral view'. And, in many cases, the bishops' votes all but cancel themselves out; suggesting that to dispense with them would not make much difference. But on the latest occasion when they turned out to vote in force, over the Assisted Dying Bill, their views were in stark contrast to those of the population at large. This suggests their moral stance is out of step with the rest of the society, a society that will be bound by the legislation on which the bishops are voting.
- The NSS is not convinced by the assertion in the report of the Wakeham Commission that a Bench of 16 bishops in the House of Lords is justified by the Church's claimed 'membership' of 25 million, based on baptism. In any event, if size-of-membership were a valid criterion for seats in the Lords many other organisations (religious and non-religious) could equally claim such privilege.

- Bishops also use their position to table amendments for self-serving purposes. One example was their tabling of an amendment in 2006 to dismantle long-standing protections against discrimination against non-religious staff in publicly funded faith schools<sup>23</sup>. This prejudiced the jobs or career prospects of thousands of publicly funded head teachers and teaching assistants. Another was the Church demanding massive exemptions from anti-discrimination employment regulations for ‘organised religion’. The exemptions were granted<sup>24</sup> almost verbatim, as demanded, and without consultation with those adversely affected by the exemption.

It is not, of course, disputed that some individual bishops do useful work in the House of Lords. This does not, however, justify this anomaly. Whatever the system of appointment or election ultimately decided upon, we do not object to individual church dignitaries standing for appointment or election, and taking their seats if this is unquestionably on their personal merits rather than patronage.

It is regrettable that the Wakeham Commission merely recommended reducing the number of bishops from 26 to 16 instead of supporting their removal (Wakeham Commission 2000: 155). At the same time the report proposed a formula for offering up to five seats for those of other denominations and faiths. The Government accepted the proposed reduction in bishops, but opted for an *ad hoc*, informal, rather than the proposed formal, allocation of seats for those of other denominations and faiths (Cm 5291: paras 83-85). In the event, Parliament failed to agree on any of the alternative reform proposals put forward by the Government.<sup>25</sup>

In February 2007 the Government published a further White Paper *House of Lords: Reform* (Cm 7027). It recommended a ‘hybrid’ – partially elected, partially appointed – chamber retaining bishops but maintaining that ways should be found for other religious faiths to be given seats in the Upper House. The NSS’s main comments on the proposals are as follows:

- In concluding ‘that the range of religious opinion in the country should also be reflected in the membership of the Lords’ (para 2.8), no account was taken of the declining religious practice, and no justification given for the assertion (para 6.22) that ‘It is important that faith communities are represented in the House of Lords’.
- The equation of removing the bishops with disestablishment is spurious: episcopal membership of the House of Lords is but one feature of establishment and not a lynchpin. The assertion that ‘any profound change in the status of the Church must be in the first instance for the Church itself’ (para 6.22) confuses two distinct issues. The conclusion that ‘It is therefore right for there to continue to be special representation of the Church of England in the reformed Lords’ entirely begs the question.
- The recommendation (para 9.27) that bishops should have a disproportionate representation because many of them are too busy elsewhere to attend regularly is

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<sup>23</sup> Resulting in Section 37 of the Education and Inspections Act 2006. The amendments were originally proposed by the Bishop of Peterborough and the Bishop of Southwell and Nottingham and retabled as Government amendments by Education Minister, Lord Adonis.

<sup>24</sup> Employment Equality (Sexual Orientation) Regulations 2003 – Regulation 7(3). The Joint Committee on Statutory Instruments concluded in its Twenty-first Report of Session 2002-03 ‘1.26 The Committee considers that, in the light of the uncertain effect of regulation 7(3), the Department would have been prudent to undertake further consultation with representatives of persons likely to be adversely affected by regulation 7(3) before the draft Regulations were laid before Parliament’.

<sup>25</sup> The NSS’s contribution to a subsequent consultation exercise may be found at [www.secularism.org.uk/uploads/lordsreform002.pdf](http://www.secularism.org.uk/uploads/lordsreform002.pdf).

unjustified special pleading. It betrays the Government's conviction that the bishops are somehow more important than other peers. Most peers lead busy lives.

