

Religion in a plural democracy: moral convictions and gay rights in the UK

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In a blog of 11 May this year, David Miliband, British Secretary of State for the Environment, Food and Rural Affairs, posted the following statement in response to a number of protests about the proposed killing of a sacred cow called Shambo, belonging to a Welsh Hindu Temple, who had tested positive for bovine tuberculosis:

Mahatma Gandhi, truly one of the great figures of the 20th century, believed that the protection of cows was one of the true signs of the Hindu faith. It is for that reason that the case of Shambo, reported in many newspapers, raises such a high degree of concern for many British Hindus. Their representatives have written to me about their concern.

Shambo is part of a herd of cattle cared for by the Skanda Vale Temple in Wales. Shambo has tested positive for bovine TB, which as many people know is a serious contagious disease that can spread to other animals. That is why it is normal practice for cattle in such cases to be humanely slaughtered to stop further spread of the disease.

Since Shambo is a Welsh cow the matter comes under the jurisdiction of the Welsh Assembly (though EU rules apply to them in the same way as to English authorities). The decision in this case will therefore come before Welsh Ministers when the new Welsh Assembly Government is formed.

After a court case and an appeal, Shambo was put down at the end of July, despite many protests from both local Hindus and Christians. A further sacred cow which tested positive was put down three weeks later. The head monk was reported as saying that he

now felt like the Jews did when the SS called. I cite this case as a vignette of the tensions and difficulties which are occurring in the multi-racial and multi-faith society which the United Kingdom has become since the Second World War. It poses in its own way the issue which is the substance of my lecture: the tensions faced by plural liberal societies such as the UK between the moral requirements of religious faith as understood in one section of the community and the consequences of laws enacted by democratically elected governments in the public realm, which must apply to all. How is a plural democracy to handle such tensions? Is it possible to reconcile the demands of those who maintain that their first loyalty must be to their faith with the observance of such laws?

In attempting to pose (rather than answer) this question I shall be concentrating on one area which has proved to be particularly contentious, the rights of gay and lesbian people. I shall look at how over the last fifty years in the UK these have come sharply into focus, and how some faith communities have sought to resist their enshrinement in law. I am, incidentally, perplexed as to why this issue rather than any other should have proved so controversial in virtually every Church which has had to face it. You know something about that here, from the disputes within the Episcopalian Church of the USA and elsewhere. It seems as if it has the power to ignite polemic and to divide opinion to an extraordinary degree. My perplexity stems from the fact that this is not a matter of faith, that is, of doctrine, but an ethical issue, like, for example divorce. From what I read and hear, the issue of abortion is at least as controversial and divisive here, something much

less true across the Atlantic; indeed, the liberalising Abortion Act of 1967 was introduced by David Steel, a Liberal MP at the time and a member of the Church of Scotland. The reasons why the development of equal legal rights for homosexual people has been the source of such bitter conflict, and why abortion should be so much more a contested issue in the US than the UK, are no doubt complex, and I shall be interested to hear your views. One obvious one is that levels of church membership and attendance are far lower in the UK than in the US, and even though the evangelical and charismatic wing in the British Churches has been growing and can be very vocal, it simply does not have the organised political power that the Christian Right appears to have had over here.

My story begins fifty years ago this month, when the Wolfenden Report was presented to the House of Commons. The law of England had imposed the death penalty for acts of sodomy in the Buggery Act of 1533, which remained a capital offence until 1861. The Labouchère Amendment to the Criminal Law Amendment Act of 1885 (named after the MP who introduced it) further stated that ‘Any male person who, in public or private, commits, or is a party to the commission of, of procures, or attempts to procure the commission by any male person of, any act of gross indecency shall be guilty of misdemeanour, and being convicted shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labour’. Oscar Wilde was a famous victim of this Amendment. Acts of buggery (same sex, not heterosexual) carried a maximum sentence of life imprisonment. In 1957 most people

