THE UNITED KINGDOM AND THE U.N. DECLARATION ON THE ELIMINATION OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION OR BELIEF

Peter Cumper*

INTRODUCTION

In 1676, Sir Matthew Hale, Lord Chief Justice of England, stated that Christianity was “parcel of the laws of England,”¹ while at the beginning of the twentieth century, the eminent British constitutional lawyer Maitland asserted that in England, “[r]eligious liberty and religious equality are complete.”² Most commentators in the past appear to have had little problem in reconciling the principles of “liberty” and “equality” with a legal system that accorded the Christian faith privileged status.³ Yet in spite of longstanding ties between the state and the Anglican Church, the changing social and religious landscape in England has made it increasingly difficult to make such assumptions in the twenty-first century. After all, England today is a largely secular, albeit religiously diverse, society in which significant numbers of people embrace a variety of faiths or systems of belief.⁴ With this in mind, using the 1981 U.N. Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief (“1981 U.N. Declaration” or “Declaration”) as a benchmark,⁵ the aim of this Article is to consider the extent to which freedom of religion or belief is respected in the United Kingdom generally and England in particular.⁶

---

* Senior Lecturer, Law School, University of Leicester, England.


⁶ It is acknowledged that, with regard to the legal regulation of religion and belief, there are a number of differences between the four regions of the United Kingdom (England, Scotland, Wales, and Northern Ireland). Thus, while this Article touches briefly on Scotland, Wales, and Northern Ireland, considerations of
This Article begins with an examination of the foundations of religious liberty before focusing on the challenge of reconciling the U.K.'s obligations under the 1981 U.N. Declaration with the privileges of the Established Anglican Church. It then discusses whether there are any lessons the U.K. can learn from the 1981 U.N. Declaration and considers the extent to which the Declaration itself could be improved by taking cognizance of British law. The Article ends by offering some general conclusions.

I. The Foundations of Religious Liberty in the United Kingdom

A. The Evolution of Religious Freedom in the United Kingdom

Although freedom of religion and belief is today a cardinal feature of British democracy, this set of circumstances has not always been the case. Toleration of religious difference was largely unheard of in previous generations and those of a persuasion different from that of the dominant faith group had few, if any, rights or privileges. In tracing the evolution of religious liberty in the U.K., a number of factors are particularly worthy of consideration.

First, until the last few centuries, there was a general assumption that minority faiths and religious dissenters posed a threat to the very existence of the state. As a consequence, Jews were banished from England in 1290, and heresy remained a capital offense well into the 17th century. Roman Catholics, whose allegiance to the state was often questioned in the wake of the Protestant Reformation, were subject to particularly harsh penalties. For example, under the First Test Act, officers of the Crown not only had to swear an oath of allegiance to the Sovereign but also were required to take the Anglican Eucharist and declare that they had rejected the doctrine of transubstantiation, while the Second Test Act effectively banned Catholics from sitting in either House of Parliament. Similarly, Protestant dissenters were affected by legislation such as the Corporation Act, which excluded from public office those who refused to take the Church of England's

---

9 The First Test Act, 1673, 25 Car. 2, c. 2 (Eng.).
10 The Second Test Act, 1678, 30 Car. 2, c. 1 (Eng.).
11 The Corporation Act, 1661, 13 Car. 2, c. 1 (Eng.).
Eucharist, as well as the Conventicle Act,\(^\text{12}\) which made it unlawful to attend a non-Anglican religious gathering of five or more persons.\(^\text{13}\) Thus, until the advent of religious toleration in the seventeenth century, the law was used less as a way of protecting an individual's freedom of conscience and more as a tool for controlling religious unorthodoxy.\(^\text{14}\)

Secondly, in spite of the United Kingdom’s apparently proud democratic heritage, draconian restrictions were imposed on a number of religious groups until comparatively recently in British history. The Toleration Act may have established the principle of exemption from legal penalty on the grounds of belief, but it only accorded protection to Protestant non-conformists who believed in the Trinity.\(^\text{15}\) Accordingly, restrictions on the role of Roman Catholics\(^\text{16}\) and Jews\(^\text{17}\) in public life were not lifted until the mid-nineteenth century. Moreover, it is particularly surprising that some longstanding discriminatory rules have only been repealed fairly recently. For example, the ban on the Lord Chancellor being a Catholic was not removed until 1974,\(^\text{18}\) while it was 2001 before curbs on Catholic (and Anglican) priests being able to sit in the House of Commons were lifted.\(^\text{19}\) Today Roman Catholics enjoy complete freedom of worship,\(^\text{20}\) but the British Constitution’s historical antipathy to Catholicism would appear to explain some curious anomalies, especially the fact that legislation still prohibits the Sovereign from converting to Catholicism or marrying a Catholic.\(^\text{21}\)

Thirdly, religious liberty has evolved in a way that is reflective of the distinctive characteristics of the British Constitution.\(^\text{22}\) Because the

---

\(^{12}\) The Conventicle Act, 1664, 16 Car. 2, c. 4 (Eng.).


\(^{14}\) See generally ANDREW R. MURPHY, CONSCIENCE AND COMMUNITY (2001).

\(^{15}\) The Toleration Act, 1689, 1 W. & M., c. 18 (Eng.).

\(^{16}\) See, e.g., The Roman Catholic Relief Act, 1829, 10 Geo. 4, c. 7 (U.K.).

\(^{17}\) See, e.g., The Jews Relief Act, 1858, 21 & 22 Vict., c. 49 (U.K.).

\(^{18}\) The Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act, 1974, c. 25 (U.K.).

\(^{19}\) See The House of Commons (Removal of Clergy Disqualification) Act, 2001, c. 13 (U.K.) (permitting ministers of religion to sit as Members of Parliament (MPs), but continuing to disqualify the Lords Spiritual from House of Commons membership).

\(^{20}\) An important caveat is that, while free to worship, Catholics in Northern Ireland have long complained about religious discrimination at the hands of the Protestant community. See generally FIO NNUL A O’CONNOR, IN SEARCH OF A STATE: CATHOLICS IN NORTHERN IRELAND (1993).

\(^{21}\) See The Act of Settlement, 1701, 12 & 13 Will. 3, c. 2, §§ 1–2 (Eng.).

\(^{22}\) For further discussion of the United Kingdom’s Constitution, see A.W. BRADLEY & K.D. EWING, CONSTITUTIONAL AND ADMINISTRATIVE LAW (14th ed. 2006).
constitution is not codified in a single document—instead being found in a range of diverse sources, including statutes, European Union legislation, the common law, and conventions—it is hardly surprising that recognition of the rights of minority faiths has long been an incremental process. From a series of statutes in the eighteenth and nineteenth centuries that laid the foundations of religious freedom, to more recent legislative measures outlawing discrimination, the catalyst for reform has thus tended to be piecemeal. Furthermore, the unusual nature of the British Constitution, whereby an individual has traditionally enjoyed the "right to do what he likes, unless restrained by the common law... or by statute," has also shaped the way in which religious liberty has developed. Thus, as noted by one commentator: "[t]he UK has no written constitution and so no formal constitutional guarantees either for religious freedom or for the churches' rights to self-determination." This statement, which was made prior to the enactment of the Human Rights Act 1998, should however be qualified today in one crucial respect. As a result of the Human Rights Act, the right to exercise one's religion or belief is now enshrined in British law.

