

The Gospel, Law, and a Secular Liberal Humanist Society: is Impartiality Theologically Justifiable or Possible?¹

P.H. Brazier

KEYWORDS

Church and Law. Secular. Impartial. Discrimination. Religious Legalism. Liberal Humanism.

ABSTRACT

Recent reports in the media assert that Christian minorities are being legislated against by the British courts. The aim of this paper is not necessarily to assess the rights and wrongs of these decisions, *per se*, but to examine the claim to impartiality that the courts use in coming to such decisions, a claim that is by its very nature theological. This analysis will focus on the McFarlane and Johns cases as it is in these that the question of the legal standing of a Christian in a secular state has been re-defined in the context of liberal religious legalism. Initially, given the claim by the judiciary that Britain is not, and never was, a Christian nation, we can examine the religion of nation states (Isaiah 40); as such we can categorically define (drawing on the ruling of Lords Justice Laws and Munby) that the dominant religion in Britain is now neo-Pagan Secular Liberal Humanism. As such the establishment and the judiciary perceives of itself as non-religious, as if it was a neutral belief system. This opens up a theological doctrine of religion which denies the possibility of objective impartiality. We can then begin to examine the ethics and theological anthropology that underpins neo-Pagan Secular Liberal Humanism, drawing on the work of Solzhenitsyn. In conclusion we can assert that to be truly neutral and non-religious, *essentially and necessarily objective*, as the judiciary believes itself to be, is an attribute of God; for the judiciary to attempt impartiality, without acting *eritis sicut Deus*, they must accept the opposition to a particular personal moral stance as equal to those who seek to promote a particular personal moral stance; however, this is not necessarily the Church's position, as dictated by scripture, revelation, and reason.

1. This is a shortened version of a paper presented to The Research Institute in Systematic Theology, Department of Theology and Religious Studies, King's College London, Tuesday 21 June 2011.

INTRODUCTION

The nations are like a drop from a bucket,
 and are accounted as dust on the scales...
 All the nations are as nothing before *Him*;
 they are accounted by *Him* as less than nothing
 And emptiness.

It is *He* who sits above the circle of the earth...
 Who brings princes to naught,
 And makes the rulers of the earth as nothing.

ISAIAH 40: 15, 17, 22 & 23

Recent reports in the media relate to events whereby certain individuals from Christian minorities are legislated against by the British courts. Roman Catholics, Pentecostals and Evangelicals see this as oppression and discrimination (as do Anglo-Catholics and Evangelicals in the Church of England). On the other hand Liberals, both Anglican and secular, who now form the Establishment in the West, decry such a notion as persecution simply because their particular brand of religion accords with the principles for which the Liberal establishment legislates against Roman Catholics, Evangelicals and Pentecostals. What is happening here is that the governments of *secular* nation states enact *secular* legislation that is then enforced through *secular* courts to demand that Christians conform to *secular* expectations. For example, the judgements by Lords Justice Laws and Munby relating to homosexuality and the traditional Christian views of plaintiffs, or the case of the Jewish school leading to a legal definition as to what constitutes a Jew, or the State control over Roman Catholic adoption agencies, or hospital staff being victimized for wearing a cross and chain.² Arrests have been made for voicing orthodox Christian ethics in public, for example Evangelical street preachers for declaring, publically, that homosexuality is sinful and subject to divine punishment: here clear Biblical and doctrinally orthodox dogma is considered contradictory to the authority of the nation state, censored by a new form of liberal religious legalism.

The aim of this paper is not necessarily to assess the rights and wrongs

2. All these and more cases have featured in the media, however, to assess their theological significance and context, a comparison between the reporting of the facts in the following three gives a balanced approach: *The Church Times*, *The Church of England Newspaper*, and *The Guardian*. Searching these papers websites will allow access to the reports.

