

An Ill-Disguised Defence of Religious Privilege

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The RELIGARE project set out four years ago to explore policy responses to the emerging conflicts between equality and non-discrimination laws and freedom of religion or belief against the background of the ‘social reality’ of widening religious and cultural diversity in Europe.

This ambitious project has produced interesting papers and resources, but its short and low-key final report¹ is fundamentally flawed by a patent bias in favour of religion: even on page one it states the expectation that the international courts will in future have a ‘greater role’ in protecting freedom of religion or belief without any balancing message that the courts will also be called on to protect the rights of vulnerable minorities oppressed by religion.

The problem is that the project starts from an unexamined assumption that religion is an unmitigated good.² Nowhere is there any examination of the nature of religion or belief, the meaning of secularism, the propositions and policies that religions support, the role that religious institutions play in our communities, or public attitudes towards religion as evinced in surveys and statistics of churchgoing or the like.³ These omissions are not excused by the project’s focus on matters lying within the competence of the EU; they are essential prolegomena to any such broad study as that undertaken by RELIGARE.

Unsurprisingly, therefore, the RELIGARE report’s recommendations are a mix of the useful, the irrelevant and others, examined below, that risk undermining equality, secularism, democracy and the rights of vulnerable individuals such as women, gays and lesbians.⁴

This is not the place to remedy the gaping deficiencies in the report, but an indication of what it fails to cover is necessary before I review briefly some of RELIGARE’s problematic recommendations.⁵

The Nature of Religion or Belief

Religions (and the same is true of explicit non-religious beliefs such as Humanism) invariably make claims about the nature of life and the universe and draw conclusions about how one should behave. It is this intellectual content that makes religion or belief profoundly different

¹ Marie-Claire Foblets and Katie Alidadi, Religion in the Context of the European Union: Engaging the Interplay between Religious Diversity and Secular Models, (RELIGARE Summer 2013).

² RELIGARE starts by talking of ‘freedom of religion or belief’, but usually shortens this prejudicially to ‘freedom of religion’, and the report’s focus is almost always on religion and religious organisations.

³ I believe this is true also of the supporting papers produced by the project, but I cannot be categorical as I have not read them all.

⁴ See M Malik, ‘From Conflict to Cohesion: Competing Interests in Equality Law and Policy’ available at <http://www.edf.org.uk/blog/wp-content/uploads/2009/02/competing-rigts-report_web.pdf> (sic).

⁵ The European Humanist Federation’s submission to RELIGARE (which I prepared) provides some of the missing considerations. It is available at <[http://humanistfederation.eu/ckfinder/userfiles/files/position/religion%20in%20society/160-EHF-submission-to-Religare-project%20\(1\).pdf](http://humanistfederation.eu/ckfinder/userfiles/files/position/religion%20in%20society/160-EHF-submission-to-Religare-project%20(1).pdf)> and, with some updated references, at <<http://david-pollock.org.uk/religion/religion-in-society/>>.

from other strands covered by equality law – race, gender, nationality, disability, sexuality and so on. Unlike any of them, religions

- can (though not at will) be chosen, put aside or selectively followed;
- make extensive and mutually incompatible claims about the nature of life and the world, claims that are by their nature rarely capable of being definitively settled;
- deliberately influence their followers’ attitudes and behaviour, often condemning the beliefs, attitudes and behaviour of others;
- are in principle and often in practice in competition with each other: evangelists come to our front doors, set up television and radio stations and conduct crusades to make converts;
- sometimes put their followers under an obligation to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable;
- are expressed through organisations that are often wealthy and that in the name of their faith sometimes exercise power far outside the realm of religion, influencing social attitudes and seeking to change the way others live, sometimes by recruiting the power of the state.

Race, gender, sexuality and other ‘strands’ in equality law provide (other things being equal) no respectable reason for treating people in other ‘strands’ differently, and people so grouped ask only to be treated fairly. Rarely if ever do these other characteristics result in clashing demands, save perhaps in priority for action. Religious groups, however, often make judgements about those in other ‘strands’ and demand special treatment in the form of legal privileges and exemptions. When difficulties arise in reconciling religious freedom with equality for other strands, it is generally religion with its propositions and injunctions that is the cause of the difficulty, not the rest of society with its movement towards non-discrimination. Religion, in other words, is an anomaly in equality law.

