FREEDOM OF RELIGION IN ENGLAND

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SUMMARY

I. Introductory

The purpose of this paper is to provide a general survey of the law relating to religion in England and Wales. The study excludes the position in Scotland where a different legal regime applies [1]. In dealing with the position in England and Wales, attention will be directed to three general questions. The first relates to the established Church, in particular the rights, privileges and duties of the Church of England. The second relates to the way in which the law is used as a means of state support for

[1] See Ewing and Finnie, *Civil Liberties in Scotland, Cases and Materials,* Second Edition, 1988 (W. Green & Son: Edinburgh), Chapter 6.

religion generally but Christianity in particular. Here we are concerned with the law of blasphemy which protects Christian religion from abuse; the law of Sunday Trading which eliminates unnecessary distractions from the Christian duty to attendance at public worship; and the law of education which instills and drills Christian religious belief into children in the schools. The third general question tackled in this paper relates to the way in which the law protects the freedom of religious observance and worship. Here we examine the (rather limited) impact of the European Convention on Human Rights on British law and practice; the significance of the general discrimination legislation as a means of protecting religious liberty; the place or more specific legal rules which address the issue of liberty and conscience more directly; the (now little used) provisions for the protection of public worship; and finally the rules regulating the freedom of religious expression on the broadcasting media and elsewhere.

II. The Established Church

The Church of England is said to be «established by law» [2], though there is no statute whereby this is expressly done. «As an established church», however, «it has peculiar privileges which involve a close relationship with the State» [3]. Perhaps the most symbolic are those which relate to the Head of State, with the Queen being «the highest power under God in the Kingdom» and having «supreme authority over all persons in all causes, ecclesiastical as well as civil» [4]. By the Act of Settlement 1700 it is provided that the Monarch must «join in communion with the Church of England» [5]. An to make it clear that «the Sovereign is not personally and secretly a Roman Catholic, she is required to make, on accession to the Crown, a doctrinal declaration, solemnly and sincerely in the presence of God professing, testifying and declaring that she is a faithful Protestant», and that she will, uphold and maintain the enactments which secure the Protestant succession to the throne [6]. In fact the Act of Settlement goes further by provinding that neither the monarch nor any heirs to the throne «shall be reconciled to or shall hold communion with the See of Church of Rome or shall profess the popish religion or shall marry a papist» [7]. Indeed, no person «professing the Roman Catholic or the Jewish religion may lawfully, either directly or indirectly, advise the Sovereign concerning the appointment to or disposal of any office or preferment in the Church of England...» [8].

Apart from the communion between the Church and the Head of State, the relationship between Church and State is close a number of other respects. Thus, Archbishops and bishops are appointed by the Queen, and though by convention this is now on advice from the Prime Minister, the Church itself will present its own preferred candidates for appointment [9], but this is in no sense binding. On the other hand, the 26 Senior Bishops of the Church of England are members of the House of Lords, the second legislative chamber. This is sometimes justified by reference to

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[2] For an indication of what this means, see Welsh Church Act 1914, disestablishing the Church of England in Wales.

[3] Wade and Phillips, *Constitutional Law,* 1931 (Longmans, Green & Co: London), p. 383.

[4] Halsbury's Laws of England, Fourth Edition, volume 14, Ecclesiastical Law, para 352.

[5] Act of Settlement 1700, s. 3.

[6] Halsbury, *op. cit.,* para 354.

[7] Act of Settlement 1700, s. 2.

[8] Halsbury, *op. cit.,* para 360.

[9] For an account of this procedure, see Bailey, Harris and Jones, *Civil Liberties Cases and Materials,* Second Edition, 1985 (Butterworths: London), p. 407.

the conthol which Parliament continues to exercise over the Church [10]. Thus, apart from the role of the state in the appointment of archbishops and bishops, church legislation «requires the consent of the State. Its forms of worship cannot be altered without the consent of Parliament [11]. In particular «[t]he forms of worship of the Church of England, though not a result of parliamentary authorship, are sanctioned by parliamentary authorisation, and without such authorisation cannot be changed» [12]. It has been explained that «[t]he need of the sanction of King and Parliament for an alteration to the services of the Church is an essential part of the Royal Supremacy and the Establishment...» [13]. The difficulties which this can create were illustrated when in 1927 and again in 1928 Parliament rejected a revised Prayer Book which had been approved by a large majority by the appropriate church authorities.

The concept of establishment does not only have a bearing on the making of church laws: it also affects their enforcement. Thus, the Church of England «is the only religious body in the land that has its own courts of law, manned by lawyers sitting as judges administering an ecclesiastical law which is "part of the general law of England"...» [14]. In contrast, other churches operate on the basis of the law of contract and must act accordingly. As Robilliard has pointed out, the Church of England courts are "courts of the land" and as such they may compel the attendance of witnesses, grant legal aid, and anyone who is in contempt, either by gratuitously insulting members of the court or by a publication which prejudices proceedings before the court, may be punished by the civil courts [15]. The last point was established in 1932 when the Lord Chief Justice said that he had no doubt that the civil courts had jurisdiction to punish for contempt of the ecclesiastical courts, commenting that just as the High Court can correct errors of law made by ecclesiastical courts, so also it can intervene to protect them. The case in question related to a publication in a newspaper which tended to prejudice proceedings before an ecclesiastical court for the discipline of a clergymen charged with immoral conduct with a named woman «on many occasions» [16]. In practice the discipline of clergymen is one of the two main areas of jurisdiction of ecclesiastical courts. The other relates to alterations of churches and churchyards.

III. State Support for Religion

Apart from the establishment of the Church of England, English law protects and supports religion in a number of ways. In the first place, some forms of criticism of the Christian faith are prohibited by the law of blasphemy. Secondly, Sunday as a religious holy day is protected by a number of statutes which prevent ordinary commercial activity on that day. And thirdly, state schools are required to provide religious education to their pupils. Each of these measures is aimed principally at protecting the Christian religion, despite the increasingly multi-cultural nature of British society. It is to a consideration of each of these measures that we now turn.

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[10] See Bailey, Harris and Jones, *op. cit.*, p. 406. Note that «episcopally ordained clergymen» are disqualified from being members of the House Commons.

[11] Wade and Phillips, *op. cit.*, p. 383.

[12] *Ibid.*, p. 385.

[13] *Ibid.*

[14] Robilliard, *Religion and the Law,* 1984 (Manchester University Press: Manchester), p. 92.

[15] *Ibid.*, p. 93.