probably thought of homosexuality as a disease, and most homosexuals, many of whom were married and some of whom had families, were forced to lead secret lives. A Committee of fourteen people of the great and the good of the land had been set up to look into two matters: homosexual offences subject at that time to the criminal law, and prostitution. Among them was Canon Vigo Demant (1893-1983), Professor of Moral and Pastoral Theology in the University of Oxford, who supervised my doctoral thesis for one term when he was already long retired, and whom I remember as the only chain-snuffer I have ever encountered. Another member was the Revd R F V Scott, a Presbyterian minister of the Church of Scotland, who was elected Moderator of General Assembly for the year 1956. I do not believe any of the members of the Committee represented an ethnic minority let alone a real, live gay man or female prostitute; a small number of women sat on it, and I expect all were nominally Christians or Jews. That was how it was in those days. The most striking recommendation of the Report was that 'homosexual behaviour between consenting adults in private should no longer be a criminal offence'. The age of consent for such behaviour was set at 21, though the Committee discussed, and saw some merit in, 18 or even 16 (as for heterosexual consent). In its report the Committee made some important statements as to how it saw the relationship between private behaviour and the public good:

We clearly recognise that the laws of any society must be acceptable to the general moral sense of the community if they are to be respected and enforced. But we are not charged to enter into matters of private moral conduct except in so far as they directly affect the public good; nor does our

commission extend to assessing the teaching of theology, sociology or psychology on these matters, though on many points we have found their conclusions very relevant to our thinking (p. 9).

The Committee was clear that its brief was to consider criminal offences, noting that ‘adultery and fornication are not offences for which a person can be punished by the criminal law’ (p. 10). It continued:

Opinions will differ as to what is offensive, injurious or inimical to the common good, and also as to what constitutes exploitation or corruption [...] We have been guided by our estimate of the standards of the community in general, recognising that they will not be accepted by all citizens, and that our estimate of them may be mistaken (p. 10).

The Committee did not accept that homosexuality was a disease, and avoided the terms ‘natural’ and ‘unnatural’, stating that ‘their use imports an approving or a condemnatory note into a discussion where dispassionate thought and statement should not be hindered by adherence to particular preconceptions’ (p. 13). Equally, it was clear to its members that ‘moral conviction or instinctive feeling is not a valid basis for overriding the individual’s privacy and for bringing within the ambit of the criminal law private sexual behaviour of this kind’ (p. 22). It went as far as to say that ‘a persistent and indignant preoccupation with the subject of homosexuality has been taken to suggest in some cases the existence of repressed homosexuality’ (p. 13), and that ‘we have had no reason shown to us which would lead us believe that homosexual behaviour between males inflicts any greater damage on family life than adultery, fornication or lesbian behaviour’ (p. 22).

John Wolfenden was knighted shortly afterwards. Interestingly, his own family life was

caught up in the issue, though he found it very difficult to handle: his son Jeremy, who died at the age of only 31 of alcohol-related disease, was a practising homosexual.

In 1957 Britain was beginning to emerge from the difficult years after the Second World War, which the Report recognised had brought about major social changes - not least the landslide victory of the Labour Party in the 1945 General Election, which led, for example, to the establishment of the National Health Service. But the authors of the report were hardly social liberals in the modern sense of the world. They represented the Establishment, came from the professions, and spoke with an authority that was still widely recognised and accepted. Britain, though still a cohesive society, was nonetheless in a state of change. The Suez adventure of the previous year came to be seen as the end of British imperial ambitions, though it was three years before Harold Macmillan, as Prime Minister, made his famous 'wind of change' speech in and about Africa, and former colonies demanded and were granted independence. But the recommendation of the Wolfenden Report with respect to consenting adults in private was not immediately taken up. This had to wait until the 'Swinging Sixties', when attitudes towards sex in general were becomingly increasingly liberal, or permissive, depending on your point of view. Sir John lived to see it pass into law in the Sexual Offences Act of 1967, which applied only to England and Wales. Homosexuality was not decriminalised in Scotland until 1980 and Northern Ireland until 1982. Its provisions excluded members of the Armed Services until 2000: those who thought morale in the services would be affected

did not know or did not believe their classical history, Spartan especially.

