For over four-hundred years, the Church of England has maintained a privileged status as the official established church in England. While the Church of England has lost many of its privileges in recent decades and no longer holds the high level of influence that it once enjoyed, religion is still favored and promoted by the government. In light of the close relationship between religious organizations and the government especially in the provision of social services and education, religion still has a valuable and significant role to play in England.

Recent developments in nondiscrimination law, specifically pertaining to laws prohibiting discrimination on the basis of sexual orientation, have led to a clash between religious liberty and gay rights. This clash erupted into an American-style culture war in 2007 when The Equality Act (Sexual Orientation) Regulations were introduced in Parliament with the full support of Prime Minister Tony Blair. These new regulations prohibited sexual orientation discrimination in the provision of goods, facilities and services and provided only a narrowly-defined religious exemption to the consternation of numerous leading religious organizations and faith leaders. This feeling of consternation morphed into public expressions of outrage by many in England’s religious community. Thus, this paper will thoroughly examine the various different responses of prominent individuals and organizations that comprise England’s diverse religious landscape to the controversial Sexual Orientation Regulations. Following this examination, the central role that religious exemptions play in this particular controversy and other similar controversies that also pit gay rights against religious liberty will be considered.

**Church-State Relations in England: A Brief Introduction**

The relationship between the institutions of “church and state” in England has been described by scholars as a “Partial Establishment.” While the Church of England has been recognized as the official established church for over four-hundred years, citizens and residents
of England enjoy a great amount of religious freedom and face limited religious discrimination in the twenty-first century.\(^1\) Consequently, England and the greater United Kingdom enjoy a diverse religious landscape.\(^2\) According to the *International Religious Freedom Report 2008* published by the U.S. Department of State, Christians comprise seventy-two percent of the population in the United Kingdom.\(^3\) A 2003 study estimated that twenty-nine percent of the population identify with the Church of England, ten percent with the Roman Catholic Church and fourteen percent with various Protestant denominations. Another study found that a higher number of Catholics now attend Sunday services than Anglicans. Due primarily to immigration, membership in Mormon, Pentecostal, Eastern Orthodox, and African churches has been growing in recent years. The United Kingdom has witnessed a growing Muslim community and an increasing number of “nones” or individuals who do not identify with any religion.\(^4\)

Over the last two centuries, the Church of England has lost many of the privileges and much of the influence that it once enjoyed as the official established church. The established status of the Church of England is still reflected in several different ways. First, England’s

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1. Stephen V. Monsma and J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies*, (Lanham, MD: Rowman & Littlefield Publishers, 2009), 131-132. Church-state scholars Stephen Monsma and Christopher Soper use the category of “Partial Establishment” to distinguish England from nations with a more complete establishment where religious freedom is limited and religious discrimination is extensive.


3. With a population of over 60 million, the United Kingdom includes Northern Ireland and the three countries that comprise Great Britain (England, Scotland and Wales). Since eighty-three percent (50 million) of the UK’s population reside in England, the central focus of this paper will be largely limited to England’s church-state model and the responses to the controversial Sexual Orientation Regulations of the leading religious groups in England.

monarch must be an Anglican and may not marry a Roman Catholic. The English monarch holds the title of “Supreme Governor” of the Church of England. As the “Defender of Faith,” the monarch promises in his/her coronation oath to support and maintain the Church of England. The monarch also appoints Church of England officials upon the recommendation of the Prime Minister and formally opens sessions of the Church of England’s General Synod. Further, twenty-six of the Church of England’s most senior officials including the Archbishop of Canterbury, Archbishop of York, and the Bishops of London, Durham and Winchester serve in the House of Lords and are reserved the title of Lords Spiritual. In fact, the Church of England is the only religious body with reserved seats in the House of Lords.  

Canon law of the Church of England also remains part of English law and only Christian festivals are celebrated as public holidays in England.

While the English enjoy much religious freedom, it must be noted that the English do not enjoy a constitutional guarantee for such freedom. As England does not have a codified constitution, there is no equivalent in England to the First Amendment of the United States Constitution. Fundamental freedoms are found in statutory laws passed by Parliament. Thus,

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6 Glenn H. Utter, Mainline Christians and U.S. Public Policy, (Santa Barbara, CA: ABC-CLIO, 2007), 81. England has a parliamentary form of government with a legislative branch divided between the popularly elected 646-member House of Commons and the unelected 750-member House of Lords. The House of Commons is responsible for creating legislation. While both houses must formally pass legislation, the House of Lords is not allowed to overturn a bill and limits its role to the debate of legislation. See also Monsma and Soper, 132.

religious freedom in England has always been treated as a right subject to legislative restrictions.\(^8\)

Since the advancement or promotion of religion is considered to be a charitable purpose by the English government, most religious organizations are exempt from taxes on income and capital gains as well as the value-added tax. In addition to being exempt from most taxes, the overwhelming majority of religious schools in England are partially subsidized by the state. These religious schools, popularly known as “faith schools,” comprise one-third of all state schools in England and educate about one-quarter of all English school children. Parliament provides up to ninety percent of the school’s building costs and one-hundred percent of operating costs including teachers’ salaries.\(^9\)

