

**EHRC Open to Question panel debate on 'Religion, Belief and the Rule of Law'
with David Cameron and Trevor Phillips**

Royal Society of Arts, London, 26 February 2008

Notes by Commissioner Francesca Klug

Some of the responses to the Archbishop of Canterbury's speech were as revealing as the speech itself and it is these I want to concentrate on in my short contribution this afternoon.

Much of the response, especially in some of the tabloids, could be characterised as shrill, hysterical and even racist.

The more sober negative reaction has largely taken the form of a restatement of so-called 'enlightenment values' which are widely perceived to provide a way forward with their 'Christian roots' and 'secular solutions'.

The phrase 'enlightenment values' has probably been used more frequently by writers and theorists in the last few years than in the whole of my lifetime. So we need to be very clear what we mean by the phrase.

Our Enlightenment was not same as the French or American versions (or for that matter the Turkish) with their rigid separation between church and state (and these were not identical to each other, either).

As we all know, we retained the established church, bishops in the House of Lords and the Blasphemy laws. Church schools, of which there are still many thousands, were the precursors to state education.

In the UK, therefore, there has always been an accommodation between Christianity and secularism, even in the public sphere.

Equality before the law was, of course, the great boast of the Enlightenment. It meant that regardless of faith, creed and status all laws should apply equally to everyone and no-one was above the law.

But difference was not generally tolerated, let alone accommodated. Jews in Europe were in many ways the Muslims of the day. As individuals they became entitled to equal rights for the first time in many countries, but as a group they were still frequently subject to vilification and denigration. This distinction was given intellectual justification by prominent philosophers and writers. Voltaire, one of the heroes of the Enlightenment, condemned discrimination against individual Jewish people whilst describing the Jewish "nation" as "in many respects, the most detestable ever to have sullied the earth."

As we now know, if difference is ignored or squashed then equal treatment can create unequal life chances as the disability movement, in particular, has so convincingly demonstrated over the years. Without 'reasonable adjustments' to buildings, transport and public services, equal rights for disabled people to work or participate in public life, are barely worth the paper they are written on.

As this example of recent advances by the disability movement illustrates, if the fall of the Berlin wall in 1989 was not the end of history then the Enlightenment of 1789 certainly wasn't!

In our version of the Enlightenment many laws have been passed over the last century or so to recognise and accommodate minority religious practices, whilst the Church of England has remained the established church.

Halal and kosher methods of animal slaughter are regulated by law. Legislation permits observant Sikh men to substitute turbans for motorcycle helmets.

There are now Shariah compliant mortgages and in 2007 a Muslim Arbitration Tribunal was established to mediate on issues like commercial disputes, domestic violence and divorce. Like the Jewish Beth Din, the Muslim tribunal will operate as a court of arbitration under the Arbitration Act. Provided there is consent between the parties, they can agree to enter a “binding arbitration” which can be enforced through the civil courts and also overturned if “contrary to public policy”. This means these dispute resolution procedures, like other similar non-religious arbitration mechanisms, are ultimately subordinate to civil law rather than parallel to it. Listening to the Archbishop’s speech, it was difficult to understand why he was presaging developments that are already effectively in train.

Some would describe this as multiculturalism at its best. I don’t want to get drawn into the debate about the value of this term – at the very least ‘multicultural’ strikes me as a fair description of the society we live in. But I cannot say I recognise all, or most, of the description of our society that David Cameron paints when he talks about “state multiculturalism”.

Jonathan Sacks, the Chief Rabbi, also criticises multiculturalism for highlighting differences between groups. He advocates a society built on tolerance. This is a reasonable start but most of us want to be more than tolerated.

Rather than get caught up in an argument about terms, a way forward, perhaps, is to recognise the democratic ethic of creating a ‘society for all its citizens’ – indeed for all its *people*. In British vernacular: ‘it takes all sorts’.

But it is important to distinguish between accommodation – or even celebration – of difference and what Rowan Williams referred to as “conscientious opting out”.

This is where creeping parallel jurisdictions can occur as people of faith claim a *unique* right to exemptions from laws which exist to protect fellow citizens.

Part of our accommodation of difference is to exempt religious institutions from practices which some allege deviate from theological doctrines. Discrimination against women bishops, for example, remains an issue for the church rather than the state.

But once an exemption from the civil law – particularly where such legislation is designed to protect others from discrimination – extends to public services which it is not incumbent on any religious body to provide, then a parallel jurisdiction of sorts *does* start to emerge. Exemptions for Catholic adoption agencies or registrars who want to opt out of civil partnerships would fall under this category, in my view.

Perhaps the most troubling aspect of the Archbishop’s speech was that much of it seemed to be aimed at making the case for “conscientious opting out,” by members of the church, from anti-discrimination measures to protect gays and lesbians in particular. The Muslim religious practices he referred to are already recognised by law and do not appear to require the ‘supplementary jurisdiction’ the Archbishop proposed. Yet this is where all the attention was predictably focussed.

The democratic ethic of a “society for all its citizens” recognises difference – even celebrates it –but within shared human rights values that affirm dignity, respect and *real* equal treatment for everyone. In a democratic society no religious practice or custom – however sacred – should be used to override these fundamental values. It is these enduring values, rather than an appeal to the enlightenment model of ‘*same treatment*’ which, it strikes me, provide the root to accommodating difference without institutionalising inequality.

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