Two things should therefore be noted. First, the decriminalisation of homosexual behaviour between consenting adults was a gradual process, taking over forty years from Wolfenden's first recommendation until its general application in the UK, suggesting that there remained considerable resistance to the idea. Second, the 1967 Act gave adult gay men only one right, and of a negative kind - the right *not* to be prosecuted for *criminal* behaviour in consenting homosexual sex between adults in private. It is important to draw the distinction which the Wolfenden Report had insisted on: 'we are not charged', its authors had written, 'to enter into matters of private moral conduct except in so far as they directly affect the public good' (p. 9); and 'moral conviction or instinctive feeling is not a valid basis for overriding the individual's privacy and for bringing within the ambit of the criminal law private sexual behaviour of this kind' (p. 22). The distinction between the private realm, both in terms of moral convictions held and sexual practice - which is not the proper concern of the law, and criminal behaviour, which is, could hardly be clearer. In a television dramatisation of the proceedings of the Wolfenden Committee which I saw just before I left England the same point was unexpectedly but forcibly made by the then Lord Chief Justice, Lord Goddard, whose reputation was that of a diehard conservative.

I have stressed the Wolfenden Report and the 1967 Act not only because they removed fear of prosecution among gay men, but because they marked a fundamental shift towards

homosexuality in the public realm. These matters stayed for some twenty years, until, during the 1980s the inexorable rise of HIV and AIDS produced fresh concerns in some political circles. The notion of a 'gay plague' representing divine judgement on such abominations, briefly thundered from sections of the popular press and still to be heard in some fundamentalist circles, did not, as some feared, result in a return to more censorious attitudes and more repressive legislation. In some ways the opposite seems to have happened. The footage of the late Princess Diana ministering to and touching sufferers had a significant effect on the public consciousness: if someone as young and beautiful as she was consciously chose to act in this way, why should ordinary members of the public be repelled by scare stories?

However, during the eighteen years of Conservative administrations, mostly under Margaret Thatcher, moral outrage that some more liberal local authorities were thought to be undermining traditional family values by permitting discussion of same-sex relationships in sex education lessons as if they were as valid as marriage led to the passing of what became known as Section 28, a clause tacked on to the Local Government Act of 1986. This clause stated that a local authority should not intentionally promote homosexuality or publish material with the intention of promoting it, or promote the teaching in any maintained school [that is, publicly funded] of the acceptability of homosexuality as a pretended family relationship. It was remarkably ineffective, since no successful prosecution was ever brought under its provisions. But it

created an atmosphere of fear in which self-censorship flourished. Some thought it prohibited councils from distributing any materials which portrayed gay relationships except as abnormal, and some teachers became reluctant to raise gay issues in the classroom for fear of prosecution. A number of gay support groups in schools and colleges across Britain were closed by council legal staff afraid that their existence could breach the Act. It was repealed in Scotland in 2000, by the Labour executive of the first Scottish Parliament, and three years later in the rest of the UK, despite opposition from some Christian groups and the House of Lords.

At the same time, during the Conservative administration of John Major, movement began towards removing the inequality in the age of consent between heterosexual and homosexual behaviour. In 1994, it was lowered to 18 for homosexual acts, a proposal by the Conservative MP Edwina Currie to lower it to 16 (later famous or infamous for her affair with the then Prime Minister, John Major) being narrowly defeated. In 1997, the European Court of Human Rights (which is not, contrary to popular belief, an organ of the EU, having been set up in 1950 and covering all 47 member states of the Council of Europe) ruled that a higher age of consent for homosexuals than for heterosexuals was a breach of the European Convention on Human Rights. In response, the following year the Government introduced the Crime and Disorder Bill, which contained a provision lowering the age of consent for homosexual acts to 16. There followed a battle between the House of Commons, which passed it, and the House of Lords, which rejected it,

twice. The Bill was eventually reintroduced under the new Labour Government in 2000 and, despite further opposition from the House of Lords, was passed under the Parliament Act 1911 (which allows the House of Commons to overrule the House of Lords under certain circumstances) and with the consent of the newly established Scottish Parliament. The Sexual Offences (Amendment) Act 2000 thus equalised the age of consent at 16 for all sexual acts (including, for the first time, lesbian acts, which Queen Victoria famously is said to have regarded as impossible, hence their previous exclusion from the law).