In accordance with the Education Reform Act of 1988, religious education forms part of the core curriculum even in the secular “community schools” as well as the “faith schools.” English law requires all schools to reflect Christianity as England’s main religious tradition while also emphasizing other religions.\(^10\) State schools are required to conduct a daily act of Christian worship that “is of broadly Christian character…without being distinctive of any

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\(^10\) Liviatan, 74-76. The religious content taught in these schools is determined at the local level. Consequently, districts with a predominantly non-Christian majority tend to give greater emphasis to other religions.
particular Christian denomination.” However, parents are given the opportunity to have their children excused from both religious education and religious worship.\textsuperscript{11}

The English government has in recent years forged an extremely strong relationship with the religious non-profit sector in the delivery of social services. One survey found that the government funds amount to eighty percent of the budgets of the top 3,800 charities in England, religious and secular alike. The sixth largest social service provider in England is the Salvation Army whose service centers feature Christian symbols on the walls, spoken prayers at meals, voluntary religious services and Bible studies. Due to England’s long history of what most Americans would consider an “entanglement” between religion and government, government funding of distinctly religious social service providers has sparked very little controversy.\textsuperscript{12} Despite the downward trajectory of the level of religious participation in England, religion and religious organizations clearly still play an important role in the different spheres of British society.

\textbf{Developments in Nondiscrimination Law and Gay Rights}

Following the conclusion of the Second World War, tensions caused by the development of an increasingly pluralistic society in England led lawmakers to enact stronger measures against discrimination. Mass immigration from South Asia, the Caribbean, East Africa and the Middle East “generated blatant intercultural clashes” during this period.\textsuperscript{13} English politicians

\textsuperscript{11} Liviatan, 74-76. See also Monsma and Soper, 154. Stephen Monsma and Christopher Soper conclude that while English law appears to prefer Christianity, “in practice most religious education curricula take a multicultural and multifaith approach.” They note that most minority religious groups have not opposed the religious education and religious worship requirements. Instead, these groups have lobbied the government to ensure that their tradition is represented in the classroom.

\textsuperscript{12} Monsma and Soper, 158-159. However, there has been recent controversy over the compliance of state-financed religious non-profits to nondiscrimination laws relating to sexual orientation which will be discussed later in this paper.

\textsuperscript{13} Liviatan, 65-66.
responded to these intercultural clashes with the *Race Relations Act 1965* which outlawed discrimination on the basis of “color, race, nationality, or ethnic and national origins.”

Scholars have argued that by not protecting against religious discrimination, the Race Relations Act created a new form of religious inequality. While racial protection was given to religious groups such as Jews and Sikhs, protection was withheld from other religious, multi-ethnic groups such as Rastafarians, Muslims and Jehovah’s Witnesses.

Following the passage of the *Race Relations Act 1965*, numerous pieces of legislation targeting discrimination in society were implemented by Parliament. Inspired by the United States’ *Equal Pay Act* (1963), Parliament passed the *Equal Pay Act 1970* which aimed to “prevent discrimination, as regards terms and conditions of employment, between men and women.”

Five years later, Parliament passed the *Sex Discrimination Act 1975*. This act prohibited direct and indirect discrimination against both women and men on grounds of gender primarily in relation to employment, education and the provision of goods and services. The *Employment Protection (Consolidation) Act of 1978* addressed religious discrimination in the workplace by offering protection to employees from being fired due to religious obligations.

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14 House of Commons, *The Race Relations Amendment Bill, Research Paper 00/27*, March 8, 2008, http://www.parliament.uk/commons/lib/research/rp2000/rp00-027.pdf (accessed October 29, 2009). More specifically, the *Race Relations Act 1965* provided that discrimination in hotels, public houses, restaurants, theatres, public transportation and any place maintained by a public authority was to be a criminal offense. This Act was amended in 1968 and again in 1975 to provide broader protections against racial discrimination.

15 Liviatan, 65-66.


English courts, however, have tended to side with the employer when the religious obligations of employees led them to violate the terms of their contract.\(^\text{18}\)

The most significant piece of legislation relating to religious freedom came in 1998 with the passage of the *Human Rights Act* (HRA). The HRA incorporated a formal right to religious freedom and banned religious discrimination under Article 9 of the European Convention on Human Rights (ECHR). Article 9 of the ECHR states that “everyone has a right to freedom of thought, conscience and religion…either alone or in community with others and…to manifest his religion or belief in worship, teaching, practice and observance.” According to the HRA, “If a court’s determination of any question arising under this Act might affect the exercise by a religious organization (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.”\(^\text{19}\)

Though the HRA constituted the first explicit recognition of the right to religious freedom in the United Kingdom, scholars have been reluctant to declare that the HRA has actually, in practice, furthered the cause of religious liberty. Political scientist Ofrit Liviatan notes that the HRA has not transformed the English statutory system into a “quasi-constitutional system.” Parliament still reigns supreme in the United Kingdom and still retains the power to restrict religious liberty.\(^\text{20}\)