of these decisions, *per se*, but to examine the claim to impartiality that the courts use in coming to such decisions. It is intended to demonstrate that such a claim is by its very nature theological: impartiality must be seen as an attribute of God. However, these judgements against Christians are grounded in an Enlightenment self-referential and hermetic concept of impartiality; judgements that are then given in a Postmodern relativistic context. The courts claim not to favour Christianity or any particular religion; they are secular in the literal sense of the word (that is, non-religious) or even irreligious (in the sense of indifference to religion), and therefore appeal to no higher authority than the courts, the nation states, and any pan-national body that issues from the nation states (for example, the European Commission). This raises difficult questions: How possible is it for secular agencies to claim impartiality and to place themselves above churches without contradicting this supposedly impartial ground? Is it possible for secular law in its judgements to be truly non-religious and therefore to claim to be neutral and impartial? Can the judges representing these nation states ever be religiously indiscriminate in their judgements, and seemingly disinterested? Can they ever be essentially and necessarily objective if to be objective is to be non-religious or irreligious? By deconstructing this aim to impartiality, we will demonstrate that these judgements are flawed, contradictory and spurious, precisely on the ground and criteria of this secular, though implicitly theological, principle of impartiality. In so doing we will concentrate on the McFarlane and Johns cases as it is in these that the question of the legal standing of a Christian in a secular state has been re-defined.³ These cases centred on the question of homosexuality. Personal morality in the form of sexual identity and practice is in many ways irrelevant, but it has become a *cause célèbre* because the State has legislated to *promote* homosexuality and to *control* public opinion about such personal behaviour, and has demanded that government organizations and local authority agencies question people on their private lives and beliefs. So, **first** we must examine what is meant by the religion of nation states; **second**, the relationship between religion and atheism, and therefore secularism; **third**, an analysis of impartiality through a theological doctrine of religion which questions the possibility of objective impartiality; **fourth**, we can

3. Gary McFarlane, and Eunice and Owen Johns. Documents pertaining to the McFarlane and Johns cases, the judgements and appeal decisions, can be accessed from BAILII: The British and Irish Legal Information Institute, at: <http://www.bailii.org/>

then examine the *nature* of the ethics that underpins these legal judgements, drawing on the work of Solzhenitsyn. **Fifth**, in conclusion we can assert that to be truly neutral and non-religious, *essentially and necessarily objective* as the judiciary believes itself to be, is an attribute of God; for the judiciary to attempt impartiality, without acting *eritis sicut Deus* (to be as if you were God), they must accept the opposition to a particular personal moral stance as equal to those who seek to promote a particular personal moral stance.

THE RELIGION OF NATION STATES

Paul Diamond, barrister, on behalf of the claimants Eunice and Owen Johns, argued against Derby City Council's decision that the Johns could no longer foster children because they would not encourage and promote (support, endorse, espouse) homosexuality if a child in their foster care expressed inclination towards or interest in homosexuality; Diamond argued on the assumption that Britain was implicitly and historically a Christian country and that homosexuality was against the Christian religion. Neither side denied that an ethical prohibition on homosexuality was inherent and implicit to a traditional orthodox interpretation of Christianity, however, Lord Justice Munby in his ruling explicitly denied and rebutted the assertion that Britain was implicitly and historically Christian, or that the law had been significantly informed by Christianity. Munby declared in his ruling on the Johns case that—

§.39. We sit as secular judges serving a multi-cultural community of many faiths. We are sworn (we quote the judicial oath) to “do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.” But the laws and usages of the realm do not include Christianity, in whatever form. The aphorism that Christianity is part of the common law of England is mere rhetoric.⁴

If Britain, a nation that once was proud of considering itself Christian and according to Sir Winston Churchill Britain stood alone against the Nazis

4. Lord Justice Munby's decision, 28 February 2011, on the Johns case, Case No: CO/4594/2010, between Eunice Johns and Owen Johns (Claimants) and Derby City Council (Defendant) and The Equality and Human Rights Commission (Intervener), §.39, was accessed from BAILII: The British and Irish Legal Information Institute, at: <http://www.bailii.org/>