B. The Human Rights Act 1998

The adoption of the Human Rights Act 1998 was a constitutional milestone in the U.K. The Act, which incorporates the bulk of the European Convention on Human Rights (ECHR) into U.K. law, guarantees a range of mainly civil and political rights, including freedom of thought, conscience, and religion. Therefore, with the incorporation of Article 9 of the ECHR,

24 David Maclean, State and Church in the United Kingdom, in STATE AND CHURCH IN THE EUROPEAN UNION 311 (Gerhard Robbers, ed. 1996).
27 For a complete list of the Convention rights which are incorporated into U.K. law, see Human Rights Act, 1998, c. 42, sched. 1.
28 ECHR, supra note 26, art. 9(1). Article 9(1) provides: "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." Id.
British law now expressly recognizes the right to change one’s religion or belief, as well as the right to manifest it “in worship, teaching, practice and observance,” subject to a number of limitations that include the protection of public safety, public order, health, morals, and the rights and freedoms of others.\(^{29}\)

Although Britain has never been found guilty of violating Article 9 of the ECHR by the European Court of Human Rights,\(^{30}\) the high number of complaints (covering a wide range of areas) submitted to the Court against the U.K. galvanized Tony Blair’s government into enacting the Human Rights Act.\(^{31}\) The Act, which stemmed the flood of cases taken to the European Court from the U.K., imposes a duty on the British courts to ensure that the actions of public authorities are compatible with ECHR.\(^{32}\) In the event of a conflict between U.K. law and the ECHR, judges can issue a declaration of incompatibility.\(^{33}\) This is a public statement that places the onus on the government to ensure that the law is reformed, so as to conform with the Human Rights Act. To date, the courts have not issued any declarations of incompatibility in relation to Article 9 of the ECHR. This reflects the fact that religious liberty is generally well protected under British law, but it also perhaps belies the cautious approach that the U.K. courts have often taken with regard to the protection of freedom of thought, conscience, and belief under the Human Rights Act.

The incorporation of Article 9 of the ECHR into U.K. law has meant that British courts are required to rule on a number of diverse issues related to religion and belief. These range from a Rastafarian’s unsuccessful submission that he had only been in possession of cannabis because he was using the drug for “religious” purposes,\(^{34}\) to the rejection of a claim that the government’s ban on foxhunting with hounds was incompatible with the manifestation of a

\(^{29}\) *Id.* art. 9(2). “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a 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.” *Id.*

\(^{30}\) The European Court of Human Rights is the ECHR’s main organ of interpretation, and is based in Strasbourg, France.

\(^{31}\) *See generally Home Dep’t, Rights Brought Home: The Human Rights Bill, 1997, Cm 3782.*

\(^{32}\) The Human Rights Act 1998 requires that the actions of public authorities be compatible with the ECHR. *See* Human Rights Act, 1998, c. 42, § 6. Additionally, “[s]o far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.” *Id.* § 3(1).

\(^{33}\) *Id.* § 4.

\(^{34}\) *See, e.g.,* R v. Taylor, [2001] EWCA (Crim.) 2263 (Wales).
complainant’s beliefs under Article 9 of the ECHR.\textsuperscript{35} Furthermore, whilst not bound by previous rulings of the European Court and Commission of Human Rights,\textsuperscript{36} British judges have often displayed a (perhaps understandable) willingness to follow the approach of the European Court (and Commission) of Human Rights in relation to the protection of religion or belief.\textsuperscript{37} As a consequence, a head-teacher’s claim that corporal punishment at an independent Christian school could be a manifestation of a religious belief was rejected,\textsuperscript{38} as was an attempt (under Article 9 of the ECHR) to establish a separate “peace tax fund” for taxpayers who objected to their taxes being used for military purposes.\textsuperscript{39} However, there have also been occasions when one might argue that the Strasbourg approach to the interpretation of Article 9—which has typically been seen as quite restrictive\textsuperscript{40}—should have been eschewed by Britain’s judges. These include the Court of Appeal’s ruling that a Christian employee had been lawfully dismissed for refusing to work on Sundays,\textsuperscript{41} and the House of Lords’ decision that a teenage Muslim school girl could be banned from wearing a loose fitting outer garment (a \textit{jilbab}) to school, which she had claimed was mandated by her faith.\textsuperscript{42}

In spite of the Courts’ relatively cautious approach to Article 9, there is little doubt that the Human Rights Act accords valuable protection to the rights of religious organizations and believers. However, prior to the enactment of the Act, concern was expressed by some Christian groups that a number of the ECHR’s provisions (especially those outlawing discrimination) might curtail


\textsuperscript{36} See The Human Rights Act, 1998, c. 42, § 2 (stating only that courts and tribunals must take these previous rulings “into account”).

\textsuperscript{37} In 1994, Protocol 11 abolished the European Commission, which had acted as the main filter for the European Court, and replaced it with a new full-time Court of Human Rights. See ECHR, supra note 26, pmb.


religious freedom. Therefore, in an attempt to assuage such fears, the government amended its legislative proposals by adding Section 13 to the Human Rights Act, which provides that judges, when considering matters relating to freedom of thought, conscience, and religion, must have “particular regard to the importance” of these rights. To date the courts have been rather circumspect in relation to Section 13, and the true effect of this provision appears likely to be more symbolic than real. In hindsight it would appear that the fears of those who claimed that the Human Rights Act could undermine the rights of religious believers have (at least to date) been ill founded. Instead, with the enactment of the Human Rights Act 1998, members of the public are, for the first time, able to invoke the principles of freedom of thought, conscience, and religion directly in the U.K. courts.

C. Religion, Belief, and the 1981 U.N. Declaration

Even prior to the Human Rights Act 1998, it was noted by one commentator that “there is no denial of religious freedom in Great Britain.” And with Article 9 of the ECHR now incorporated into British law, there is little doubt that Article 1 of the 1981 U.N. Declaration—which guarantees freedom of thought, conscience, and religion, and specifies that curbs can only be imposed on the manifestation of religion or belief in limited circumstances—is respected in the U.K. Moreover, U.K. law would appear to be compatible with the Declaration on the basis that individuals are generally free to “worship or assemble in connection with a

---


46 For example, the ECHR was described by Michael Nazir-Ali, the Bishop of Rochester, as a “Trojan Horse” by which Christian values would be undermined and ideas “hostile to the Christian foundations of this country” would be propagated. See Jonathan Petre, Human Rights Act Undermines Christian Values Warns Bishop, Sunday Telegraph, Oct. 1, 2000, at 1.


48 See supra text accompanying notes 26–28.

49 1981 U.N. Declaration, supra note 5, art. 1(1).