Secularisation and Secularism

Most people in Europe continue to adhere in some sense to a religion, fewer by far actively practise one, and fewer still hold or can even describe the essential teachings of their religion (see below). For many people their religion nevertheless plays a part in their identity, in creating meaning in their lives and in shaping their attitudes and behaviour; for a minority it is of paramount importance. Many others ignore religion, some positively reject it, a few are explicitly hostile. A small number adhere to explicit non-religious beliefs, principally Humanism, and large numbers share its attitudes and beliefs without so labelling them.

Learning from the horrors of the religious wars of past centuries, Europe has moved a considerable distance towards institutional secularisation,⁶ but the churches still have

⁶ However, an early claim in the report (1.1) is highly contestable: is it actually true that ‘the majority of national legislatures ... have made the historic decision to secularise State law’? Is it not closer to the truth that states have drifted into quasi-secularism as democracy confronted diversity and met demands to end discrimination? In most states (the exceptions are France and Turkey plus – insofar as engaged neutrality is secularism – the Netherlands, Belgium and Bulgaria) there have been serial ad hoc changes, not a principled decision to adopt secularism.

significant influence, both with governments and in society. This is partly because morality was for centuries tied to religion, so religious doctrines are assumed to embody moral teachings, but it is partly also because during their past dominance the churches became wealthy, gained lasting political influence and established institutions – hospitals, schools, universities – that survive to this day, now almost always supported by public funds.⁷

None of this background is examined by RELIGARE; nor does it examine the principles of secularism and its strong claim to be the best guarantor of freedom of religion or belief. It does not take account of the unresolved disagreement between those secularists who support separation of religion and politics and those who support the neutral but potentially engaged state (as with so-called ‘pillar constitutions’). Instead, and extraordinarily, it classifies models of church–state relations entirely from the viewpoint of the churches (see section 1.1 and the table on page 6) and fails to acknowledge that separation does not necessarily entail relegation of religion to private life: a secular state can allow religious organisations to engage in politics in the same way that any other NGO does, simply as a body of citizens with a shared interest.

Religious Propositions, Policies and Practices

Religion’s influence in society is undoubtedly often benign and uncontroversial, as when religious groups provide relief to the poor, help asylum seekers, and plead the cause of the oppressed to politicians. But in other ways the Christian churches – and the other religions – are socially reactionary.⁸ Of course, religious claims and teaching have evolved over time. Bible literalism is now confined to a fringe of Christianity, women are rarely now treated as appendages to fathers or husbands, and single parenthood, divorce and abortion – anathema in living memory – have been accepted by a majority of Christians as regrettable necessities or even normal. But significant religious organisations still too often apply the moral codes of the past, shaped hundreds or even thousands of years ago in circumstances utterly unlike ours today. They have fought decriminalisation of homosexuality and still resist gay marriage and try to prevent gay couples from adopting children. They opposed legalisation or liberalisation of divorce, fighting bitterly to the end in Malta only three years ago.⁹ They opposed legalisation of abortion, and the Roman Catholic Church still campaigns ceaselessly to keep it illegal or to drive it back underground – regrettably succeeding recently in Spain.¹⁰ The Holy See opposes sexual and reproductive health and rights in the United Nations, preventing inclusion in aid packages of contraception and even condoms as protection against AIDS, though this is noticed mainly outside Europe (within Europe its denunciations are largely ignored). Some religious bodies have tried to maintain criminal sanctions against the religious offence of blasphemy, and they have even succeeded in Ireland. Elsewhere they flirt with laws

⁷ For example, in an authoritative article in the *Frankfurter Rundschau* (19 December 2010)

Carsten Frerk estimated such public funding of religious institutions in Germany at €10 billion a year (see ‘Die Caritas-Legende’, www.fr-online.de/meinung/gastbeitrag-die-caritas-legende,1472602,5027372.html).

⁸ Brevity demands broad generalisations; there are, of course, honourable exceptions, more or less numerous, to all the points cited in this and the following paragraph.

⁹ In the campaign leading to the divorce referendum on 28 May 2011, the Roman Catholic Church spent hugely under the banner ‘Christ Yes, Divorce No’.

