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RELIGION AND LAW

THE RIGHT HONORABLE LORD JUSTICE JOHN LAWS*

I. THREE RULES

In this Lecture I am going to talk about the relation between religion and the legal power of the State; in particular, how religious belief and practice are to be accommodated within a democracy. At the outset I will state three propositions. I will call them rules, but they are of my own making. I have found them useful as a means of expressing, in a more or less rigorous fashion, my view as to how these matters should be ordered. The first rule is that the State must not demand that its citizens adhere to any particular religious belief. I will call this *the rule of the agnostic State*. The second rule is that the State must not by law require or prohibit any measure or practice on the ground only that it is espoused by or is offensive to adherents of any particular religious faith. I will call this *the rule of religious neutrality*. The third rule, however, is that the State must stoutly defend the right of every person to worship as he will, or not at all, and to express his faith or his atheism as he chooses, subject only to reasonable objective limitations in the interest of others. I will call this *the rule of religious freedom*.

I will say something about each of these propositions or rules before considering whether and how they may be justified. First, *the rule of the agnostic State*—the State must not demand that its citizens adhere to any particular religious belief. This may seem very obvious to a modern western audience—on either side of the Atlantic—and one might suppose it to be well-established in developed civilised States. Nothing, surely, is more elementary than freedom of thought. The idea that the State should by law insist on a citizen's subscription to a particular religious belief is barbarous, not because the belief is false (it may be true), but because it steals from the citizen his own mind—if he cannot choose what to believe, he is less than a person. Such terrible constraints are the stuff of religious extremism, but the State's insistence on thrusting religious belief down the throats of its citizens has a very lively history. In the annals of Christianity, it was the inspiration of the Spanish Inquisition. There are still Christians who relish it. There are some extremist religious believers of the present day who would claim not only to dictate what their fellow citizens should think, but would commend measures to make them think in line. There are Muslims who believe that apostasy should be met with the death penalty.

We should notice that the rule of the agnostic State applies as surely to political as to religious beliefs. Political dictatorships have always tried to dictate what their people believe. It is a poison most graphically illustrated by

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George Orwell's marvellous and terrifying novel, *1984*—"Big Brother is Watching You." It is the stuff of the brainwashing nightmares of the Cold War. There is no moral or logical difference between defying the rule of the agnostic State in a religious context and denying it in a political context.

It is a curiosity that there is, as it happens, a provision remaining in the law of England which forbids free thought—it is the Black Rubric, which is one of the instructions appended to the Order for Holy Communion in the *Book of Common Prayer*. It is in these terms:

Whereas it is ordained in this office for the Administration of the Lord's Supper, that the Communicants should receive the same kneeling; . . . yet, lest the same kneeling should by any persons, either out of ignorance and infirmity, or out of malice and obstinacy, be misconstrued and depraved: It is here declared, that thereby no Adoration is intended, or ought to be done, either unto the Sacramental Bread or Wine there bodily received, or unto any Corporal Presence of Christ's natural Flesh and Blood.

The Rubric was composed by Archbishop Cranmer for his second Prayer Book of 1552. It requires the communicant to kneel but forbids him to worship the bread and wine as if it were Christ's flesh and blood. It is intended to regulate what happens in his head while he is on his knees. Her late Majesty Queen Elizabeth I had the Rubric removed; as Sir Francis Bacon tells us, "She would not make windows into men's souls." But it was restored in the *Book of Common Prayer* of 1662, one of the "historic formularies" of the Church of England, and has been the law of the land ever since. But this, of course, is ecclesiastical law, about which I will have a little more to say.