50 Id. art. 1(2).

51 Id. art. 1(3).
religion or belief,"52 “establish and maintain charitable or humanitarian institutions,”53 “celebrate [religious] holidays,”54 use articles or materials relating to “the rites or customs of a religion or belief,”55 and organize family life “in accordance with their religion or belief.”56

By virtue of being a signatory to the 1981 U.N. Declaration, the U.K. is also required to “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief . . . in all fields of civil, economic, political, social and cultural life.”57 However, until recently in Great Britain (but not Northern Ireland),58 the absence of a statutory ban on religious discrimination meant that religious (as opposed to racial) discrimination was not an offence per se. Accordingly, the only “religious” communities protected against discrimination were those as Jews59 and Sikhs60 that came within the remit of the Race Relations Act 1976,61 because they were regarded as having both religious and racial identities—whereas other faith groups (for example, Muslims62 and Rastafarians63) were left unprotected. Perhaps not surprisingly, the Special Rapporteur on Freedom of

---

52 Id. art. 6(a); see also The Places of Religious Worship Act, 1812, 52 Geo. 3, c. 155 (U.K.).
53 1981 U.N. Declaration, supra note 5, art. 6(b); see also Comm’n for Special Purposes of the Income Tax v. Pemsel, [1891] A.C. 531 (U.K.).
54 1981 U.N. Declaration, supra note 5, art. 6(h). The U.K. Government insists that it is successful in encouraging “employers to provide flexible working arrangements, including those made necessary by cultural and religious differences.” U.N. Human Rights Comm. [HRC], Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Addendum: Great Britain and Northern Ireland, ¶ 468, U.N. Doc. CCPR/C/UK/99/5 (Apr. 11, 2000). However, the U.K. courts have accepted that curbs may be placed on the manifestation of religion or belief at the workplace. See Copsey v. WWB Devon Clays Ltd., [2005] EWCA (Civ) 932 (Eng.).
56 1981 U.N. Declaration, supra note 5, art. 5(1); see also ECHR, supra note 26, Protocol No. 1, art. 2.
57 1981 U.N. Declaration, supra note 5, art. 4(1).
60 Manda v. Lee, [1983] 2 A.C. 548, 562 (Eng.).
61 Race Relations Act, 1976, c. 74 (U.K.) (outlawing discrimination on the grounds of “race,” but not “religion”).
63 Dawkins v. Dep’t of the Env’t, [1993] I.C.R. 517 (Eng.).
Religion or Belief expressed concern about this unsatisfactory state of affairs, as did a number of minority faith groups themselves. This apparent legal anomaly has now, however, been resolved with the introduction of the Employment Equality (Religion or Belief) Regulations 2003, which prohibit discrimination in the workplace by reason of "any religion, religious belief or similar philosophical belief." The Regulations are supplemented by the non-discrimination clause of the European Convention (Article 14), which has been incorporated into British law, and litigants also retain the right to petition the European Court of Human Rights if their complaints of religious discrimination are rejected in the U.K. Thus, even though some minority faith groups claim that their grievances have yet to be satisfactorily resolved, it can be argued that freedom of religion or belief has (at least from a constitutional perspective) never been quite so well protected in the U.K. Against this backdrop, this Article now considers the formidable challenge of reconciling the unique constitutional status of the Anglican Church with the principle of non-discrimination under the 1981 U.N. Declaration.


A. The Constitutional Role of the Church of England

It has been said that "the relationship between the state and religion in modern secular states is regulated by two principles: the separation of the state and religion, and the freedom of religion." In light of the Establishment of the Church of England, the U.K. would appear to satisfy the latter, but not the

---


former. The term “Establishment” is hard to define, but it usually describes the situation in which “a religion or a religious body [has been accorded] the position of a state religion or a state Church.” In the U.K., the issue of Establishment is complicated by constitutional differences between the four separate regions of the United Kingdom. For example, an Established Church exists in neither Northern Ireland nor Wales, whereas the Church of Scotland is an Established Church, albeit in a more modest sense of the term than applies to England. It is, however, in England where the “purest” form of Establishment is evident, in view of the presence of “laws which apply to the Church of England and not to the other churches.”

Given that there are a “bewildering variety” of state/church relations, and that Established Churches can be found far beyond the U.K., it is perhaps unsurprising that the mere presence of an Established Church is not, per se, incompatible with a nation’s human-rights obligations. This position has been confirmed by the U.N. Special Rapporteur on Freedom of Religion or Belief, as well as the Human Rights Committee and the European Commission of Human Rights. That said, when a religion has been accorded a special or “established” status, certain principles govern its operation.

---

70 For example, the problems of defining “establishment” have led one commentator even to suggest that “no one particular concrete expression of it is sacrosanct.” P. AVIS, CHURCH, STATE AND ESTABLISHMENT 34 (2001).
72 See Irish Church Act, 1869, 33 & 34 Vict., c. 42 (U.K.).
73 See Welsh Church Act, 1914, 4 & 5 Geo. 5, c. 91 (U.K.).
74 The Church of Scotland is “Established” in so far as a system of church courts was set up in the sixteenth century and future Sovereigns were required to swear to protect the Church. See the Church Jurisdiction Act, 1567, c.12 (Scot.); Coronation Oath Act, 1567, c. 8 (Scot.). See also the Church of Scotland Act, 1921, 11 & 12 Geo. 5, c. 29 (U.K.) (recognizing the Church’s exclusive jurisdiction in matters spiritual).
For example, governments are forbidden from interfering directly with the management and business of a state/established church,\(^\text{83}\) and the U.N. Special Rapporteur on Freedom of Religion or Belief has condemned those states that "manipulate . . . dominate and even subjugate" a religion.\(^\text{84}\) At first glance, the Church of England might seem at risk of being "manipulated" or "dominated" as a result of its Established status. After all, there are a number of ways in which the state exercises control over the Anglican Church. To begin with, the title of "Supreme Governor" of the Church of England is granted not to its most senior cleric (the Archbishop of Canterbury), but rather this position is reserved for the Sovereign alone.\(^\text{85}\) Moreover, in crucial areas, such as the appointment of the Church of England's Archbishops and Bishops, decisions are vested formally in the Sovereign,\(^\text{86}\) although by convention they are taken by government Ministers on his or her behalf.\(^\text{87}\) And lastly, Measures passed by the Church's General Synod (its main law-making body) require the approval of Parliament,\(^\text{88}\) while Ecclesiastical Canons (rules governing the Anglican clergy) must also receive the Royal Assent before they can become law.\(^\text{89}\)

However, a more detailed examination of the issues reveals that the Church of England not merely retains considerable autonomy,\(^\text{90}\) but also enjoys a number of privileges that are denied to other religious organizations. Thus, for example, it is a well-established practice that Anglican Bishops lead the worship at high profile "national" events such as state funerals and war

---

83 Id.
85 See The Act of Supremacy, 1558, 1 Eliz., c. 1, § 8. The term "Supreme Governor" was used rather than "Supreme Head"—the phrase used originally in the Act of Supremacy, 1534, 26 Hen. 8 (Eng.), by Henry VIII—because of the principle that Christ (and not the Sovereign) was "Head" of the Church.
87 As a consequence, a British Prime Minister, who may not be an Anglican (or even a Christian), has the power to veto candidates that have been put forward by the Church of England's Crown Appointment Commission for appointment as Archbishops or Bishops. For criticism of the appointments process see Baroness Perry's statements in 631 PARL. DEB., H.L. (5th ser.) (2002) 883. See also 1981 U.N. Declaration, supra note 5, art. 6(g) (guaranteeing the right to "[t]rain, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief").
89 See The Synodical Government Measure, 1969, No. 2, § 1 (Eng.).
remembrance services. Furthermore, the Archbishop of Canterbury traditionally conducts the coronation service and places the crown on the head of a Sovereign in Westminster Abbey. In addition, the Sovereign, as the Church’s Supreme Governor, must be a communicant of the Church of England.\textsuperscript{91} Finally, the Anglican Church is the only religious organization that has its own courts, and its courts administer ecclesiastical law which is “part of the general law of England.”\textsuperscript{92}

