

THE LEGAL STATUS OF OLD AND NEW RELIGIOUS MINORITIES IN THE UNITED KINGDOM

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Recent years have witnessed in the United Kingdom major developments in the field of law and religion. On the one hand, in the practical field, there has been the enactment by Parliament of a series of statutes which affect religion – not least the Human Rights Act 1998, and its protection of religious freedom under the European Convention on Human Rights incorporated by that statute into domestic national law, as well as under the Equality Act 2010 and its complex body of rules on religious discrimination and associated forms of discrimination. As a result, the courts have been very active in decision-making with regard to a host of religion-specific issues. On the other hand, the field of religion law has seen a burgeoning of scholarly literature. What follows deals with the legal status of old and new religious minorities in these two contexts.¹

PART I. Definition and Status

1.1. Social science definition

There are various sociological approaches to the meaning of the word ‘minority’. The word ‘minority’ is most commonly used by social scientists to correlate with population – a minority denotes a numerically smaller group than other numerically larger groups in society. However, ‘minority’ may also be defined, more subtly, as ‘a culturally, ethnically or racially distinct group that coexists with but is subordinate to a more dominant group. As the term is used in the social sciences, this subordinancy is the chief defining characteristic of a minority group. As such, minority status does not necessarily correlate to population. In some cases one or more so-called minority groups may have a population many times the size of the dominating group...’² This definition makes no mention of ‘religion’ but may equally characterise, for example, Islam in the United Kingdom whose members outnumber those of the established Church of England which sociologists may regard as a historically ‘dominant’ though numerically smaller religious group.³

1.2. Legal definition

There is no statutory definition of ‘minority’ as used in the context of religion.⁴ However, the explanatory notes to some statutes use the word but without defining it;⁵ and the word is also used in the context of parliamentary debate, internal standards and organisation.⁶ The Equality and Human Rights Commission also uses the word; for example: ‘There are two essential characteristics which an ethnic group must have: a long shared history and a cultural tradition of its own. In addition, an ethnic group may have one or more of the following characteristics: a

¹ At the Centre for Law and Religion, Cardiff, we are grateful to Frank Cranmer for invaluable comments on drafts.

² *Encyclopaedia Britannica* (2015), ‘Minority’: <<https://www.britannica.com/topic/minority>>.

³ P. Balls Organista, G. Marín, and K.M. Chun, *Multicultural Psychology* (Rowman and Littlefield, 2018).

⁴ The word is used though e.g. in relation to ‘minority shareholders’ in the Companies Act 2006, s. 979; ‘minority’ is also used to denote the state of being under age.

⁵ E.g. Equality Act 2010, s. 521: ‘ethnic minority background’.

⁶ See e.g. T. Saalfeld and D. Bischof, ‘Minority-Ethnic MPs and the Substantive Representation of Minority Interests in the House of Commons, 2005–2011’, *Parliamentary Affairs*, Volume 66:2, 1 April 2013, 305–328.

common language; a common literature; a common religion or common geographical origin; or being a minority or an oppressed group'.⁷ Likewise, the category 'minority' is recognised by the Charity Commission.⁸ Courts too associate minorities with the characteristic of vulnerability, when judges speak of 'the need to guard against tyranny which majority opinion may impose on those who, for whatever reason, comprise a weak or voiceless minority'.⁹ However, for legal commentators the most common definition of 'minority' is, simply, 'the smaller number';¹⁰ and so in turn a 'religious minority' is a numerically smaller religious group in terms of population. But for other legal scholars, religious minorities may also be understood as those, for example, with 'distinct cultural or religious norms' which possess 'some "systemic" features that allow us to say that there is a distinct institutional system for the identification, interpretation or enforcement of these norms'; whether or not a community has such features may be 'a matter of degree'.¹¹ On the basis that international law is judicially enforceable in United Kingdom only when it is incorporated in domestic law, international norms on religious minorities have merely persuasive not binding authority in the United Kingdom, but are commonly invoked by courts.¹²