Both the repeal of Section 28 and the equalising of the age of consent were actions of the first two Labour administrations of Tony Blair and were opposed by a coalition of faith groups, but unsuccessfully. Further legislation passed over the last four years has turned its attention to gay people, alongside members of other minority groups, in the broad area of human rights, especially with regard to employment, the provision of goods and services, and legally recognised civil partnerships between same-sex couples. I will give a brief account of these, because they have sharpened the debate and led to a greater rift between proponents arguing from a human rights perspective and opponents taking up a moral stance than I can recall in my lifetime. Because this is such recent legislation, many of the implications remain to be tested out. But a number of cases have already been brought, so that the process has begun.

The Employment Equality Regulations of 2003 dealt with all forms of discrimination in the work-place, while the Sexual Orientation Regulations, which became law in Northern

Ireland (rather improbably) in 2006 and the rest of the UK earlier this year, have introduced legislation which deals specifically with discrimination in the provision of goods and services on grounds of sexual orientation. Just as significantly, the Civil Partnerships Act of 2004 has made it possible for same-sex couples to acquire the same legal rights as those enjoyed by married couples. Both these pieces of legislation have proved contentious, and perhaps exemplify more than any of the other developments I have outlined the ways in which the civil law has begun to clash with the moral convictions of particular individuals and faith communities.

In the case of the Employment Equality Regulations, a limited exemption was secured by the Churches, after much lobbying by them and by opponents, such as the Trades Union Congress and the mainstream gay rights campaigning group Stonewall.

Discrimination in employment on grounds of sexual orientation is permitted 'for the purpose of an organised religion [...] if it is necessary to comply with the doctrine of the organisation; or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers'. The deliberately imprecise formulation 'a significant number' suggests that the courts will have to rule on what 'a significant number' means at some point in the future. Must it mean a majority of all members, or is a minority sufficient? If so, what size minority? How do you ensure that small but vociferous minorities are not given undue influence? And given that most Churches are split on the matter, what if a significant number of followers hold equally strong

convictions of the opposite kind? A recent judgement has given some comfort to both sides. On 17 July an Employment Tribunal held that the decision of the Bishop of Hereford, Anthony Priddis (whom I remember as Chaplain of Christ Church, Oxford, when I was a young don there in the 70s) not to appoint as Diocesan Youth Officer an applicant who had been unanimously recommended to him by the interviewing panel was unlawful. The applicant had been in a homosexual relationship which had broken down and would not give an undertaking to lead a celibate life thereafter. Legal proceedings against the Diocese of Hereford were begun, with the assistance of Stonewall. Because the law does not make the distinction many Church groups do between orientation and practice, the Tribunal found against the Diocese, and stated that the applicant fulfilled the Church of England's requirements because he was at the time of the thwarted appointment celibate and because his future state could not possibly be known. The Tribunal took the view that the post in question did fall within the 'very narrow' exception for which the Church could legitimately discriminate, but that because the Bishops' Statement on Human Sexuality of 1991 (to which I shall return) did not require celibacy of lay persons in the Church as it did of the clergy, the applicant, a layman, had fulfilled the necessary conditions and the Bishop had therefore acted unlawfully. It remains to be seen whether an appeal will be lodged and, if so, what the outcome will be.

With respect to the Sexual Orientation Regulations, the best example of the nature of the problem has come from some owners of bed-and-breakfast establishments, which offer

accommodation to visitors within their own homes. Why should they, they argued, permit same-sex couples to sleep in the same bed and engage in practices in their home and on their property which went against the moral convictions their faith? The counter-argument was that as soon as one is using part of one's home and property as a commercial enterprise, to provide goods and services, and enjoying, for example, the tax reliefs that pertain to such a business, one's private views as to what two persons who share a bed may get up to must be accounted irrelevant. Such a couple may legitimately require non-paying visitors, such as family members and friends, to comply with their moral convictions at bed-time, but not if visitors are paying good money for their room and their bacon and eggs.