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\(^{18}\) United Kingdom, *Employment Protection(Consolidation) Act 1978*, c. 44, http://www.opsi.gov.uk/Revised Statutes/Acts/ukpga/1978/cukpga_19780044_en_1 (accessed October 29, 2009). Stephen Monsma points to a decision by an English appeals court which sustained the firing of a member of the Seventh-day Adventist Church who refused on religious grounds to work on Saturdays as required by the terms of his work contract. Another example involves the dismissal of a Sikh who lost his job at an ice cream factory for growing a beard because of his religious beliefs and thus in violation of his employer’s hygiene rules. This dismissal was also upheld. See Monsma and Soper 45-46.

Over the last fifteen years, Parliament has granted numerous rights and protections to homosexuals in the United Kingdom. According to legal scholar Neil Cobb, during this period the United Kingdom has “witnessed an unprecedented growth in both legislative provisions and judicial pronouncements allocating significant legal rights to lesbians and gay men.” Examples of legal progress towards political equality for homosexuals include the right of a same-sex couple to adopt a child jointly; repeal of a provision (Section 28) prohibiting the positive portrayal of homosexuality by the government; equalization of the age of consent; legalization of civil unions for same-sex couples (Civil Partnership Act); and the criminalization of the incitement to violence on the basis of sexual orientation. The Employment Equality Regulations 2003 outlawed discrimination against employees on the basis of sexual orientation (actual and perceived), religion or belief and age. In each instance mentioned above when gays and lesbians secured more rights and protections, religious liberty concerns were raised by various faith leaders in the United Kingdom. However, this seemingly inevitable clash between gay rights and religious liberty did not cause serious controversy in the British public square until Parliament proposed the Equality Act (Sexual Orientation) Regulations in 2007.

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20 Liviatan, 53-55. For more on British discrimination law, see Linda Dickens, “The Road is Long: Thirty Years of Equality Legislation in Britain,” British Journal of Industrial Relations 45, no. 3 (September 2007): 463-494.


The Equality Act (Sexual Orientation) Regulations 2007

The Equality Act 2006 created the Equality and Human Rights Commission which granted the government the power to make regulations to further prohibit discrimination related to sexual orientation. Consequently, Parliament introduced the Equality Act (Sexual Orientation) Regulations in 2007 which prohibited “discrimination on the grounds of sexual orientation…in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.” According to an impact assessment paper published by the government, homosexuals are more likely than heterosexuals to suffer discrimination in the United Kingdom in the supply of goods, facilities and services. The paper cited examples of ongoing discrimination in “accessing hotels, restaurants, cafes, private housing, in relation to venues and commercial services for civil partnership registration and celebration, in the delivery of education, and in the public provision of healthcare, social housing and nursing homes.”

Ruth Kelly, the leading government advocate for the Sexual Orientation Regulations (SORs), explained the rationale and purpose for these regulations:

The goal of these regulations is to ensure that when accessing goods, services and facilities, everyone is treated fairly and with respect, no matter what their sexual orientation, religious or belief. I am confident that they strike the right balance to some of the most sensitive challenges we face today and tackle the real, everyday problems which have for too long, been faced by lesbians and gay people. It cannot be right in a decent, tolerant society that a shopkeeper or restaurant can refuse to service a customer because of their religion. Equally it cannot be right for a school to discriminate against a

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child because of their parents’ sexuality or not to take homophobic bullying as seriously as they should. These are rights that the majority of people take for granted.\textsuperscript{26}

The SORs were approved by Parliament in March 2007 and went into effect on April 30, 2007.\textsuperscript{27} Under the SORs, religious organizations were still allowed to discriminate on the grounds of sexual orientation in their membership and activities. However, religious agencies were prohibited from discriminating on the basis of sexual orientation in the provision of goods and services. For example, a church that made available its facilities to the public for weddings and other events could not refuse to rent to a person because of his/her sexual orientation.\textsuperscript{28}

Although the SORs passed by a wide margin, there was significant religious opposition to the regulations. Most of the opposition to the SORs focused on the fact that Catholic adoption agencies in the United Kingdom would no longer be allowed to discriminate against prospective parents on the basis of sexual orientation. The British media helped fuel a controversy over whether Prime Minister Tony Blair would exempt the Catholic adoption agencies from complying with the SORs. Numerous editorials speculated that Blair – who had a Catholic wife and sent his children to Catholic schools and was rumored to be a “closet Catholic” himself – and his equality czar Ruth Kelly, a devout Catholic and member of Opus Dei, were sympathetic to exempting the adoption agencies. After a highly-publicized “row” among various government cabinet members, Blair announced that there would be “no exemption” for the Catholic adoption agencies and other faith-based agencies. Blair insisted, “There is no place in our society for discrimination. That’s why I support the right of gay couples to apply to adopt like any other couple. And that way there can be no exemptions for faith-based adoption agencies offering