I turn to the second rule, *the rule of religious neutrality*—the State must not by law require or prohibit any measure or practice on the ground only that it is espoused by or is offensive to adherents of any particular religious faith. The rule of the agnostic State and the rule of religious neutrality are closely related, but they are not the same. The first prohibits attempts to control what men *think*. The second prohibits attempts to control what men *do*. The relationship is close for the obvious reason that what men think often governs what they do. The issues generated by the rule of religious neutrality are, to coin a phrase, somewhat less apocalyptic than the issues to which the rule of the agnostic State gives rise—but they occupy, I think, a more lively place in western society's daily fabric. The principal difficulty is with the negative part of the rule—the State must not prohibit any conduct or practice on the ground only that it is offensive to the adherents of a particular religious faith. Like the rule of the agnostic State, the force of this imperative is not limited to the religious context. Offensiveness does not justify State censorship or other prohibitive laws. Offensiveness is to be condemned, and roundly condemned, at the bar of good manners, not in the dock of the criminal court.

The third rule, *the rule of religious freedom*, is that the State must stoutly defend the right of every person to worship as he will, or not at all, and to express his faith or his atheism as he chooses, subject to reasonable objective limitations in the interest of others. This rule may roughly be regarded as the converse, or perhaps the corollary, of the other rules—the rule of the agnostic State and the rule of religious neutrality. Whereas those rules condemn compulsion by the State of thought or conduct on religious grounds, the rule of religious freedom demands the opposite—freedom of belief and worship. To suppress freedom of religion is to suppress freedom of expression. In its most virulent form, it is to suppress freedom of thought, and only brainwashers do that. Suppressing freedom of thought is the vice of the first rule. As I have said, it steals from the citizen his own mind—if he cannot choose what to believe, he is less than a person. In this wonderful country, home of my favourite pastime, watching old movies, there is a movie analogy—*Invasion of the Body Snatchers* (the original 1950s version is much the best).

II. JUSTIFICATION OF THE RULES

Now let me turn more closely to the justification of these rules. Is there a single driving principle behind the rule of the agnostic State, the rule of religious neutrality, and the rule of religious freedom? We are, I think, accustomed to justify the post-war liberal political consensus by reference to two ideals—to draw an image from Plato's dialogue the *Phaedrus*, it is a kind of double-yoked chariot.¹ The horses which draw the chariot, the two ideals, are democracy and the rule of law. Is this—are these—the driving principle? Democracy and the rule of law have become something of a mantra. But there are problems with both. Thus, if you try and give an account of why democracy is virtuous, you run into difficulties. As a system of government, democracy is fully capable of perpetrating horrific injustices; the price of universal suffrage is that the vote of the stupid, malicious, and ignorant elector (if he troubles to exercise it) is worth the same as anyone else's, and there are difficulties in classifying democracy as an end rather than a means, or vice versa. Then, if you try and give an account of what the rule of law means, again you run into difficulties. Does the rule of law require only that the State be governed by laws which are published and on the whole not retrospective? But in that case, it is pretty thin soup as a constitutional principle. Or does it further require that the content of the laws should be good, replete with enlightened human rights? But in that case, the rule of law is not an autonomous principle at all, but a mere catalogue of the socio-political virtues favoured by whoever happens to be thinking about it.

Any proper discussion of democracy and the rule of law needs to confront these difficulties, and I have attempted elsewhere to do so, however

1. PLATO, PHAEDRUS 28, at *246a–b (Robin Waterfield trans., Oxford Univ. Press 2002) (c. 360 B.C.E.).

superficially. But this is not my theme today. I am sure we need democratic government as an engine against tyranny. And I am sure we need the rule of law as an overarching principle of justice. However, it is a long intellectual road to get to these conclusions, and I think that, for present purposes, the justification of the rule of the agnostic State, the rule of religious neutrality, and the rule of religious freedom is nearer to hand. It rests in two qualities which march with democracy and the rule of law; indeed, their value largely constitutes the philosophical foundation of democracy and the rule of law. These qualities are freedom and reason. The first is an aspiration of humankind. The second is a characteristic of humankind. A free and reasonable person is responsible for his own self. He is responsible for what he thinks and for how he behaves. His right of free thought is absolute. His right of free behaviour, having consequences outside himself, is restricted, but only by laws imposing proportionate constraints for the protection of the rights of others and the security of the State. His beliefs and his morals cannot be dictated to him.