A further, and more important consequence of the Regulations is that requests for adoption cannot be refused on the grounds of a person's sexual orientation, whether or not that person is in a same-sex relationship. This caused grave concern, especially in the Roman Catholic Church, which stated publicly that its adoption agencies were likely to have to close if the Bill went through. It and the Church of England mounted a strong campaign to have an exception made for adoption agencies under the auspices of the Churches. In a strong letter of 23 January this year to the then Prime Minister, Tony Blair, the Archbishops of Canterbury and York pointed out that 'the rights of conscience cannot be made subject to legislation, however well meaning'. They cited the example of doctors in the NHS who do not perform abortions on the grounds of conscience and

cannot be made to do so by law. They added: 'It would be deeply regrettable if in seeking, quite properly, better to defend the rights of a particular group not to be discriminated against, a climate were to be created in which, for example, some feel free to argue that members of the government are not fit to hold public office on the grounds of their faith affiliation. This is hardly evidence of a balanced and reasonable public debate'. Finally, they drew attention to the importance of 'the interests of vulnerable children' not being 'relegated to suit any political interest'. For a while it looked as if Tony Blair, who has been thought for some time likely to convert to Roman Catholicism, would manage to placate the Churches by offering some form of opt-out. But a row broke out in the Labour Government over this and his attempts to do so were defeated.

All that could be achieved was a delay in implementing the Regulations for such agencies until 31 December 2008. In his statement of 29 January to the House of Commons Mr Blair explained that he had been listening to strongly held opinions over the previous few days. He acknowledged the primacy of vulnerable children's interests. But: 'I start from a very firm foundation: there is no place in our society for discrimination. And that is why I support the right of gay couples to adopt like any other couple. And that is why there can be no exemption for faith-based adoption agencies offering publicly-funded services from regulations which prevent discrimination.' He announced the transition period I have mentioned, and a statutory duty 'for any adoption agency which does not process applications from same sex couples to refer them to another agency',

together with 'regular independent assessment' of how the Act was affecting the provision of adoption. Curiously, the right of single people of any sexual orientation to adopt had already been established, and critics were not slow to point out the oddity of the Churches' resistance to adoption by same-sex couples.

The Civil Partnerships Act has proved, if anything, more controversial, because its opponents see it as striking at the very heart of Christian marriage and therefore of the family. The Act gives same-sex couples the same legal rights with respect to property, tenancy rights, life insurance, pensions, social security, inheritance, parental responsibility for the partner's children, as marriage does, and also makes provision for the termination of a relationship in a manner akin to divorce. Its opponents have argued that it is gay marriage in all but name, and thus contravenes orthodox Christian teaching. Some have pointed out that it discriminates in favour of same-sex couples and against men and women who choose to live together and raise families, but remain unmarried. The Government's answer to that is that they already have a means of securing these rights, namely marriage, whereas same-sex couples do not. One question facing the churches is what to do with clergy and other employees who have entered into civil partnerships. Legally, when one partner dies they will be required to give the same rights to pension and other benefits as they would to a widow or widower. Another is whether or not they will offer services of blessing to those civil partners who ask for them, of which more in a moment. My own denomination, the United Reformed Church, has said that this is a

matter for each local congregation to decide. I'm not sure where we are on pensions, but it would be quite odd if a Church found itself breaking the law of the land.

Meanwhile, the British Churches have been engaged in their own soul-searching on the issue of homosexuality. There seems to be a widely held consensus that homosexual orientation combined with a celibate life is not a bar to full participation in the life of the church or to ordination to its ministries, though a recent hard-line statement from Rome casts some doubt on this. The position of the Church of England on homosexual practice is a good example of the way in which sharply divided views have led to what both extremes in the debate regard as an unsatisfactory compromise, though of course the Church of England itself tries to hold together in fellowship a range of doctrinal and liturgical views from the high Catholic to modern fundamentalist. In 1991, following arguments over whether or not practising homosexuals could exercise the priestly ministry, the House of Bishops produced the policy document entitled 'Issues in Human Sexuality' to which I referred earlier. Practising lay homosexuals were welcome to participate fully in the life of the church, but homosexual priests were required to live as celibates. For the conservatives this was a step too far, for the liberals not far enough. Critics accused the document of double standards, a lower one for the laity and a higher one for the clergy, when the same Christian teaching should apply to all. It is doubtful, though, whether a more conservative or a more liberal attitude could have commanded sufficient support. In July 2005 the same House of Bishops issued a Pastoral Statement to