\textsuperscript{27} Ibid.

public-funded services from regulations that prevent discrimination.” Blair did, however, give the faith-based adoption agencies an additional twenty months to comply with the new regulations.\textsuperscript{30}

**Religious Responses to the Sexual Orientation Regulations**

*Roman Catholic Church*

The proposed Sexual Orientation Regulations sparked outrage among leaders of the Catholic Church. Catholic officials were aware that the new regulations which would prohibit Catholic adoption agencies from refusing to place children with same-sex couples could ultimately have the effect of putting the Catholic Church in England out of the adoption business. With the support of the Church of England, Catholic leaders mobilized religious opposition to the SORs. Catholic-led demonstrations and rallies were held throughout England. However, these rallies and demonstrations ultimately were unsuccessful as the Prime Minister and Parliament refused to budge on its decision not to exempt the Catholic adoption agencies from the new regulations.\textsuperscript{31}

During the height of the campaign against the proposed SORs, Cardinal Cormac Murphy-O’Connor, the head of the Catholic Church in England and Wales (known as the Archbishop of Westminster), expressed his vehement opposition to the lack of a broad religious exemption in the regulations in a letter to Prime Minister Tony Blair and members of Blair’s Cabinet. After conveying the Catholic Church’s opposition to all forms of “unjust discrimination” and its


\textsuperscript{30} John L. Allen Jr. “A New Church-State Standoff: Adoption Case Pits Traditional Family Values Against Gay Rights,” *National Catholic Reporter*, February 16, 2007, 18. The faith-based adoption agencies were given until January 1, 2009 to comply with the new regulations.

\textsuperscript{31} Monsma, 140-141.
commitment to cooperating with the government to further the “common good,” the Cardinal explained the Church’s position on the regulations:

We would, however, have a serious difficulty with the proposed regulations on discrimination on grounds of sexual orientation in the provision of goods and services if they required our adoption agencies to consider homosexual couples as potential adoptive parents….To oblige our agencies in law to consider adoption applications from homosexual couples as potential adoptive parents would require them to act against the principles of Catholic teaching….We believe it would be unreasonable, unnecessary and unjust discrimination against Catholics for the government to insist that if they wish to continue to work with local authorities, Catholic adoption agencies must act against the teaching of the Church and their own consciences by being obliged in law to provide such a service.\(^\text{32}\)

Warning that the new regulations could force the close of Catholic adoption agencies across England, the Cardinal appealed to the successes of the agencies in finding homes for disadvantaged children.\(^\text{33}\) Although Catholic agencies annually handled only six percent of all adoptions in England, they handled one-third of “difficult cases” involving children with disabilities, limited life expectancies and those who had suffered physical and sexual abuse. These agencies touted an extremely low placement disruption rate as well.\(^\text{34}\)

Newspapers across England were not sympathetic to the Cardinal’s concerns, however. In one news report, Keith Wood of the National Secular Society exclaimed, “The Church has demanded that it be given taxpayers’ money to act in a way that Parliament forbids, simply because they consider it is against their ‘conscience.’ What the Cardinal calls ‘conscience,’ others would call ‘bigotry.’”\(^\text{35}\) Meanwhile, Cardinal Murphy-O’Connor continued to publicly


\(^{33}\) Ibid.

\(^{34}\) Terry Philpot, “Keeping the Faith,” Community Care, January 22, 2009, 18-19.

\(^{35}\) Alison Little, “Gay Adoption Row: Are they trying to ban religion now?” The Express, January 31, 2007, 6.
denounce the regulations. In a lecture at Westminster Cathedral two years later, the Cardinal argued that anti-discrimination legislation was being used to “limit freedom of religion in unacceptable ways.” He argued that these regulations were merely the latest effort to marginalize the role of religion and religious voices in British society.\(^{36}\)

Despite the threats of various Catholic leaders, only one of the eleven Catholic adoption agencies has closed its doors after the government’s twenty-month extension period expired on January 4, 2009. At least half of the remaining agencies have chosen to comply with the new regulations. However, several have chosen to do so by cutting their formal ties with the Catholic Church. The agencies which have taken this course of action still receive financial support from local parishes and have vowed to continue promoting a Catholic identity and ethos. Ultimately, most of the Catholic adoption agencies decided that more harm than good would be done to many children and families if the risky route of ignoring the regulations was taken.\(^{37}\)

\textit{Church of England}

On the same day that the head of the Catholic Church in England and Wales sent a letter to Prime Minister Tony Blair, the two highest ranking officials in the Church of England sent a similar letter. Signed by Rev. Rowan Williams, Archbishop of Canterbury and symbolic head of the worldwide Anglican Communion, and Rev. John Sentamu, Archbishop of York, the letter declared that “The rights of conscience cannot be made subject to legislation, however well meaning.” The Archbishops letter continued:

Many in the voluntary sector are dedicated to public service because of the dictates of their conscience. In legislating to protect and promote the rights of particular groups the


government is faced with the delicate but important challenge of not thereby creating the conditions within which others feel their rights to have been ignored or sacrificed, or in which the dictates of personal conscience are put to risk.\(^{38}\)

Alluding to the controversy over the Catholic adoption agencies, the Archbishops argued on behalf of broadly defined religious exemptions. In support of their arguments, the Archbishops cited current English laws exempting doctors on the government’s payroll from being forced to perform abortions. The Archbishops concluded, “It is vitally important that the interests of vulnerable children are not relegated to suit any political interest. And that conditions are not inadvertently created which make the claims of conscience an obstacle to, rather than the inspiration for, the invaluable public service rendered by parts of the voluntary sector.”\(^{39}\) Eight years prior to this particular controversy, the Church of England announced that its own adoption agency, Children’s Society, was lifting its long-time ban on gays and lesbians fostering and adopting children under its care. Thus, this argument put forward by the Archbishops was based solely on ensuring religious liberty and freedom of conscience for people of faith and their organizations in Britain.\(^{40}\)

The Archbishop of York, Rev. John Sentamu, took a more aggressive approach in a speech two months later from the floor of the House of Lords. With the new regulations, the Archbishop accused Parliament of introducing a “new hierarchy of rights” which placed people of faith in “a new sub-category of those whom it will be legal to discriminate against.” Like Cardinal Murphy-O’Connor, the Archbishop argued that the government was attempting to keep


\(^{39}\) Ibid.

religion and religious voices out of the public square and thus “limit the proper sphere of religion to the internal activities of religious organizations.” In quite colorful language, the Archbishop concluded, “It now seems to me that a legal sausage machine is being created by these [Sexual Orientation Regulations], requiring many of us to go through it and come out at the other end, sanitized, and with our consciences surgically removed.”

**Baptists**

The response of Baptists in the United Kingdom to the Sexual Orientation Regulations was mixed. Through the ecumenical Joint Public Issues Team, the Baptist Union of Great Britain joined The Methodist Church of Great Britain and The United Reform Church in publishing a document which responded to issues raised by the new regulations. However, this document did not take a position on any of the controversy surrounding the SORs. Instead, the document noted that it was up to individuals and congregations to reach their own conclusions.

Other Baptist leaders did stake out an explicit position on the regulations. Most notably, Rev. Jonathan Edwards, the General-Secretary of the Baptist Union of Great Britain, accused Parliament of committing a “profound and offensive error” in requiring faith-based organizations that provide publicly-funded social services such as the Catholic adoption agencies to “act in a way contrary to their Christian conscience” (comply with the SORs). While suggesting that

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Christians should affirm the principle of nondiscrimination towards gays and lesbians, Edwards lamented that the government did not show greater “sensitivity to issues of conscience” in their refusal to provide exemptions to the Catholic adoption agencies. In fact, Edwards went so far as to endorse civil disobedience. He stated, “I wholeheartedly support those Christian agencies which have indicated that following conscience takes precedence over obedience to the law, where that law contradicts Christian belief and practice.” Rev. Bill Slack, General Director of the Baptist Union of Scotland, also vigorously opposed the SORs. He urged Scottish Baptist churches to write their elected officials and “draw their attention to the potential discrimination that will be suffered by people seeking to live their lives according to the dictates of their faith and conscience.”

In addition to the top leaders of the Baptist Union of Great Britain and the Baptist Union of Scotland, the editor of The Baptist Times, the only Baptist newspaper in Great Britain, opined against the new regulations. Editor Mark Woods also took a rhetorically aggressive approach in his opposition. Woods readily acknowledged that the language used by some of his fellow opponents of the regulations had been both “inflammatory and unhelpful.” Describing the regulations as “fundamentally illiberal,” Woods concluded that “The State has decided that its own morality is to take precedence over the conscience of the individual. The extent to which people of faith are allowed to contribute to the welfare of society is to be determined by whether they are prepared to compromise that faith.” In his editorials opposing the regulations, Woods cited the “free speech and free thought” tradition of previous generations of Baptists. Notably absent in these editorials was any mention of Woods’ British Baptist forebears who opposed

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44 Daniel Grote, “Government condemned over gay adoption stance.”

45 Editorial, “This is not an anti-gay crusade,” The Baptist Times, February 1, 2007, 8.
government funding of religious organizations. Nor did Woods acknowledge that faith-based agencies could contribute to the welfare of society without compromising their faith provided that they did not accept public funds to assist in their social service endeavors.\textsuperscript{46} This is just one example of how Baptists and other religious groups interpreted the related principles of “religious liberty” and “freedom of conscience” through a historical framework that could not envision an institutional separation of church and state that refused to lend public financial support to religious organizations.