¹⁰ Pressure from the Catholic Church, which organised large street demonstrations, led the conservative government to reverse reforms made by the previous socialist government that allowed terminations without restrictions until the fourteenth week of pregnancy – reforms that did not lead to a significant rise in the number of abortions (in fact, in some regions, such as Madrid, the total actually fell). Spain is the first country within the European Union to reverse legalisation of abortion (see *Daily Telegraph*, London, 20 December 2013, <www.telegraph.co.uk/news/worldnews/europe/spain/10531811/Spain-approves-new-restrictive-abortion-law.html>).

against insulting or mocking religion. They are still mostly successful in preventing the legalisation, whatever the safeguards, of assisted dying or euthanasia. They maintain universally that they have the right to instruct children, at public expense, in their own religious beliefs, paying scant attention to children's right to freedom of thought, conscience and religion (UN Convention on the Rights of the Child, Article 14).

The right to manifest a religion might well include the right to denounce in inflammatory terms people whose nature or behaviour offends one's religious principles: gays (think Westboro Baptist Church), blacks (think Dutch Reformed Church in apartheid South Africa),¹¹ abortion doctors (even urging that they be murdered, as has happened too often in the United States), unbelievers and 'infidels' who follow other religions (including apostates for whom in Islam the death sentence is routinely demanded), disabled people (think Calvin and demonic possession) and so on. The question is not whether these examples are typical – they are not – but whether RELIGARE upholds such religious freedoms. This is not clear from the report, but if RELIGARE does *not* uphold such freedoms, then the boundary it draws between these and other manifestations that it (and almost everyone) does uphold (for example, the right to wear a religious badge in public) remains undefined. This is a difficult frontier, and RELIGARE has ducked the challenge of trying to demarcate it.

Public Attitudes towards Religion

Finally, in this rapid survey of what RELIGARE leaves unexamined, there is the fact that religion is of ever decreasing significance in Europe, as witnessed by the EU's large Eurobarometer surveys across all EU states. Eurobarometer found in 2005 that only 52 per cent of people believed in God while 18 per cent rejected outright even the idea of 'some sort of spirit or life force'.¹² In 2012, 23 per cent called themselves atheist or agnostic.¹³ When asked to pick up to three from a list of twelve 'values', people in Europe twice placed religion last: only 5 per cent chose it as important to them personally, and only 3 per cent saw it as a value representative of the EU.¹⁴ Surveys also show the abysmal ignorance of self-proclaimed Christians about the basic propositions of their religion.¹⁵ Plainly, although the majority when asked still identify with Christianity, that affiliation means little to most of them, making it quite misguided to put significant emphasis on it. Meanwhile, popular morality is secular and highlights instead the need for fairness and equality.

The problems that arise from this progression from an authoritarian age of religious privilege in

¹¹ In volume 5 of its final report, the Truth and Reconciliation Commission found that 'Christianity, as the dominant religion in South Africa, promoted the ideology of Apartheid in a range of different ways that included Biblical and theological teaching in support of Apartheid; ecclesiastical Apartheid by appointing ministers to congregations based on race, and the payment of unequal stipends; a failure to support dissident clergy who found themselves in confrontation with the state; and a failure to provide economic support to those most severely affected by Apartheid' (see <www.justice.gov.za/trc/report/finalreport/Volume5.pdf>).

¹² Special Eurobarometer 225, 'Social Values, Science and Technology' (European Commission, June 2005) – see <http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf>.

¹³ Special Eurobarometer 393, 'Discrimination in the EU in 2012' (European Commission, November 2012) – see <http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf>.

¹⁴ Eurobarometer 79, 'Public Opinion in the European Union' (European Commission, Spring 2013) – see <http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_anx_en.pdf>.