help the Church face the implications of the Civil Partnerships Act, and followed the logic of their earlier policy. It affirmed that services of blessing could not be offered to those who register a civil partnership, since ‘the question of public rites for the blessing of same sex unions is still a cause of potentially divisive controversy’. Liturgy expresses belief, and because there is no consensus of belief on this matter there can be no agreed such rite: they were clearly sensitive to the ructions in the Anglican Communion over the appointment of gay bishops and the provision of services of blessing for same-sex couples in some Episcopalian churches. It made the same distinction between laity and clergy as in 1991, in that lay civil partners could not be excluded from full participation in the life of the Church, but stated that clergy who wished to enter into civil partnerships were required to give an undertaking to the diocesan Bishop that they would be obedient to Anglican teaching as set out in the 1991 Statement. In other words, they could enter into such partnerships as long as they did not have sexual relations in them. This means that Bishops are now supposed to seek such assurances. The Bishop of Durham, reflecting on this in a letter of 12 December 2005 to his clergy, said: ‘This would not (as is sometimes suggested, be ‘intrusive’ or ‘invasive’, but the proper exercise of pastoral care’.

The views of the conservative bishop of Rochester, Michael Nazir Ali, born in Pakistan and whose father was a convert from Islam, articulates the opinions of those who have found difficulty with the new Civil Partnerships Act. I will give these some prominence, because they represent a more thoughtful conservative reaction to the legislation than

some of the more strident voices, such as that of the Christian Institute, a fundamentalist campaigning body the literature of which has more in common with the sensationalism of the popular press than anything else.

Accepting that those who choose to live together for whatever reasons do not have the same legal protection as those who marry, he nonetheless writes of his and others' concerns that the Act 'replicated for same-sex couples nearly all the provisions for marriage which are to be found in existing law. In particular, the prohibition on consanguinity reads very like the provision for marriage.' Attempts in Parliament to widen the scope of the legislation so that siblings and other relatives living together might also benefit were fiercely resisted and were unacceptable to the government: one such case, involving two sisters in their eighties, the Miss Burdens, has been turned down by the English courts and has just gone to the European Court of Human Rights in Strasbourg. On the one hand, the Bishop continues, the Bill was portrayed as being about the removal of injustices and, on the other, as something as near to 'marriage' for same-sex couples as may be. He adds: 'It has been noted that it is in its careful mimicking of marriage that the Bill can be said to undermine the distinctiveness and fundamental importance to society of the relationship of marriage. There is, then, at the very least, a studied ambiguity both in the text of the legislation and in the way it has been presented and promoted. In such circumstances, what should have been the Church's response? It was, I believe, open to the Church, in terms of the Human Rights Act, to derogate from

the legislation on the grounds that its ambiguity was not consistent with fundamental Christian teaching on marriage. Also, it could have derogated on the grounds that the ‘marriage-like’ character of the Act would be unacceptable to a substantial number of its members.’

The problem he identifies is the consequence of the earlier Bishops’ Statement which permitted same-sex relationships for lay people within the Church, but not for the clergy. He is bothered that the House of Bishops cannot clearly state ‘that civil partnerships entered into under this legislation would be inconsistent with Christian teaching. This is, and will continue to be, a recipe for confusion.’ He is worried, too, that bishops have been given ‘the task of ensuring that clergy who enter into these partnerships adhere to church teaching in the area of sexuality without giving the bishops the clear means to do so. In the days to come, this step will both severely test the Church’s discipline and stretch pastoral relationships to breaking point.’ He remains unhappy with the earlier policy, believing that ‘clear biblical teaching and the unanimous practice of the Church down the ages’ require guidance and discipline for participation in its sacramental life. That life he sees ‘as an entry into states of holiness and of discipleship’, which he implies is incompatible with homosexual practice.