in 1940 as representative of Christian civilization, if Britain is no longer considered by the establishment to be Christian, what is it? In religious terms is Britain regressing into a form of Paganism? The term Pagan is used simply to refer to people and cultures outside of the Judaeo-Christian tradition and revelation (essentially Oriental, Middle Eastern and Asiatic-Indian religion, specifically the ancient Pagan nations that surrounded the ancient Hebrews, but also North European tribes and nations). The ancient Greeks and Romans were considered to espouse Pagan religion defined by a belief in a multiplicity of “gods” and “idols,” which represented an array of subjective spiritual forces, though ultimately according to many in an oligarchic intellectual ruling élite, none of these “gods” and “idols” were considered to exist. Ancient Greece and Rome also developed a respect and love for homosexuality, and, along with many Pagan nation states in the Middle East, extoled, in varying degrees, polygamy, and a variety of sexual practices defined by paraphilia, often exercised in a spiritual or religious context. If we accept Lords Justice Laws and Munby’s classification of Britain as non-Christian, and given the contemporary use and justification of a wide variety of sexual practices, including homosexuality, given that serialized polygamy is endemic, given the idolization of paraphilia, then Britain by its own confession, in the form of Lords Justice Laws and Munby’s classification, and in keeping with the dictionary definition, is Pagan, more pertinently neo-Pagan. In his judgement on the McFarlane case Lord Justice Laws summarizes in specific terms that Britain is not a Christian nation state, and that the laws of the land owe virtually nothing to a Christian heritage. In this he unwittingly defines Britain as a neo-Pagan nation state.⁵ Lord Justice Laws goes to great lengths to define the relationship between Christianity and the law to the extent that Christian witness and belief is provocative, an antipathy, to the well-being of the state. For example:

§22. [Christian beliefs] should not offer any protection whatever of the substance or content of those beliefs on the ground only that they are based on religious precepts.

§23 The general law may of course protect a particular social or moral

5. The McFarlane case, Case No: A2/2009/2733, between Gary McFarlane (Appellant) and Relate Avon Limited (Respondent), see §§.20-27, accessed from BAILII: The British and Irish Legal Information Institute, at: <http://www.bailii.org/>.

position which is espoused by Christianity, not because of its religious imprimatur, but on the footing that in reason its merits commend themselves ... But the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled ... since in the eye of everyone save the believer religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence.⁶

Given the liberal socio-cultural revolution that has taken place since the 1960s in Britain, and given that representatives of the establishment have declared in a court of law that Britain is at best Post-Christian, at worst never was Christian, and in the context of the credentials of those who seek to play down the role of the churches in the life of the nation, then we must name the dominant religion in Britain to be neo-Pagan: that is, a Paganism defined by the beliefs and actions of the Secular Liberal Humanist.

Perhaps the idea of a Christian nation is a delusion. From an existentialist perspective people are either-or, they are with God, for God, or against God; this issues from the will, and may vary at different times in their lives, the real person (hidden in life by a pretence of ideas, beliefs, lifestyles and actions), being revealed in the *eschaton*, subject to the Last Judgement. The true Church is then invisible. What we take to be the Church, the visible manifestation, may not be eschatologically the true community of the redeemed, the body of Christ, the righteous acceptable to God in Christ. A nation is simply an amalgam, a society, of people. If the church cannot categorically demonstrate that all its members are Christian, if being Christian is more than a religious identity, or even just a consumer choice, a lifestyle statement, then it must be impossible for a nation to attempt such a classification as being Christian, or not. Any claim to pan-national religious distinctiveness is merely a tribal identity. What inherent value is there to these nation states? Are nation states ever a representation of the will of God? Isaiah defines their eschatological value: the nations are little more than a drop of water from a bucket; they are accounted as no more than dust on the scales because all the nations are counted as nothing before God, they are less than nothing before the Lord, and are emptiness. The Lord God brings all these leaders and governments to nonentity, the rulers of the earth are as naught (Isaiah 40: 15, 17, 22 & 23). If all

6. McFarlane case, Case No: A2/2009/2733, §§. 22 & 23

governments are valued as less than nothing by the Lord God, then the claim by any nation or country to be of a particular religious tradition is a pretence.

RELIGION AND ATHEISM

Lord Justice Laws pronouncements on the McFarlane case, quoted by Lord Justice Munby, are couched in the language and concepts of Richard Dawkins' doctrine of religion, whereby religion as a generic term for widely differing and contradictory belief systems is considered subjective, irrational, bereft of evidence or proof and is divisive. For example,

§.23. ...[i]n the eye of everyone save the believer religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence. ... Therefore it lies only in the heart of the believer, who is alone bound by it.