In summary, Cm 7027 represents yet a further attempt by the Government to secure the unwarranted perpetuation, and possible extension, of religious privilege in the legislature, at a time when religious conflict is everywhere heightened and when, in Britain, religious observance is continuing its precipitous decline.

Research commissioned by the NSS reveals that the United Kingdom is *unique* among Western democracies in having *ex-officio* religious representation in its legislature. The vast majority of Western democracies have abandoned all such links between Church and State, with no discernible adverse consequences. For the Government to aid an extension of such links under the guise of 'modernisation' is simply deluded. Real modernisation would be a secular second chamber without any formal religious representation.

Countries with totally secular constitutions – as the table below shows – include Albania, Belgium, Canada, the Czech Republic, Finland, France, Japan, the Netherlands, New Zealand, Poland, Portugal, Spain and the United States of America. Of these, Japan's Post-W.W.II (and thus westernised) constitution is one of the most modern. It specifically prohibits state involvement in religion, and *vice versa*; it also guarantees that the practice of religion will not be mandatory.

Italy provides a European example of how religious influence can be separated from the legislature. Even in Poland, where the importance of the Roman Catholic Church's influence is acknowledged in the preamble to the Constitution, the remainder of the document contains very definite separation of Church and State.

Finally, we need to deal with the point that the Church of England regards its representation in the House of Lords as available to all religions. It is also suggested the Church of England would welcome a broadening of religious representation in the Lords. Here it should be noted that the Church has a vested interest in calling for this privilege to be shared since success would help guarantee the perpetuation of seats for the Church.

### **Archbishops as Privy Councillors and 'Second Citizens'**

The position of the Archbishops as privy councillors and next in precedence to the Monarch is also anomalous. It is through the Privy Council that ministers exercise the Royal Prerogative, for example in decisions to go to war. The presence in the Privy Council of Church dignitaries is an outdated and completely inappropriate hangover of constitutional history.

### **The Monarchy and the Church**

The NSS's positions on the relevant issues are:

- The present *position of the monarch as the head of the Church and the preservation of the Protestant succession* are leftovers from the politics of the sixteenth to eighteenth centuries and are entirely inappropriate in a modern democracy. The prohibition on a Roman Catholic ascending to the Throne or on the heir to the Throne marrying a Roman Catholic are intolerably discriminatory, as are any provisions limiting the rights of non-protestants of whatever faith (or none).
- *Coronation ceremony* - Elizabeth II is believed to be the only living European monarch to have been anointed and crowned in a traditional religious ceremony that rests heavily on the idea of the Divine Right of Kings. Whilst the ceremonial flummery of the

Coronation can be regarded as mere pageantry, and of no real significance, secularists do not believe these matters should be taken lightly. They feel excluded from the Coronation because it is a religious service in which they cannot in conscience fully engage and which consequently implies that those who do not share the beliefs promulgated at the service are not fully citizens of the State. The sense of exclusion would be made more acute by the extension of the coronation ‘umbrella’ to encompass those of other denominations and faiths. Such changes would, in effect, place those of no faith (probably, in reality, the majority of the population) in an invidious position of inferiority and non-involvement in an event supposed to unite the nation. It follows that secularists feel similarly alienated by the religious aspects of the state opening of parliament and about parliamentary prayers.

- In the *Coronation oaths*, the head of state is required to swear to preserve the laws of God, the Protestant religion, the doctrine of the Church, and the rights and privileges of the Church and its clergy. To the non-religious these oaths can have no meaning. At the same time, however, the oaths imply that the head of state should rely upon God or the Church (not Parliament or the people or the judiciary) for guidance as to the substance and interpretation of the ‘laws of God’. Any expansion of the oaths to include other denominations, and faiths in the manner implied by Prince Charles would introduce the logical absurdity of the head of state being obliged to preserve several mutually exclusive laws, faiths and deities.

The coronation oath of Albert II of the Belgians was simply ‘I swear to observe the constitution and the laws of the Belgian people and to maintain the national independence and the integrity of the territory’. The NSS maintains that the oaths should represent, to use more modern language, the ‘values’ by which the head of state conducts state business every single day. While the Belgian oath shown seems to omit some important aspects, it is infinitely preferable to the UK one.

