

This is not a 'Christian country'

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Despite many remaining anachronisms in our constitution, the UK is not a Christian country in any meaningful legal sense: but politicians continue to repeat this myth.

Theresa May's father was an Anglican priest, as she likes to remind us frequently. And on Easter Sunday, like her predecessor last year, she urged Christians to be free to practise and speak out about their faith in public – as if they weren't already. This is yet more ammunition for those who put about the myth that Britain "is a Christian country".

For historical reasons the liturgy and governance of the Church of England are subject to Parliamentary control and there are some religious qualifications for the role of head of state. More seriously a number of Anglican bishops have the right to sit and vote in the House of Lords. Though these privileges remain, the courts do not consider Christianity to be the basis of our laws today. They have made this clear in a series of judgments over many years.

Let's start in 1917. A Mr Bowman left some money in his will to the Secular Society. Among the Society's objectives was the promotion of the "principle that human conduct should be based upon natural knowledge, and not upon super-natural belief, and that human welfare in this world is the proper end of all thought and action".

Bowman's relatives sought to invalidate the legacy on the grounds that Christianity was part of the law of the land and that the courts should therefore not help people undermine it. Overruling nineteenth century precedents to the contrary, the House of Lords, then the UK's highest court of appeal, clearly laid down that rational argument against Christianity was not blasphemy; and, more fundamentally, that "the phrase 'Christianity is part of the law of England' is really not law; it is rhetoric". The Secular Society got its money and I am sure used it well.

In 2008 Parliament abolished the crime of blasphemy in England and Wales. Sadly the devolved legislatures in Northern Ireland and Scotland have not, although there have been no prosecutions in Scotland for over a century.

In recent times the tension between LGBT rights and some religious opponents has made the courts consider this issue afresh.

In 2010 Mr and Mrs Johns were being considered as potential foster parents and when asked their potential reaction to having a gay foster child, gave some fairly clear anti-gay reactions: the male of the couple said that when confronted with a child confused about its sexuality he would "gently work to turn them round". In other words he would try to 'cure' them. It is professionally recognised that attempts to 'cure' same sex orientation do not work and can cause serious psychological harm to the victim. Not surprisingly the city council vetting the couple as to their suitability as foster parents did not immediately put them on the list of suitable people.

The Johns tried to get the decision judicially reviewed on the grounds, inter alia, that it was unlawful to treat people as unsuitable to be foster carers on the grounds that they adhered to a "traditional code of sexual ethics" (i.e. no sex outside heterosexual marriage). The High Court did not agree and expressed itself strongly in disagreeing. Here the court puts it very clearly:

"Although historically this country is part of the Christian west, and although it has an established church which is Christian, there have been enormous changes in the social and religious life of our country over the last century. Our society is now pluralistic and largely secular. But one aspect of its pluralism is that we also now live in a multi-cultural community of many faiths. One of the paradoxes of our lives is that we live in a society which has at one and the same time become both increasingly secular but also increasingly diverse in religious affiliation.

"We sit as secular judges serving a multi-cultural community of many faiths. We are sworn (we quote the judicial oath) to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.' But the laws and usages of the realm do not include Christianity, in whatever form."

Mr McFarlane, who belonged to a non-conformist sect, refused to provide sexual counselling to gay couples, in breach of his employer Relate's equal opportunities policy, and was accordingly dismissed. He claimed that his dismissal was unlawful on the grounds of discrimination against Christians: in other words, that his freedom of religion was violated by his wish to discriminate against LGBT+ people in the workplace, because this was not accommodated by his employer.

Lord Carey, a former Archbishop of Canterbury, provided a witness statement read to the Court of Appeal on McFarlane's appeal, in support of an application to the appeal to be heard by a panel of judges with "a proven sensitivity and understanding of religious issues" (presumably people who could be relied on to rule the right way). Such an idea was of course refused as "deeply inimical to the public interest".

Lord Justice Laws, writing on behalf of the Court of Appeal, made very clear the Court's views not just on the proposition that discrimination is validated by Christian morality but on the whole proposition that Christian morality in some way underlies our laws:

"... The general law may of course protect a particular social or moral position which is espoused by Christianity, not because of its religious imprimatur, but on the footing that in reason its merits commend themselves. So it is with core provisions of the criminal law, the prohibition of violence and dishonesty. The Judea-Christian tradition, stretching over many centuries, has no doubt exerted a profound influence upon the judgment of law-makers as to the objective merits of this or that social policy, and the liturgy and practice of the established church are to some extent prescribed by law. But the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled; it imposes compulsory law not to advance the general good on objective grounds, but to give effect to the force of subjective opinion. This must be so, since, in the eye of everyone save the believer, religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence. It may, of course, be true, but the ascertainment of such a truth lies beyond the means by which laws are made in a reasonable society. Therefore it lies only in the heart of the believer who is alone bound by it; no one else is or can be so bound, unless by his own free choice he accepts its claims.

"The promulgation of law for the protection of a position held purely on religious grounds cannot therefore be justified; it is irrational, as preferring the subjective over the objective, but it is also divisive, capricious and arbitrary. We do not live in a society where all the people share uniform religious beliefs. The precepts of any one religion, any belief system, cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other. If they did, those out in the cold would be less than citizens and our constitution would be on the way to a theocracy, which is of necessity autocratic. The law of a theocracy is dictated without option to the people, not made by their judges and governments. The individual conscience is free to accept

such dictated law, but the State, if its people are to be free, has the burdensome duty of thinking for itself."

This splendid passage should make us quite proud of the British judiciary – it alone shows that to state that this country is Christian, in anything but a historical sense, is fundamentally inaccurate. And all credit to Lord Justice Laws for writing as he did when in his private life he is understood to be a practising Anglican.

Mrs May and those who preach that this is in some way a Christian country should note what its judges actually say.

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