A minority group and/or its activities will be classified legally as 'religious' if the group satisfies whichever test is appropriate depending on the issue at hand, such as under charity, human rights or discrimination legislation.¹³ For example, it has been held recently in the Supreme Court that a building within the Church of Scientology could be a 'place of meeting for religious worship' under the Places of Worship Registration Act 1855. Registration of a place of 'public religious worship' is exempt from local council tax. For Lord Toulson, although there is no 'universal legal definition of religion in English law', nevertheless, 'the understanding of religion in today's society is broad'. Moreover: 'Unless there is some compelling contextual reason for holding otherwise, religion should not be confined to religions which recognize a supreme deity' – since this would be 'a form of religious discrimination unacceptable in today's society'. For the purpose of the 1855 Act, religion can be described 'as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how to live their lives in conformity with the spiritual understanding associated with the belief system'. The term 'religious worship' is 'wide enough to include religious service'. This understanding is intended to be broader than the 'unduly narrow' definition previously found at common law where 'a place of religious worship' was defined as 'a place of which the principal use is as a place where people come together as a congregation or assembly to do reverence to God'; worship involved 'reverence or veneration of God or a Supreme Being'; 'worship has been defined as having 'some, at least, of the following characteristics:

⁷ Equality Act 2010, Code of Practice: Services, Public Functions and Associations, Statutory Code of Practice

⁸ Registered charities include e.g. Minority Integration Network and Ethnic Minorities Development Association.

⁹ *Singh v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075.

¹⁰ *Jowitt's Dictionary of English Law* (London: Sweet and Maxwell, 3rd edition, 2010) 1471.

¹¹ M. Malik, *Minority Legal Orders in the United Kingdom: Minorities, Pluralism and the Law* (British Academy, 2012), Executive Summary, p. 4.

¹² See e.g. J. Alder and K. Syrett, *Constitutional and Administrative Law* (Palgrave, 11th edition, 2017) 199-205.

¹³ For statutory definitions of religion, see R. Sandberg, *Law and Religion* (Cambridge, 2011) 39-57.

submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession'.¹⁴ The decision has been welcomed for its inclusiveness.¹⁵

1.3. Legal status

The civil legal position of religious minorities varies minimally as between faiths.¹⁶ The most common arrangement is that a religious community is treated in law as a voluntary association – a group of persons associated together for the purpose of practising or advancing religion. They are classified as contractual societies whose members are bound together as a matter of private agreement. Legally, they are not corporations. They have no separate legal identity and, unlike corporations, they are not treated in law as a person. They cannot, as a body, sue at law, nor can they be sued. They are incapable of holding property as a body – though institutions within them may be legal owners of property, and these institutions may themselves enjoy the legal status of corporations.¹⁷ Religious minorities may negotiate with government enactment of tailor-made parliamentary statute to protect e.g. their institutional structures, doctrinal position, or property.¹⁸

PART II: Social and Legal Change

2.1. Social change.

According to the Census of 2011, for example, of the population of England and Wales, 59.3% regarded themselves as Christian, 4.8% as Muslim, and 0.50% as Jewish, 0.28% Buddhist, 1.06% Hindu, 0.643, Sikh, 0.29 other, and 14.81% none, with 7.71% of respondents giving no answer. Pagans, Wiccans and 'Witchcraft' together had over 70,000 devotees.¹⁹ As of May 2017, net long-term international migration was estimated to be +248,000 in 2016, which is statistically significant as this is down 84,000 since 2015. This was driven by a considerable increase in emigration, which was up 40,000 from 2015, and this was mainly EU citizens (117,000 – up 31,000 from 2015). Immigration was estimated to be 588,000 with a decrease of 43,000, and this was not considered to be statistically significant.²⁰ These figures are reflected in for example the numbers of minority faith schools and charities: in 2011, about one third of the 20,000 state funded schools in England were faith schools (68% Church of England), including 42 Jewish, 12 Muslim, 3 Sikh and 1 Hindu;²¹ and the register of the Charity Commission shows over 22,000 religious charities in England and Wales - many are minority religious charities.²²

¹⁴ *R (On the Application of Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77; the decision overturned the narrower approach in *R v Registrar General ex parte Segerdal* [1970] 2 QB 679. See also *Lee (Respondent) v Ashers Baking Co Ltd and Others (Appellants) (Northern Ireland)* [2018] UKSC 49.

¹⁵ E.g. C. Kenny, 'Law, religion and the curve of reason', in F. Cranmer, M. Hill, C. Kenny, and R. Sandberg, *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge, 2016) 19.