The idea that the monarch is answerable only to ‘God’ is not an acceptable principle of accountability for the head of state, particularly one who is not elected, who is not impeachable and who is not otherwise accountable. Equally unacceptable is that non-Protestants are barred from becoming head of state, and monarchs are denied freedom of conscience.

- *Widening religious participation in the Coronation* - The NSS particularly opposes the inclusion of other denominations and faiths. Such changes would further alienate those, probably the majority, who do not think the appointment of a head of state should be a religious matter. If the Coronation oath were extended to other faiths it would in effect be to uphold mutually incompatible faiths, a logical absurdity. Nor, practically, could it include all faiths, leading to the adherents of the excluded faiths feeling a heightened sense of exclusion.
- *The monarch’s formal position as the Supreme Governor of the Church* and the role of the monarchy in the appointment of bishops and other Church dignitaries. It is not acceptable that a government elected by *all* of the enfranchised population should spend any of its time on the internal affairs of one (or, indeed, of any) religious denomination. This is one area where the Church is at a disadvantage, in not even being able to appoint its own ‘management’.

## **The Church’s Special Legal Status**

The NSS believes that: The rights and privileges the Church enjoys under law are no longer warranted and are outmoded.

- Religious law belongs in a theocracy. The common law and statutory measures that protect the Church are superfluous and anomalous in a democratic society.
- The law in relation to blasphemy is an affront to freedom of speech.

- The Church, its clergy and members should be entitled to no more protection against offence, damage or injury than any other organisation or citizen.

The Church occupies a unique position under the law of England and Wales: the *Church Assembly (Powers) Act 1919* gives statutory force to the Synod's 'Measures'; and the MP who is the Second Church Estates Commissioner acts as the Parliamentary spokesman for the Church Commissioners. There is no reason why Parliament should occupy itself with such matters. The High Court already has powers through its administrative jurisdiction to review the decisions of any body where those decisions impinge on public policy – bodies like the Jockey Club or indeed the Rabbinical Court (see for example *R v London Beth Din ex parte Bloom* 18/11/1997 CO-2495-96).

Recently, there have been calls from Islamic groups for certain aspects of Sharia law to be recognised within the British system of laws. If the right of the Anglican Church to make its own law is maintained, this might be used to justify the introduction of other ecclesiastical laws, such as Sharia or the laws of other religious beliefs, into the modern 'multi-faith' Britain.

Other areas of privileged status include the following:

- The ecclesiastical courts have *powers to compel witnesses* and to cause the production of documents which are enforceable by orders of the High Court. The power is sparingly used, but that is no reason for its survival.
- *The Judicial Committee of the Privy Council* also has a limited jurisdiction to hear certain ecclesiastical appeals.
- *Blasphemy* – The law still makes it an offence to blaspheme the Christian religion. The Lords Select Committee on Religious Offences now believe the common law offence of blasphemous libel would contravene the Human Rights Act. Furthermore the Law Commission has twice severely criticised the offence and recommended its abolition<sup>26</sup>. There are, however, calls to extend the law of blasphemy to religions other than Christianity, which would open up the prospect of a re-invigorated law protecting religion from attack. It is unacceptable that any belief system should be ring-fenced from the criticism, or even ridicule, to which every other ideology and institution is subject. In particular, it is essential for the good of society that the right is upheld to criticise (and to insult the practitioners of) religiously inspired, but what many would regard as offensive, practices. Examples include discrimination against women or homosexuals, discriminatory practices in employment, the cruel slaughter of animals, the genital mutilation of infants and children, public executions for adultery and violent exorcism. Indeed, a strict new blasphemy regime could outlaw the objective teaching of history (and sociology) on matters such as religious wars, persecution of heretics and inquisitions.
- *Other outmoded offences* – There are a number of Victorian statutory protections specific to the Church of England where the behaviour concerned can be dealt with under other, general provisions of the criminal law. There are, for example, no equivalent provisions in Scots law where breach of the peace is held to be sufficient to deal with the mischiefs concerned. Similarly, unique powers to levy voluntary parochial rates are inequitable and discriminatory.