These considerations articulate the essential autonomy of the individual citizen. And the essential autonomy of the individual citizen is an ideal which owes much to the categorical imperative of Immanuel Kant—every person is to be treated as an end in himself, not a means.² The individual citizen is not to be dictated to on the strength of someone else's opinion, however heartfelt. These ideas justify and require compliance by the State with the rule of the agnostic State, the rule of religious neutrality, and the rule of religious freedom—unless, of course, there is some overriding imperative in the other direction. But there is not. Considerations of the nature of religious truth and the place of religion in society tend to support, rather than contradict, the three rules.

In looking at the nature of religious truth and the place of religion in society, I would offer you two contrasts which I think may illuminate the force of our three rules. The first contrast is between two different kinds of truth. The second contrast is between two different kinds of States or polities.

III. TWO KINDS OF TRUTH

Here is the first contrast—between two different kinds of truth. I will call them factual truth and religious truth. Facts and events which happen are one kind of truth. They are objectively ascertainable and communicable. They may be proved by evidence. Their consequences may be assessed and judged by reference to other facts and events, which are likewise susceptible to objective proof. That is factual truth. Contrast religious truth—if it is a truth. It is received through faith. It is revealed, not proved; it is neither capable of being proved, nor disproved. Therefore, it lives only in and through its believers. In a world of ascertainable facts and events, the world of factual truth, there is—for

2. See IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 38 (Mary Gregor ed. & trans., Cambridge Univ. Press 1997) (1785).

reasons I will briefly set out—a rational place for laws which bind everyone, with or without their consent. In a world where asserted truth is received (and only received) through faith, the world of religious truth, there is no such place for binding law.

IV. THE LOGIC OF OBEDIENCE

This position is, I think, supported by considerations relating to the logic of the concept of obedience. The fact that *X* commands you to do *Y* cannot of itself entail that you should do it. This is an instance of what is often called Hume's Law—you cannot derive an *ought* from an *is*.³ It is true whatever the identity of *X*, even if *X* is God. The proposition that *X* commands you to do *Y* is a proposition of fact—an *is*. No normative proposition—no *ought*—can be deduced from it. The bare existence of a master's command is of itself no basis whatever to require the servant's obedience. There must always be a higher premise. The higher premise must consist in an established prior obligation to obey the orders of *X*. But *X* cannot himself provide the premise. It must lie outside him and is logically prior to him. As I have said, the logic is the same whether *X* is God or man. In every case where it is claimed that an order issued by *X* ought to be obeyed—unless there is some *separate* reason for such obedience (such as an acceptance that it is anyway a good thing to do on its own merits)—the claim only has force if there is to be found an established prior obligation to obey the orders of *X*. In every case, the question must be—what is the basis of this prior obligation, this higher premise?

My suggestion to you is that in the world of factual there *is* a higher premise to support the duty of everyone to obey the general laws of the State, but in the world of religious truth, there is *no* such higher premise to support a general or universal duty to obey the laws of God written in the holy book.

V. DUTY TO OBEY THE LAW

I would articulate the higher premise giving rise to the duty to obey the law in the following way. First, it cannot consist in any expression of a desire or a command on the part of the ruler of the State, the maker of the laws. The ruler of the State in this instance has the role of *X*—the person whose commands are putatively to be obeyed. But as we have seen, *X* cannot himself provide the premise. It must lie outside him and is logically prior to him. Nor, plainly, can the higher premise consist in a desire or a command on the part of anyone else.

3. See DAVID HUME, A TREATISE OF HUMAN NATURE bk. III, pt. I, § 1, at 469 (L.A. Selby-Bigge ed., Oxford Univ. Press 1967) (1740). Compare 1 K.R. POPPER, THE OPEN SOCIETY AND ITS ENEMIES 57–59 (Princeton Univ. Press, 4th ed. rev. 1963) (1945) (discussing the distinctions between “natural” laws and “normative” laws), with GEORGE EDWARD MOORE, PRINCIPIA ETHICA 9–10 (1st ed. report 1951) (1903) (discussing the “naturalistic fallacy” theory).