§.24. The promulgation of Law for the protection of a position held purely on religious grounds cannot be justified. It is irrational, as preferring the subjective over the objective. But it is also divisive, capricious and arbitrary.⁷

Therefore what do we regard as religion? There is in effect no generally agreed definition of religion. Prior to Postmodernism all societies tribalistically defined true religion as their particular religio-political belief system, other belief systems were granted varying degrees of truth and religiosity by comparison with this pre-defined true religion. The term religion is used with widely different meanings. The Roman philosopher Marcus Tullius Cicero defined *religio* as the giving of proper honour, respect and reverence to the divine, by which he meant the “gods;”⁸ such “religion” was a dutiful honouring of the “gods”, as distinct from a “superstition,” an empty fear of them.⁹ Cicero's definition implies an object — theistic religion will invoke God, or the “gods,” as the object of religious practice. But this object may only be in the mind of the believer. In addition, religion may embrace non-theistic belief systems

7. McFarlane case, Case No: A2/2009/2733, §§. 23 & 24

8. Marcus Tullius Cicero (106-43 BC), *The Nature of the gods*. Trans and intro, Patrick Gerard Walsh; Oxford: Clarendon Press, 2001, 2.3.8; and Marcus Tullius Cicero, *The Orations of Marcus Tullius Cicero, Volume IV: The Fourteen Orations Against Marcus Antonius; The Treatise on Rhetorical Invention; The Orator; Topics; On Rhetorical Partitions, Etc.* Trans. C.D. Yonge; Dodo Press, 2008, 2.53.161.

9. Cicero, *The Nature of the gods*, 1.4.2.

from Buddhism to Marxism, or from football to popular culture, all of which exhibit the characteristics often associated with objectively theistic religions, indeed any philosophy of life that exhibits a world view of sorts and that defines ethics is in some way implicitly religious: at the very least it is, according to Lords Justice Laws and Munby, a belief system. According to the unscripted assertions of Postmodern relativism, which drives neo-Pagan Secular Liberal Humanism, almost anything can count as “religion,” any lifestyle statement as “religious.” In the 2001 national census in the United Kingdom more than a quarter of a million people defined their religion as “Jedi,” a belief system invented for and proclaimed uniquely in the Hollywood fantasy film, *Star Wars* (1978); for the 2011 census heavy metal music fans demanded their religio-musical belief system (centred on the deistically demonic concept of the “rock-god” or “rock-idol”) be recognized as a religion. In 2011 a British employment tribunal accepted that believing in the higher purpose of public service broadcasting—i.e. the BBC—qualifies as a religious belief for protection under discrimination laws:¹⁰ “The Employment Equality (Religion or Belief) Regulations 2003, as originally enacted, provided protection against discrimination on grounds of ‘any religion, religious belief, or similar philosophical belief.’ In April 2007 ‘similar’ was removed, widening the scope to cover any philosophical belief, which remains the case in the Equality Act 2010.”¹¹ Therefore, “The decision effectively puts the broadcaster’s core principle on a par with Christianity.”

By comparison with this confused cacophony of egocentric religions the Swiss theologian Karl Barth distinguished, dialectically, between religion and revelation. In stressing the sovereignty of God, Barth denied, to a degree, knowledge of God through human effort. Therefore all religion—including Christianity—was a human activity, human generated. For Barth, God could only be “known” by God’s self-revealing, through revelation, in Jesus Christ. And the truth of this could only be accepted by faith. Religion at its best was to be seen as a flawed human response to the self-revelation of the one true living God. Therefore Barth asserts that we live under the divine judgement, God’s

10. See: *The Daily Telegraph*, 9 May 2011. “A Birmingham tribunal has given Devan Maistry permission to sue the corporation [the BBC] for wrongful dismissal on the grounds of discrimination. Mr Maistry, who worked for the BBC Asian Network, claims he suffered from discrimination for six years and has filed a claim for ‘religious or belief discrimination.’”

11. See: *People Management*, magazine,
<http://www.peoplemanagement.co.uk/pm/articles/2011/04/maistry-v-bbc.htm>.

judgement on all religion—“Apart from and without Jesus Christ we can say nothing at all about God and man and their relationship one with another.”¹² Furthermore, “The revelation of God in the outpouring of the Holy Spirit is the judging but also the reconciling presence of God in the world of human religion, that is, in the realm of humanity’s attempts to justify and to sanctify itself before a capricious and arbitrary picture of God.”¹³ If, like Barth, we are to regard religion, *per se*, as idolatrous, as unbelief, because it perpetually falls short of the unknowable *aseity* of the one true living God revealed in Jesus of Nazareth, the Christ, then what do we classify as religion? Is belief in God, or for that matter a “god” (note the lower case “g”), an essential axiom of religion? No; there are numerous non-theistic religious belief systems. By comparison Barth saw the self-revealing of God, the paradoxical dialectic of an unveiling-veiling, as the abolition of all religion.¹⁴ This unveiling-veiling dialectic implies that we can never get religion right, even if we claim to be Christian. The inherent contradiction in a neo-Pagan Secular Liberal Humanist approach to religion, issuing as it does from the Enlightenment, is characterised by Thomas Jefferson, the third US president, who epitomises the Enlightenment’s approach to religion. The Statute of Virginia for Religious Freedom granted pluralistic equality for all religions but effectively denied religious truth, asserting one truth—Jefferson’s highly individualistic Deistic beliefs. This in many ways is the model for the state sanctioning of religion in the West today.