¹⁵ For example, see the Ipsos MORI poll for the Richard Dawkins Foundation for Reason and Science (UK), February 2012 – see <<http://www.ipsos-mori.com/Assets/Docs/Polls/ipsos-mori-religious-and-social-attitudes-topline-2012.pdf>>.

near mono-credal societies to a democratic age of human rights in distinctly multi-credal societies form the focus of the RELIGARE project. Our old laws and traditional attitudes, shaped around a Judeo-Christian culture, are being asked to adapt not only to an unprecedented rise in disbelief and disenchantment with religion, but also to the arrival of (mainly immigrant) followers of other world religions who, on average, are probably more devout than most Christians. Not only that, but with more moderate believers relatively indifferent, Christianity's more fervent and uncompromising followers gain in influence. Sometimes they find themselves making common cause with the ardent believers of non-Christian religions. Under the banner of conscientious objection we see militant attempts to use politics and the law to preserve privileges, establish exemptions to accommodate beliefs and practices, and restrict the liberty of others to live as they wish.¹⁶

None of this, however, finds a place in the thinking of the RELIGARE team. In their report minorities are almost always religious minorities and rights (except for general references to human rights) are almost always those of religious believers or institutions; the rights of groups liable to suffer at the hands of religion go unexamined, and homosexuality (never named) is seen only as a problem for religion. There are formidable religious campaigns everywhere against abortion, gay marriage and assisted dying – but no one is being forced to have an abortion, to marry someone of the same sex or to be assisted to die.¹⁷ Instead, religious zealots are trying to prevent others from having such freedoms. These attempts to curtail the liberty of others are seen as virtuous because based on religion, yet any interference with the right to wear a cross or to refuse hotel rooms to LGBT couples is roundly denounced.

¹⁶ On this see my articles 'The Limits to Legal Accommodation of Conscientious Objection' at <<http://david-pollock.org.uk/religion/the-limits-to-legal-accommodation-of-conscientious-objection/>> and 'Is Conscientious Objection an Absolute Right?', in A Haworth (ed), *Right to Object? Conscientious Objection and Religious Conviction* (British Humanist Association 2011).

¹⁷ For example, the 'One of Us' movement is a fundamentally religious campaign across Europe to outlaw not only abortion but also research using human embryonic stem cells (see <<http://www.oneofus.eu/initiative-explanation/>>). Its president, Grégor Puppincq, is director general of the European Centre for Law and Justice, an offshoot of US evangelist Pat Robertson's US campaigns for conservative Christian values. The European Centre for Law and Justice collaborates with the Roman Catholic Church and works with some success in the Council of Europe and the European Court of Human Rights. Puppincq was central to the successful campaign by the churches to overturn the unanimous chamber judgment against Italy's law compelling the display of a crucifix in every classroom in all state schools (see Pasquale Annicchino, 'Winning the Battle by Losing the War: the Lautsi Case and the Holy Alliance between American Conservative Evangelicals, the Russian Orthodox Church and the Vatican to Reshape European Identity' (2011) 6 *Religion and Human Rights* 213–19). Puppincq sees moves towards gay rights as an attempt to 'impose acceptance of homosexuality' (see <www.aleteia.org/en/politics/documents/manif-pour-tous-lgbt-rights-and-gender-in-the-council-of-europe-2092006>). The campaign in France against gay marriage was spearheaded by the Roman Catholic Church; there were violent protests despite the general public support for the change (see <www.catholicherald.co.uk/news/2013/06/10/french-catholic-leader-calls-for-continued-opposition-to-same-sex-marriage/>). Opposition to euthanasia is largely religious, again despite public support. Well-financed groups with strong religious backing such as European Dignity Watch and Care are skilled lobbyists in the European institutions, and the Catholic bishops were central to the successful opposition to EU funding of medical research using human embryonic stem cells (see <www.comece.eu/site/en/press/pressreleases/newsletter.content/1483.html?SWS=9c10870f2d9549bcec86fc1e5660118a>). A massive and at root religious lobbying campaign was successful in persuading MEPs to turn down by the narrowest margin a resolution supporting sexual reproductive health and rights (see <www.aleteia.org/en/politics/article/the-estrela-draft-resolution-remains-morally-unacceptable-5894733628964864>). There are endless other examples of attempts by religious groups to curtail the freedoms of others who do not share their beliefs.