It must rest in a principle or principles whose acceptance is demanded by the force of reason.

Now, the fact that we are rational beings, possessed of free will, and living in community with others of our kind requires us to come to terms with each other. It is an inevitable confrontation. At every turn the individual is faced with choices which affect his fellows, who will judge him and make their own choices. Such judgments and choices define the culture in which their makers live. They—we—have to confront the misery of cruelty and selfishness, in ourselves and in others. Unless we build our culture on such ideals as self-restraint, honesty, mutual respect, and fair treatment, we have no hope of being at peace with each other or ourselves. We cannot live in a free society without these ideals, save at the price of endless insecurity—each person would fear his stronger neighbour, and the currency of all our dealings would be brutality and distrust. These ideals are the very condition upon which human community is tolerable. They take their place as primary moral principles. They are the touchstones, at least they are among the touchstones, upon which other principles are honed and sharpened. They are critical to the principles which govern civic or political society. And as such they require an acceptance of compulsory law. The citizen must be subject to the general law, which is made and enforced for the general good. Otherwise, the conditions upon which society is tolerable, in which humanity can flourish, are writ in water. Here—however it is precisely expressed—rests the higher premise, the prior obligation, which gives rise to the duty of obedience to the particular laws which are made by the State, and which the State is entitled to enforce. I would express it as the need for constitutional rule, the need for an ordered State. And the context for all this is the first kind of truth: factual truth—the truth of ascertainable facts and events.

I should acknowledge, though it is obvious, that this coarse summary of the rationale of the duty to obey the law does no justice to the reams of philosophical learning that bear upon the subject. It may be said to start with Plato's dialogue the *Crito*, set in 399 B.C.E. Socrates had been convicted of impiety and was condemned to death. But his execution was delayed by a month out of respect for a religious festival during which executions were forbidden. During this time, he was visited in jail by his friend Crito, who tried to persuade him to escape—which was a real enough possibility. Socrates refused. His reasons, given in the dialogue, are contained in a long exposition about the force of a solemn contract between himself and the State. And, of course, the notion of a social contract has resonated through the writings of Hobbes,⁴ Locke,⁵ Rousseau,⁶ and Rawls.⁷ It is obvious that such a contract is fictional, since not

4. THOMAS HOBBS, *LEVIATHAN* (Michael Oakeshott ed., MacMillan 1947) (1651).

5. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Peter Laslett ed., Cambridge Univ. Press 1967) (1690).

6. JEAN JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* (Willmoore Kendall trans., Henry Regnery 1954) (1762).

7. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

every citizen agrees to obey the law. The fiction is developed, however, to show that rational people would consent to political rule if they were confronted with the alternative—anarchy and the brutish power of the strongest. But this Lecture is not the place to enlarge upon the theory of the social contract, even if I were up to the task.

VI. RELIGIOUS OBEDIENCE

I have suggested that while there *is* a higher premise to support the duty of everyone to obey the general laws of the State, there is *no* such higher premise to support a general or universal duty to obey the laws of God written in the holy book. There is no analogue to the need for an ordered State, and the need for an ordered State cannot serve as the higher premise for a duty to obey the laws of God. An ordered State (based on the ideals I have described), self-restraint, and the rest may be fulfilled without any reference to God whatever or any religious position being taken. Loving-kindness, the greatest of all the virtues, is by no means the monopoly of the religious. This is a position which can cause discomfort to the devout, because it seems to claim that their God is an irrelevancy to the great issues about what makes a healthy polity. But I do not think it is as stark as that. Let it be supposed that man is created in God's image, so that his freedom, his reason, and his social nature are God-given. In that case, God is to thank for the state of affairs that is humankind; the existence of that state of affairs has been brought about by Him. But the truth or falsity of this proposition does not itself touch what is implied by the need for an ordered State. Nor does it provide a higher premise to justify a general or universal duty of obedience to God's commands.