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<sup>26</sup> House of Lords Select Committee Religious Offences Report (2003) HL 95-I, Chapters 3 and 4 and Appendix 3 - [www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelof/95/9501.htm](http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelof/95/9501.htm) (accessed 16 March 2007).

## Other Areas of Church Influence

There are many areas of public life where the Church remains entrenched when its influence should be removed.

- *Education* – the original Constitution Unit exercise dealt only tangentially with the Church's rôle in education on the basis that it was neither exclusive to the Church (since other denominations have their own schools) nor a requirement of establishment. Accordingly, the fact that the NSS has concentrated above on the main constitutional issues should not be taken to imply any diminution of its objections to the principle of maintained religious schools.

The Church owns or controls the vast majority of religious schools within the maintained sector, and a quarter of all maintained schools are Church schools. The Government has actively promoted the opening of a significant number of state funded Church schools and academies. These are long-term projects involving massive amounts of public money, which could better have been made available to local education authorities for community schools open to all without discrimination.

- *Publicly funded chaplaincy* - Because this no longer derives from the constitutional relationship of the Church to the State this matter is not addressed in detail. There is no need for chaplaincy in colleges, as alternatives are generally readily available to those who want them.

The situation in prisons and hospitals is more complex as some people of all faiths and none may have a need to discuss emotional and other personal matters with someone independent on site. The non-religious should be given such assistance, in proportion to their (considerable) numbers. It should not be the norm that such assistance is only provided by the religious.

It is of concern that any public funding provided (and we do not take it as read that any is necessary) should be broadly proportionate to the religious and non-religious mix of the institutional population. The undue emphasis on religion in prisons, which has developed over the last decade, is likely to impede cohesion while encouraging sectarianism and radicalisation. There should be an absolute bar on proselytisation.

- *Parliament* - It is not appropriate to open Parliamentary sessions with prayers.

**Table 1: Religious Characteristics of the Constitutional Governments in Leading Western Democracies<sup>27</sup>**

Country	<i>Ex officio</i> religious representation in the state	Control of religious education by parliament	Control of religious institutions by parliament	Religion established by law	Limitation upon the expression of “blasphemy”	Oaths or preamble contain a religious component
<b>United Kingdom</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Albania	No	No	No	No	No	No
Austria	No	<b>Yes</b>	No	No	<b>Yes</b>	No
Australia	No	No	No	No	<b>Yes</b>	No
Belgium	No	No	No	No	No	No
Canada	No	No	No	No	No	No
Czech Republic	No	No	No	No	No	No
Denmark	No	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No
Finland	No	No	No	No	No	No
France	No	No	No	No	No	No
Germany	No	No	No	No	<b>Yes</b>	<b>Yes</b>
Greece	No	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Ireland	No	No	No	No	<b>Yes</b>	<b>Yes</b>
Italy	No	No	No	No	<b>Yes</b>	No
Japan	No	No	No	No	No	No
Luxembourg	No	No	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	No
Macedonia	No	No	<b>Yes</b>	No	No	No
Netherlands	No	No	No	No	No	No
New Zealand	No	No	No	No	No	No
Norway	No	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Poland	No	No	No	No	No	No
Portugal	No	No	No	No	No	No
South Africa	No	<b>Yes</b>	No	No	No	No
Spain	No	No	No	No	No	No
Sweden	No	No	No	<b>Yes</b>	<b>Yes</b>	No
Switzerland	No	<b>Yes</b>	No	No	No	<b>Yes</b>
Turkey	No	<b>Yes</b>	No	No	No	No
United States	No	No	No	No	No	No

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<sup>27</sup> All countries covered by this research are included in the above summary. With the exception of the United Kingdom, the NSS has not been able to identify a single Western democracy with *ex officio* religious representation in its legislature. The above table was prepared by Dr. David Nash of Oxford Brookes University specifically for the NSS.