What emerges strikingly from this survey of the last fifty years, since what now seem the modest proposals of the Wolfenden Report, is how in Britain we have moved from a society in which there was a broad consensus about public morality to one in which that

consensus has broken down and has been replaced on any given issue by a number of sharply opposing opinions, even within the Churches. Fifty years ago Britain thought of itself as a largely Christian country, and there was a general respect for and trust in public institutions. Now, though according to the 2001 census Christians make up at least nominally a large majority of the population (over 70%), we live in a much more plural and fluid society, and minority groups have not been slow to demand equal treatment with the rest. Ethical and legal arguments in the areas I have been looking at have tended to diverge: the law, as I have noted, does not distinguish between sexual orientation and sexual practice as do some religious groups, who like to say that God loves the sinner but not the sin. This is a problem for those who will accept into their communities persons of a homosexual orientation but who will demand of them complete sexual abstinence, or even claim to be able to 'cure' them. Parliament, with its concern for the public good, has recently been dismantling the vestiges of that older concern for general standards of morality, preferring to regard what consenting adults get up to in private as inappropriate for legislation. It has added new offences, but only of a specifically criminal kind. Thus, the Sexual Offences Act of 2003 abolished a number of old offences but created several new ones, for example voyeurism, causing a child to watch a sexual act, assault by penetration, and necrophilia. All these, however, are criminal because in one way or another they do not involve consent. The old legal prohibitions on private adult behaviour have given way in the public realm to a new political and legal concern for

equal human rights. Hence the criminal law now treats people of different sexualities in the same way, and the civil law likewise, with a few exceptions - the limited exemption of faith groups from equality legislation, and the provision for civil partnerships rather than for same-sex marriage.

I should, of course, like to pull out of the hat a brilliant solution to the growing tensions between the demands of faith and the rule of law, but I fear these are likely to increase rather than to find swift resolution. But I feel I would not be doing my duty if I did not conclude by offering a few pointers about how the debate should be conducted, however obvious they may be.

The first is that in a plural democracy, where many different and opposing opinions on important issues have to co-exist, each community has the right to make its views known and seek to influence public debate on specific policies. Points of view which particular faith communities regard as essential to their beliefs have every right to be heard in the public arena. But they must make their case on its perceived merits and by careful, rational argument, not on the grounds that a higher power requires everyone to accept it. If you can't persuade others of the rightness or reasonableness of your case, you can either seek some kind of opt-out on the grounds of conscience, which may not be possible, quietly accept the verdict of the majority, or resist and face the consequences. Christians have certainly thought it right to disobey unjust laws, but they have equally done so in full awareness of the personal cost to them, of liberty, or, in extreme cases, of

life. A plural democracy cannot flourish if various constituent elements will not accept as binding laws which have been passed by elected representatives and which must apply to everyone.

Let me give you a recent example of what I think is not a helpful way to proceed. The leader of Scotland's Roman Catholics has told politicians that they should not expect to remain full Church members if they defend the 'social evil' of abortion. Using language calculated to shock, Cardinal Keith O'Brien likened the abortion rate to 'two Dunblane massacres a day' and urged his followers to reject Members of Parliament who supported the abortion laws. The Cardinal went farther than any Catholic leader yet on the politics of termination during a sermon in Edinburgh marking the 40th anniversary of the 1967 Abortion Act, in which he urged parliamentarians to stop supporting an 'unspeakable crime'. The cardinal said: 'I believe the time has come for wide-ranging and open debate in this country about abortion. It should not be dominated by our political elites or medical professionals, by religious leaders or pressure groups, but should be open to all.' The use of a highly emotive comparison rather than rational argument to persuade is, in my view, an inappropriate way to seek to promote one's views: on 13 March 1996 a lone gunman went on a shooting spree at a school in Dunblane, Scotland, killing 16 children aged 5-6 and their teacher, then himself. The tragedy led to the introduction new and very restrictive gun laws in the UK. I have the same difficulty with the response of the Hindu monk to the removal of the sacred cow Shambo, likening it to the knocking of the SS on

the door. Arguments, as the Wolfenden Report so clearly stated fifty years ago, need to be based in reason, not emotion, and any comparisons should be proportionate. Indeed, a Hindu colleague assured me that Hinduism always accepts that the greater good must sometimes overrule a particular circumstance.