[16] *R. v. Daily Herald, ex parte Bishop of Norwich* [1932] 2 KB 402.

1. *Blasphemy*

The law of blasphemy «has a long and at times unglorius history in the common law» [17]. Initially, it was an offence to «cast doubt on the doctrines of the established church or to deny the truth of the Christian faith». By 1843, however, the scope of the offence had been mitigated by judicial rulings so that the publication of opinions «denying the truth of doctrines of the established Church or even of Christianity itself was no longer held to amount to [an] offence... So long as such opinions were expressed in temperate language and not in terms of offence, insult or ridicule» [18]. By the twentieth century the scope of the offence had been refined in the following fashion:

> «Every publication is said to be blasphemous which contains any contemptuous, reviing, scurrilous or ludicrous matter relating to God, Jesus Christ, or the Bible, or the formularies of the Church of England as by law Established. It is not blasphemous to speak or publish opinions hostile to the Christian religion, or to deny the existence of God, if the publication is couched in decent and temperate language. The test to be applied is as to the manner in which the doctrines are advocated and not as to the substance of the doctrines themselves.
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> Everyone who publishes any blasphemous document is guilty of the [offence] of publishing a blasphemous libel.
>
> Everyone who speaks blasphemous words is guilty of the [offence] of blasphemy» [19].

Yet although the offence was still thus recognised by the next-book writers, it had become obsolete, with the last trial before 1976 having been conducted in 1922. Interest in the offence revived, however, following the successful prosecution of the editor and publishers of the magazine *Gay News* for the publication of a poem (accompanied by an illustrative drawing) which purported «to describe in explicit detail acts of sodomy and fellatio with the body of Christ immediately after His death and to ascribe to Him during His lifetime promiscuous homosexual practices with the Apostles and with other men» [20]. In upholding the conviction, the House of Lords (by a 3:2 majority) also held that for the purpose of blasphemy, it is not necessary to show that the accused intended to blaspheme but merely that the accused intended to publish the material in question and that the material was blasphemous.

An important feature of the offence of blasphemy is its apparent protection of the Christian religion only. The point arose for consideration in the rather controversial circumstances suorrounding the publication by Viking Publishing Co of Mr Salman Rushdie's *Satanic Verses,* which caused great offence in some sections of the Muslim community in Britain because it was allegedly blasphemous of the Islamic religion. Indeed the offence was so greatly felt in some quarters that Mr Rushdie was sentenced to death by the Ayatollah Khomeini (shortly before he himself died), conduct which in turn led the British government to break off diplomatic relations with Iran and to Mr Rushdie going into hiding for fear of his life. So far as the alleged blasphemy was concerned, when the prosecution authorities refused to intervene, an application was made by a private citizen requesting the chief metropolitan magistrate to grant summonses for blasphemous libel against Rushdie and his publishers. The application was refused on the ground that blasphemy related only to

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[17] *R. v. Lemon* [1979] AC 617, at p. 633 (Lord Diplock).

[18] *R. v. Lemon* [1979] AC 617, at p. 654 (Lord Diplock).

[19] Stephen's Digest of Criminal Law, Ninth Edition, 1950. Approved by Lord Scarman in *R. v. Lemon, op. cit.,* at pp. 665-666.

[20] *R. v. Lemon, op. cit.,* at p. 632.

the Christian religion. An application for judicial review of this decision was unsuccessful, the court unable to hold that blasphemous libel covered attacks on religions other than Christianity [21]. The law was clear, though arguably anomalous and unjust. But even if it had been open to the court to extend the law to cover religions other than Christianity. it would have refrained from doing so. For apart from the fact that «[i]t would be virtually impossible by judicial decision to set sufficiently clear limits to the offence» [22] —a rather dubious rationale in view of the fact that judicial decision has set the limits since before the Reformation— the court drew attention to the fact that the future of blasphemy had been called into question by the Law Commission in a report published in 1985. In such circumstances it would be «wholly wrong to extend the law, even if [the court] had the power to do so» [23].

The Salman Rushdie affair has rekindled the public debate about the future place of blasphemy in English law. In the *Gay News* case, Lord Scarman said that he did not subscribe to the view that blasphemy served to useful purpose in the modern law. On the contrary, he thought that there was a case for legislation «extending it to protect the religious beliefs and feelings of non-Chrisians» [24]. For in «an increasingly plural society such as that of modern Britain it is necessary not only to respect the differing religious beliefs, feelings and practices of all but also to protect them from scurrility, vilification, ridicule or contempt» [25]. If the offence is to continue to have a place in English law the case for its extension in this way seems unanswerable, as does the charge that the present law is «shakled by the chains of history» [26]. Another way of dealing with the problem, however, would be to abolish the offence altogether. This is a view which is also widely supported, perhaps most authoritatively by the Law Commission in 1985 which recommended the abolition of the present common law without any replacement legislation. In so doing the Law Commission rejected a number of quite different arguments in favour of reforming the offence [27]. These related to the need to protect religion and religious beliefs, the need to safeguard public order, the need to protect society generally from attacks which will undermine its stability, and the need to protect religious feelings [28]. They also rejected the view that there is a constitutional argument in favour of retention. (The fact that such an argument could seriously be made serves only to underline the extent to which religion has pervaded the English legal system.) Abolition is perhaps the most sensible and principled approach to the problem. But until steps are taken either to extend or abolish the offence it will in its present form continue to be both an anachronism in an increasingly multi-cultural society and an affront to members of non-Christian religions.

2. *Sunday Trading*

It appears that the first restrictions on Sunday Trading date from 1448. Until 1936 the main source of regulation was the Sunday Observance Act 1677 which had become a deed letter by the twentieth century with the penalty for breach being set at five shillings (25 pence). The 1677 Act was replaced by the Sunday Trading Act 1936 which in turn gave way to the Shops Act 1950, the main source of the current restric-

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[21] *R. v. Chief Metropolitan Magistrate, ex parte Choudhary* (1990) 140 NLJ 702.
[22] *Ibid.*, at p. 703 (Watkins LJ).
[23] *Ibid.*
[24] *R. v. Lemon* [1979] AC 617, at p. 658.
[25] *Ibid.*
[26] *Ibid.*
[27] Law Commission, «Offences Against Religion and Public Worship», Law Com. 145, 1985 (HMSO: London).
[28] See esp. pp. 12-28.

tions. This provides by section 47 that retail establishments must close for the serving of customers on Sunday. There are a number of exceptions to this (relating to the sale of items such as alcohol, cigarettes, and newspapers)[29] the bizarre nature of which drew the following analysis from Humphreys J. in *Binns v. Wardale*:

> «I have found in quite impossible to arrive at any conclusion as to what was in the mind of those who put in this list of exceptions, unless it amounts to this (I am not saying I think it does, but it possibly may) that wherever you can think of anything which people are likely to want on Sunday, then a shop may be kept open for that purpose. So you find excepted things which are not in the least necessary, which can never be necessary, but which are the sort of things which the ordinary person may desire to purchase on Sunday, although he could purchase them all perfectly easily on another day. They are such things as —I will leave out intoxicating liquors. There may be a special reason there, because Sunday trading is dealt with in the Licensing Act— sweets, chocolate, ice-cream. Why should people be particularly allowed to buy sweets and ice-cream on Sundays if all shops are to be closed on Sunday? I do not know. What is the necessity for a flower shop to be open on Sunday? It is very pleasant for some people to be able to buy flowers on Sundays, but nobody can say it is necessary. Fruit and vegetables are things which you eat and one can understand it in that case. Then you get aircraft, motor or cycle supplies or accessories. I can only imagine that that is to help the broken-down motorist or even possibly the person who is travelling by air, but it is a little unlikely that a person who is travelling by air, and has found it necessary to make a forced landing, would go to the sort of shop which would be open on Sunday in order to get what was necessary to make his aircraft airworthy. Then, tobacco and smokers' requisites. No doubt it is a convenience for a great many people to be able to buy tobacco on Sunday. They, newspapers, books and stationery and so forth; guide books, postcards, photographs, reproductions, photographic films and plates and souvenirs. For some reason or other people may open their shops on Sunday in order to sell all these things» [30].

Apart from these exceptions, the other major qualification relates to Jewish shopkeepers who may register with a local authority and who may then open until 2.00 pm on Sundays provided that they are «closed for all purposes connected with trade or business on Saturday» [31].

Failure to comply the Sunday trading restrictions is a criminal offence punishable by a fine[32]. However, the penalty is so triflings and of little deterrence [33], that a number of local authorities have cast around for other ways to enforce the law in the light of a growing tendency to flout the restrictions. One such solution has been to seek to use the civil law remedy of injunction to restrain companies from opening their shops on Sundays. This rather unusual procedure has important enforcement advantages. If an injunction is granted, then it will be a contempt of court to open on

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[29] Shops Act 1950, s. 47 and Schedule 5.

[30] [1946] 1 KB 451, at pp. 457-8. I am indebted to ROBILLIARD, *op. cit.*, for this reference.

[31] Shops Act 1950, s. 53. See *Thanet District Counil v. Ninedrive Ltd* [1978] 1 A11 ER 703.

[32] Shops Act 1950, s. 59.

[33] A point recognised in *Stoke on Trent City Council v. B. & Q. Retail Ltd* [1984] 2 A11 ER 332. The efficacy of the criminal law has been undermined still further by the decision in *B. & Q. Retail Ltd v. Dudley Metropolitan Borough Council* (1988) 86 LGR 137.

Sunday. Contempt of court is quasi-criminal conduct which is punishable by a fine and/or imprisonment and the fine is likely to be much higher than anything which might be imposed in a prosecution for violation of the Act. It is this rather circuitous arrangement which arose for consideration in the House of Lords decision in *Stoke-on-Trent City Council v. B. & Q. (Retail) Ltd* [34]. In that case the defendant company opened for business on Sundays despite being asked not to by the local authority. The authority was concerned with what appeared to be a proliferation of illegal Sunday trading which had led to complaints from other shopkeepers in the area. Under the Shops Act 1950 the authority was under a duty to enforce the provisions of the Act in its area and in this case it did so not by instituting criminal proceedings but by issuing a writ seeking an injunction to restrain the defendants from opening on Sundays. The House of Lords upheld their right to do so, thereby creating an exception to the rule that only the Attorney General can seek a civil remedy to enforce the criminal law where the alleged violation does not interfere with the plaintiff's legal rights or cause him or her any special damage [35]. The House of Lords also said that «As a general rule a local authority should try the effect of criminal proceedings before seeking the assistance of the civil courts». But in this case, «the council were entitled to take the view that the appellants would not be deterred by the maximum fine which was substantially less than the profits which could be made from illegal Sunday trading» [36].

A number of attempts have been made to repeal the Sunday trading laws, the most notable being in the Shops Bill 1985 sponsored by the government as part of its programme of deregulation of labour market restrictions. Before that there had been no fewer than 19 attempts to reform the law, with proposals for reform also having been made by an independent committee of inquiry under the chairmanship of Mr Robin Auld QC. The case for reform was based on three major considerations. The first was the changes in retailing which have seen «the emergence of many more mixed retail outlets — making the task of enforcing any law based on lists of products which can and cannot be sold on Sunday immensely difficulty» [37]. Secondly, the «proportion of married women below pensionable age in employment has doubled» [38], leading to a rise in consumer demand for the opportunity to shop at least occasionally on Sundays» [39]. Thirdly, it was becoming more and more difficult to enforce the law in the face of growing evasion, consumer demand and local authority reluctance. Nevertheless the government's Shops Bill met considerable hostility in the attempt to repeal the Sunday trading restrictions of the 1950 Act. Concern was expressed about the impact of reform on the «traditional British Sunday». Sunday is «a reminder that our heritage... is a Christian heritage», the removal of which would undermine «the best values in this land» [40]. There was concern too about the small shopkeeper (who would be coerced for business reasons into opening his or her shop on Sunday) and employees who would be compelled to work on Sunday [41]. The last concern continued to be made forcefully despite a provision in the Bill that people in jobs at the time the Bill was passed would not be required to work on Sundays. These concerns appeared to carry the day, with the Bill being defeated, a

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[34] [1984] 2 A11 ER 332.

[35] *Gouriet v. Union of Post Offie Workers* [1977] 3 A11 ER 70.

[36] *Stoke-on-Trent City Council v. B. & Q. Retail Ltd* [1984] 2 A11 ER 332, at p. 342 (Lord Templeman).

[37] Lord Glenarthur, Parliamentary Under-Secretary of State, Home Office, 468 HL Debs 1064 (2 December 1985).

[38] *Ibid.*

[39] *Ibid.*

[40] Lord Tonypandy, 468 HL Debs 1084 (2 December 1985).

[41] Shops Bill 1985, clauses 2, 3.

rare failure of the Thatcher government. As a result the 1950 Act remains on the statute book [42].