Nor in its one-sided approach does RELIGARE acknowledge that courts of law, since they are not competent to examine the plausibility of religious beliefs or, unless *in extremis*, their effects, but only whether they are being treated even-handedly by the state and the law, must give equal consideration (including, in RELIGARE's view, financial support and broadcasting platforms) to Scientology with its extortionate hard sell of its hierarchy of auditing, Christian Science with its ban on blood transfusions, and beliefs from the even wilder fringes of religiosity. Here the assumption that religion is benign hits the buffers. Is the law not only to avoid taking paternalistic steps to safeguard believers from their own folly (which is arguable), but actually to *support* such religions? Is not equal treatment best delivered by equal indifference rather than equal support?

RELIGARE's Two Principles

So what, after ignoring all this background, does RELIGARE propose?

It bases its recommendations on two 'principles' – 'inclusive state neutrality' and 'justice as even-handedness' – but these are never defined, scarcely illustrated, only invoked. Perhaps the need to win agreement from its large team, drawn from thirteen universities across Europe, frustrated anything more explicit, but the result is that they are reduced almost to slogans. One can recognise their well-intentioned aims while doubting if such unfocused feel-good terms can sustain the weight placed on them. What about justice as justice? Even-handedness is valuable as between parties in the same circumstances, but otherwise it risks decisions being based on splitting the difference.¹⁸

'Inclusive state neutrality' is similarly undefined but is said to reject any form of separation or state neutrality that 'could be interpreted as public hostility towards churches/religious communities and/or secular values', which reveals a strange notion of neutrality. After rejecting 'hostile' neutrality, RELIGARE immediately adds that 'experience shows that it is impossible to rigidly uphold a strict separation between and a strict neutrality towards religion and belief'. This is an extraordinary assertion to make without argument on a matter central to the report. Not only is it far from clear that experience shows any such thing, but RELIGARE leaves unexamined the possibility that aiming at neutrality, even with occasional lapses,¹⁹ may be preferable to settling for a deliberate rejection of separation.

Of course, RELIGARE produces some sensible suggestions. The proposal to base any controls over wearing of religious clothing or symbols in the public space on a distinction between different types of space (common, political, institutional) and the different functions (as private citizens or as state representatives) of people in those spaces is welcome, if not original. Strangely, however, these distinctions make no appearance in their recommendations. The recommendations on family issues appear to make good sense to this novice in the tangled field of private international law, with the exception of the broad endorsement of alternative dispute resolution as an option without a single mention of the need to uphold the best interests of any children involved.

But elsewhere its recommendations are open to criticism, sometimes severe. I shall confine my

¹⁸ See also below on reasonable accommodation.

¹⁹ It is a distortion – in fact, a denial – of secularism, which as a political principle is neutral by definition, to use it to prevent religious groups from taking part in public life or (worse) to curtail the rights of vulnerable, often immigrant, minorities, and it is regrettable that something like this has happened from time to time in small parts of Europe.

detailed comments to two questions about employment – ‘reasonable adjustment’ and the ‘collective dimension’ – and to the matter of state support and the role of the European Union.

Employment: ‘Reasonable Adjustment’

RELIGARE’s bias in favour of religion²⁰ comes out starkly in its treatment of issues that may arise in employment. These, it says, may include demands for exemption from duties or customary practice:

issues such as workers refusing to perform certain job functions (registering same-sex partnerships; handling alcohol or pork), refusing to adhere to dominant socialising customs (for example, shaking hands with people of the opposite sex), workers challenging the position of women in managerial positions in the workplace, workers seeking to be excused from parties at work, among others. (2.1.1)

The report offers no criteria by which such claims are to be judged, proceeding instead on the assumption that wherever possible they should be met. But this should not be taken for granted. Are we to accept refusal to recognise ‘women in managerial positions’? Apparently so, for the report supports its position by quoting an article on reasonable accommodation: ‘Instead of requiring ... people to conform to existing norms, the aim is to develop a concept of equality which requires (mutual) adaptation and change.’²¹ So employers must, if possible, accede to objections to women managers. But RELIGARE’s justificatory quote is about disability, a very different context – unless of course we are being invited to see religious belief as a disability!

The report jumps from two examples in which the EU law on indirect discrimination appears not to have been properly applied to proposing a legal presumptive right to ‘reasonable accommodation’. A footnote says that there are ‘important differences’ between reasonable accommodation and indirect discrimination: to discover what RELIGARE has in mind, one must refer to an earlier paper which identifies that reasonable accommodation ‘concentrates on the situation of the individual employee’ rather than on his or her position as a member of a religious group.²² In other words, any demand counts if it is labelled religious by the employee.