For many believers, however, there is such a higher premise. It is, simply, that God's commands are always to be obeyed. Both the premise, and the commands, are to be found in holy writ. But you will see at once that the God who is said to command obedience is here claimed also to be the source of the higher premise. That cannot be—a general duty to obey *X* must, as I have said, be founded on a higher premise which is logically prior to *X*, even if *X* is God. The proposition that God's commands are always to be obeyed cannot be justified by stating that the proposition is simply another of God's commands. Accordingly, such a duty to obey cannot be objectively demonstrated to the people generally as something they have to accept, like it or not. It lives only in the faith of those who choose to accept it.

I will say a little more about scripture, the holy book, since for many believers this is the critical source of religious truth. As I have stated, the existence of God and His nature are claimed to be revealed to us in the scriptures, and so are God's commands as to how we should and should not behave. Now, the nature of scriptural authority is a very large subject, which has exercised the minds of scholars over the centuries and is the subject of much distinguished academic writing. My submission to you—I have already foreshadowed it—is that nothing in the holy books of any religion can of itself

justify the imposition of general compulsory law in the civil State. No claim of scriptural authority can contradict the proposition that religious truth, if truth it is, is received through faith; it is revealed, not proved—it is neither capable of being proved nor disproved. Therefore, it lives only in and through its believers. Its acceptance is necessarily voluntary. In this it is in contrast to the first kind of truth, factual truth. The holy book's demand for obedience cannot create a general duty to obey which ought to be enforced by the law.

That is not the end of it. Legal obligation cannot be given by the words of the holy book, uncritically accepted. But nor can moral truth be so given. To suggest that morality without more is given in a book of rules prescribed by scripture is to degrade morality. It reduces the virtue of a good conscience to the drudgery of mere obedience, and it provides no principled basis even for the drudgery of obedience. If the duty of obedience is to be found simply in the book's literal pages, then it is blind and unreasoned. If it is said that the divine command is accompanied by promises of bliss or threats of torment, why then the due responses of the slavish faithful are merely self-centred. The carrot and the stick are the same creatures, however big they are. They certainly have nothing to do with duty or principle. And they have nothing to do with *goodness*.

Accordingly, scripture should not be treated, without more, either as compulsory law or as compulsory morals. Its adherents may of course obey its precepts; not because they must, but because they choose. However, none of these considerations—and I would emphasise this—needs diminish the force of scripture. The holy book may be inspirational; its words may rightly be treasured, as are those of the King James Bible, whose 400th anniversary falls next year. It may work a benign and mysterious alchemy in the souls of those who treasure it. Its value may grow—its wisdom seen to be more and more secure—as through the ages generation succeeds generation. The principles it offers may commend themselves, not only by virtue of the stamp of divinity, but because they are seen to be good in the world of facts and events. In that case, it will invite obedience and rational society will respond. But the holy book has of itself no claim to command obedience that is not freely given.

Let me add these observations. It is not a coincidence that no higher premise can be found to substantiate a duty to obey the commands of God, at least if the God we are discussing is an all-powerful creator. It is a necessary truth—the assertion of such a higher premise is self-contradictory. As we have seen, such a premise must lie outside *X*, who gives the orders that are putatively to be obeyed. It is logically prior to *X*. But there is, surely, nothing beyond an all-powerful creator—nothing that is logically prior to him. Accordingly, the existence of such a creator and the existence of a higher premise, which justifies or requires a duty of obedience to his commands, are mutually inconsistent propositions.

