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978-1-107-04203-2 - Religion in a Liberal State

Edited by Gavin D'Costa, Malcolm Evans, Tariq Modood and Julian Rivers

Excerpt

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## *Introduction*

It is now a truism to observe that over the last decade religion has reasserted its presence in public consciousness. One must still question just how broad or how deep this reassertion is. Perhaps the secularization thesis – and its contemporary reversal – were only ever plausible in the contexts of Northern European liberal democracies. Perhaps, with hindsight, these societies had only ever experienced a temporary lull in the ‘furore’ of their religions (Berger, 1999). Perhaps the religion which is now reasserting itself is a set of peripheral concerns bound to come into conflict with surrounding culture and even masking, or responding to, a general decline (Bruce, 2011). Or perhaps surrounding cultures are themselves changing in ways which make religious beliefs and practices more unusual and more awkward to accommodate. But as all these questions suggest, the public presence of religion is widely perceived to represent a growing problem, which, however one might explain, receives concrete expression in increased political contestation and even litigation.

There are other more general and familiar trends which suggest that ‘the problem of religion’ is new, or at least has new dimensions. The first of these is globalization. Globalization in its technological manifestation enables real-time awareness of movements and events across the world, as well as networks of the like-minded, who might be mere mavericks at home. It is easy to forget that the Internet started being widely used only from the late 1990s. Globalization brings with it a strengthened awareness of diversity, which in turn is reflected in politicization as different options for the public and collective expression of religions vie for adherents. The sacred canopy has become a contest of importunate umbrella salesmen. Politicization in its turn feeds juridification, as disputants seek solutions by reference to legal norms and processes in desperate recourse to the only remainder of society’s ‘crumbling cement’ (Habermas, 1999).

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The 'problem of religion' is particularly acute for liberalism. Liberalism emerged as a solution to the religious conflicts of sixteenth- and seventeenth-century Europe. And while the liberal solution may for some have been initially about compromise, over time it came to aspire to universality, neutrality and cosmopolitanism. Moreover, by and large, it worked. Or so, at least, it seemed. Yet the re-emergence of problematic religion, religion which has not remained content with the social and political spaces allocated to it in classic liberal solutions, has nourished and been nourished by a loss of confidence in liberalism's universality. Rationalism has given way to pragmatic and parochial consensus on the part of 'decent peoples' (Rawls, 1999) who need only – and can only – agree on minimal procedures.

Not surprisingly, the revival of religion, and revival of worries about religion, also find expression in the academy as the religious dimensions of disciplines have moved from the periphery towards centre stage. What for a while was *recherché* has become research once again. This has been welcome news to those of us sitting for some time on that particular periphery. Yet, located as we are in our own disciplines, we have become increasingly aware that the academic revival of religious studies (in the broadest sense) has largely been carried out in a series of parallel debates. And wary as we have been that interdisciplinarity risks the fate of the jack of all trades, we have also become convinced that plausible solutions to the 'problem of religion' require at least these parallel lines to cross.

The editors of this volume were therefore grateful for the opportunity presented by a substantial bequest given to the University of Bristol in 2007 to attempt to break through the disciplinary boundaries. Our mandate was to conduct academic events which would contribute (among other objects) to 'the promotion of religious tolerance and understanding' and consider 'the reasons for and possible solutions of then-current conflicts with a religious factor'. What emerged was a lecture by Professor the Lord Plant of Highfield on 'Religion in a Liberal State' embedded within an interdisciplinary symposium. Two papers from each of the fields of law, sociology, political science and theology and religious studies were commissioned to reflect on the questions and themes raised in Plant's lecture. Along with the lecture itself, these were discussed and revised, both during the symposium and subsequently, until what has emerged in this book is a multi-faceted

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series of reflections focused on the same fundamental question: what is the proper place of religion in a liberal state?