RELIGARE does not define what is reasonable and offers an employer no defence against unpredictable personal and intransigent demands. This is unlike indirect discrimination, which looks objectively at whether a practice bears more heavily on a particular religious group than on the generality of employees. By contrast, reasonable accommodation is essentially a process of compromise, of splitting the difference. There are circumstances where this may in practice be sensible, but it is an unprincipled process: the more excessive the demands made, the more the concessions needed to reach accommodation.

²⁰ Among its occasional attempts at inclusiveness, a particularly silly example is the suggestion that ‘in the workplace employers should try to accommodate the religious practices of employees (notably, also of secular respondents)’ (2.1.1).

²¹ See, for example, LB Waddington, ‘Reasonable Accommodation – Time to Extend the Duty to Accommodate Beyond Disability?’ (2011) 38 (2) NJCM Bulletin: Nederlands Tijdschrift voor de Mensenrechten 186–98.

²² K Alidadi, ‘A Comparative Legal Study Addressing Religious or Belief Discrimination in Employment and Reasonable Accommodations for Employees’ Religious or Philosophical Beliefs or Practice’ (May 2012) – see < <http://www.religareproject.eu/content/comparative-legal-study-addressing-religious-or-belief-discrimination-employment-and> >.

RELIGARE argues fairly that it is not just the employer whose costs are relevant – religious employees also pay a cost in adapting to the work environment. But the report, in asking ‘What is a fair distribution of burdens?’, is so focussed on the religious employee that it does not recognise the impact of accommodating religious demands on such third parties as other employees, clients and users of services. Reasonable accommodation for the believer may ride roughshod over other people’s human rights.

As the earlier paper says, ‘Accepting the idea of reasonable accommodations ... entails a mentality switch’.²³ Indeed, a switch to a mentality where religion carries all before it. But in the face of some demands, it is proper to say ‘no’. Religion should not necessarily be a free ride. Priests accept some limitations on their freedom as result of their occupation – why should devout believers not do the same? Conscientious objectors in wartime do not get off scot-free; they have to do alternative war work or else go to jail. And in any case why should we indulge religion-based requests for special treatment above others? If I need to leave work early on Friday afternoons because my childminder has to leave at four o’clock every Friday, why should my Jewish colleague have a legal right to time off to observe the Sabbath but I no right to time off to look after my child? If I have a secular belief that alcohol is baneful, why should my conscience be ignored but a colleague whose shunning of alcohol is based on religion be indulged?

Employment: the ‘Collective Dimension’

RELIGARE often refers to the ‘collective dimension’, which it defines as ‘the human rights position of religious and non-religious communities of conviction’, but its treatment both in the report and elsewhere²⁴ is seriously wanting.

There can be no dispute (despite the obstacles imposed in some European states) that freedom of religion or belief includes the right to set up religious organisations such as churches which, like any other voluntary organisation, can have ‘legal personality’, so as to be able to own property, enter into contracts and so on. Further, it is plainly right that some religious organisations must have some exemptions from some laws: employment equality laws must allow for only Roman Catholics to be cardinals, or only Anglicans to be eligible to become the Archbishop of Canterbury.

But RELIGARE’s brief treatment of ‘religiously oriented’ employers is either naive or disingenuous. For example, it recommends that ‘[e]nforcement of human rights and equality legislation ... may require that religious employers/organisations be granted exemptions from anti-discrimination laws and labour laws’, without any recognition of either the fact that wide exemptions already exist under the Employment Directive or that arguably they have been implemented more generously than the Directive envisaged.²⁵

Moreover, the RELIGARE report fails to distinguish between types of religious employer. Not only are there churches, mosques and other institutions with the specific goal of advancing a religion or belief, but there are hospitals, children’s and retirement homes, schools and other public services that are run – usually at public expense – by institutions with a religious

²³ Ibid.

²⁴ In particular in: K Alidadi, ‘State of the Art Report: Religion and the Workplace’ (September 2010) <<http://www.religareproject.eu/content/state-art-report-religion-and-workplace>>.