The British government has, in the past, acknowledged that the Church of England retains a “special position” in the Constitution,\textsuperscript{93} although critics of Establishment tend to view it in much less positive terms as a “nationalized monopoly” of religion.\textsuperscript{94} At the very least, it would seem that the burdens imposed by Establishment, as well as the privileges granted uniquely to the Church of England, are problematic when considered in light of the non-discrimination provisions of the 1981 U.N. Declaration. For example, Asma Jahangir, the current Special Rapporteur on Freedom of Religion or Belief, has noted that, “[w]ithout addressing the question of whether a ‘State religion’ is a system that is compatible with human-rights . . . the legalisation of a distinction between different categories of religion is liable to pave the way for . . . discrimination on the basis of religion or belief.”\textsuperscript{95} Moreover, in a report made by one of her predecessors, Abdelfattah Amor, it was noted that under international human rights law, the principle of freedom of religion or belief “is difficult to reconcile with a formal or legal distinction between different kinds of religious or faith based communities in so far as such a distinction . . . must imply a difference in rights or treatment, which may . . . constitute discrimination that is incompatible with the exercise of human rights.”\textsuperscript{96} In view of such considerations, and the fact that some commentators

\begin{itemize}
\item \textsuperscript{91} The Act of Settlement, 1701, 12 & 13 Will. 3, c. 2, § 3 (Eng.).
\item \textsuperscript{92} Mackonochie v. Lord Penzance, [1881] 6 App. Cas. 424, 446 (U.K.).
\item \textsuperscript{93} See Representation made by the UK Government to the Human Rights Committee, CCPR/C.58/Add. 6, para. 38, cited in Peter Cumper, Freedom of Thought, Conscience, and Religion, in THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND UNITED KINGDOM LAW 355, 361 (David Harris and Sarah Joseph, eds. 1995).
\item \textsuperscript{94} See Colin Buchanan, Cut the Connection: Disestablishment and the Church of England 11 (1994).
\end{itemize}
equate Established Churches with religious discrimination,\textsuperscript{97} it would seem that a nation which grants privileges uniquely to a state or established religion puts itself at risk of acting contrary to the 1981 U.N. Declaration.

Advocates of the constitutional status quo will doubtlessly insist that the Establishment of the Anglican Church is a legacy of England’s constitutional history, and that notwithstanding the unique position of that Church, the United Kingdom government has never intended to discriminate against minority faiths. Yet it is perhaps significant that the terms “intolerance” and “discrimination” under the 1981 U.N. Declaration cover “any distinction, exclusion, restriction or preference based on religion or belief” which has “as its purpose or as its effect” the “nullification or impairment” of human rights “on an equal basis.”\textsuperscript{98} Thus, irrespective of intent, there may be circumstances when the “effect” of a nation’s law is such that a state fails to comply with its obligations under the Declaration. With this in mind, this Article now proceeds to examine three issues that illustrate the challenge of reconciling the Anglican Church’s privileges with the non-discrimination provisions of the 1981 U.N. Declaration. These are: the constitutional prohibitions on the Sovereign marrying a Catholic or adopting Catholicism; the fact that the Lords Spiritual in the House of Lords are appointed merely from the ranks of the Church of England; and the apparent anomaly that the law of blasphemy accords protection only to the Anglican Church in contemporary multi-faith Britain.

1. Legal Restrictions on the Religion of the Sovereign

The rules governing the religion of the Sovereign can be traced back to the late 17th century when an English Protestant Parliament offered the Crown to the Dutch Protestant Prince, William of Orange. As part of this transfer of power, Parliament enacted the Bill of Rights 1688, which provided that Roman Catholics, or those married to Roman Catholics would “be excluded and be forever uncapeable to inherit possesse or enjoy the crowne.”\textsuperscript{99} Parliament subsequently enacted the Act of Settlement (1701), which limited succession of the Crown to Protestants\textsuperscript{100} and reaffirmed the relevant provisions of the Bill

\textsuperscript{97} See Charalambos Papastathis, Tolerance and Law in Countries with an Established Church, 10(1) RATIO JURIS, 108, 108 (1997).
\textsuperscript{98} 1981 U.N. Declaration, supra note 5, art. 2(2) (emphasis added).
\textsuperscript{99} The Bill of Rights, 1688, 1 W. & M. 2, c. 2, § 1 (Eng.).
\textsuperscript{100} The Act of Settlement, 1701, 12 & 13 WILL. 3, c. 2, § 1 (Eng.).
of Rights,\textsuperscript{101} as well as providing that the Sovereign must be a communicant of the Church of England.\textsuperscript{102}

It seems extraordinary that legislation passed by Parliament over 300 years ago, at a time when Catholicism was regarded as posing a threat to the security of the state, should survive into the 21st century.\textsuperscript{103} However, the constitutional ban preventing a Sovereign who is either Roman Catholic or married to a Roman Catholic from inheriting the Crown continues to remain in force. The current situation was described in colorful terms by Lord James Douglas-Hamilton, a former British Minister, when he observed that it was “grossly unfair” that the “heir to the throne can accede if he marries a Muslim, a Buddhist, a scientologist, . . . an atheist or a sun-worshipper, but not if he marries a Roman Catholic.”\textsuperscript{104} Although there has been support for lifting these restrictions from Members of Parliaments (MPs),\textsuperscript{105} Peers,\textsuperscript{106} Anglican Bishops,\textsuperscript{107} national newspapers,\textsuperscript{108} and even (if press reports are accurate) the heir to the throne, Prince Charles’,\textsuperscript{109} attempts to reform the law have failed.

While acknowledging that the terms of the Act of Settlement (1701) are “discriminatory,”\textsuperscript{110} the government has affirmed that it has no plans to change the law in this area, with ministers insisting that legislative reform would be “a complex and controversial undertaking.”\textsuperscript{111} This is doubtlessly true, but it also risks ignoring the fact that a nation’s domestic or administrative problems seldom justify its failure to comply with international human rights obligations.\textsuperscript{112} Moreover, the rules governing the religion of the Sovereign seem at odds with the principles underpinning the 1981 U.N. Declaration in at least three respects. First, the law is discriminatory, since only communicants

\textsuperscript{101} Id. § 2.
\textsuperscript{102} Id. § 3.
\textsuperscript{107} See id. at 502.
\textsuperscript{111} Id. at 510.
\textsuperscript{112} See, e.g., Tyer v. United Kingdom, 2 Eur. Ct. H.R. para. 31 (1980). In that case, the European Court of Human Rights rejected the argument that it would be difficult to ban judicial corporal punishment on the Isle of Man because a significant proportion of the local population supported its retention. Id.
of the Church of England (or at least the Protestant Christian tradition) can inherit the Crown.\textsuperscript{113} Secondly, the Sovereign’s personal freedom of religion is limited, because he or she is forbidden from converting to Catholicism. Finally, the Coronation Oath, whereby the Sovereign must pledge to be “a faithful Protestant,”\textsuperscript{114} appears at best archaic and at worst discriminatory, given that the United Kingdom is a religiously diverse (albeit largely secular) nation.