_Evangelicals: Faithworks vs. Evangelical Alliance_

The division in the British evangelical community over the Sexual Orientation Regulations and its implications for religious liberty is best represented in the divergent positions taken by two influential evangelical parachurch organizations: Faithworks and the Evangelical Alliance. Comprised of thousands of evangelical individuals and congregations, Faithworks welcomed the SORs with arms wide open and confidently expressed that the regulations “do not pose a threat to Christians.”\textsuperscript{47} Faithworks elaborated in a press release:

> It is right that any organization receiving public funds should deliver services to genuine public benefit. A commitment to diversity does not mean losing one’s distinctive faith identity: it actually presents an opportunity to develop a dialogue and demonstrate Christian love and service.\textsuperscript{48}

In other public statements, Faithworks leaders continued to insist that publicly-funded social services be delivered in nondiscriminatory ways.\textsuperscript{49}


\textsuperscript{47} “Does the SORs Act threaten to criminalize Christian values?” _The Baptist Times_, January 18, 2007, 13.


\textsuperscript{49} Christians should work with SORs bill, _The Baptist Times_, March 29, 2007, 3.
Meanwhile, the one-million member Evangelical Alliance argued forcefully against the SORs. They asserted that the new equality regulations would “unfairly jeopardize expression of religion and belief in the public square and are part of a trend to effectively force it behind closed doors.”50 This powerful declaration was echoed by Rev. Joel Edwards, the head of the Evangelical Alliance, who exclaimed that “The erosion of Christian values increasingly reflected in our legislation is an indication that Britain has lost its Christian soul.”51 The arguments of Evangelical Alliance leaders against the SOR were indeed extremely similar to the sentiments expressed by Catholic and Anglican leaders such as the Church of England’s Archbishop of York, Rev. John Sentamu.

Evangelical Alliance leaders were careful to note in their criticisms of the new regulations that they did not support discrimination against gays and lesbians. However, these leaders adamantly asserted that the SORs would have the effect of coercing Christians into “facilitating the promotion of homosexuality.” Emphasizing the importance of an unfettered conscience, the Evangelical Alliance announced that it would advise its members to completely ignore the new regulations and continue to serve their communities “unless and until the law shuts them down.”52 Support for civil disobedience was a common theme expressed by religious leaders opposed to the new regulations.


52 Evangelical Alliance, “Christianity is not a private faith.” See also Evangelical Alliance, “Christians should continue to deliver public services until the law stops them,” Evangelical Alliance, March 22, 2007, http://www.eauk.org/media/equality-act-decision.cfm (accessed October 29, 2009).
Jews and Muslims

Founded in 1760, the Board of Deputies of British Jews is the leading organization of the 300,000 strong Jewish community in the United Kingdom. The Board of Deputies includes representatives from the majority of Orthodox, Masorti, Reform and Liberal synagogues. Widely regarded as a champion of human rights, the Board of Deputies recently reemphasized the commitment of the Jewish community to “ensuring the elimination of unlawful discrimination in the workplace and the promotion of equality of opportunity in society.”\(^53\) After numerous media outlets reported that the leading Jewish group was formally involved alongside Christian organizations in public campaign against the controversial Sexual Orientation Regulations, the Board of Deputies quickly accused the media of misrepresenting their “clear and balanced” position and denied being involved in any campaign. A statement released by the Board of Deputies explained their position:

The Sexual Orientation Regulations will provide a further platform to combat discrimination in this country. It must be possible for people to live their lives in the manner in which they choose as long as it does not impinge upon the rights of others. We hope that to this effect the regulations will be framed in such a way that allows for both the effective combating of discrimination in the provision of goods and services whilst respecting freedom of conscience and conviction.\(^54\)

Though the British charity Jewish Care, the fifth largest private welfare service provider in Europe, is represented on the Board of Deputies, the Board chose not to explicitly weigh in on whether faith-based agencies should be exempted from the SORs. The Board also failed to clearly explain how “freedom of conscience and conviction” was to be respected in the

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application of the SORs. While the Board of Deputies took this vague and politically safe approach, some members of the Jewish community protested loudly against the new regulations.\footnote{Maria Mackay, “Faith Groups to Rally Against Sexual Orientation Regulations,” \textit{Christian Today}, January 9, 2007, http://www.christiantoday.com/article/faith.groups.to.rally.against.sexual.orientation.regulations/9043.htm (accessed October 29, 2009).}

The Muslim Council of Britain, the largest Islamic organization in the United Kingdom, took a slightly different approach than the Board of Deputies of British Jews.\footnote{The Muslim Council of Britain, “Fairness For All – A New Commission For Equality & Human Rights: A Response From The Muslim Council of Britain,” August 2004, http://www.mcb.org.uk/downloads/MCB-Submission-Summary.pdf (accessed October 29, 2009).} Historically, the Muslim Council of Britain had consistently opposed legislative measures that aimed to protect and provide greater freedom to gays and lesbians. The Muslim Council of Britain opposed both the repeal of Section 28 and the Civil Partnership Act. However, the Council began to sing a different tune with the passage of the SORs. Secretary-General Muhammad Abdul Bari released the following statement on behalf of the Muslim Council of Britain:

\begin{displayquote}
We affirm our belief that the practice and promotion of homosexuality is forbidden according to the teachings of Islam. However, the Sexual Orientation Regulations are not about religious belief but about prohibiting discrimination in the provision of goods and services on grounds of sexual orientation. The Muslim Council of Britain stands opposed to discrimination in all its forms.\end{displayquote}