²⁵ For example, EU Commission rulings are pending on a number of formal complaints that assert that the United Kingdom’s exemptions for religious schools go well beyond what the Employment Directive allows.

connection. There are also private commercial undertakings run along religious lines. When RELIGARE fails to distinguish between these categories or to recognise that there is a persistent, highly controversial campaign to treat such organisations as if they had human rights as such,²⁶ by default it takes the side of the religious zealots who, in a small way, are trying to re-create the autonomous church of mediaeval times, standing apart from the state as a rival authority. This is scarcely an exaggerated comparison: consider the United States, where hospitals and schools run by the churches – largely at public expense – are at the time of this writing winning exemptions from providing health insurance for certain procedures for their employees,²⁷ where even ‘religious’ commercial concerns are claiming the same exemptions,²⁸ and where religious bodies can effectively circumvent employment laws by classifying their employees as ministers.²⁹

And, once again, RELIGARE fails to recognise that the cost falls on third parties when, for example, pharmacists refuse to dispense contraceptives, when hospitals refuse to perform abortions, when hotels turn away gay couples or retirement homes assign them separate rooms, and when non-religious employees of any such institution find their careers blighted because they do not have the right religion or belief.

State Support

RELIGARE recognises that typical current patterns of state support for one or a few churches are increasingly seen as discriminatory and unfair as the number of religions or beliefs becomes greater, beliefs more personal and society more secular. According to the RELIGARE report, the jurisprudence of the European Court of Human Rights suggests the need to offer ‘equivalent benefits to *all*’ – fitting RELIGARE’s slogans of ‘inclusive state neutrality’ and ‘justice as even-handedness’. The report therefore suggests that tax relief should (subject to minimal conditions) be provided to all belief groups on the basis of their public benefit (which goes undefined but raises huge questions, as is demonstrated by the problems it creates in UK charity law); that (controversially) the state should finance the training of religious leaders; that (uncontroversially) subsidies be paid to protect ancient buildings as part of our historical heritage; and that access to public service broadcasting and perhaps support for it be more fairly allocated.

But despite devoting ten pages to state support, RELIGARE does not even mention the most egregious and objectionable form of support for religion from public funds – namely, direct subsidies. Examples are not hard to find: Denmark’s established church receives grants that meet about one-eighth of its budget – worth an estimated €100 million a year. The Evangelical-Lutheran Church of Finland gets 1.94 per cent of the proceeds of corporation tax, worth a similar sum. Belgium hands out taxpayers’ money to a variety of churches and other religious and non-religious belief organisations, totalling approximately €240 million in 2008,

²⁶ See, for example, resolution 1763(2010) of the Parliamentary Assembly of the Council of Europe, crudely amended in a last minute ambush

(<<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta10/eres1763.htm> >).

²⁷ Roman Catholic Archdiocese of New York v Sebelius, 12-cv-2542, U.S. District Court, Eastern District of New York (Brooklyn), in which the religious objection was extended even to facilitating third-party contraceptive health coverage for employees. The archdiocese was helped in the case by the Becket Fund, an intensely conservative law firm that has involved itself in European litigation, including Lautsi v Italy and Others.

²⁸ Sebelius v Hobby Lobby Stores Inc.

²⁹ Hosanna-Tabor Evangelical Lutheran Church and School v Equal Employment Opportunity Commission.

of which the Roman Catholic Church received about 90 per cent. Greece pays for the training, salaries and pensions of Greek Orthodox clergy and for their church buildings, and France maintains all pre-1905 Roman Catholic churches free of charge.³⁰

Now, the huge variety of arrangements – traditions, constitutions, laws – across Europe makes for intractable complexity, and imposing any single solution is effectively impossible. But was it impossible to point in a direction of travel in the shape of general principles, and to identify if not an end-state at least a wayfaring point in the middle distance, with a recommendation that, from our several current positions, we should travel towards it? Why not propose that state support be phased out over a sufficient period of years to allow the churches to build up voluntary giving by their followers? This is something the Church of England, with no public subsidy, has successfully done in recent years.³¹ Doing so would acknowledge the increasing secularisation of the population of Europe and avoid the problem (under RELIGARE’s policy of enthusiastic and impartially dispensed support) of more and more small religious groups – verging on sects – being encouraged and aided with public resources.

