challenging religious privilege

national secular society

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A response to the Consultation on a Bill of Rights

National Secular Society

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About the National Secular Society (NSS)

The NSS is a not-for-profit non-governmental organisation founded in 1866. It promotes the separation of religion and state, and seeks a society where law and the administration of justice are based on equality, respect for Human Rights and objective evidence without regard to religious doctrine or belief. Its honorary associates include writers, academics, and parliamentarians.

We welcome the opportunity to respond to this review. We will limit our comments to questions that fall within the remit of our work.

Question 1: Do you think we need a UK Bill of Rights?

The NSS has no objection in principle to a Bill of Rights ("the Bill") but detailed comment must be reserved until a more detailed proposal is made by Government and its commissions.

We are broadly satisfied with the current operation of the Human Rights Act (HRA) and are concerned that no existing rights should be lost. The HRA is to some extent a Bill of Rights and should not be diluted. None of the rights and associated obligations enshrined in the HRA is one which could not be reasonably expected from people by law (duties entailed by rights). Therefore any debate on a future Bill of Rights should indicate very precisely what additional advantage there is in the process of renewing the HRA into such a Bill.

If the UK intends to replace the HRA, the question technically arises whether the UK should remain a signatory to the European Convention on HR. In our opinion, withdrawal, or anything beyond a minimal derogation from the Convention, would be deeply damaging to the UK's international reputation. Such action might also render membership of the EU untenable. It might also risk setting a precedent so that other countries may feel justified in withdrawing from the Convention, thereby allowing them to abandon currently recognised rights that do not accord with their political, social or religious views.

Question 2: What do you think a UK Bill of Rights should contain?

The NSS feels strongly that the Bill should not permit any reduction of rights below minimum standards currently set by the HRA.

We urge that no privileges are given to religious organisations or perspectives relative to other organisations or perspectives. There should be both freedom *of* religion and freedom *from* religion.

We strongly recommend that the current secular nature of the law is upheld and we cite extracts from the summing up of two legal cases at the end of this document to illustrate this point.

There should be no hierarchy of rights with religion and belief trumping other rights. This would ensure that citizens are aware that their responsibilities are to society as a whole, not just to their own interest group.

(As a caveat to our earlier comments about the HRA, we consider that Section 13(1) of the Human Rights Act 1998 breaches this principle:

(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.)

If there is to be a 'common set' of beliefs and values expressed in the bill, then no religious groups or individuals should be allowed privileged input into deciding them. If mentioned, morality should be uncoupled from religious values.

Responsibilities lie not only with citizens but with governments to treat all citizens equally. Equality for all before the law and within society should be specifically stated.

Furthermore, any Bill should:

Be non-regressive: It should not dilute existing protection provided by the HRA.

Be transparent: Politicians and others involved should be transparent about the purpose of a Bill of Rights and the consultation process involved in drafting it.

Protect freedom of expression with no proscription in law solely based on 'offence' to religious people.

Be rooted in human rights. There should be no exemptions from law beyond current occupational requirements for religious groups or individuals - for example in the area of equality laws, education or publicly-funded service provision. There should be no exemption from law for religious codes and processes.

We are also concerned that group interests must not become group rights and such rights must remain focussed on the individual but remain universal in application. There should be no group rights, partly because this tends to disadvantage those who are not members of groups thereby favoured, leaders do not speak for everyone within a group because groups are not homogenous. We are therefore strongly opposed to any form of religious privilege in the way rights are applied or interpreted. Within religions, there is a whole spectrum of belief and practice. According group rights can be especially dangerous for women and sexual minorities.

We are also concerned about the conflation of ethnicity and faith and the resultant pressure to have separate or different laws in the name of human rights. Human rights are by definition universal and any concession to groups would have the effect of undermining such rights.

We welcome a more prolonged debate following the publication of the Commission report before any further changes are contemplated.

Appendix

Extracts from two legal cases underlining the importance of upholding a secular legal framework

Justice Laws' summing up the case of McFarlane v Relate Avon Ltd[1]

The Judaeo-Christian tradition, stretching over many centuries, has no doubt exerted a profound influence upon the judgment of lawmakers 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.

[1] http://www.bailii.org/ew/cases/EWCA/Civ/2010/B1.html

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.

So it is that the law must firmly safeguard the right to hold and express religious belief; equally firmly, it must eschew any protection of such a belief's content in the name only of its religious credentials. Both principles are necessary conditions of a free and rational regime.

Lord Justice Munby's summing up of the case of Eunice and Owen Johns, Derby Council and the Equality & Human Rights Commission[2]

We sit as secular judges serving a multi-cultural community of many faiths. We are sworn (we quote the judicial oath) to "do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will." But the laws and usages of the realm do not include Christianity, in whatever form. The aphorism that 'Christianity is part of the common law of England' is mere rhetoric; at least since the decision of the House of Lords in Bowman v Secular Society Limited [1917] AC 406 it has been impossible to contend that it is law.

The starting point of the common law is thus respect for an individual's religious principles coupled with an essentially neutral view of religious beliefs and benevolent tolerance of cultural and religious diversity.

It is important to realise that reliance upon religious belief, however conscientious the belief and however ancient and respectable the religion, can never of itself immunise the believer from the reach of the secular law. And invocation of religious belief does not necessarily provide a defence to what is otherwise a valid claim.

[2] http://www.bailii.org/ew/cases/EWHC/Admin/2011/375.html