Inevitably, the principal backdrop for our conversation was the United Kingdom. In common with many 'Western' liberal democracies, the United Kingdom is characterized by a threefold diversity: a significant, albeit shrinking, legacy of nominal Christianity with an active core, often outside older denominations; a growing body of those professing atheism or at least agnosticism, engaging in little or no formal religious practice; and a wide range of world religions and new religious movements, of which Islam is increasingly dominant. Raymond Plant takes as his starting point the basic aspiration of liberalism to transcend such diversity in the name of a just and humane political order, but observes that recent legislative changes such as the Human Rights Act 1998 and the equalities legislation of the last decade have changed the nature of the liberal solution from one of ethos to one of rules. This not only has the effect of unsettling the fudged compromises of the past, it raises a fundamental problem of justification: why should a religious believer give up the reason for their existence in the name of an impartial order?

Plant reviews – and rejects – several possible liberal answers to this question. Liberalism is a way of coping with the fact of pluralism – but then so is fascism; liberalism is a matter of existential choice – but where then is its claim to transcend other religious existential choices?; liberalism is based on an overlapping consensus of comprehensive doctrines – but only if those comprehensive doctrines are held in a 'liberal' way, which it is not rational to expect; or liberalism represents a thick moral position of its own – but then why should it be authoritative over other moral conceptions? Only one liberal answer holds out more promise: liberalism is rooted, as it was for Locke, in some kind of natural-law theory. Plant goes on to demonstrate that apparently neutral concepts such as 'coercion' are irretrievably rooted in moral values, and then draws on the work of Alan Gewirth and John Finnis to posit a universal 'natural-law' grounding for such values. This in turn leads him to reject the recent political and legal turn towards religion as identity and reaffirm difference-blind solutions to problems such as hate speech.

The chapters which follow Plant's essay reinforce and probe his thesis, digging with increasing depth into the foundations of liberalism's treatment of religion. The lawyers provide further evidence for

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the difficulties Plant identifies with recent legal changes. Ian Leigh analyses developments in the case-law of the European Court of Human Rights and points out a growing tendency to require a policy of state secularism. This has developed out of a requirement of state neutrality, which itself represented a judicial response to cases in which states intervened with partiality in the affairs of competing religious factions. But neutrality has the effect of rendering problematic mild forms of religious establishment hitherto deemed compatible with the Convention's protection of individual rights to religious liberty and equality. Thus the function of the Convention has shifted from the protection of basic rights as side-constraints on otherwise unregulated state action, to the foundation of a pan-European constitutional ethos. The problem with 'neutrality' is that it is open to a range of conceptions, which Leigh identifies and explores. By contrast, Maleiha Malik focuses on problems created by domestic equality laws, drawing attention to both legislative and judicial unwillingness to resolve the limits of the accommodation of difference. These have been particularly acute where religious believers have come into conflict with the new acceptance of same-sex partnerships. Thus while the stakes are raised for participants, solutions are evaded. Malik suggests that the way forward is to eschew the rigid boundaries to which law aspires and look for negotiated settlements. In short, she commends a return to what Plant terms the 'fudged compromises' of the past.

There is implicit in these critiques a rejection of a certain conception of secularism, namely one which consists in the exclusion of religious expression and religious justifications from public life. This contestation around secularism is reflected first in the chapters by sociologists Linda Woodhead and Derek McGhee. Woodhead argues that secularism is straightforwardly illiberal where, for example, it is used to justify bans on religious clothing, state surveillance of people holding dangerous beliefs and the dismissal of employees who refuse to take on new duties on grounds of conscience. Rather, religion is integral to the foundations and development of liberalism and liberalism benefits from religious critique and opposition. In any case Britain is neither secular nor religious but betrays the very dialectic that is necessary to the survival of liberalism. Religion overlaps the public sphere in all sorts of complex ways. She therefore rejects the implicit framing of much current debate. Religion is not the problem; intolerance and illiberalism are.

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What Woodhead takes as the characteristic ‘non-secularism’ of the British state, McGhee prefers to characterize as a ‘moderate secularism’. His principal concern is to question whether Habermas’s more recent proposals in respect of the place of religion in public life, along with the suggestions of others interested in ‘public reason’ such as Rawls, Audi and Baggini, are capable of meeting the requirements of moderate secularism. Basing himself upon Modood’s characterization of moderate secularism in terms of the inclusion of religious identities and organizations in public life, challenging the supposed neutrality of secularism and softening the public–private divide, McGhee notes the opening up of new public spaces for the participation of ‘poly-glottal’ citizens and the translation of religious concerns into secular. However, he charges Habermas with a failure to understand the ‘multiple subject positions’ which religiously committed citizens may adopt, along with the ‘intersectional nature’ of all identities. Ultimately he suspects that Habermas has not managed to escape from Raymond Plant’s charge that liberalism requires religious people to hold their beliefs in a liberal way.