3. *Education*

A third way in which the state gives support to religion is through the educational system, in the sense that a number of obligations are imposed on schools maintained by the state. Approximately 95% of English schoolchildren are educated by the state, there being essentially two different kinds of school. There are county schools, which are largely non-denominational, and voluntary schools, which are not. Until recently religious education was governed by the Education Act 1944 which has now been replaced in a number of key respects by the Education Reform Act 198.8

a) *Religious Instruction*

The curriculum for state schools has been the subject of recent legislative reform. By the Education Reform Act 1988, the curriculum of every school must comprise a basic curriculum which includes provision for religious education for all registered pupils at the school [43]. The religious instruction given in this way «shall be given in accordance with an agreed syllabus adopted for the school... and shall not include any catechism or formulary which is distinctive of any particular religious denomination» [44]. The agreed syllabus in any area is to be drawn up by a committee composed of representatives of the local authority, teachers representatives, the Church of England, and «such religious denominations as, in the opinion of the authority, ought, having regard to the circumstances of the are, to be represented» [45]. Any agreed syllabus adopted in this way must «reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain» [46].

b) *Collective Worship*

Section 6 of the Education Reform Act 1988 provides that «all pupils in attendance at a [school maintained by the state] shall on each school day take part in an act of collective worship». The Act also provides that the arrangements for collective worship for all pupils or for separate acts of worship for pupils in different age groups or in different school groups. As a general rule the act of collective worship must take place in the school and not at some other place, such as a church. These measures replace the much more formal provisions of the 1944 Act which required that every school day should begin «with collective worship on the part of all pupils in attendance at the school, and the arrangement made therefore shall provide for a single act of worship attended by all such pupils unless the school premises are such as to make it impracticable to assemble them for that purpose» [47]. In practice it seems that the obligations under the 1944 Act were not widely obeyed; some schools had legitimate reasons for failing to comply— such as the absence of a hall large enough to hold the entire school in a single assembly— while others failed without «any particular excuse» [48]. It remains to be seen how vigorously the 1988 Act will be

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[42] For a recent (unsuccessful) challenge to the restrictions under the Treaty of Rome, see *Trfaen BC v. B. & Q. plc* (Case 145/88) [1990] 1 A11 ER 129.
[43] Education Reform Act 1988, s. 2.
[44] Education Act 1944, s. 26.
[45] Education Act 1944, Schedule 5.
[46] Education Reform Act 1988 s. 8(3).
[47] Education Act 1944, s. 25.
[48] ROBILLIARD, *Religion an the Law, op, cit.*, p. 157.

complied with now that some of the more practical reasons for failing to observe the 1944 Act have been eliminated by a more flexible regime. One difficulty may be, however, the fact that unlike the 1944 Act which provided that collective worship should not be distinctive of any religious denomination, under the new regime it should be «wholly or mainly of a broadly Christian character» [49]. For this purpose, it is sufficient that «it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination» [50]. It is perhaps helpful, though arguably not adequate, that not every act of collective worship need comply with this Christian character requirement, provided that most of them do.

c) *The Right to be Excused*

The State thus plays an important role in religious indoctrination. There are, however, qualifications for the benefit of those parents who may be opposed to religion, religious teaching or worship, or religion being taught or worshipped. So section 9 of the 1988 Act provides that a parent may request that a child be wholly or partly excused from attendance at religious worship in the school, from receiving religious education given in the school, or from both. Where a child has been wholly or partly excused from either or both the parent may also request that he or she be withdrawn from school for such periods as are reasonably necessary for the purpose of receiving religious education of a kind which is not provided in the school. This applies only where the pupil cannot «with reasonable convenience» be sent to another school maintained by the state where religious education of the kind desired by the parent is provided. Moreover, this right to withdraw the child applies only if the local education authority are satisfied that the arrangements will not interfere with the attendance of the pupil at school on any day «except at the beginning or end of the school session or, if there is more than one, of any school session on that day». So there is the right to be excused from and a right to withdraw from the broadly Christian nature of the face served up by a particular school. In practice this places a heavy onus on parent and child with practical considerations of social ostracism having to be balanced against questions of principle. It is perhaps unsurprising that the parents of only a small number of children are thought to have taken advantage of the similar privisions of the Education Act 1944.

IV. Religious Observance and Collective Worship

Having examined some of the way in which the state support religion, we may now consider in what way throught the law the state protect the right of individuals to adhere to and practise their religious beliefs. This is a subject which touches a number of different areas of law which have to be drawn together for the purpose of exposition. There is no single body of doctrine on religious liberty in English law.

1. *The European Convention on Human Rights*

Article 9 of the European Convention on Human Rights provides that

> «1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

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[49] Education Reform Act 1988, s. 7(1).
[50] Education Reform Act 1988, s. 7(2).

2. Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.»

The Convention is not, however, part of English law, never having been formally incorporated [51]. So it cannot be directly enforced by the courts in England and cannot be used to displace the terms of an otherwise inconsistent Act of Parliament. Anyone who claims that his or her Convention rights have been violated must thus seek a remedy before the enforcement agencies created by the Convention. Yet although Britain has been found in violation of the Convention by the Court and the Council of Ministers on a number of different grounds, there is no such case involving a breach of Article 9. As a result Article 9 does not appear to have played a very significant part in the development of British law. This is not to deny that interesting cases have arisen, with perhaps the most important of those being *Ahmad v. United Kingdom* [52].

Mr Ahmad was employed as a schoolteacher. He was a practising Muslim and insisted on taking time off work each Friday to attend a nearby mosque for prayers. The lunch break at the school was between 12.30 and 1.30 pm, whereas the prayers were held between 1.00 and 2.00 pm, and Mr Ahmad did not return to the school until 2.15 or 2.20 pm. After some protests from fellow employers the employer eventually sought to resolve the matter by issuing Mr Ahmad with a new contract as a part-time teacher engaged for 4½ days per week in place of his current full-time contract of 5 days per week. At this point Mr Ahmad resigned, claiming that he had been unfairly dismissed. But is complaint was rejected by an industrial tribunal (a local labour court) and its decision was upheld by the appeal courts which accepted the tribunal's judgment that the employer had behaved «quite reasonably in the course which they took in this difficult situation» [53]. The Court of Appeal also rejected (though by a majority of 2:1) an argument based on Article 9 of the European Convention with the majority taking the traditional (and correct) approach that it is «not part of our English law» [54]. While the English courts «will always have regard to it» and do their best to see that their «decisions are in conformity with it», «it is drawn in such vague terms that it can be used for all sorts of unreasonable claims and provoke all sorts of litigation» [55]. Lord Denning could see nothing in the Convention to give Mr Ahmad any right to manifest his religion on Friday afternoons in derogation of his contract of employment — even if the Convention had been legally enforceable [56]. This is a conclusion with which the Commission readily concurred in declaring Mr Ahmad's complaint to Strasbourg to be inadmissible. In the view of the Commission the education authority had not «in relying on the applicant's contract, arbitrarily disregarded his freedom of religion» [57].