## Consolidated List of NSS Recommendations

1. The Church of England should be disestablished.
2. Establishment should not be extended in any form to other denominations or faiths. This would be wrong in principle, grossly undemocratic in practice, and also impractical to implement.
3. Bishops should be completely removed from the House of Lords; and the new Second Chamber should not have any formal religious representation whether *ex-officio* or appointed, whether of Christian denominations or any other faiths.
4. All religious representation should be removed from the Privy Council, and the Church's Archbishops should no longer have precedence after the head of state.
5. The religiously discriminatory provisions relating to the monarchy or monarch's spouse, for example in the Act of Settlement 1700, should be repealed.
6. The role of head of state and head of the Church of England should be separated.
7. The head of state should be allowed to exercise freedom of conscience.
8. The wording of the Coronation and its oaths should be changed to become inclusive of all, whether religious or non-religious.
9. The Coronation (and Accession) oaths of the head of state should not be premised upon the preservation of religion (or any denomination) or on succession being dependent on any religious belief, far less a particular denomination. Instead, the emphasis should be upon the preservation of human dignity and upholding human rights.
10. The role of the Crown and government in ecclesiastical appointments should be ended, but only as part of a package under which the privileges of establishment are similarly removed.
11. Parliament should no longer be required to approve the Church's 'measures', *but this change should only be brought about as part of a package in which Church privileges are withdrawn.*
12. The Ecclesiastical Committee of Parliament should be disbanded and the role of Second Church Estates Commissioner should no longer be allocated to a Member of Parliament.
13. The powers of ecclesiastical courts to compel those who have not voluntarily submitted to their jurisdiction should be revoked. Ecclesiastical courts should no longer be able to summon witnesses or to require the production of documents.
14. The jurisdiction of the Judicial Committee of the Privy Council over ecclesiastical appeals should be withdrawn.
15. The common law offence of blasphemous libel should be abolished.
16. Section 36 of the Offences Against the Person Act 1861 (Obstructing a Clergyman in the Discharge of his Duty) should be repealed.
17. Section 7 of the Burial Laws Amendment Act 1880 should be repealed.
18. Section 2 of the Ecclesiastical Courts Jurisdiction Act 1860 should be repealed.
19. Section 7 of the Parochial Church Councils (Powers) Measure 1956 should be repealed.
20. Parliamentary prayers should be abolished.

This list is not intended to be exhaustive. The NSS would be pleased to participate in an exercise to determine the full extent of changes necessary in order to eliminate religious privilege.



## Chapter 8

### Perspectives from within the Church of England

#### William Fittall<sup>1</sup>

Most of the contributions in this book are of an academic character or come from those whose religious or secular commitments enable them to view the Church of England with a measure of detachment. This chapter sets out to offer some specifically Anglican insights.

To provide some context, the chapter starts with an overview of how attitudes to Church/State relations have evolved within the Church of England in modern times. It goes on to explore, from an Anglican perspective, ways in which Establishment continues to be of positive value both to the Church of England and to society more generally. The difficulties with the present situation as some see them from within the Church of England are then examined. Finally, the chapter concludes with a brief reflection on possible future developments.

#### Evolving Church of England Attitudes

The single most striking fact about debate within the Church of England on the future of Establishment is how much less there has been for the past thirty years than in earlier generations. This is not because church leaders and members have lost their capacity for lively internal argument, nor because the Church of England has lost its appetite for engaging with public policy issues. It is rather because, over the past thirty years or so, a level of equilibrium seems to have been reached. Most active Anglicans have devoted their energies and concerns to other issues.

Does this simply reflect inertia, or is there some more positive explanation? From the 1830s to the 1970s the nature of the relationship between the Church and State was a recurrent subject for debate and at times acute controversy within the Church. For the most part the Church responded pragmatically and sympathetically to what is described elsewhere in this book as a process of unplanned, piecemeal separation between Church and State. After all, those with the political power in the 19<sup>th</sup> century who first broke the Anglican religious monopoly in civic and political life and then promoted the development of a more explicitly pluralist and tolerant society were for the most part active Anglicans themselves.

The substantial measure of self-government that the Church of England secured in 1919 through the Church of England Assembly (Powers) Act was a significant landmark and widely seen as overdue. It might have been expected to have brought a slightly belated end to the debates of the 19<sup>th</sup> century and laid the question of Church State relations to rest for many years to come.