¹⁶ However, Jews and Sikhs have been classified judicially as *racial*, rather than religious, groups: see e.g. *Mandla v Dowell Lee* [1983] 2 AC 548; and *R (E) v Governing Body of Jewish Free School* [2009] UKSC 15.

¹⁷ See M. Hill, R. Sandberg, and N. Doe, *Religion and Law in the United Kingdom* (Kluwer, 2014) III.1.2.

¹⁸ See e.g. the United Synagogues Act 1870, the Methodist Church Act 1976, and the Dawat-e-Hadiyah Act 1993.

¹⁹ Office for National Statistics, 'Religion in England and Wales 2011', 2012; See also: Home Office, R. O'Brien, A. Potter-Collins, '2011 Census analysis: Ethnicity and religion of the non-UK born population in England and Wales: 2011' (18 June 2015).

²⁰ Migration Statistics Quarterly Report, May 2017.

²¹ Department for Education, *Faith Schools: Maintained faith schools* (2011).

²² M. Hill, R. Sandberg and N. Doe, *Religion and Law in the United Kingdom* (2014) par. 13 and par. 178.

There is also the social phenomenon of ‘religious minorities within religious minorities’. For example within Judaism,²³ many Jewish communities and organisations are long-standing and others more recent: the Board of Deputies of British Jews, ‘the representative body of British Jewry’ was founded in 1760;²⁴ the United Synagogue in 1870, and under the religious authority of the Chief Rabbi, with 50 member synagogues;²⁵ the Federation of Synagogues in 1887 for Orthodox communities which ‘retain their individuality and distinct identity’;²⁶ the Union of Orthodox Hebrew Congregations in 1926, an umbrella organisation of Haredi communities in London and Manchester (so-called ‘Strictly-’ or ‘Ultra-Orthodox’) with over 6,000 members;²⁷ Movement for Reform Judaism founded 2005 (with 41 autonomous synagogues);²⁸ and Union of Liberal and Progressive Synagogues founded 1902, with 30 or so congregations in Britain.²⁹ The same diversity within a religious minority is also found among e.g. Muslims and Christians.³⁰

2.2. *Legal change.*

It is commonly understood that, historically, there are ‘four broad overlapping but conceptually distinct phases’ in the development of State law on religion, including religious minorities.³¹ The first – the medieval period – is characterised by a temporal-spiritual partnership between the realm of England (and its common law) and the Church of Rome (and its canon law); the Jewish minority in England suffered grave persecution.³² The second period was that of discrimination and intolerance following the Reformation of the sixteenth century. This period was marked by the ousting of papal jurisdiction, the establishment of the Church of England by the civil power, protected from ‘foreign’ jurisdiction, and religious intolerance towards all other religious groups’ including minority ‘dissenters’ such as Presbyterians and Baptists. After the civil war, during the Protectorate (from 1649), the dissenting religious minority disestablished the Church of England and introduced a non-episcopal religious order operative until the Restoration of the monarchy and the re-establishment of the Church of England in 1660. The third period was that of religious

²³ It is believed the first Jews came from Normandy with William the Conqueror in 1066. However, the Edict of Expulsion issued by King Edward I, 18 July 1290 (on the Jewish Fast of Tisha B’Av) banished the entire Jewish population. Yet, in 1656, Rabbi Menashe Ben Israel successfully petitioned Oliver Cromwell to allow their readmission. Within 50 years, the offices of the Chief Rabbi and the London Beth Din were set up to provide a religious authority for Jewish communities in London and elsewhere: see Jewish Policy Research Report (for the Board of Deputies of British Jews): Synagogue Membership in the United Kingdom in 2016 (2017), compiled by D.C. Mashiah and J. Boyd (2017).

²⁴ The Board was founded in 1760 when seven deputies were appointed by elders of the Spanish and Portuguese Congregations (Sephardic) to form a committee to pay homage to George III on his accession; the Ashkenazi Community also appointed a committee then and it was agreed in that both committees should hold joint meetings.

²⁵ See: <https://www.theus.org.uk/>. Members are chiefly in the south east, but also in e.g. Sheffield.

²⁶ See: <http://www.federation.org.uk/>.

²⁷ Its synagogues constitute some 37.4% of all British synagogues. Its spiritual leadership is in the hands of its rabbinate led by the Av Beis Din.