It follows that if we are to speak coherently of a duty to obey God's commands, we must mean something different from a duty of obedience in the factual world. It cannot be an enforceable duty, given by a higher premise, of the kind which justifies compulsory law. It can only be a voluntary duty,

willingly undertaken by the duty-ower. This distinction between a compulsory duty to obey the laws of the State and a voluntary duty to obey the laws of God is of the first importance. If they are confused and religious precepts are advanced as the basis of compulsory law in the civil State, that would be to impose the unprovable beliefs of some upon everyone. It would be a form of political tyranny—more accurately, a theocratic tyranny. Theocracy is necessarily tyrannous because it involves the exaction of compulsory obedience with no objective justification.

No such arrangement would be assented to by the people generally, unless of course they (or a majority of them) subscribed of their own volition to the proposition that God's commands are always to be obeyed and are to be found in holy writ. That brings me to the second of the two contrasts I proposed to canvass with you.

VII. TWO KINDS OF POLITY

The first contrast was between factual truth and religious truth. The second is between two kinds of States or polities. In the first, the overwhelming majority of citizens assume the truth of a monotheistic religion whose God is all-powerful, takes a close interest in human affairs, and is liable to visit his approval or disapproval on the people according to their compliance or otherwise with his will. Contrast the second kind of State—where no single religion prevails. There is a kaleidoscope of religious opinion ranging from a devout belief in the all-powerful God of the first State to outright atheism, with many different “theisms” in between, including an easygoing kind of scepticism or agnosticism. These two model States tend to put our three rules in their proper respective contexts.

In the first kind of State, the government, whether democratic or autocratic, will if it is rational make laws and elaborate policies which will appease the God. He is a jealous God—Thou shalt have no other Gods but me—and he does not approve of religious toleration or freedom to worship gods other than himself. The people are in fear of him, and the State is in fear of him on their behalf. There is little or no appetite for any of our three rules, since an unquestioning belief in this jealous God is all but universal. There is certainly no appetite for the rule of religious neutrality because the State and the people believe that their God will only be appeased by measures and practices favoured by him—forms of religious observance, prohibition of certain sexual practices, restrictions or requirements of forms of dress, and so forth. If it is sufficiently convinced of the terrible consequences of doing otherwise, the State will pass all these strictures into law.

In the second kind of State—where there is a kaleidoscope of religious opinion and belief, together with atheism, skepticism, and agnosticism—there are, or should be, no such adamant constraints. There is no will to impose them. The State is free to sign up to all three rules, which are—for reasons I have already given—commended by the precepts of freedom and reason.

VIII. CONCLUSIONS

We live in the second kind of State. We used to live in the first. The challenge offered by my subject in this Lecture is the insight that our three rules were repugnant to the first kind of State, but are rational and necessary in the second. Much of the difficulty resides in the fact that the cultural and historical shift from the first State to the second has been gradual; perhaps it is still incomplete. In England we can see the beginnings of the move away from a blind adherence to the literal word of scripture in the work of Richard Hooker, appointed Master of the Temple in 1585 and perhaps the greatest of English theologians.⁸ He brought to its flourishing a religious philosophy consisting in a threefold appeal to scripture, tradition, and reason. Hooker's thought was prefigured by John Jewel, Bishop of Salisbury from 1559, whose *Apology for the Church of England* was published in 1562. Hooker's great work, *The Laws of Ecclesiastical Polity*, is "a carefully worked answer to seven Puritan propositions."⁹ Of these, a foremost Puritan principle was that scripture alone is the "rule of all things which in this life may be done by men."¹⁰ But this is the jackboot of the single book, the cold command. Hooker's appeal to tradition and reason alongside scripture begins a journey down a road where far greater rewards are to be found. His view of the Bible was, of course, a sixteenth-century view; he affirmed "the absolute perfection of scripture," but this was by no means the same as the Puritan principle.¹¹ For Hooker, reason was a vital guide to the understanding and the use of scripture: "For whatsoever we believe concerning salvation by Christ, although the scripture be therein the ground of our beliefe; yet the authoritie of man is, if we marke it, the key which openeth the dore of entrance into the knowledge of the scripture."¹² As Henry McAdoo says:

To sum it up: Hooker gives the primacy of value to Scripture and to reason in his hermeneutics and a secondary value to tradition which also has authority but only in so far as it is consonant with Scripture and with reason. In other words, Scriptural interpretation involves maintaining a balance between reason and grace, "the special grace of the Holy Ghost" concurring "to the enlightening of our minds"; a balance between

8. Here I am indebted to Henry McAdoo's essay on Richard Hooker. See Henry McAdoo, *Richard Hooker*, in *THE ENGLISH RELIGIOUS TRADITION AND THE GENIUS OF ANGLICANISM* 105, 105–23 (Geoffrey Rowell ed., 1992).

9. *Id.* at 111.

10. *Id.* (internal quotation marks omitted).

11. RICHARD HOOKER, *OF THE LAWES OF ECCLESIASTICALL POLITIE* bk. II, at 123 (Da Capo Press 1971) (1594).

12. *Id.* at 116.

private and personal conclusions on the one hand and the corporate wisdom of the Church on the other.¹³

A hundred years or so after Hooker, there were the beginnings of the Enlightenment, which most clearly started to push open the door to our three rules—the rule of the agnostic State, the rule of religious neutrality, and the rule of religious freedom. Now in the twenty-first century we have—we certainly ought to have—reached the point where these are well in place. But the truth is that they rattle around in a box they do not entirely fit. By and large, as I have said, we do indeed live in the second kind of State—the pluralist State. Here and in the United Kingdom, in the nations of the European Union, and in other advanced societies, the State imposes no requirement of religious belief; and, by and large, it offers fair guarantees of freedom of religious thought and expression. So the first and third rules are reasonably well-established.

However, we still have difficulties with the second rule, the rule of religious neutrality. Remember the terms in which I introduced it to you—the State must not by law require or prohibit any measure or practice on the ground only that it is espoused by or is offensive to adherents of any particular religious faith. Yet, in modern developed States there are laws forbidding certain kinds of dress on religious grounds. The display of some religious symbols is suppressed, or sought to be suppressed, on grounds that it may offend members of other religious faiths. There are calls for discrimination against homosexuals. We have still not got it entirely clear that the law of the State has to be founded on objective, rational, and humane grounds, and on nothing else. These various religious prejudices, and many others, cannot pass the test. They rest, at most, on the literal word of the book, and that is never enough. If the theme of this Lecture poses any one challenge above others, it is this—the State must observe the law of religious neutrality.

The vice of the literal word of the book is close to the fear of divine punishment—a lively feature of the first kind of State or polity which I described. This in its turn is close to what Plutarch in the first century A.D. called superstition. Plutarch was born about A.D. 50 and came from Chaeronea in Central Greece, where Philip of Macedon had defeated the Greek city-states in 338 B.C. The collection of his writings known to us as the *Moralia* is a series of essays and dialogues on all sorts of subjects. In his essay on superstition, Plutarch held that atheism and superstition were at two extremes, and the mean between the two was piety, or, as we might describe it, decent religion. Here is the flavour of his views of superstition:

Polycrates was a dreaded tyrant on Samos, as Periander was at Corinth; yet nobody continued in fear of them who migrated to a free

13. McAdoo, *supra* note 8, at 116 (footnote omitted) (quoting HOOKER, *supra* note 11, bk III, at 147).

and democratic city. But if a man fears the rule of the gods as a grim, inexorable tyranny, whither shall he migrate, whither shall he flee? What land, what sea can he find that has no gods? In what corner of the world, poor wretch, can you sink and hide yourself, confident that you have escaped god? The law permits slaves who despair of winning their freedom to apply to be sold and pass to a kinder master; but superstition offers no change of gods, there is no way of finding a god who will not be feared by the man who fears the gods of his ancestors and his family, who shudders at the powers of salvation and beneficence, who goes in fear and trembling at the thought of those from whom we ask wealth, prosperity, peace, concord, and the success of our noblest words and actions. . . .