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[51] See especially *Malone v. Metropolitan Police Commissioner* [1979] Ch 344. See more recently, *R. v. Home Secretary, ex parte Brind* [1990] 1 A11 ER 469.

[52] [1981] 4 EHRR 126.

[53] *Ahmad v. Inner London Education Authority* [1976] ICR 461.

[54] *Ahmad v. Inner London Education Authority* [1977] ICR 490.

[55] *Ibid.*, at pp. 495-6 (Lord Dennning). Cfr. Scarman LJ.

[56] Also on unfair dismissal and religious liberty, see *Esson v. London Transport Executive* [1976] IRLR 48. Cfr. *Saggers v. British Railways Board* [1977] ICR 809. (See now, on this latter problem, Employment Act 1988, s. 11.)

[57] [1981] 4 EHRR 126, at p. 136.

2. *Race Relations Act 1976*

The *Ahmad* case illustrates nicely the fact that there is no protection against religious discrimination in private legal relationships in English law. Employers, landlords and shopkeepers are generally free to discriminate on religious grounds against anyone they choose. These are matters regulated generally by the law of contract and at common law parties are free to contract with whom they like [58]. Unlike in Northern Ireland [59], there is not in England any statutory restriction on religious discrimination. There is, however, a restriction on racial discrimination —contained in the Race Relations Act— which applies to a number of spheres of social activity, most notably employment, housing and the provision of goods, services and facilities. Exceptionally, it may be poscsible for some religious groups to seek protection under the umbrella of the 1976 Act. But in order to do so the person discriminated against must show that he or she has been discriminated against on «racial grounds», a ter which is defined by the Act to mean «colour, race, nationalitq or ethnic or national origins» [60]. The question what constitutes an ethnic group was considered by the House of Lords in *Mandla v. Dowell Lee* [61] which concerned the refusal of a school to admit as a pupil the plaintiff's son unless he removed his turban, a condition with which as a practising Sikh he could not comply. The House of Lords held that Sikhs constituted a distinct ethnic group, having regard to such essential matters as a long shared history and a cultural tradition of their own, as well as such non-essential matters as a common geographical origin, a common language, a common literature, a common religion, and a history of persecution. On this basis, it may be that Jews as well as Sikhs would constitute an ethnic group for the purpose of the Act and it seems to be the case Jews are regarded as being covered in some circumstances [62].

Once this hurdle has been crossed, the 1976 Act may be of some value particularly in cases of indirect discrimination. The Act makes it unlawful to discriminate on racial grounds directly and indirectly [63]. The former means to treat someone less favourably while the latter means to apply the same requirement or condition to members of all racial groups in circumstances where the proportion of members of one who can comply with the requirement or condition are considerably smaller than the proportion of members of the other. In such a case this requirement or condition will be discriminatory unless it can be justified. This has been an important device available to Sikhs in particular to challenge a number of practices (in education and employment) which appear to be fair in form but which are discriminatory in effect. These include a requirement of no head gear (held not to be justifiable in the *Mandla* case) [64]; a requirement of no facial hair (held to be justifiable in a case where the defendant employer manufactured foodstuffs) [65]; and a requirement that

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[58] See *Allen v. Flood* [1988] AC 1; *Shlegel v. Corcoran* [1942] IR 19 and *Downsborough v. Huddersfield Industrial Society* [1942] 1 KB 306. See also *Re Lysaght* [1966] Ch 191 and *Blathwayt v. Baron Cawley* [1976] AC 397.

[59] Fair Employment (Northern Ireland), Acts 1976-1989. These are limited, however, to religious discrimination in the employment field. For background, see McCRUDDEN, «The Northern Ireland Fair Employment White Paper: A Critical Assessment» (1988), 17, *Indudustrial Law Journal,* 162.

[60] Race Relations Act 1976, s. 1(3).

[61] [1983] 2 AC 548. See also *Singh v. British Rain Engineering* [1986] ICR 22.

[62] See *Seide v. Gillette Industries* [1980] ICR 427. But cfr. *Tower Hamlets London Borough Council v. Rabin* [1989] ICR 693.

[63] Race Relations Act 1976, s. 1(1).

[64] *Mandla v. Dowell Lee* [1983] 2 AC 548. But contrast *Singh v. British Rail Engineering Ltd* [1986] ICR 22 where a hard hat rule (with which Sikhs could not comply) was held to be justifiable on safety grounds. See now, Employment Act 1989, ss. 11, 12.

[65] *Panesar v. Nestle Co Ltd* [1980] ICR 144.

female employees wear a uniform which did not allow for trousers (held to be justifiable in the case of nurses [66] but not be justifiable in the case of shop assistants) [67]. In all these examples the requirement or condition was one with which Sikhs could not comply on religious grounds. Indeed some of these practices may present difficulties for members of other religious communities, in which case they would be open to challenge if one community in question could be identified as a separate ethnic group. For example, it may have been open to Mr Ahmad to challenge under the 1976 Act, though it seems likely that the court would regard the requirement of full-time work as being justifiable.

As already pointed out, the 1976 Act regulates discrimination on racial grounds in a number of specific areas only. It does not apply to all aspects of discrimination, not even in the private sphere. Thus apart from education, the Act is limited mainly to discrimination in the fields of employment [68], housing [69] and the provision of goods, services and facilities [70]. Enforcement is by way of a complaint by an aggrieved individual to either an industrial tribunal (a forma of labour court) in employment cases or to a county court (a civil court) in other cases [71]. These bodies are empowered to issue declarations of the rights of the parties and to award compensation or damages where appropriate [72]. In addition to the right of individual enforcement, reference should be made to the Commission for Racial Equality, a statutory agency set up by the 1976 Act with a number of duties. These are first, to work towards the elimination of discrimination; secondly to promote equality of opportunity and good relations between members of different racial groups; and thirdly to keep under review the working of the Act and where necessary to make suggestions for amendment [73]. The Commission also has investigative and enforcement powers and may provide assistance of various kinds to people who wish to being complaints under the Act [74]. But of particular importance for present purposes is the discussion paper issued by the Commission in 1980 on Religious Observance by Muslim Employees [75]. This discussed the relationship between the religious practices of Muslim employees and the requirements of the workplace. It was designed to provide information on the norms of Islam and the difficulties involved in its workplace practice, and to put forward suggestions for resolving these difficulties. It is not, however, a legally document so that employers are not compelled to comply with its terms.