²⁸ See: <https://www.reformjudaism.org.uk/>. The Associated British Synagogues was founded in 1942, later renamed the Associated Synagogues of Great Britain, and in 1958 adopted the name Reform Synagogues of Great Britain, which in 2005 became the Movement for Reform Judaism.

²⁹ See: *Affirmations of Liberal Judaism* ((London: Revised Edition 2006) Preamble. The head office is in London. It is linked to the World Union for Progressive Judaism.

³⁰ See N. Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge University Press, 2018) 8-13.

³¹ R. Sandberg, *Law and Religion* (Cambridge University Press 2011) 17.

³² See above n. 22.

toleration: it saw abolition of statutes making religious conformity a precursor of taking public office and the Act of Toleration 1689 was enacted which allowed Trinitarian Protestants to have their own places of worship. The eighteenth century saw the rise of the category of ‘religious freedom’ at common law and was followed in the nineteenth century by a series of statutes removing legal disabilities hitherto placed on dissenters, e.g. Roman Catholic Relief Act 1829.³³

The twentieth century saw, for example, the disestablishment of the Church of England in Wales in 1920, on the basis, *inter alia*, of the inequality in legal treatment of the minority which that church represented – it was conceived of as an ‘alien church’ in light of the religious majority of Welsh dissenting groups.³⁴ Religious minorities also sought relief from general laws by way of special statutory exemptions (such as that for Sikhs from the wearing of crash helmets on motor-cycles). The final period sees the introduction of positive religious freedom for all, including religious minorities, with the incorporation of Article 9 of the European Convention on Human Rights (ECHR),³⁵ in the Human Rights Act 1998.³⁶ In turn, the Equality Act 2010 also forbids religious discrimination - the benefits of this statute are shared alike by all religious minorities.³⁷

Importantly, the courts have in recent years accepted a role to protect the rights of minorities; for example, in *Ghaidan v Godin Mendoza* (2001), Keene LJ stated: ‘Where discrimination against a minority is concerned, amounting on the face of it to a breach of article 14 rights [ECHR], the courts are entitled to require to be satisfied that a proper and rational justification for the difference in treatment has been made out. It is... a matter involving rights of high constitutional importance where the courts are equipped to arrive at a judgment. It is indeed a classic role of the courts to be concerned with the protection of such minority rights. That being so this court is entitled to ask whether there is any rational and proportionate basis for the distinction. For my part, I am not satisfied that any such basis has been established’.³⁸ Again, in *R (Countryside Alliance) v Attorney General*,³⁹ Sir Anthony Clarke MR approved the Divisional Court judgment that a measure is not necessary in a democratic society only because the democratically elected majority of the legislature enacts it; and in *Re S: Newcastle City Council v Z*, Munby LJ referred to the need for courts’ decisions to reflect the pluralism of society: ‘to live, or strive to live, in a tolerant society increasingly alive to the need to guard against tyranny which majority opinion may impose on those who, for whatever reason, comprise a weak or voiceless minority. Equality under the law, human rights and the protection of minorities, have to be more than what Brennan J [High Court of Australia] once memorably described as “the incantations of legal rhetoric”’.⁴⁰

³³ R. Sandberg, *Law and Religion* (Cambridge University Press, 2011) 17.

³⁴ See the Welsh Church Act 1914.

³⁵ Previously, as the ECHR was not part of UK law, the courts could not directly enforce it - it therefore had little effect upon religion law – see e.g. *Ahmad v. Inner London Education Authority* [1978] QB 36, where the appellant was refused leave from work as a teacher to attend prayers at the Mosque.

³⁶ S. Knights, *Freedom of Religion, Minorities, and the Law* (Oxford University Press, 2007); See also: St. J. A. Robilliard, *Religion and the Law: Religious Liberty in Modern English Law* (Manchester University Press, 1984) ix.

³⁷ Previously, at common law, see *Matadeen v Pointu* [1991] AC 98, 109, citing *Police v Rose* [1976] MR 79: Lord Hoffman recognised that ‘[e]quality before the law requires that persons should be uniformly treated, unless there is some valid reason to treat them differently’. But the Privy Council also noted that ‘it by no means follows, however, that the rights which are constitutionally protected and subject to judicial review include a general justiciable principle of equality’.

³⁸ [2001] EWCA Civ 1533 – decision upheld by the HL: [2004] UKHL 30.

³⁹ [2006] EWCA Civ 1677, para 45.

⁴⁰ [2007] EWHC 1490 (Fam).