In the event, Parliament's continuing power in relation to worship and doctrine (most vividly illustrated by the rejection of the proposed new Prayer book in 1927/8) and the Church's relatively limited role in relation to its most senior appointments continued as a source of friction until the 1970s. The reports from the three Church commissions (Cecil, Moberly and Chadwick) in 1930, 1952 and 1970 each grappled with these issues and reflected a continuing strand of thinking within the Church of England that its spiritual freedom remained excessively restricted.

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<sup>1</sup> This chapter, prepared by the Secretary General of the General Synod and Archbishops' Council, has drawn on thinking from those who, in addition to him, represented the Church of England at a seminar in July 2006, namely the Rt Revd Michael Scott-Joynt, Prebendary Paul Avis, Dr Christina Baxter, Prof David McClean and Mr Tim Livesey.

It was the acceptance by Parliament in 1974 of the Worship and Doctrine Measure and by the then Prime Minister (James Callaghan) in 1976 of a new procedure for appointing the Church's archbishops and other diocesan bishops that finally drew most of the remaining sting from these issues within the Church.

While Parliamentary approval would still be needed for any change to the status of the Book of Common Prayer of 1662, in all other respects the Church of England has for more than thirty years had full authority to order its worship and doctrine. In relation to the appointment of diocesan bishops the Prime Minister can now forward to the Queen only names that have been proposed by the Church. He retains the right to choose the second rather than the first of the two names submitted or to ask the Church for additional names. But he cannot come up with his own candidates.

There has been a handful of attempts over the past thirty years, through private members and diocesan Synod motions at the General Synod, to seek to remove these remaining rights of Parliament and Prime Minister in respect of Church legislation and appointments respectively. On each occasion they have been heavily defeated.

This has partly been because of a perception that, most of the time, the arrangements have worked well enough. There has also been a reluctance within the Church to initiate action that might be interpreted as the Church pushing towards full disestablishment. What then, from the perspective of the Church, are the continuing advantages of the Establishment in its present form?

### **Benefits to the Church?**

The Church of England's view of itself derives from its conviction that it is 'part of the One Holy, Catholic Apostolic Church, worshipping the one true God, Father Son and Holy Spirit'. Contrary to what is sometimes suggested, the Church of England would not cease to exist – any more than the Church of Ireland or the Church in Wales ceased to exist at disestablishment – if Parliament decided to end the present links between Church and State. For very many in the Church of England, however, such a development would impact adversely on the Church's mission and ministry to the English nation as a whole. Why is this so?

First, its position as the recognised national church serves as a constant reminder to the Church of England of the expectation that its buildings (which include 45 per cent of the grade 1 listed buildings of England) and its ministers are there to provide pastoral support for all who seek it. As a matter of law, anyone in England can ask to be baptised or married in a Church of England church or can seek a Church of England funeral service for a member of their family.

True, the State makes no attempt to prescribe how many church buildings or clergy the Church of England should have. True, the Church could chose to continue to pursue a national vocation even if it were disestablished. Nevertheless, Establishment serves as a constant and healthy reminder to the Church of England that it should resist the temptation to become simply a membership organisation for the like-minded or to focus its attention solely on people or communities expected to provide the most favourable response. It is there for every community in the land.

Secondly, Establishment provides recognition and access that make it easier for the Church to provide a Christian presence and witness in the social, political and institutional life of the nation. Again, no one is suggesting that this would simply cease if Establishment were to end. The nature of Establishment has evolved hugely over recent generations and now has a much more

hospitable character to it. Opportunities for witness and service are widely shared with leaders of other denominations and faith communities. Where there is still an element of exclusivity – in particular in relation to membership of the House of Lords – the Church of England has signalled its strong support for widening representation to other denominations and faiths.

What many Anglicans fear, however, is that disestablishment would lead not to a greater sharing of access and representation in public life for Christians and other people of faith but a further move towards corralling religious faith of every kind into the private sphere. That would not advance the mission and ministry of the Church.

Thirdly, Establishment helps to preserve the historic character of the Church of England as a broad church, strong for the core doctrines of the faith but willing to accommodate a good deal of diversity around that in both doctrine and forms of worship. Something of this breadth can be seen in most Anglican churches around the world. What is striking is that it is in the Church of England - the only established church in the Anglican Communion - where the diversity has proved the greatest and most enduring. For those who attach a high value to Christian unity, that is not a prize likely to be jeopardised.