Second, in putting forward arguments it is important to be consistent. If you state that you do not wish to accommodate gay couples in your bed and breakfast establishment on the grounds that it goes against the teachings of your faith and because you assume that when people share a bed sexual acts are bound to take place, you must also turn away any unmarried heterosexual couple. Equally, if you take the view that Scripture is inerrant you cannot demand obedience to particular biblical texts without demanding it of all. Otherwise you are being selective and dishonest. Nor, if your attitude to Scripture is more liberal, can you apply a few texts on one subject literally and argue for a more open interpretation of others; not, at least, without explaining on what hermeneutical grounds.

Third, it is important to understand that human rights also carry theological and biblical weight. I do not think it is helpful to set a secular agenda based on human rights against a religious agenda based on moral convictions. Ethical beliefs derived from particular readings of the Old and New Testaments and from Christian tradition about the inherent sinfulness of all homosexual acts are jostling against what must be accounted another form of ethical belief, that all human beings should enjoy equal rights under the law, regardless of creed, colour, and now, sexual orientation. The Bible has a great deal to say

about justice and about equality, even it does not say it in the same way as we would. It is true that for Christians rights always carry responsibilities; the problem, perhaps, is that while you can legislate to establish rights, for example, to prevent people from discriminating unfairly against others, just as you can and must to outlaw crime, it is much harder, maybe impossible, as Christians have always supposed, to legislate to make people good.

Appendix

1. Names referred to

David Miliband, British Secretary of State for the Environment, Food and Rural Affairs

David Steel (Lord Steel), Leader of the Liberal Party (1976-88)

Sir John Wolfenden (Lord Wolfenden, 1906-85), Chairman of the Wolfenden Committee

Oscar Wilde (1854-1900), author

Canon Vigo Demant (1893-1983), Regius Professor of Moral and Pastoral Theology in the University of Oxford (1949-71)

Revd Dr R F V Scott, Moderator of the General Assembly of the Church of Scotland (1956)

Harold Macmillan (1894-1986), British Prime Minister (1956-63)

Lord Goddard (1877-1971), Lord Chief Justice (1946-58)

Margaret Thatcher, British Prime Minister (1979-91)

John Major, British Prime Minister (1991-97)

Edwina Currie, Conservative MP for South Derbyshire (1983-97)

The Rt Revd Anthony Priddis, Bishop of Hereford (2004 -)

The Rt Revd Rowan Williams, Archbishop of Canterbury (2003 -)

The Rt Revd John Sentanu, Archbishop of York (2005 -)

Tony Blair, British Prime Minister (1997-2007)

The Rt Revd Tom Wright, Bishop of Durham (2003 -)

The Rt Revd Michael Nazir Ali, Bishop of Rochester (1985 -)

Cardinal Keith O'Brien, Roman Catholic Archbishop of St Andrew's and Edinburgh

(1985 -)

Legislation referred to

Buggery Act, 1533; remained a capital offence until 1861

Labouchère Amendment to the Criminal Law Amendment Act, 1885

Abortion Act, 1967

Sexual Offences Act, 1967 (England and Wales only)

Local Government Act, 1986 (Section 28)

Age of consent for homosexuality reduced to 18, 1994

Crime and Disorder Bill, 1998; eventually passed, 2000, under the Parliament Act (1911)

The Employment Equality Regulations, 2003

Sexual Offences Act, 2003 (buggery and gross indecency abolished as criminal offences)

Civil Partnerships Act, 2004

Equality Act, 2006: Sexual Orientation Regulations, 2006-07

2. *Other Documents*

Report of the Committee on Homosexual Offences and Prostitution (London: HMSO, 1957); see especially pp. 7-78 (Wolfenden Report)

‘Issues in Human Sexuality’, Church of England, House of Bishops, 1991

‘Pastoral Statement’, Church of England, House of Bishops, July 2005

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| <p>Lecture delivered at Penn State Erie as part of the <i>Programme on Religion and Democracy</i> jointly organized by Mansfield College, Oxford and Penn State Erie Wednesday September 19, 2007</p> |
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