It would appear that Prince Charles is less than comfortable with many of the rules and conventions governing the religion of the Sovereign. For example, he has indicated that he would prefer to be seen as a “Defender of Faith,” rather than a “Defender of the Faith,”\textsuperscript{115} the latter being the title that successive Sovereigns have taken since the time of Henry VIII. Recently, there have been claims that Charles plans to involve Muslim, Jewish, Hindu, and Sikh leaders in his future Coronation,\textsuperscript{116} a suggestion that has incurred the wrath of some conservative Christian groups.\textsuperscript{117} Much of this is mere press speculation, but what is clear is that for Prince Charles to accede in the throne, his freedom of religion will be constrained by the terms of the Act of Settlement (1701). Hypothetically, should Charles ever wish to embrace Catholicism, he would be ineligible to become Sovereign, and the throne would be offered to the next Protestant male in the line of succession (Prince William). Furthermore, the fact that Charles could still convert to Catholicism on abdication would seem to lessen the possibility that these constitutional restrictions could be successfully challenged under international human rights law.\textsuperscript{118}

In this context, Natan Lerner has pointed out that when a state permits “only members of a given religion to accede to certain public positions, such as

\textsuperscript{113} The Bill of Rights, 1688, 1 W. & M. 1, c. 1, (Eng.); The Act of Settlement, 1701, 12 & 13 Will. 3, c. 2, § 3 (Eng.).
\textsuperscript{114} The Accession Declaration Act, 1910, 10 Edw. 7 & 1 Geo. 5, c. 29, sched. 1 (UK.).
\textsuperscript{115} See JONATHAN DIMBLEBY, THE PRINCE OF WALES, A BIOGRAPHY 528 (1994).
\textsuperscript{118} Knudsen v. Norway, 42 Eur. Comm’n H.R. Dec. & Rep. 247 (1985). The European Commission of Human Rights held, in relation to the claim of a Norwegian Minister that his religious freedom had been violated following his dismissal from the State Church, that: “If the requirements imposed upon him by the State should be in conflict with his convictions, he is free to relinquish his office as a clergyman within the State Church, and the Commission regards this as an ultimate guarantee of his right to freedom of thought, conscience and religion.” Id. at 65.
president of the state," it may contravene the 1981 U.N. Declaration. Of course a Sovereign is typically different from a President on the basis that the former holds a unique hereditary office, is not accountable to an electorate, and seldom enjoys any real political power. Nevertheless, the legal restrictions on the religion of the Sovereign continue to have a potent symbolic value in the United Kingdom, especially for the nation’s Catholics. It can be thus argued that until the United Kingdom reforms the Act of Settlement (1701), the seventeenth century’s imprint of religious intolerance will continue to be found at the very heart of the British constitution.

2. The Lords Spiritual—Privileges of Anglican Bishops

A second legacy of Establishment which rests uneasily with the principle of non-discrimination under the 1981 U.N. Declaration is that those eligible to be Lords Spiritual—ex officio members of the House of Lords, the Upper House of the United Kingdom bicameral legislature—must be ecclesiastical representatives of the Church of England. The Lords Spiritual comprise the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, as well as 21 other Diocesan Bishops in terms of their seniority (with the exception of the Bishop of Sodor and Man). They sit in the House of Lords with three other categories of “peer”—hereditary peers, life peers, and Lords of Appeal in Ordinary. Although the Lords Spiritual currently have less influence than their predecessors in earlier generations, they nonetheless retain the right to speak and vote on legislative proposals within

---

122 Since the Disestablishment of the Church of Ireland (1871) and the Church in Wales (1920), the leaders of neither Church have been able to sit as Lords Spiritual, while the leaders of the Church of Scotland (which, as a Presbyterian institution, has no Archbishops or Bishops of its own) remain ineligible.
123 See House of Lords Act, 1999, c. 34, § 2 (U.K.) (reducing the number of hereditary peers in the House of Lords to 92).
124 See Life Peerages Act, 1958, 6 & 7 Eliz. 2, c. 21, § 1 (U.K.) ( awarding titles to those who serve the community).
125 Lords of Appeal in Ordinary are the Law Lords, who perform the judicial work of the House of Lords, sitting as the U.K.’s final Appeal Court.
the House of Lords.\textsuperscript{127} Of course, it must not be forgotten that the powers of peers generally are limited, because the Lords (as the Second Chamber of the Westminster Parliament) can ultimately only delay legislative proposals that have been passed in the House of Commons.\textsuperscript{128} Yet irrespective of the political influence (or lack thereof) exercised by the Lords Spiritual, it is noteworthy that the U.K. remains one of the few democratic countries in the world where the most senior officeholders of a Church are, merely by virtue of their office, members of the legislature.\textsuperscript{129}

The fact that only senior Anglican clergy are eligible to sit as Lords Spiritual rests uncomfortably with the U.K.'s human rights obligations. After all, the U.N. Human Rights Committee has noted that where a Church enjoys a special status, "discrimination against adherents to other religions or nonbelievers" is forbidden.\textsuperscript{130} One apparently simple way of rectifying this problem would be to remove the Lords Spiritual from the Upper House,\textsuperscript{131} but a number of arguments can be put forward against such a course of action. First, there is little appetite for this proposal amongst Britain's minority faith leaders, many of whom are already wary of the increasing influence of secularism in British public life.\textsuperscript{132} Secondly, it can be argued that the Lords Spiritual maintain an important link with British history, on account of the fact that Bishops have been found in the House of Lords since the Middle Ages.\textsuperscript{133} Thirdly, some claim that the presence of faith representatives in the House of Lords enriches the Chamber and brings government closer to the ordinary people.\textsuperscript{134} Finally, any attempt to remove the Lords Spiritual from the Upper House would almost certainly be strongly resisted by many within the Church.

\textsuperscript{128} See Parliament Act, 1949, 12, 13 & 14 Geo. 6, c. 103 (UK.); Parliament Act, 1911, 1 & 2 Geo. 5, c. 13, § 2 (UK.).
\textsuperscript{129} See MEG RUSSELL, REFORMING THE HOUSE OF LORDS: LESSONS FROM OVERSEAS 330 (2000) (confirming that there are 26 seats in the house given to Anglican bishops).
of England itself, on account of the fact that a majority of Anglican laity and clergy are evidently supportive of the retention of Church of England Bishops in a revised second Parliamentary Chamber.\textsuperscript{135}

Such considerations would seem to explain why recent proposals to reform the House of Lords have focused on a revision of the eligibility criteria for the Lords Spiritual, rather than the mere abolition of this category of peer. For example, a government appointed Royal Commission proposed in 2000 that the leaders of religious organizations other than the Church of England should be able to sit, as of right, in the House of Lords with 21 places for “Christian” representatives and five places for those who are “broadly representative” of non-Christian faiths.\textsuperscript{136} In view of the problems of implementing this proposal (especially in relation to the non-Christian groups), a separate government White Paper subsequently recommended a reduction in the number of Bishops from 26 to 16 and suggested that rather than having a formal “quota” for other religions, their representatives could instead be selected at a later date by an independent Appointments Commission.\textsuperscript{137} Such a proposal has been welcomed by minority leaders\textsuperscript{138} as well as representatives of the Church of England.\textsuperscript{139} Yet, the challenge of selecting peers to represent the nation’s different faith traditions is formidable, not least because it would be impossible to accommodate the representatives of every religion or belief system in contemporary Britain. Thus, the problems of selecting Lords Spiritual from a range of different faiths and/or beliefs have meant that every proposal for reform in this area has so far been unsuccessful.

According to recent press reports, the U.K. government is once again devising plans to restructure the House of Lords.\textsuperscript{140} History is seemingly not on the side of those advocating change, given that unsuccessful attempts to


\textsuperscript{138} See Chief Rabbi, Submission on Reform to the House of Lords, http://www.chiefrabbi.org/articles/other/lords.html (last visited Apr. 9, 2007).


reform the Lords go back many years. Yet, irrespective of the outcome of the government’s latest proposals, their publication may highlight the anomaly that in contemporary multi-faith Britain, only the leaders of the Church of England are accorded an *ex officio* right to sit in the Westminster Parliament.