Fourthly, the fact of Establishment has meant that acts of Christian prayer and worship have continued to have a natural place at moments of public thanksgiving, mourning or remembrance. Again, some of this might continue whatever the legal relationship between Church and State. Certainly, at local level, the instinctive recourse to parish churches and cathedrals for services following local tragedies is not intrinsically bound up with the legal status of the Church. But, the great national services in St Paul's Cathedral and Westminster Abbey, the annual service of Remembrance at the Cenotaph, the daily beginning of parliamentary proceedings with prayer and, supremely, the Coronation, are events which place the Christian faith at the centre of national life. From the Church's perspective the loss of such opportunities would be no small thing.

### **Benefits to the State?**

The continuing support for Establishment among most Anglicans reflects not simply a view of what is in the best interests of the Church. It is based on a judgement – offered in full recognition that it needs to be set alongside the views of others – about the continuing benefit that the Church/State relationship still brings to society more generally.

One view of the Establishment is that it is, essentially, a description of 'the State we're in', that is it describes the legal, constitutional reality of the Government in this country as Government by the Crown in Parliament under God. Traditionally that has meant that the Christian faith and, within it, the Judaeo-Christian scriptures have been the route and point of reference and accountability for Government and the Law.

In practice, executive authority has of course, since the nineteenth century been in the hands of Governments elected on political manifestos and consisting of party members who may be drawn from all religious faiths or none. The idea of the Church having a role in servicing and sustaining the Christian roots underpinning our Constitutional arrangements risks, therefore, triggering a retort based on Walter Bagehot's famous distinction of 1867 between the effective and decorative parts of the Constitution.

But it is only the coolest of rationalists for whom symbols have no meaning. Indeed it is the very significance of the symbols that prompt those opposed to any special place for religion in our national life to press for disestablishment and a wholly secular state in which mention of God

should take place only among consenting adults, preferably in private. For the secularist, it is precisely the role of the Sovereign as Supreme Governor of the Church of England and the historic responsibility of the Archbishop of Canterbury to crown and anoint the Monarch at the Coronation that are the most objectionable features of Establishment.

This, however, takes us close to the heart of the issue in terms of the benefit or otherwise to the State. For, at the symbolic centre of our national life stands the Head of State who must, by law, 'join in Communion with' the Church of England. Like the Church itself, the Sovereign has very little now by way of executive power. Nevertheless, the monarchy defines and represents something which many regard as integral to our national story and identity. If the monarchy were to end we would be a different sort of nation. Similarly if the monarchy continued but the sovereign were no longer Supreme Governor of the Church of England and no longer symbolically received authority at the hands of the Archbishop of Canterbury, we would have become a different sort of society.

It is, of course, ultimately for the nation to judge whether the traditional symbols have lost too much of their significance or involve too great a measure of perceived discrimination to be serviceable for the 21<sup>st</sup> century. What many in the Church would want to argue is that they are symbols that still have value and potency. On the basis of the experience of recent decades, there is a good case for claiming that a reformed, constitutional monarchy, together with a tolerant and hospitable Establishment of the Church of England, has helped to make this country a more tolerant and inclusive society than many where more secular principles have long been entrenched at the heart of the State.

This may be why, although the number of people from other faiths or none has increased substantially over recent decades, leaders of other faith traditions have voiced little criticism of the Church's Establishment. Indeed, when asked, they have tended to speak supportively. National religious ceremonies have proved well able to reflect the changing nature of national life. Gradual adjustments in attendance at the annual Cenotaph service on Remembrance Sunday well illustrate this.

There is some historical irony in the fact that, when the Cenotaph was unveiled in 1919, there was controversy between the then Archbishop of Canterbury and Prime Minister and other Cabinet members over whether (to quote the dated language of Archbishop Davidson's diary) the proceedings should, as Lloyd George had wished, 'be wholly secular, alleging as reason that Mohammedans and Hindus were among those to whose memory it stood... But I prevailed, and we had prayer and "Oh God our help"... instead of anybody disapproving, there was unanimous expression of thankfulness...' (Bell 1952: 1037).