In his ruling against the Johns, Lord Justice Munby quoted Lord Justice Laws’ comments that “The precepts of any one religion, any belief system, cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other.”¹⁵ Both Laws and Munby represent the dominant religion in this country, that is, the neo-Pagan religion defined by Secular Liberal Humanism. So what is Secular Liberal Humanism? Secular Liberal Humanism is a religious belief system characterized essentially by an

12. See, Karl Barth, *The Church Dogmatics*. 14 Vols; eds. G.W. Bromiley and T.F. Torrance; Edinburgh: T&T Clark, 1936-1977. Quote from: §17 (Vol. I/2) “The Revelation of God as the Abolition of Religion,” 280.

13. Barth, *CD*, §.17 (Vol. I/2), p. 280.

14. *Ibid*.

15. Johns case, Case No: CO/4594/2010, §55:

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/375.html>.

Munby is quoting, Lord Justice Laws on the McFarlane case, Case No: A2/2009/2733, §§. 21-23:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2010/880.html>.

unwritten creed containing three clauses: **first**, the Enlightenment principle that the human is the measure of all;¹⁶ **second**, syncretistic religious atheism whereby all the “gods” and “idols” of humanity are conflated into a nihilistic nondescript and non-existent “god”, an “idol” that varies from person to person; **third**, autonomous consequentialist ethics whereby morality is reduced to self-interest, provided one can get away with one’s actions, or persuade society and the establishment to redefine morality according to one’s own self-interest. Secular Liberal Humanism is an unscripted religion, unscripted in the sense that it is impromptu, *ad hoc*, in that its adherents do not see themselves as religious, only those they oppose can be religious, yet Lord Justice Laws’ reference to “the precepts of any one religion, any belief system” implies that Secular Liberal Humanists cannot avoid being religious. As such, Secular Liberal Humanism, is essentially an anti-theistic belief system that denies any inherent truth or value in religion, whereby all religions are to be considered superficially equal and equally of no ultimate value yet they must exist side-by-side and not attempt truth claims. But are Secular Liberal Humanists so immune from being religious? Despite their disbelief in an objective God their belief system is religious and bears the hallmarks of a religious mindset. Richard Dawkins’ beliefs as a self-proclaimed atheist (even evangelical atheist) and prophet of religious nihilism, clearly formed the doctrinal basis (and explicit wording) of recent rulings against Christians. Such beliefs are characterized by an evangelical urge to convert, by a ruthless certainty, perhaps by a sublimated inferiority complex in the face of other religio-belief systems given the manner in which these New Atheists, as they are termed, need constantly to assert their religious perspective and fight off, resist, others.

According to the now neo-Pagan Secular Liberal Humanist British establishment and the New Atheists, being religious is something everyone else does, the enemy is religious; they cannot be religious because they have decided so, which makes it an ontological certainty. The supposition is that the critics of religion are immune from religion, likewise the law-makers and judges are resistant and invulnerable from being religious. Thomas Erskine of Linlathen commented that those who make religion their “god,” will not

16. “Man is the measure of all things: of things which are, that they are, and of things which are not, that they are not.” See, Protagoras’ statement that humanity is the measure of all is summarized and reiterated by Plato in his *Theaetetus*, §152a, however, a full quotation is given by Sextus Empiricus (c. 2nd-3rd C. BC) in *Adversus Mathematicos* (Against the Mathematicians), §7.60.

have God for their religion.¹⁷ According to G.K. Chesterton those who stop worshipping God don't stop worshipping, they start worshipping idols, their own bad imitations of God.¹⁸ The eighteenth century French philosopher Voltaire, a profound influence on the French and American Revolutions, was reputed to have commented that he had no morals — and yet was a very moral person. The same can be said of the neo-Pagan Secular Liberal Humanists as examples of Post-modern, Post-Christian Western religion — they claim to have no religion, yet they are very religious people. The judges in these recent cases claim to be above religion, yet clearly by their own definition they are not.