3. *Religion and Conscience*

The Race Relations Act 1976 thus provides only a limited protection for freedom of religion and mainly in the field of private law. There are, however, a number of specific measures operating in the public sphere, and in this section we consider the extent to which public duties of individuals may be overriden by personal religious considerations. This is a question which has met with different responses in the English legal system. Much depends on the circumstances of the case and the social

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[66] *Kingston Area Health Authority v. Kaur* [1981] IRLR 337.
[67] *Malik v. British Home Stores,* cited in BAILEY, HARRIS and JONES, *op. cit.,* p. 432.
[68] Race Relations Act 1976, ss. 4-6.
[69] Race Relations Act 1976, ss. 21-25.
[70] Race Relations Act 1976, s. 20.
[71] Race Relations Act 1976, ss. 54-57.
[72] Race Relations Act 1976, ss. 56-57.
[73] Race Relations Act 1976, s. 43.
[74] Race Relations Act 1976, ss. 58-62, 65.
[75] Commission for Racial Equality, Religious Observance of Muslim Employees — A framework for discussion, 1980 (CRE: London).

consequences of observance. In some instances there is or has been an absolute right to religious observance. So, for example, when military service was compulsory exemption was provided for those who had a conscientious objection to the undertaking of combatant service [76], although such provisions did not always meet with the approval of the judges, with Atkinson J. in *Newell v. Gillingham Corporation* [77] observing with unnecessary sarcasm that «the legislature has thought it right to say that, if this young man can satisfy the tribunal that he has a conscientious objection to defending his own or the country's liberty or freedom, or protecting women and children from organised massacre from the air, or protecting or sea-borne supplies of food upon which he lives, he shall be exempted from military service» [78]. It is perhaps unsurprising that the term conscientious objection was narrowly construed and appears largely to have been confined to those with religious objection. So in *Newell* it was said that «A true conscientious objector... is one who on religious grounds thinks it wrong to kill and to resist force by force — he thinks that that is the teaching of Christ» [79].. But it was also said that the «true conscientious objector remembers other undoubted teachings of Christ —namely, to help the injured, the suffering and the helpless— and remembers that there is such a thing as duty». Above all, the «true conscientious objector is loyal to his country» [80].

A second approach to que question of individual observance has been to provide a qualified right or to confer a discretion on the appropriate public authorities. Two examples may serve to illustrate this approach. The first is in the field of abortion which is subject to a very permissive regime in England. Nevertheless, by virtue of section 4 of the Abortion Act 1967, it is expressly provided that «no person shall be under any duty, whether by contract or by a statutory or other legal requirement to participate in any treatment authorised by this Act to which he has a conscientious objection» [81]. This will protect Roman Catholic (and other) health care workers who object to abortion on religious grounds. The right not to participate is not, however, unqualified for it is provided that it shall not «affect any duty to participate in treatment which is necessary to save the life or prevent grave permanent injury to the physical or mental health of a pregnant woman». The second example of this approach relates to jury service. Section 9(2) of the Juries Act 1974 provides that if any person who has been summoned for jury service «shows to the satisfaction of the appropriate officer that there is good reason why he should be excused from attending... the appropriate officer may excuse him from so attending». In *R. v. Guildford Crown Court, ex parte Siderfin* [82], the applicant was a Plymouth Brethren who believed that jury service would be contrary to the movement's tenets. When she was summoned as a juror, she maintained that it would create a conflict of conscience for her but her request to be excused was refused first by the chief clerk of the court and then by the judge. In an application for judicial review of this decision the Divisional Court held that religious objection on its own would not amount to a good reason for being excused from jury service, but it might do so if the applicant's religious beliefs would be likely to prevent her from serving as a juror

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[76] See National Service Act 19848, ss. 17-22. Note also that «A man in holy orders or a regular minister of any religious denomination» was not liable to be called up, quite apart from the right of others to conscientious objection. On the narrow approach to this question, see *Walsh v. Lord Advocate,* 1955, SLT 393.

[77] [1941] 1 A11 ER 552.

[78] *Ibid.,* at p. 553.

[79] *Ibid.,* at pp. 553-4.

[80] *Ibid.,* at p. 54.

[81] On the scope of this measure, see *Janaway v. Salford Health Authority* [1938] 3 A 11 ER 1079.

[82] [1989] 3 A11 ER 7.

in the proper way. The case was referred back to the Crown Court to be reconsidered by a different judge [83].

The third approach to individual observance has been simply to refuse to acknowledge the right: the consequences are just too serious. So in *R. v. Senior* [84] the matter turned on a prosecution under the Prevention of Cruelty to Children Act 1894 which provided that if any person with custody, charge or care of any child wilfully neglected the child in a manner likely to cause injury to the child's health, that person was guilty of a misdemeanour. In this case the prisoner was found guilty of the manslaughter of his infant child for deliberately refusing to call in medical aid which would probably have saved the child's life. The prisoner was a member of a religious sect, known as the Peculiar People, which objected on religious grounds to medical treatment. In an appeal against the conviction Senior argued that because he had been «proved to be an affectionate parent, and was willing to do all things for the benefit of his child, except the one thing which was necessary in the present case, he ought not be found guilty of the offence of manslaughter, on the grounds that he abstained from providing medical aid for his child in consequence of his peculiar views in the matter» [85]. But this argument was rejected, the court being unable to «shut its eyes» to the danger which might arise were it to be accepted. This is an important case (which may have some practical bearing on members of those religious organisations who decline blood transfusions for their children) [86] which illustrates the principle that the individual right to religious observance will generally be trumped by the criminal law which serves the need of the community as a whole [87]. A more recent case illustrating the same point is *R. v. John* [88] which relate to the Road Safety Act 1967, which by section 3(3) provided that it was an offence to fail without reasonable cause to provide a specimen of blood when the individual in question was suspected of drunk driving. The Court of Appeal held that religious objection to providing a specimen did not constitute a reasonable excuse so that the offence had been committed.