3. Blasphemy

Another privilege enjoyed uniquely by the Church of England is the fact that, unlike other faiths, it is protected by the common law of blasphemy. Even though prosecutions for blasphemy are rare, Muslim groups have been particularly concerned about the failure of English law to protect their most sacred beliefs. For example, attempts were made in 1991 by a group of British Muslims to ban Salman Rushdie’s book, *The Satanic Verses*, on the ground that it was blasphemous. The Divisional Court rejected their submissions and held that the law of blasphemy only extends to Christianity and the Established Church. Having exhausted domestic remedies, the applicants in this case petitioned the European Commission on Human Rights in Strasbourg, where they claimed that the publication of *The Satanic Verses* constituted religious discrimination and violated Articles 9 and 14 of the ECHR. The Commission rejected their application on the basis that Article 9 did not impose an obligation on the state to protect individuals from offences caused by other private citizens, although it is questionable whether, in the

---

142 The Lords Spiritual are *ex officio* members of the House of Lords. RUSSELL, supra note 129, at 10. However, a Government retains the option of granting a faith leader membership in the House of Lords by awarding him or her a life peerage. See id. at 13. For example, Lord Jakobovits, the former Chief Rabbi, was awarded a life peerage in 1988 and become the first Rabbi to sit in the House of Lords. See CHAIM BERMAN, LORD JAKOBOVITS: THE AUTHORIZED BIOGRAPHY OF THE CHIEF RABBI (1990).
144 For example, between 1922 and 1978 there were no prosecutions for blasphemy in England and Wales. See SELECT COMM. ON RELIGIOUS OFFENCES IN ENG. & WALES, REPORT, 2002–3, H.L. 95-I, available at http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelof/95/9505.htm#s2 [hereinafter SELECT COMMITTEE]. There has never been a prosecution for blasphemy in Northern Ireland and the last reported prosecution in Scotland was in 1843. See id.
146 See id.
148 Article 14 of the ECHR provides that the “rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion.” See ECHR, supra note 26, art. 14. Article 9 provides that everyone “has the right to freedom of thought, conscience and religion.” Id. art. 9.
wake of the Human Rights Act 1998, a British court would adopt such an approach.\textsuperscript{150}

The wide “margin of appreciation” granted by the European Court of Human Rights to states in areas where free expression is “liable to offend intimate personal convictions within the sphere of morals or, especially, religion,”\textsuperscript{151} explains why legal challenges to the U.K.’s blasphemy law have failed in Strasbourg. However, concern has nonetheless been expressed by a member of the Human Rights Committee that the privileged position of the Anglican Church in this area may be at odds with Britain’s obligations under the International Covenant on Civil and Political Rights (ICCPR).\textsuperscript{152} Moreover, the compatibility of the U.K.’s blasphemy law with the 1981 U.N. Declaration is also questionable, in the wake of comments from a former U.N. Special Rapporteur that blasphemy “should not be discriminatory and should not give rise to abuse . . . [n]or should it be so vague as to jeopardize human rights, especially those of minorities.”\textsuperscript{153}

Although there is no evidence that human rights are “jeopardized” today by the offence of blasphemy, the law in this area is certainly vague. A Parliamentary Select Committee has, for example, described it as “obscure,”\textsuperscript{154} while in contrast to most other criminal offences, the courts regard the intent of anyone accused of blasphemous libel as irrelevant.\textsuperscript{155} The fact that Article 10 of the ECHR has now been incorporated into British law is also significant,\textsuperscript{156} because it is thought that any future prosecutions for blasphemy are unlikely to survive a legal challenge under the Human Rights Act 1998.\textsuperscript{157} That said, the common law offence of blasphemous libel has yet formally to be abolished, and the fact that it remains in force, distinguishing between the Church of

\textsuperscript{153} See 1996 Special Rapporteur Report, supra note 80, ¶ 82.
\textsuperscript{154} Select Committee, supra, note 144, ch. 3, para. 18.
\textsuperscript{156} Article 10 of the ECHR guarantees “the right to freedom of expression” which includes “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” ECHR, supra note 26, art. 10.
\textsuperscript{157} Select Committee, supra note 144, ch. 3, para. 20.
England and other faiths, is undoubtedly a matter of some concern. A strong case can thus be made that the U.K. government should amend the law relating to blasphemy with immediate effect. But even if such a course of action is considered necessary, a significant challenge still remains—there is no consensus as to how the law of blasphemy should be reformed.\footnote{For example, the Select Committee took evidence from a wide range of interested parties, but itself made no recommendations in relation to the reform of the law of blasphemy. \textit{See Select Committee, supra note 144}, ch. 3, para. 30.}

The preferred option for many is for the current blasphemy law to be abolished without replacement, because it discriminates against non-Christian faiths. This approach has received the support of the U.K. Law Commission,\footnote{U.K. LAWComm', OFFENCES AGAINST RELIGION AND PUBLIC WORSHIP, Working Paper No. 79, ¶ 13.1 (1981) [hereinafter OFFENCES AGAINST RELIGION].} as well as academics,\footnote{\textit{See, e.g.}, Robert McCrorquodale, Case and Comment, \textit{Blasphemous Verses}, 50 CAMBRIDGE L.J. 22 (1991).} humanists,\footnote{\textit{Brit. Humanist Ass'n, Blasphemy and Other Religious Offences, www.humanism.org.uk/site/cms/contentViewArticle.asp?article=1419 (last visted May 2, 2007).}} and even a former Archbishop of Canterbury.\footnote{Tania Branigan, \textit{Ex-Archbishop Backs Axing of 'Redundant' Blasphemy Laws}, THE GUARDIAN, Oct. 21, 2005, at 5, available at http://www.guardian.co.uk/religion/Story/0,2763,1597360,00.html.} Yet such a proposal would undoubtedly incur the wrath of conservative Anglicans, wary of it constituting the first step on the road to disestablishment.\footnote{For example, see the concerns of Baroness O’Cathain in 675 Parl. Deb., H.L. (5th ser.) (2005) 333 (U.K.).} Many Muslims are also likely to oppose this approach on the basis that “all religions need that protection” from blasphemous attacks.\footnote{\textit{See Letter and Memorandum from The Muslim News to the Select Committee on Religious Offences in England and Wales (Aug. 8, 2002), available at http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/idrelof95/2102303.htm.}}

Another option, supported primarily by Muslim groups, is for the law to be changed so as to protect the fundamental tenets of all faiths from ridicule or vilification.\footnote{\textit{See Daoud Rosser-Owen, A Muslim Perspective, in CHURCH, STATE AND RELIGIOUS MINORITIES} 82, 84–85 (Tarig Modood ed., 1997).} Whilst this proposal has been put forward by a prominent Law Lord,\footnote{This was the preferred option of Lord Scarman in \textit{R v. Lemon}, [1979] A.C. 617, 658 (H.L.) (U.K.).} and has been endorsed by a minority of the Law Commission,\footnote{\textit{See OFFENCES AGAINST RELIGION, supra note 159, ¶ 8.5.}} it would be very difficult to implement in practice. Not only could it lead to draconian restrictions on free speech (with judges at risk of being swamped by complaints that any criticism of a faith’s beliefs constituted “blasphemy”), but the courts would almost certainly have to face the challenge of defining the
nebulous term “religion”—a challenge made all the more daunting by virtue of the fact that the U.K. is currently the home to a wide range of faiths and belief systems. Mindful of the problems of initiating change in this area, it is perhaps hardly surprising that the British government has, to date, refrained from committing itself to reforming the nation’s blasphemy law.

