

Civil and Religious Laws in England

The Religion and Society Debate

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Dr. Rowan Williams, Archbishop of Canterbury, stirred up an international hornet's nest this month with a lecture exploring how Muslim *sharia* (law) might be accommodated within the British legal system (www.archbishopofcanterbury.org/1575).

Leaving to one side a discussion of the distinctive character of the British system of laws and institutions, I want to comment here on two elements of his lecture: the references to "religious communities" and the argument about the relation of "universal secular law" to "social pluralism."

First of all, the Archbishop's references to religious communities are quite equivocal. Primarily, he is concerned with "minority communities" such as Muslims and Jews, who "relate to something other than the British legal system alone." In other places, he has in view institutions that are different from the Church of England but which function similarly in Muslim and Jewish communities. And sometimes he seems to have in view an entire theology of law and society that is (or could be) shared by all Abrahamic faith communities.

One problem created by this equivocation shows up in the phrase—just quoted—about communities that "relate to something other than the British legal system alone." Part of what he means is that anyone in Britain, not only a Muslim, should be free to belong to non-state organizations. He opposes a "monopolistic" conception of "universal secular law" that would force people to choose between "cultural loyalty" and "state loyalty." If, therefore, the Archbishop means by "something other" those arenas of life in which parents, educators, publishers, and others bear responsibilities different from the responsibilities of Parliament and judges, then everyone, and not only minority communities, has freedom to relate to something other than the British legal system alone. But pluralism of that kind is already recognized to some degree in British law and it may simply need to be adjusted or expanded within the British legal system.

If, on the other hand, Dr. Williams means by "something other" a realm of divine law or moral constraints that transcend the entire British system of law, then "minority religious communities" in Britain are not peculiar. Christians themselves give allegiance to the higher authority of God that transcends both the Crown and the Church of

England. Perhaps the Archbishop's equivocation here arises because the Church's law is, as he says, "the law of the land" in a way that Muslim *sharia* is not. Thus, he may be looking for a way to permit Muslims to heed what they revere as divine mandates not currently recognized by the British legal and ecclesiastical system. Such a change, however, may require either the disestablishment of the Church of England, so it would become like other "religious communities," or the pluralization of the Church to the point where it could make room, under its authority, for Muslim practice of some elements of *sharia*.

That brings us to the second point about universal secular law and social pluralism. The Archbishop's argument toward the end of his lecture suggests that he wants to reconceive the universality of public law more restrictively in a "negative rather than a positive sense." In other words, what should remain universal about it is the protection of every person's basic human dignity, while beyond that, people should be free to pursue social and cultural pluralism—in marriage, finance, and perhaps education and other spheres of life. "The role of 'secular' law," he says, "is not the dissolution of these things [religion, custom, and habit] in the name of universalism but the monitoring of such affiliations to prevent the creation of mutually isolated communities in which human liberties are seen in incompatible ways and individual persons are subjected to restraints or injustices for which there is no public redress."

However, this argument presupposes the existence of something more than just a legal-rights monitor; it presupposes a British *political community* in which every citizen is a member and in which the government governs for the common good of the whole. After all, who decides when a community has become too "isolated"? Who is to judge when the "restraints" on citizens demand public redress? Who decides when different ways of understanding human liberties are "incompatible" enough to require public action? The answer, of course, is that the national community's government and courts will decide.

What the Archbishop should be (and perhaps is) trying to argue, it seems to me, is that diverse religious communities, including Muslims, who give allegiance to God beyond allegiance to Crown and Church, should be equally free to live in Great Britain. Moreover, public "secular" law should recognize the right of British citizens, who are members of these different religious communities, to engage in diverse practices in the nongovernment spheres of marriage, private finance, education, and more. However, the foundation of such religious freedom and social pluralism is that all citizens, as members of the same political community, must abide by the public laws of the nation. If they want to change the laws that stipulate the obligations of citizenship, that protect religious freedom, or that articulate the identities and freedoms of nongovernment organizations, they will have to participate in the open democratic process to try to do so.

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