Later in the volume, Milbank will also contest Habermas’s implicit understanding of human nature and identity, but the following two chapters continue probing the theme of secularism. The political theorists Cécile Laborde and Veit Bader are also, respectively, more and less comfortable with the language of secularism. Laborde defends secularism (shorn of anti-religious sentiment) against the charges that it marginalizes, excludes, neglects or even attacks religion. However, she concedes that liberalism does require believers to accept that politics will largely be conducted in a secular mode and that freedom of conscience – which lies at the centre of secularism’s conception of religion – relies on only a thin theory of the good. What is at stake in the secular ideal is the need for all people to respect the conscience of others by submitting to the disciplines of public discourse. This is entirely compatible with forms of interaction between religions and the states, such as the public funding of chaplaincies in public institutions.

Bader is interested in the foundations of a liberal-democratic constitutionalism which emphasizes the priority of rules and institutions over theories. But as well as rejecting an ‘exclusivist secularism’ based either on a comprehensive ethics or a foundational rationality, he considers at length a series of arguments that liberal-democratic constitutionalism must have religious foundations, which in turn impacts on

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the place of religion in public life. These arguments, which are barely heard in the United Kingdom, have been most fully developed in the context of the German constitution. In their conservative formulation they defend the dominant position of the Christian churches in education and social welfare; in their postmodern formulation they insist on the impossibility of neutrality and the inevitability of a structured toleration. Against such views, Bader argues that Liberal-Democratic Constitutionalism has no unique founding conditions – whether religious or otherwise. It simply requires personal virtues of moderation and self-restraint in the freedom of political communication and the exercise of political self-determination. This is most suitably expressed in a range of forms of associative governance.

Bader's essay paves the way for two theological perspectives. However, neither of the theologians John Milbank and John Perry seeks to ground their vision of the possibilities of politics in Christian foundationalism. Rather, in different ways both challenge what they take to be the way the underlying problem of the religion–politics relation is constructed and offer third ways. For both, the Enlightenment contrast between faith and reason gives rise to a characteristic form of liberalism: one which seeks to draw boundaries between private faith and public reason. Both reject this fundamental presupposition of what Perry calls 'Johannine' liberalism – that of the two Johns, Locke and Rawls. The collapse of consensus around these boundaries is precisely the problem, which repeated attempts to draw the lines here, or there, will not solve. Milbank looks for a solution in the Humean notion of 'sympathy' and suggests an urgent need to recreate a community of sympathy out of concrete discussions about who we are. In not-unrelated fashion, John Perry re-emphasizes the role of rhetoric and decorum in public speech, thus focusing attention on the virtues that make an open public process of identity-formation possible. Here too there is an idea of civility in operation which depends on a respect for the other's capacity for deliberation and action.

Through all these contributions, and in the course of our conversations, a number of overlapping themes emerge in the face of current difficulties. The first – in line with points made by the editors in other contexts (D'Costa, 2009; Evans, 2009; Levey and Modood, 2009; Modood, 2010; Rivers, 2010) – is that 'secularism' is not automatically a guarantor of 'liberalism', but must be carefully articulated and

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qualified if it is to do that work. The same can be said of other similar concepts that claim to transcend difference, both negative (e.g. coercion) and positive (e.g. neutrality). Whether one seeks to retain the secular label, appropriately defined, or disavow it in the name of liberal democracy or some other value, slippage in the direction of hostility to religion must be avoided. Both religious people and secularists may be illiberal.

The second theme is that an older commitment to freedom of conscience has been at least partially eclipsed by more recent ideas of neutrality and equality, and may need recovering. Freedom of conscience is not simply one human right among many. It is a fundamental and necessary value-commitment which grounds the structuring of public spaces within which difference can be negotiated. Although it is epistemologically more ambitious than some attempts to ground liberalism – and Plant indicates some of the ways in which that ambition may be fulfilled – it is more robust. At the same time it is legally more modest, representing protected limits to state action while eschewing grander, and less concrete, principles of constitutional design. Closer attention to freedom of conscience may well suggest that a brake needs to be placed both on the vigorous pursuit of secular neutrality as a required habit of the heart of every citizen, as well as on policies which treat religions as matters of fixed identity which must be protected and accommodated at all costs. The recent judgment of the Grand Chamber of the European Court of Human Rights in the case of *Lautsi v. Italy* (judgment of 18 March 2011) suggests that the need for such restraint is now being recognized.