The government’s inertia in the field of blasphemy stands in marked contrast to its determination in recent years to plug what Minsters previously called a “gap” in the law—the fact that it was an offence to incite racial but not religious hatred. The Special Rapporteur on Freedom of Religion or Belief expressed disquiet about this issue in 2005, echoing earlier concerns of the Committee on the Elimination of Racial Discrimination, that the law in Great Britain failed to criminalize incitement to religious hatred. Given that the ICCPR prohibits any “advocacy of . . . religious hatred that constitutes incitement to discrimination, hostility or violence” and that the 1981 U.N. Declaration places states under a duty “to adopt criminal law measures against organizations that incite others to practice religious intolerance,” Britain’s failure to outlaw incitement to religious hatred was seemingly contrary to its international obligations. However, this problem appears now to have been resolved with the enactment of the Religious and Racial Hatred Act 2006, which makes it (for the first time) unlawful to incite hatred on religious

---

169 See NATIONAL STATISTICS, supra note 4.
170 For example, the Secretary of State for Constitutional Affairs, Lord Falconer, has merely spoken of the need to “undertake a proper consultation with the public” prior to any reform of the law of blasphemy. 674 PARL. DEB. H.L. (5th ser.) (2005) 168 (U.K.).
171 Id. at 162.
172 On the offence of incitement to racial hatred, see The Public Order Act, 1986, c. 64, §§ 17–29 (U.K.).
175 ICCPR, supra note 152, art. 2(2).
176 LERNER, supra note 119, at 35. Although a duty to outlaw incitement to religious hatred is not expressly mentioned in the 1981 U.N. Declaration, it can be implied from Article 2(1) of the Declaration, which provides that no discrimination should stem from “any State, institution, group of persons, or person on the grounds of religion or other belief.” 1981 U.N. Declaration, supra note 5, art. 2(1).
grounds in England and Wales. It is expected that this legislation will, in
conjunction with existing powers, be used to tackle the increasingly serious
problem of people in the U.K. being attacked and harassed because of their
religious beliefs.

In pursuing legal reform in this area, government Ministers have
distinguished between the protection of religious beliefs and religious
communities, with only the latter deemed worthy of being safeguarded from
hateful attacks. Such a distinction can be maintained under international
human rights law. For example, Asma Jahangir, the current Special
Rapporteur on Freedom of Religion or Belief, has noted that “[c]onstruing all
expressions defaming religion as human rights violations would not only limit
freedom of expression . . . but would also give rise to religious intolerance.”
Her comment makes it clear that the 1981 U.N. Declaration does not impose an
obligation on states to outlaw blasphemy, and she has also acknowledged that
“freedom of expression is as valuable as the right to freedom of religion or
belief.” Yet where a nation retains a blasphemy law, it appears that it should
not be drafted or interpreted in a way that is discriminatory. This then is the
fundamental problem with the common law offence of blasphemy in the
U.K.—it accords protection only to one religious group.

178 The Racial and Religious Hatred Act, 2006, c. 1, § 4(3), makes it clear that this legislation extends
only to England and Wales. In Northern Ireland, separate legislation makes it unlawful to incite religious
hatred. The Public Order (Northern Ireland) Order, 1987, SI 1987/463 (N. Ir. 7), arts. 8–17. In Scotland,
proposals have been put forward for the creation of a religious incitement law. See generally SCOTTISH
EXECUTIVE, TACKLING RELIGIOUS HATRED: REPORT OF CROSS-PARTY WORKING GROUP ON RELIGIOUS
HATRED (2002).

179 For example, the Committee on the Elimination of Racial Discrimination was alarmed by claims of
Islamophobia in Britain after 9/11. See 2003 Concluding Observations, supra note 174. Concern was also
expressed by the Special Rapporteur on Freedom of Religion or Belief about a number of reported attacks on
Muslims in the wake of the 2005 suicide bombings in London. See Report on Cases Submitted, supra note
173, ¶ 393. Finally, the Human Rights Committee has also commented on this issue. HRC, Concluding
Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, ¶ 14,


(Oct. 25, 2006).

182 2004 Special Rapporteur Report, supra note 95, ¶ 72.

183 See The Belgian Linguistics Case, 1 Eur. H.R. Rep. 252 (1968) (holding that even if a State guarantees
a right that is not formally recognized under the ECHR, it must nonetheless ensure that there is no
discrimination in the exercise of that right).

184 Other Christian denominations are protected by the law of blasphemy when their beliefs overlap with
those of the Church of England. See SELECT COMMITTEE, supra note 144, at 38, 46–47.

A. Lessons from the United Kingdom?

The 1981 U.N. Declaration has been described as “a milestone in the progressive development of human rights norms,” and as “the most important international instrument regarding religious rights.” Yet notwithstanding such considerations, there are a number of grounds on which the 1981 U.N. Declaration can be criticized. To begin with, it is phrased in terms that are generally vague and imprecise because its drafters had to produce a document that was capable of superseding Cold War rivalries as well as accommodating differences between the Islamic and non-Islamic world. In addition, the 1981 U.N. Declaration is much weaker than comparable international documents, such as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), in view of the obligations imposed on states to tackle discrimination. And finally, the Declaration’s legal status has been questioned by some given that it was adopted as a General Assembly Resolution, although others insist that it has a “certain legal effect.” On this point, one commentator has noted that “however desirable a legally binding instrument may be for the protection of freedom of religion or belief, there seems to be little inclination on the part of at least the majority of states to incur further legally binding obligations in this domain.” Thus, with claims that “the time is not yet ripe for a convention” on freedom of religion or belief, radical reform of the 1981 U.N. Declaration seems unlikely in the short term. But if this were not the case—and the international community chose to embark upon a review of the 1981 U.N.

187 See generally MALCOLM EVANS, RELIGIOUS LIBERTY AND INTERNATIONAL LAW IN EUROPE 227–57 (1997). Because a General Assembly Resolution has only the status of a recommendation, it is not automatically legally binding. Id. at 257.
188 See generally MICHAEL BANTON, INTERNATIONAL ACTION AGAINST RACIAL DISCRIMINATION 50–73 (1996).
189 See EVANS, supra note 187, at 257.
190 Sullivan, supra note at 185, at 488.
192 EVANS, supra note 187, at 261.
Declaration—there are a number of areas in which it could look to the U.K. for guidance.

First, reform based on the British model would remedy the Declaration’s failure to include the right to change one’s religion or belief in express terms.\textsuperscript{193} However, there is no real likelihood of reform in this area because the Islamic states that vetoed the inclusion of this right when the Declaration was originally drafted would doubtlessly object again.\textsuperscript{194} Secondly, given that the terms “religion” or “belief” are not defined in the Declaration,\textsuperscript{195} guidance may also be had from the United Kingdom. British courts have defined the two essential attributes of a “religion” as being “faith in a god and worship of that god,”\textsuperscript{196} although, a more flexible test is that of the High Court in Australia where “religion” has been held to include “belief in a supernatural Being, Thing or Principle [and] the acceptance of canons of conduct in order to give effect to that belief.”\textsuperscript{197} A third way to improve the 1981 U.N. Declaration would be to take account of British law in relation to the principle of children’s rights,\textsuperscript{198} which (under Article 5 of the Declaration) are ill-defined and seen as being merely synonymous with the interests of parents.\textsuperscript{199} Fourthly, there is no mention of equality before the law under the 1981 U.N. Declaration, whereas this has long been the guiding principle of the British Constitution.\textsuperscript{200} And finally, looking beyond the U.K., the inclusion of a provision based on Article 13 of the ECHR would resolve the lack of effective remedies for violations of human rights or formal mechanisms for guaranteeing redress under the 1981 U.N. Declaration.\textsuperscript{201}