This short statement was greeted warmly by prominent gay rights activists. Well-known gay rights proponent Brian Whitaker of \textit{The Guardian} declared that “the Muslim Council of Britain

has shown itself to be more enlightened than reactionary elements in the Christian church that have opposed the [Sexual Orientation Regulations] from the beginning.\(^{58}\)

By ignoring the national controversy over whether Catholic adoption agencies should be exempted from the new regulations, the Muslim Council of Britain misled the public by failing to present their entire position in this highly publicized press release. Whitaker and other gay rights advocates were apparently unaware that three months prior the Muslim Council of Britain had backed the Catholic Church in its quest to have Catholic adoption agencies exempted from the new Sexual Orientation Regulations. General-Secretary Muhammad Abdul Bari argued that the refusal to grant an exemption to faith-based adoption agencies was inconsistent with previous nondiscrimination legislation. Bari insisted that the regulations should “take full account of our multifaith, multicultural, multiethnic society and make accommodation to accord with differing beliefs and values.”\(^{59}\)

**Religious Exemptions Considered**

Central to the controversy over the Sexual Orientation Regulations was whether faith-based organizations (specifically Catholic adoption agencies) which received public funds should be exempt from the prohibition of sexual orientation discrimination in the provision of goods and services. Much of the religious opposition to the SORs spoke as if the government had failed to afford any type of legislative exemption based on religion. However, the Archbishops of Westminster, Canterbury and York did not make this common mistake. The SORs did indeed include religious exemptions. However, top Catholic and Anglican officials recognized in their


arguments that the scope of these religious exemptions was quite narrow and protected only the private sphere of religious worship and doctrine rather than the practice of religion in the public sphere. Consequently, the Archbishops argued that these narrowly-defined religious exemptions not consistent with Parliament’s history of granting much broader religious exemptions to previous nondiscrimination laws.\textsuperscript{60}

Broad religious exemptions for religious groups from generally applicable laws such as nondiscrimination legislation are far from unusual.\textsuperscript{61} For example, turbaned Sikhs are exempted from wearing a helmet when on a motorcycle under the \textit{Road Traffic Act 1976} and the Jewish and Muslim methods of slaughter are exempted under the \textit{Slaughterhouses Act 1976}. English law also exempts those who carry religious weapons from criminal prosecution even on school premises. This particular exemption has an especially broad scope and does not limit the exemption to a specific religious group.\textsuperscript{62} The \textit{Sex Discrimination Act 1975} as amended by the \textit{Employment Equality (Sex Discrimination) Regulations 2005} provides both general and specific religious exemptions. Recent laws prohibiting religious discrimination including the \textit{Employment Equality (Religion or Belief) Regulations 2003} and Part 2 of the \textit{Equality Act 2006} provide individual exemptions on the grounds of religion or belief.\textsuperscript{63}

\textsuperscript{60} Stychin, 19-24. Regulation 17 of the Sexual Orientation Regulations does indeed provide exemptions for “organizations relating to religion or belief.” However, faith-based organizations lose their religious exemption when they contract with the State to provide a public service. See Russell Sandberg and Norman Doe, “Religious Exemptions in Discrimination Law,” \textit{Cambridge Law Journal} 66 (2007): 309-310.


\textsuperscript{62} Liviatan, 73.

\textsuperscript{63} Sandberg and Doe, 303-312. For an in-depth assessment of religious exemptions in nondiscrimination law, this article is a must-read. Without wading into the technical aspects of nondiscrimination law, it must simply be noted that the scholarly consensus maintains the scope of the religious exemption provisions found in the Sexual Orientation Regulations is extremely narrow when compared with previous religious exemptions afforded in previous pieces of legislation. I have not come across a legal expert to dispute this point made by Sandberg and Doe.
Numerous legal scholars have noted that while these past religious exemptions to nondiscrimination statutes and other laws have been largely uncontroversial, similarly broad exemptions from laws prohibiting sexual orientation discrimination have proved particularly controversial and ultimately have been rejected in both the United Kingdom and the United States. These scholars have observed that gay rights groups have consistently opposed religious liberty protections in any application that might affect the rights of gays and lesbians. The controversy over the Sexual Orientation Regulations in the United Kingdom is but one recent example of how nondiscrimination laws designed to protect homosexuals have clashed with and ultimately trumped the religious freedom claims of heterosexuals.  

American constitutional scholar Douglas Laycock has been one of the strongest proponents in the legal community of broad statutory religious exemptions to laws prohibiting sexual orientation discrimination. In a recent book edited by Laycock titled *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*, Laycock asserts:

> No human being should be penalized because of his beliefs about religion, or because of his sexual orientation. And no human being should be penalized because of her religious practice, or because of her choice of sexual partners, unless her conduct is actually inflicting significant and cognizable harm on some other person.  