IMPARTIALITY

The prayer for the Church militant in *The Book of Common Prayer* (1662), still the official prayer book for The Church of England, entreats the Lord for the monarch—

...thy Servant ELIZABETH our Queen; that under her we may be godly and quietly governed: And grant unto her whole Council, and to all that are put in authority under her, that they may truly and indifferently administer justice, to the punishment of wickedness and vice, and to the maintenance of thy true religion, and virtue...¹⁹

The term *indifferent* may be used today to imply no interest or concern, no commitment, however, in the language of early modern English the term means having no particular interest or empathy, no partisan sympathies (the term today is substituted by most priests/ministers when reading from the Prayer Book with the word *impartial*). In the Reformation, Church of England, Prayer Books (1549, 1559 and 1662) the assumption is *indifference* or *impartiality* in relation to and defined by *true religion* (Christian) and the discrimination against wickedness and vice. Indifference, impartiality, must be set in a context: in the instance of *The Book of Common Prayer* this is in the veracity of the revelation of the triune God in Jesus of Nazareth, the Christ,

17. Thomas Erskine, *Remarks on the Internal Evidence for the Truth of Revealed Religion*. Edinburgh: Waugh, Innes and Hamilton, 1820.

18. G.K. Chesterton, *Orthodoxy*. San Francisco, CA: Ignatius Press, 1995, [1908], see, III—The Suicide of Thought.

19. The Church of England, *The Book of Common Prayer* (1662), 'The Order of the Ministration of Holy Communion—The Prayer for the Church.'

and in the need to promote a Christian perspective on morality and ethics. To raise-up vice (greed, paraphilia, etc.) as a moral virtue as the law-makers have today, is a Pagan inversion of the prayer for the Church in the *Book of Common Prayer*.

But what is impartiality? We are talking about a number of terms: impartial, indiscriminate, indifferent and neutral. The archaic meaning of *indifferent* aside, from a legal perspective *impartiality* involves treating all rivals or disputants equally, or seemingly equally; to be *impartial* implies having no particular interest or sympathy, even of being unconcerned, perceiving neither good nor bad, even acting at random or without bias in judgement, thereby not being influenced by considerations of personal advantage, declaring no interest or specific concern. As a philosophical proposition, on which the legal use is grounded, impartiality as a principle of justice purports that judgements *ought* to be based on objective criteria, free of partiality, preconception, or favouritism. Legally, impartiality does not necessarily expect that all be treated equally under all conditions. Individuals may warrant different treatment according to external ethics, especially where laws enacted by parliament define that external morality. Therefore judges work within a framework of ethics laid down by a government—which is in effect a form of bias. Impartiality under the law requires that all appear to receive equal treatment, that all appear to be seen to be treated equally. In terms of religious legalism, British judges would now appear to claim impartiality by working within the biased framework of their own religiosity. Can impartiality in a legal context ever be a workable universal moral imperative?

According to the Stanford Encyclopaedia of Philosophy,²⁰ *Impartiality* is often regarded as if it were equivalent to, or synonymic with, *Moral Impartiality*. Often impartial is used as a qualifying adjective for the moral. Impartiality in its broadest sense is best understood as a formal notion, while moral impartiality in particular is classified as a substantive (i.e. practical, functional even utilitarian) concept — which in itself is controversial and disputed. In legal and philosophical use impartial is assumed to denote a positive unitary concept that is by default moral, however, by claiming to be impartial one in authority is by default being biased and partisan. Western liberal democracies like to shelter behind a veneer of impartiality, however, most philosophers see

20. *Stanford Online Encyclopaedia of Philosophy*.
See: <http://plato.stanford.edu/entries/impartiality/>

impartiality as an illusion generating a guise of neutrality. This is a common position adopted by feminists in criticising a patriarchal establishment; for example, “The ideal of impartiality is an idealist fiction. It is impossible to adopt an unsituated point of view, and if a point of view is situated, it cannot stand apart from and understand all points of view.”²¹ The philosopher Thomas Nagel comments: “The original position seems to presuppose not just a neutral theory of the good, but a liberal, individualistic conception according to which the best that can be wished for someone is the unimpeded pursuit of his own path, provided it does not interfere with the rights of others.”²²