## **Disadvantages to the Church?**

If the steam has gone out of the disestablishment cause within the Church of England over the past thirty years or so, some have continued to argue, as a matter of principle, that the Church should achieve the same measure of self-government as all other denominations and faiths. There are also others who, while not seeing change as a priority, believe that present arrangements are bound to change in due course and that the Church should take some initiative to hasten this process on its way. Concerns tend to cluster around four issues: the Crown role in Church appointments; Parliament's role in relation to church legislation; a perceived cramping of the church's prophetic role; and implications for ecumenical relations.

In relation to Church appointments, concerns centre on the potential for the Prime Minister not to accept the Church's first preference for diocesan Bishop appointments (a prerogative known

to have been exercised in the 1980's and, it has been widely surmised, in the 1990's too). The active role of the Prime Minister's Appointments Secretary in selecting Deans for those cathedrals where the decision rests with the Crown has also been the subject of some questioning and is among the issues being addressed by a review initiated by the Synod in 2005.

As to legislation, there have been two occasions in the past twenty-five years when Parliament has refused to approve a Measure forwarded to it by the General Synod. In 1984 it declined to agree the proposed abolition of certain medieval ceremonies concerning the appointment of bishops. Then in 1989 Parliament initially rejected legislation in relation to the ordination of those who had remarried after divorce (or married a divorced person). More recently the Synod agreed in 2000 and in 2002 to amend legislative proposals in relation to churchwardens and the Church Commissioners' powers in relation to pensions in order to avert clashes with the Ecclesiastical Committee of Parliament.

So, it is emphatically not the case that Parliamentary scrutiny of the Church's legislation has become simply a formality. The Ecclesiastical Committee continues to take seriously its statutory duty to consider 'the constitutional duties of all her Majesty's subjects.' Some within the Church believe that this level and manner of scrutiny by Ecclesiastical Committee of Parliament is wrong in principle and unsatisfactory in practice.

The perceived constraint on the Church's prophetic ministry derives from a view that episcopal membership of the House of Lords and other aspects of formal recognition by the State inevitably lead to some pulling of punches, in style if not in substance. There are, of course, innumerable examples of church leaders not pulling their punches – Bishop Bell's criticism of saturation bombing during the Second World War, Archbishop Ramsey's criticisms of the Government's immigration policies and approach to race relations in the 1960's, the publication of *Faith in the City* in 1985 and more recent criticisms of Government policy on asylum, criminal justice and Iraq.

Nevertheless, there are some who continue to believe that the Church would be less constrained if it were not represented in Parliament and had no formal status other than that of other churches and national voluntary organisations who operate within the general framework of the law (including in some cases Private Acts).

Finally, some in the Church believe that Establishment is an embarrassment in ecumenical relations and an obstacle to the promotion of Christian unity. In practice, the Establishment is for the most part no longer a live issue with other churches and the most significant obstacles to union between the churches have nothing to do with Church/State relations. Nevertheless, the special position of the Church of England within the nation remains a source of discomfort to some Anglicans.

### **Where Next?**

It has long been the declared view of successive Governments that the disestablishment of the Church of England will not become an issue until and unless the Church of England requests it. The Church has shown no such inclination, nor does it seem likely it will do so over the coming years. Any move on the part of the Church would more likely be prompted by events and particular problems than any fundamental change of view about the value of Establishment. So, a special relationship between the Church of England and the State has every prospect of continuing, unless the view of Government changes.

Other wider developments, for example changes in the nature and composition of the House of Lords, may of course, lead to consequential adjustments to aspects of the Church-State relationship. On some issues, for example, Church appointments, new conventions or processes may come to be accepted. On others there may be specific reason why Church or State decides some adjustment is needed.

As the history of the past two hundred years illustrates Establishment is not a static concept. It is not so much a single ball of wax as a cord with many threads. The probability is that there will be further evolution, as individual threads become unserviceable or for some other reason require attention. A cutting of the cord would, however, be seen by many in the Church of England not simply as the end of an era but as a sad day for the Christian faith, and indeed for religious faith more generally in this country. The State we're in would no longer be the same.



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