4. *Protection for Collective Worship*

We move now from the right of the individual to follow his or her conscience to the protection of a group of people assembling for the purpose of religious worship. Here the position is regulated by the general law relating to public order which creates general offences regulating the conduct of public assemblies, some of which would apply in the specific context of religious assemblies. There is in addition, however, a separate body of doctrine which applies to protect religious assemblies from being disrupted, though the law is little used. Nevertheless, the principal provision is the Eccesiastical Courts Jurisdiction Act 1860 which penalises any person guilty of «riotous, violent or indecent behaviour» [89] in any cathedral church, parish or district church or chapel of the Church of England, or in any chapel of any religious denomination, or in any certified place of religious worship, whether during the celebration of a divine servie or at any other time. It is also an offence to «molest, let, disturb, vex,

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[83] Contrast the different approach taken in social security law: see R(S) 9/51 and R(U) 2/77.

[84] [1989] 1 QB 283.

[85] *Ibid.*, at p. 291 (Lord Russell, LCJ).

[86] For a discussion of this, see KEARNEY, «Leukaemia in Children of Jehovah's Witnesses: issues and priorities in a conflict of care» (1978), *Journal of Medical Ethics*, 32. Also, CASALE, «Blood Transfussions and Jehovah's Witnesses», *British Medical Journal*, 30 June 1979, p. 1796.

[87] But cfr. Motor Cycle Crash-Helmets (Religious Exemption), Act 1976.

[88] [1974] 1 WLR 624.

[89] Ecclesiastical Courts Jurisdiction Act 1860, s. 2.

or trouble, or by any other unlawful means disquiet or misuse» any preacher duly authorised to preach therein or any clergyman in holy orders ministering or celebrating any sacrament or any divine service, rite or office» [90]. The reference to a certified place of religious worship is to «any place of religious worship duly certified under the provisions of the Places of Worship Registration Act 1855» which authorises the registration of places of worship of Protestants, Roman Catholics, Jews and «every place of meeting for religious worship of any other body or denomination of persons» [91]. It has been held that a meeting place of the Church of Scientology could not be registered under the Act because the Scientologists do not engage in religious *worship* [92]. So their activities are not protected by the 1860 Act.

The operation of this provision is highlighted by *Abrahams v. Cavey* [93]. During the Labour Party Conference in Brighton in 1966, a service attended by leaders of the party was held at the Dorset Gardens Methodist Church, a certified church for the purposes of the 1860 Act. During the service one of the defendants interrupted by shouting «Oh, you hypocrites, how can you use the word of God to justify your policies?» He was then escorted from the church but the proceedings continued to be interrupted by others of the accused who addressed the congregation from their places in the body of the church. All this was done as part of a protest against the government's support for the United States in Vietnam. Each of the accused was found guilty of indecent behaviour in the church, and two were sentenced to two months imprisonment. On appeal the convictions were upheld, though in the course of so doing the Divisional Court gave some guidance as to the meaning of the word «indecent» for the purpose of the Act. It had been argued for the accused that the word had to be narrowly construed and confined to indecency of a sexual character, or conduct which was shocking and repellant though not necessary in a sexual sense, or conduct likely to corrupt morals. But this was rejected by the court which prepared a much wider interpretation, commenting that «the true meaning is any particular statute must naturally depend upon the context. It is quite clear here that indecency is not referring to anything in the nature of tending to corrupt or deprave; it is quite clearly used not with any sexual connotation whatsoever, but it is used in the context of "riotous, violent or indecent behaviour", to put it quite generally within the genus of creating a disturbance in a sacred place» [94]. Although the conduct might not have constituted an offence if done outside the church, the fact that it was done inside, «makes all the difference because you are dealing with a sacred place and when a service is taking place» [95].

So «an act done in a church during divine service might be highly indecent and improper, which would not be so at another time» [96]. The question whether conduct should continue to be an offence for this reason alone was considered by the Law Commission in the same report which dealt with blasphemy. In particular the Law Commission considered whether section 2 of the 1860 Act continued to have a useful role to play in the light of criticism that there was no need for the specific protection of places of religious worship and that such places should be treated in the same way as other public buildings such as assembly halls. The general public order law already dealt with the problem adequately. But although it accepted the cogency of those arguments, they were rejected, perhaps surprisingly in view of the recommendations on blasphemy:

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[90] *Ibid.*
[91] Places of Worship Registration Act 1855, s. 2.
[92] *R. v. Registrar General, ex parte Segerdal* [1970] 2 QB 697.
[93] [1968] 1 QB 479.
[94] *Ibid.*, at p. 485 (Lord Parker LCJ).
[95] *Ibid.*, at p. 487 (Lord Parker LCJ).
[96] *Worth v. Terrington* (1845) 13 M & W 781, at p. 795 (Baron Parker).

«... a special offence penalising offensive behaviur which seriously disturbs religious services or acts of desecration in places of worship is justifiable on the grounds that worshippers engaged in such activities or using such places for meditation or prayer should be entitled to do so free of undue disturbance which might cause outrage or offence» [97].

The Commissioners continued by arguing that «where particular activities are in progress or where premises are specially set aside for particular purposes, these justify the special protection which an offence would give» [98]. The Commission did, however, suggest that section 2 of the 1860 Act was «archaic» and that it should be repealed and replaced by a new offence. Following consultations they concluded that this new offence should penalise two different types of behaviour, one of which was «the disruption of church services and other acts of communional worship, wherever held» [99]. But because of a lack of resources to investigate the matter fully, the Law Commission was unable formally to recommend these steps. Nevertheless their views were clear, but they have yet to be acted upon by government.

5. *Freedom of Religious Expression*

In this final section of this part, we consider the question of the right to freedom of expression, and in particular the right to express views in support of or against religious groups or beliefs. We begin by dealing with brgadcasting — the most powerful vehicle for expression and communication. We then move to consider relevant aspects of the law relating to more conventional forms of expression, that is to say, public meetings and assemblies.

a) *Broadcasting*

Before dealing with the regulation of religious broadcasting it is necessary to say something about the nature of radio and television broadcasting in Britain. The B.B.C. is financed by licences paid by those people who own a television, with the amount of the licence fee being fixed annually by government. So far as commercial television is concerned, the bulk of the revenue is provided by advertising (which is not permitted on the B.B.C.). The B.B.C. provides two channels (B.B.C. 1 and B.B.C. 2) while in most parts of the country, there are two commercial stations. Although they thave no legal obligation to do so, the broadcasting authorities in practice make some provision for religious broadcasting. In 1976 the Annan Committee on the Future of Broadcasting [100] reported that B.B.C. television set aside 2¾ hours per week for this purpose and that the independent or commercial television companies provided 2 hours. There was in addition a closed period of 35 minutes between 6.40 and 7.15 pm on Sunday evenings when both would broadcast religious programmes only. It is important to note, however, that the use of this time is within the editorial control of the respective broadcasting authorities; no person or organisation has a legal right of access to television or radio for the purpose of religious broadcasting. It is also to be noted that although the independent or commercial television companies carry advertisements, there are statutory rules regulating these advertisements which provide, inter alia, that no advertisement shall be per-

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[97] Law Commission, Offences Against Religion and Public Worship, Law Com., 145, 1985 (HMSO: London), p. 36.