These are not wholly benign, uncontroversial organisations. Any case for state support has to be made at a meta level that argues that any belief is better than none and that, despite the failure to deal with sexual assaults on children by clergy, despite Vatican opposition to contraception and abortion in the face of overwhelming public support, despite the proliferation of fundamentalist sects, on balance religious bodies do more good than harm and the ‘social capital’ of communal life they promote is worth subsidising. Support for such propositions requires strong evidence, but RELIGARE produces none.

The European Union

Finally, RELIGARE calls for stronger and pro-active coordination by the European Union of national policy on religion in society, thereby not just calling in question Article 17(1) of the Treaty on the Functioning of the European Union (TFEU) with its abjuration of EU interference with ‘the status under national law of churches and religious associations’, but also running counter to the spirit of the times, which increasingly questions the ambition of ‘ever closer union’.

In so doing, RELIGARE compounds its bias in favour of the churches by recommending a ‘permanent consultative mechanism’ or ‘inter-service group on religion and belief’ for ‘internal and external networking’. The role for this group appears in part to be to prevent equality legislation from impinging on freedom of religion. Here again RELIGARE shows its support for the religious agenda over equality for gays and women and the non-religious, who too often have to rely on public services channelled through religious organisations. If the proposed unit were created, it would without doubt rapidly become the ‘small “liaison office” within the services of the European Commission’ that COMECE and CEC (the two

³⁰ See F Cranmer, ‘Notes on Church and State in the European Economic Area 2011’ (<www.law.cf.ac.uk/clr/networks/Frank%20Cranmer_%20Church%20&%20State%20in%20W%20Europe.pdf>).

³¹ The average member of the Church of England gives almost €400 a year to the Church, which in total raises about €550 million a year in voluntary donations from its congregations (see <www.churchofengland.org/media/1791665/2011financesstatistics.pdf>).

conferences of European bishops) jointly sought for the sake of ‘pre-legislative consultation’ in their secret memorandum to the EU Commission of June 2002.³²

RELIGARE also recommends that the EU enhance the dialogue with religions and non-religious belief organisations under Article 17(3) TFEU. It takes no note of the strong and principled opposition of European non-religious organisations, led by the European Humanist Federation, to a dialogue that privileges religion and belief organisations over other NGOs by providing them with routine access to the highest levels of the EU.³³ It does not recognise that in practice the dialogue offers disproportionate gains to the main Christian churches (owing to their funding, itself partly from public sources, and their history of involvement in diplomacy and state affairs) over non-Christian and non-religious organisations – the latter in particular since, although they in some sense represent between a third and a half of all European citizens, they are of their nature not mass membership organisations (why join an organisation defined by what you are not?).³⁴ If the Article 17 dialogue were to be given more weight as RELIGARE recommends, it would give the churches, with their undemocratic agendas, far more influence in the government of Europe.

That indeed is the principal likely effect of RELIGARE’s proposals, flying in the face of European public opinion – in 2007, Eurobarometer found that 46 per cent of people across the EU already thought religion had too important a place in society.³⁵ Is it sensible to strengthen its position even further?

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³² See

<<http://humanistfederation.eu/ckfinder/userfiles/files/our-work/Campaign%20opposing%20special%20rights%20for%20churches%20in%20the%20EU/The%20Churches%20submission%202002.pdf>>.

³³ See <<http://humanistfederation.eu/our-work.php?page=no-to-special-rights-for-churches-in-the-EU>>.

³⁴ Footnote 92 of the RELIGARE report reveals the inaccuracy of the report’s authors’ understanding, making the extraordinary claim that the European Humanist Federation, like the conferences of European bishops COMECE and CEC, is ‘represented (by their own “diplomats”) in Brussels’. COMECE, which is concerned solely with the Roman Catholic Church’s relations with the European Union, names on its website twelve staff in its secretariat and has large offices in Brussels. CEC has offices in Brussels, Strasbourg and Geneva, and names ten staff on its website just for its Church and Society Commission. By contrast, the EHF has no staff and a total budget of about €25,000, operating only through volunteers and with some assistance from one of its member organisations.

³⁵ Eurobarometer 66, ‘Public Opinion in the European Union’ (European Commission, September 2007) – see <http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf>.