. . . The slave has his altar of refuge, the robber his sanctuary in many a temple, escapers from battle feel safe if they can touch a statue: but the superstitious man goes in fear and terror of these very aids in which men place their hopes when they fear the worst.¹⁴

Plutarch's superstition is like the tyranny of the book. The superstitious man is a slave—a slave with no escape. If God required us to be slaves, we ought to disobey him; just as if he commanded us to slaughter the innocent or people who happen not to believe in him, so also we ought to disobey him.

At the end let me make clear what I am not saying. I do not seek to deny religious truth. I do not seek to deny religion a place in the life of civic society. I have no patience with the shrill intemperate aggression of some of our more vocal atheists. At home in England along with many others—people of religious faith and of none—I greatly value the liturgy of the established church, at least in the form of the *Book of Common Prayer* of 1662. I do not seek to deny the status and propriety of ecclesiastical law—about which I indicated I would say a little more. The Church of England's liturgy, and indeed its doctrine, are prescribed by law—the Worship and Doctrine Measure of 1974. I have no difficulty with any of this. However, in contrast to the position as it would have been in the first kind of polity, which I have described, nothing in our law seeks to compel or enforce religious belief in those who do not possess it. There is no breach of the rule of the agnostic State. Indeed, the evolution of the first kind of polity into the second may be signalled by what I would suggest can be seen as a change in the nature—leave aside the content—of ecclesiastical law. Once it was general compulsory law. As Thomas Glyn Watkin has written, referring to the origins of the Church of England, “To be a subject of the King of England

14. For an alternate translation of Plutarch's words, see II Plutarch, *Superstition*, in *Moralia* 455, 463–65 (T.E. Page et al. eds., Frank Cole Babbitt trans., Harvard Univ. Press 3rd prtg. 1962) (c. 90 C.E.).

entailed acceptance of the reformed faith as part and parcel of loyalty to the sovereign.”¹⁵

*Cuius regio, eius religio.*¹⁶ But now, and by contrast, our ecclesiastical law regulates the Church’s forms of worship and doctrine only for those who enter into its fold. Anyone is free to remain outside. You can trace the development of this position through the history of religious tolerance and intolerance. If the rule was once *Cuius regio, eius religio*, it was changed in England not least by the Toleration Act of 1689, the first year of the reign of William and Mary. The Act granted freedom of worship to dissenters on certain prescribed conditions; Roman Catholics and Unitarians, however, were not given the benefit of the statute. Their religious liberty free of all constraints had to await the nineteenth century.

I have urged the rules of the agnostic State, of religious neutrality, and of religious freedom. They have to be obeyed by a State which respects the freedom and reason of humankind, as a democracy under the rule of law will do. I think these three rules are a condition of civilised democratic government. But they can live alongside the church, even an established church, so long as church and State both keep their swords in their scabbards.

Let St. Matthew have the last word, in the language of the King James Bible:

And they sent out unto him their disciples with the Herodians, saying, Master, we know that thou art true, and teachest the way of God in truth, neither carest thou for any *man*: for thou regardest not the person of men.

Tell us therefore, What thinkest thou? Is it lawful to give tribute unto Caesar, or not?

But Jesus perceived their wickedness, and said, Why tempt ye me, ye hypocrites?

Show me the tribute money. And they brought unto him a penny.

And he saith unto them, Whose *is* this image and superscription?

They say unto him, Caesar’s. Then saith he unto them, Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.

15. Thomas Glyn Watkin, *Church and State in a Changing World*, in *ENGLISH CANON LAW: ESSAYS IN HONOUR OF BISHOP ERIC KEMP* 82, 86 (Norman Doe et al. eds., Univ. of Wales Press 1998).

16. “Whose realm, his religion.”

When they had heard *these words*, they marveled, and left him, and went their way.¹⁷

17. *St. Matthew* 22:16–22 (King James).