PART III: Social and Legal Developments

3.1. Social developments

There would seem to be two largely polarised appraisals about the (un)conditional protection of minorities today. On the one hand, we find such current opinions as: ‘Minority views are likely to need greater protection than majority views under a constitutional democracy in that they may not be able to gain the necessary protection through the normal channels’; and: ‘Minorities are especially vulnerable to biased perceptions and negative stereotyping and may not easily be able to secure their rights through the normal democratic process’. Therefore, there may be a ‘need to support a vulnerable or politically weak group in society against more powerful interests’. However: ‘certain minority views may be considered by the majority as conflicting directly with democratic values, such that it is argued that no recognition should be given to those views’.⁴¹

On the other hand: ‘There have always been religious groups (or individuals) on the fringes of society, considered radical or even extreme, with teachings that are newly invented, re-invented, or renewal movements within old traditions... Such oppositional attitudes often come with social structures...that can be conducive to the engendering of certain attitudes and behaviours. [They] tend to be small in size, demographically atypical compared to the rest of the population’.⁴² Indeed, the Ethnic Minority British Election Study (EMBES), which was conducted in 2010, found a great diversity in ethnic minorities’ religious involvement. There were general concerns that if groups felt themselves disenfranchised, they may either withdraw politically or turn to alternative unconventional forms of protest: the study aimed to understand ‘whether minority political concerns were being adequately incorporated into the mainstream political agenda’.⁴³

There is also evidence of religious minorities engaging in interfaith and ecumenical dialogue, and with the State; for instance: the Muslim Council of Britain often expresses its opinion, or else urges government to act, on human rights issues;⁴⁴ and the Board of Deputies of British Jews advocates human rights,⁴⁵ has an interest in promoting of religious freedom and non-discrimination,⁴⁶ has called on both Jews and Muslims to stand together on issues such as *halal* and *shechitah*,⁴⁷ and it engages in interfaith dialogue.⁴⁸ Government too has dialogue structures:

⁴¹ S. Knights, *Freedoms of Religion, Minorities, and the Law* (Oxford University Press, 2007). See also R. Jones and W. Gnanapala, *Ethnic Minorities in English Law* (Threntham Books, 2000).

⁴² A. Van Eck Dumaer Van Twist, ‘What can we learn about radicalisation from the life histories of cult members?’, 6 July 2015, https://www.radicalisationresearch.org/debate/van-eck-cult-members/#_ftnref1. See also: E. Barker, ‘Plus ça change...’ Twenty Years On: Changes in New Religious Movements, Special edition of *Social Compass* 42/2 (1995).

⁴³ A. Heath, O Khan, *Ethnic Minority British Election Study – Key Findings* (RUNNYMEDE TRUST, Feb 2012).

⁴⁴ MCB: 20 May 2011: <http://www.mcb.org.uk/our-government-must-not-look-the-other-way-as-bahrain-commits-gross-violations-of-human-rights/>.

⁴⁵ See: <https://www.bod.org.uk/jonathan-arkush-irans-human-rights-record-is-dire-and-deteriorating/>.

⁴⁶ See: <https://www.bod.org.uk/political-party-manifestos-where-they-stand-on-issues-of-jewish-interest/>.

⁴⁷ See: <https://www.bod.org.uk/board-of-deputies-president-calls-for-muslims-and-jews-to-work-together-to-marginalise-extremists/>.

⁴⁸ The Board promotes relations between different faith communities in the UK as to e.g. education, equality and extremism, and works with the Inter Faith Network, Council of Christians and Jews, and Three Faiths Forum: <https://www.bod.org.uk/issues/interfaith-social-action/>.

the Ministry of Housing, Communities and Local Government has a Minister for Faith (who currently is Lord Bourne of Aberystwyth) and an Integration and Communities Directorate;⁴⁹ the Equality and Human Rights Commission promotes equality in protected grounds like religion.⁵⁰

3.2 Legal developments

As we have seen, UK law seeks to protect religious minorities. Indeed, for some legal scholars: ‘The liberal nature of the state, as well as constitutional and human rights commitments to protect minorities, mean that it is not viable to openly adopt policies that lead to persecution, exclusion or discrimination against a minority group. Moreover, it is now considered to be reasonable for minorities to make requests for the accommodation of some of their cultural or religious practices, including some...they consider...part of their community based “law”’.⁵¹ The idea that the courts do not understand religious minorities is considered a further issue.⁵²