The third theme is that new structural contexts for ‘being liberal’ still need to be developed if the challenges of religion in a liberal society are to be met. In spite of all the concerns, it is noticeable that many of the essays display an optimism in the genuinely productive capacity of respectful discourse to resolve problems which at first manifest themselves as the product of fundamental ideological conflict. It may even be possible to hope for the creation of new forms of community out of the crucible of pluralism. The rejection of passive resignation in the face of difference alongside public action to seek new forms of reconciliation is perhaps the most enduring moral legacy of liberalism. And it is in the light of such a hope that this record of our conversation is offered to a wider audience.

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# 1 *Religion in a liberal state*

RAYMOND PLANT

The role of religion in liberal societies raises deep questions about the moral basis and legitimacy of liberalism. This is because the legal and regulatory requirements of a liberal political order in many respects challenge religious practices and the ways in which religious beliefs are manifested. In the view of many religious people, it challenges their beliefs as well because of the internal connection between their beliefs and the way they seek to manifest and practise those beliefs. What is it that gives liberalism such authority and why are its beliefs and values so privileged?

The challenge, however, is not just to the basis of the authority of the liberal state, but also to religion within it and in particular whether a religion seeking a role in a liberal society can do so only if it is a *liberalized* form of that religion. If this is so, then it may be that being part of a liberal political order will have radical effects on the integrity of the beliefs held by those who espouse them by requiring that such beliefs should be held in a liberal way as a precondition of playing a part in the liberal order.

These are not just abstract, academic questions in normative jurisprudence and political philosophy but are also of current political importance and controversy. They have developed as an important part of the public agenda in Western societies at the moment. I give just a few examples of this:

- 1 the debate in France about whether to ban the veil worn by Muslim women in public places – a law which has now been passed;
- 2 debates in the UK arising out of the Equality Act 2010 about the rights of religious organizations to discriminate in recruitment in favour of those with sympathy for and in some cases belief in the doctrines and practices taught by that religion;

This chapter formed the first Zutshi–Smith lecture at the University of Bristol.

- 3 the decision of Roman Catholic adoption agencies to close down rather than offer children for adoption by gay and lesbian couples as the law requires them to do;
- 4 controversies over the wearing of religious symbols in both public-sector workplaces such as schools and hospitals and indeed private-sector organizations such as British Airways;
- 5 the disciplining of a nurse who offered to pray for a patient in her care in hospital;
- 6 the requirement that rooms in guest-houses which are also private homes to be available to gay and lesbian couples even if such relationships are against the religious beliefs of those offering the accommodation;
- 7 the role and function of faith schools in a liberal-democratic order when such schools are largely publicly funded;
- 8 the very categorical dismissal by Laws LJ of an appeal by an employee of Relate who was dismissed because he would not on principle offer counselling to gay couples on the grounds of his religious beliefs – a judgment which led Lord Carey to claim that Christians were in fact being forced out of the public realm because they were prevented from acting on their conscientious convictions. Pope Benedict XVI made a similar claim during his visit to Spain when he argued that in Western societies equalities and rights legislation is making it more and more difficult for the Roman Catholic Church to articulate its moral objections to homosexuality.

There has also very recently been an interesting development in France on an issue which is at the heart of the problem I am trying to raise. In *Le Monde* (12 May 2010) it was reported that Eric Besson, then minister for immigration, integration and national identity, announced that imams planning to officiate in France would have to attend one of two designated public universities to learn how to articulate their Islamic beliefs in a way compatible with French political values and republican culture. This raises the question about the legitimacy of this sort of role for government and the privilege which it claims in relation to other sorts of beliefs.

These issues are likely to become more rather than less prevalent as third-sector bodies including faith communities take a greater and greater role in the provision of public services as part of Big Society programmes and the scaling back of the role of the state as the provider