\textsuperscript{194} See TAHZIB, supra note 191, at 168.
\textsuperscript{195} Neither the Universal Declaration of Human Rights nor the ICCPR specifically provides a definition of the term “religion.” The Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess. 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948). However, the Krishnaswami Study suggested that the words “religion or belief” would “include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism.” ARCO\textsc{t} KRISHNASWAMI, STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES 1, U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No. 60.XIV.2 (1960).
\textsuperscript{196} Re S. Place Ethical Soc’y, [1980] 1 W.L.R. 1565, 1572 (Eng.).
\textsuperscript{197} See Church of the New Faith v. Comm’r of Pay-Roll Tax (Vic.), (1983) 154 C.L.R. 120, 136 (Austl.).
\textsuperscript{199} On Article 5 of the 1981 U.N. Declaration, see TAHZIB, supra note 191, at 175–79.
\textsuperscript{201} Article 13 of the ECHR provides that: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” ECHR, supra note 26, art. 13.
There are certainly a number of other ways in which the 1981 U.N. Declaration could be improved by taking account of British law. Rather than using nation states as a benchmark in this area, more appropriate comparisons can be made with those international human rights instruments that outlaw discrimination on the grounds of race or sex. However, until there is a political will to reform the 1981 U.N. Declaration, “lessons” from the U.K. (or elsewhere) will be little other than mere conjecture.

B. Lessons for the United Kingdom?

At first sight, one might presume that there is nothing for the U.K. to learn from the 1981 U.N. Declaration. After all, the Declaration’s final text is, as noted above, poorly drafted and modest in scope. In addition, the U.K. has generally been thought of as having a good record of religious tolerance, and is unlikely to be included among those states that give the U.N. Special Rapporteur a cause for concern. And finally, the enactment of the Human Rights Act 1998—which has even been welcomed by the Human Rights Committee of the ICCPR as an “important step” in respect of the U.K.’s compliance with its human rights obligations—guarantees freedom of religion and belief in express terms. However, on closer inspection, the 1981 U.N. Declaration may be of relevance to the U.K. for three reasons.

First, the Declaration is a useful benchmark by which one can consider the legality, under international human rights law, of the U.K.’s laws and policies in the field of religion and belief, particularly since the British Government has not granted individuals the right to submit complaints directly to the Human Rights Committee of the ICCPR. Secondly, there is nothing to prevent the U.K. courts from using the 1981 U.N. Declaration as an aid to interpretation when considering matters relating to religion or belief under Article 9 of the

---

204 See discussion supra Part I.B. (stating that the U.K. has never been found guilty by the European Court of Human Rights of violating Article 9 of the ECHR).
206 See 2001 Concluding Observations, supra note 179, ¶ 3.
208 See generally David Harris, Introduction, in THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND UNITED KINGDOM LAW 1, 1–68 (David Harris & Sarah Joseph eds., 1995).
ECHRR. And thirdly, mindful of the diversity of contemporary Britain—and the fact that there are currently more “religious” minorities in the U.K. than at any other time in recent history—\textsuperscript{210}—the Declaration is a potentially useful tool by which religious organizations (especially ones that lack political influence) can generate publicity when campaigning for equal treatment.

In view of the constitutional guarantees that currently exist in the U.K., the impact of the 1981 U.N. Declaration on British law in the future seems destined (as has been the case for the last quarter of a century) to be minimal. That said, it would also be unwise for the U.K. to ignore a document which is significant in the international arena, and in the drafting of which its representatives played an important role.\textsuperscript{211}

\textbf{CONCLUSION}

It is ironic that in comparison to the United States—\textsuperscript{212}—where the functions of church and state are separate in spite of high rates of church attendance—\textsuperscript{213}—an Established Church in England should maintain close ties with the state, despite largely empty pews.\textsuperscript{214} The question whether the Anglican Church should continue to enjoy its privileged status is an emotive one, and a strong case has been made for its disestablishment.\textsuperscript{215} Even though reform in this area can be opposed on account of the Church’s significant role in shaping the nation’s history,\textsuperscript{216} it seems increasingly difficult to reconcile the privileges of a religious organization which “owes its present condition to political changes

\begin{footnotes}
\item[210] See generally NATIONAL STATISTICS, supra note 4.
\item[211] See TAHZIB, supra note 191, at 180 (citing Sidney Laskofsky, \textit{The U.N. Declaration on the Elimination of Religious Intolerance and Discrimination: Historical and Legal Perspectives, in Religion and the State: Essays in Honour of Leo Pfeffer} 440 (James E. Wood ed., 1985)).
\item[212] See, e.g., Lemon v. Kurtzman, 403 U.S. 602 (1971).
\end{footnotes}
engineered by Henry VIII and consolidated by Elizabeth I\textsuperscript{217} with a secular, albeit religiously diverse, nation in the 21st century.\textsuperscript{218} The 25th anniversary of the 1981 U.N. Declaration would thus appear to be an appropriate time for a frank and well-informed public debate on the extent to which the Church of England should continue to enjoy its unique constitutional status.

At one level, the Church of England’s privileges can hardly be said to detract significantly from the U.K.’s generally good record in the field of protecting religion or belief.\textsuperscript{219} Yet at another, even if the privileges of the Church of England can be reconciled with the letter of the 1981 U.N. Declaration, one may question whether they are consistent with the “spirit” of this international document, which seeks to curb discrimination on grounds of religion or belief.

The eminent peer and political theorist, Bhikhu Parekh, has pointed out that minority groups “deserve not only equal religious . . . rights but also an official acknowledgement of their presence in . . . the symbols of the state.”\textsuperscript{220} In this respect the privileges of the Anglican Church are especially problematic. Although U.K. law is ostensibly “perfectly impartial in matters of religion,”\textsuperscript{221} the constitutional status of the Church of England nonetheless symbolizes a disparity of treatment between the nation’s religious organizations. The potential impact of this symbolism should not be ignored, especially in respect of those minority faith communities where a significant proportion of people appear to be alienated from the British state.\textsuperscript{222} Tony Blair, the Prime Minister, has spoken of his wish that minority religious groups will be “seen as an integral part of British society,” and that they will feel “fully accepted and catered for in Britain.”\textsuperscript{223} Unpalatable as it may be for some, the constitutional

\textsuperscript{218} See NATIONAL STATISTICS, supra note 4.
\textsuperscript{219} See discussion supra Part II.
\textsuperscript{220} Bhikhu Parekh, Religion and Public Life, in CHURCH, STATE AND RELIGIOUS MINORITIES, supra note 165, at 16, 19.
\textsuperscript{221} Re J. M. Carroll, [1931] 1 K.B. 317, 336 (Eng.); see also Neville Estates, Ltd. v. Madden, [1961] 3 All E.R. 769, 781 (stating that “between different religions the law stands neutral”).
\textsuperscript{222} The frustration of many British Muslims with the U.K.’s secular liberal values was demonstrated recently when an opinion poll found that 40 per cent of British Muslims would support the introduction of Shari’a law in areas of Britain which are predominantly Muslim. ICM Research Polls, Muslim Poll, SUNDAY TELEGRAPH, Feb. 2006, available at http://www.icmresearch.co.uk/reviews/latest-polls.asp (follow hyperlink for “Muslim Survey” under “February 2006”).
provisions that elevate one religion above all others in the U.K. represent an impediment to these noble aims.