[98] *Ibid.*

[99] *Ibid.*, at p. 37.

[100] Report of the Committee on the Future of Broadcasting. Chairman: Lord Annan, Cmnd 6783, 1977 (HMSO: London), Chapter 20.

mitted on behalf of a religious body or which is directed towards any religious end [101]. So for the time being this is a medium of communication not readily available to religious organisations, though the position is likely to change with the enactment of the Broadcasting Bill presently before Parliament.

b) *Public Meetings and Rallies*

If we turn our attention to more traditional methods of persuasion, crusading or campagning, we may note that there is in England no right to assemble, meet or rally for religious or any other purpose. The position is governed initially by the common law which allows citizens a freedom to do that which is not forbidden, though there is an increasing body ot doctrine —both statutory and common law— to prohibit and regulate the conduct of meetings and assemblies. Coincidentally, however, one of the leading freedom of expression cases in English law concerns a religious rally. This is *Beatty v. Gillbanks* [102] where Beatty was arrested after having assembled with more than 100 other people with a view to parading through Weston-super-Mare in a Salvation Army procession. In the past Salvation Army processions had attracted disorder from a rival organisation, the Skeleton Army, and on this occasion the magistrates had issued an order directing all persons to abstain from assembling to the disturbance of the public peace. The instruction was defied whereupon Beatty was arrested and charged with unlawful assembly. The prosecution failed with the court taking the view that the Salvation Army were engaged in lawful and peaceable conduct and that they were not responsible for the disturbance of the peace. On the contrary, «the disturbance that did take place was caused entirely by the unlawful and unjustifiable interference of the Skeleton Army, a body of persons opposed to the religious views of the... Salvation Army». This case would appear to suggest then that the public expression of religious views is not per se unlawful merely because it will move others to cause disturbance and disruption. In other words, there is no heckler's veto. However, the matter is not quite so straightforward for there may well circumstances where those publicly proclaiming religious views will be guilty of an offence against public order [103].

The wide freedom to promote controversial religious views recognised in *Beatty v. Gillbanks* is to be contrasted with cases such as *Wise v. Dunning* [104] where the appellant was a celebrated Protestant «crusader» in the city of Liverpool. As part of his crusade he had seld several meetings of the public highway which had been attended by large numbers of people, Protestant and Roman Catholic alike. At these meetings Mr Wise had expressed himself in a manner which was deeply offensive to Roman Catholics and had generally behaved in a manner calculated to provoke a breach of the peace, and breaches of the peace did take place. This conduct led the magistrates to bind over the appellant to keep the peace for twelve months and it was against this order that he unsuccessfully appealed. The appellant had relied on *Beatty v. Gillbanks* but this was easily side-stepped on the ground that this whole question was one of fact and evidence. In this case, there were distinct findings of fact that «the appellant held a number of meetings in the public streets; that the highways were blocked by crowds numbering thousands of persons; that very serious contests and breaches of the peace had arisen, and that the appellant himself used, with respect to a large body of persons of a different religion, language which the magistrate... found to be of a most insulting character...». On those facts if was held

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[101] Broadcasting Act 1981, Schedule 2.

[102] (1892) 9 QBD 308.

[103] See *R. v. Londonderry JJ* (1891) 28 LR Ir 440.

[104] [1902] 1 KB 167. For a more recent illustration of the problem with which *Wise v. Dunning* deals, see *R. v. Metropolitan Magistrate, et parte Siadatin* (1990) 140 NLJ 704.

that «no one could reasonably doubt» that the magistrate was right in thinking that the appellant's «language and conduct went very far indeed towards inciting people to commit, or was, at any rate, language and behaviour likely to occasion, a breach of the peace». The differences between this Protestant crusader and the Salvation Army would seem to be this: while the latter had assembled for the bona fide purpose of promoting their faith, the former had assembled for the sole purpose of insulting another. So motive and purpose appears to be very important in determining legality when the conduct provokes a breach of the peace.

V. Conclusion

What conclusions can be drawn from this general survey? Perhaps the most important is that English law of religion has been very slow to react the multi-cultural nature of British society. As a result much of the law seems anachronistic and increasingly difficult to defend, not to say offensive. This is true of some of the consequences of Establishment. The virulent anti-Catholicism of the law is an affront to decency in a country where much of the population is Catholic. And for different reasons it is not easy to defend a constitutional practice which reserves 26 places in the legislature for people just because they happen to be senior figures of a particular church. Equally perplexing is the continuing operation, not to say vigorous enthusiasm for, laws which, in promoting and protecting religion, are weighted heavily in favour of Christianity. Muslims have been told that while Christianity merits the protection of blasphemy, Islam does not. Jews are constrained by the ritual observance of Christian holy days while for the most part their own are treated at best with insensitivity, indifference and ignorance [105]. And all non-Christians must subscribe to a school system which predominantly worships a Christian God and teaches predominantly Christian religion. In view of this rather doctrinaire approach, it is perhaps hardly surprising that the protection of individual liberty should also leave much to be desired. Not only is there a lack of general protection for religious discrimination (all the more noticeable for the part that we have detailed statutory codes dealing with race and sex discrimination), but the ad hoc measures which do operate are spotty in their coverage and incoherent as to their rationale. Cases such as *Siderfin,* which does not stand isolated, continue to demostrate just how difficult it is for people outside mainstream religions to be excused from public duties. Yet these anachronisms and weaknesses of the English law on religion are likely to be more rather than less keenly felt in the future. One of the most significant features of the Salman Rushdie affair (without prejudice to the debate about the author's right to freedom of expression) is that non-Christians are rightly increasingly irritated by the hypocrisy and lack of even-handedness of English law.

[105] *See Ostreicher v. Secretary of State for the Environment* [1978] 3 A11 ER 82.