At the same time, concerns persist. Three examples may be offered. First, that Islam and some Jewish traditions govern the whole of the life of the faithful may be problematic. For instance, in 2012, in a case (about the schooling of children in Haredi Judaism), Sir James Munby stated:

Even for the devout Christian attempting to live their life in accordance with Christ’s teaching there is likely to be some degree of distinction between the secular and the divine....But there are other communities, and we are here concerned with such a community, for whom the distinction is, at root, meaningless, for whom every aspect of their lives...of their being, of who and what they are, is governed by a body of what the outsider might characterise as purely religious law. That is so of the devout Muslim, every aspect of whose being and existence is governed by the Quran and the Sharia. It is so also of the ultra-orthodox Jew, every aspect of whose being...is governed by the Torah and the Talmud. I therefore agree entirely with...Hughes LJ...The issue is: “not simply a matter of choice of school but a much more fundamental one of way of life. ‘Lifestyle’ scarcely does [it] justice. It is a matter of the rules for living”.⁵³

Secondly, there are concerns about the accommodation by civil law of religious law - from the view that religious laws are not recognised by the civil law, through the opinion that they could be recognised by it, to the view that it is not possible to have legal pluralism in society.⁵⁴ For instance, in 2008, the then Archbishop of Canterbury, Dr Rowan Williams, proposed that some form of ‘transformative accommodation’ should be found between State law and Islamic *sharia*; but in Parliament in 2008, Bridget Prentice MP, Parliamentary Under Secretary, Ministry of Justice, stated: ‘Shari’a law has no jurisdiction in England and Wales and there is no intention to change

⁴⁹ See <https://app.beapplied.com/apply/bwfxktindr>. See also the Integrated Communities Strategy Green Paper: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696993/Integrated_Communities_Strategy.pdf.

⁵⁰ It was set up under the Equality Act 2006.

⁵¹ M. Malik, *Minority Legal Orders in the United Kingdom: Minorities, Pluralism and the Law* (British Academy, 2012), Executive Summary, p. 3.

⁵² See also e.g. F Cranmer, ‘OSCE guidelines on legal personality of faith-groups’ Law and Religion UK blog, 7 February 2015: these look ‘remarkably like an expansion of Article 9 ECHR’. Point 10 is ‘particularly telling, given the recent experience of minority religious groups such as the Alevis, Jehovah’s Witnesses and the Scientologists’.

⁵³ *Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233.

⁵⁴ Also, one may contract into religious law and the terms of that agreement will be enforced by the secular courts: see, e.g., *Kohn v Wagschal & Ors* [2007] EWCA Civ 1022 in which the Court refused to set aside an arbitration award of the London Beth Din.

this position'.⁵⁵ Moreover, the current Archbishop of Canterbury, Most Reverend Justin Welby, said in 2017 that *sharia* should not be part of English law: 'I don't think that we should have elements of sharia law in the English jurisprudence system'; rather: 'We have a philosophy of law in this country, and you can only really cope with one philosophy of law within a jurisprudential system. English courts always have to prevail, under all circumstances, always'.⁵⁶

Thirdly, there are concerns that theocratic ideas are incompatible with democracy. In a case in 2010, for example, Sir John Laws stated that to give legal protection to a moral position because it was based on Christianity or any other religion would be 'deeply unprincipled'; he said: '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 law 'in the heart of the believer'. To do otherwise, he said, would be 'divisive, capricious and arbitrary', especially 'in a society where all the people [do not] share uniform religious beliefs'. Also, he states: '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'.⁵⁷ To these may be added many other concerns, e.g. religious marriages, and safeguarding children.⁵⁸

⁵⁵ For the lecture, 'Civil and religious law in England' (7 February 2008), and the Written Parliamentary Answer by Bridget Prentice MP (23 October 2008), and other reactions to the lecture and the issues raised in it, see R. Griffith-Jones, ed., *Islam and English Law: Rights, Responsibilities and the Place of Shari'a* (Cambridge: Cambridge University Press, 2013) 20-33 and 35 and the other studies therein.

⁵⁶ *Church Times* (9 February 2018) 6.

⁵⁷ *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 771.

⁵⁸ See generally N. Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge, 2014) Chs. 8-10.