Laycock laments the tendency of gay rights groups to dismiss the feelings of moral responsibility of those religious individuals and organizations with more traditionalist view of sexuality. He argued that “the right to one’s moral integrity should generally trump the inconvenience” of gays and lesbians having to get the same service from another nearby provider. Laycock explains that requiring a person to “provide services that violate his deeply held moral commitments is far

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more serious, different in kind and not just in degree, from mere inconvenience."\textsuperscript{66} The harm caused to the individual(s) by this inconvenience must be weighed against the harm caused to the individual(s) being coerced to provide services, according to Layock.

Laycock readily recognizes that broad religious exemptions to gay rights legislation, specifically legislation prohibiting sexual orientation discrimination, will be messy and likely quite controversial. However, this messy picture created by the emerging conflicts between gay rights and religious liberty and made messier by religious exemptions is preferable to “completely tramping the core values of one side or the other” according to Laycock.\textsuperscript{67} One of the solutions offered by Laycock for the United States is very similar to what much of the religious opposition to the Sexual Orientation Regulations in the United Kingdom desired in 2007: a broadly-defined legislative exemption for all non-profit religious organizations including those that provide social services in the public square.

\textbf{Conclusion}

This examination of the religious responses to the Sexual Orientation Regulations reveals that the tension that exists between religious liberty and gay rights is not muted even in more secularized European nations such as England. People of faith and faith organizations clearly do not speak with one voice when this tension erupts in the public square. While the evangelical parachurch organization Faithworks welcomed the regulations, the Evangelical Alliance asserted its strong opposition. Alongside high ranking officials from the Church of England, the Catholic Church in England led the opposition and helped organize public demonstrations and protests. The Muslim Council of Britain offered its public support for the regulations but also stressed the necessity of broadly-defined religious exemptions. Meanwhile, Britain’s leading Jewish

\textsuperscript{66} Ibid., 197-198.

\textsuperscript{67} Ibid., 199-201.
organization took a politically safe approach by completely ignoring the controversy surrounding whether Catholic adoption agencies should receive a religious exemption. The Baptist Union of Great Britain, The Methodist Church of Great Britain and The United Reform Church decided not to stake out an official position and instead encouraged individuals and congregations to reach their own, informed conclusions. However, individual Baptist leaders were willing to make their opposition known.

Although faith groups and their leaders did not speak with one voice, a clear majority of England’s largest religious bodies were extremely worried that the Sexual Orientation Regulations would infringe on their right to religious liberty. Consequently, the respective leaders of these groups championed broadly-defined religious exemptions as a solution to this particular clash between the claims of religious conscience and gay rights. It must be noted, however, that most of the harshest critics of the regulations were careful to explain that their opposition was solely concerned with protecting religious liberty. According to British Baptist leader Mark Woods, opponents of the regulations were not waging an “anti-gay crusade.” This is a sentiment that is not universally expressed by religious critics of nondiscrimination laws designed to protect gays and lesbians here in the United States.

Recognizing that the controversy over the Sexual Orientation Regulations is largely settled in England and that it is highly unlikely that Parliament will in the foreseeable future renege on its position against broadly-defined religious exemptions, what insights can Americans glean from England’s most recent mini-culture war? First and perhaps foremost, the controversy over the Sexual Orientation Regulations sheds light on what happens when a nation with a strong commitment to nondiscrimination heavily subsidizes the social service ministries of religious organizations. In this instance, the state-financed Catholic adoption agencies were legally forced
to play by the government’s rules even if these new rules went against the agencies’ sincere, deeply-held religious convictions. This example should give pause to those in the United States who feel that a federally-funded Faith-Based Initiative is a solution to America’s social ills.

American progressives and centrists must also be careful not to dismiss outright the religious liberty claims of those from the conservative side of the aisle. These progressives and centrists must resist the temptation to lump all of those who express religious liberty concerns together with the shrill professional culture warriors whose over-the-top rhetoric offers few solutions to such serious concerns. Numerous scholars including conservatives such Douglas Kmiec and Marc Stern, centrists such as Jonathan Turley and Douglas Laycock, and progressives such as Robin Fretwell Wilson and Chai Feldblum have all recently acknowledged that religious liberty conflicts will continue to emerge as more legal rights and protections are granted to gays and lesbians. The number of clashes between religious liberty and gay rights will continue to rise as same-sex marriage becomes legal in more states. In addition, the recently passed Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act and the Employment Non-Discrimination Act now being debated in the United States Congress will merely exacerbate such conflict.

Consequently, constitutional lawyers and elected officials should familiarize themselves with this recent controversy in England as they look for solutions to these emerging conflicts in the United States. As government officials seek to determine the appropriate scope of religious exemptions to nondiscrimination laws and other laws pertaining to gays and lesbians, there is indeed much insight that these officials as well as legal scholars can garner from a thorough examination of the religious response to England’s controversial Sexual Orientation Regulations.
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