Furthermore, Nagel notes how it can be reasonable for an individual to hold certain beliefs yet simultaneously unreasonable for that individual to attempt to decide matters of public policy on the basis of such beliefs.²³ Therefore are we to conclude that this applies to the religious individual, but not to governments and judiciaries? Governments and judiciaries can claim impartiality, individuals cannot by default. All are religious: governments, judges, and individuals. A government’s beliefs and decisions are simply the attempt at a collective representation of individuals. Any attempt to be neutral may be amoral and therefore moral or immoral. The world has been full of laws, convincingly enacted, that in retrospect appear immoral: for example, slavery, the holocaust, or abortion. A contemporary concept of impartiality common in the media is that laws enacted by a democratically elected government must by default be good because they represent what is rightly or wrongly considered to be the will of the people. The 1935 Nuremberg Race Laws, which defined Jews, amongst others, as non-citizens and sub-human, were enacted by the *democratically* elected National Socialist Party in Germany—the Nazis. These race laws were rigorously applied with absolute impartiality: no Jew was exempt, no Aryan convicted, regardless of interest.

21. Marion Young, quoted in, Seyla Benhabib, ‘The Generalized and the Concrete Other: The Kohlberg-Gilligan Controversy and Feminist Theory,’ in, Seyla Benhabib and Drucilla Cornell eds., *Feminism as Critique*. Cambridge: The Polity Press, 1987, 90.

22. Thomas Nagel, ‘Rawls on Justice,’ in, *The Philosophical Review*, 82/2 (April 1972), 220-234, quoted in the *Stanford Online Encyclopaedia of Philosophy*, article, ‘Impartiality.’

23. Thomas Nagel, ‘Moral Conflict and Political Legitimacy,’ in, *Philosophy and Public Affairs*, 16.3 (Summer 1987), 215-240.

THEOLOGICAL IMPARTIALITY

In passing judgement on the lives and beliefs of Christians the legal establishment is being implicitly theological; in claiming impartiality they appear to be above natural law, God-given ethics. If the judiciary now expect Christians to justify their beliefs and actions from outside of their faith this is an accusation and qualifying condition that is often levelled at theologians in universities. The philosopher Nicholas Wolterstorff noted how theology as an academic subject was being expected to justify itself from outside of its field. This is as though theologians are expected to disbelieve what they study; yet, biologists are not expected to disbelieve Darwin's theory of evolution through natural selection before they are allowed to study it. Wolterstorff notes how modern theologians are "compelled not to say about God what they want to say without first establishing that they are justified or entitled in saying those things."²⁴ Wolterstorff is in effect arguing that this is an invalid form of foundationalism. If, according to the standard usage, foundationalism is the proposition that the justification of all non-basic beliefs can be derived from basic beliefs that are either universal truths of reason or derived clearly from the senses and thus incorrigible, then foundationalism is the proposition that there is only one persistent and infallible ground for beliefs. The resurrection, given the witnesses and perilous conditions under which the testimony of the early Christians was given, is surely such a ground: thus theology can ground itself in itself, as biology does. Wolterstorff takes this further when he examines the seventeenth century philosopher John Locke on foundationalism.²⁵ He argues that the unusual thing about modern conditions is that believers are expected to justify their beliefs on considerations taken from outside of Christianity. If you want to justify a discovery in physics, the reasons you give will be from physics, not from theology. The unusual situation about this type of foundationalism is the demand that you justify your belief on something extrinsic to it. This is what is happening with the judgements of Lords Justice Laws and Munby: any justification for the beliefs of plaintiffs and appellants must be from a belief system outside of the individual's belief system, but the decisions of the law makers and judges are not subject to such discrimination.

24. Nicholas Wolterstorff, 'Is it Possible and Desirable for Theologians to Recover from Kant?', in *Modern Theology*, 14.1 (1998), 1-18.

25. Nicholas Wolterstorff, *John Locke and the Ethics of Belief*. Cambridge: Cambridge University Press, 1996. See Preface, ix-xxi.

INDIFFERENTISM

In seventeenth century English the noun *Indifferentism*, or, indifferentist (defined as, “the belief that differences of religious belief are of no importance,” OED) governed the revision that formed the 1662 Prayer Book. If pluralism of religious belief is related closely to impartiality in principle, it is pertinent to note that *Indifferentism* as an element of Roman Catholic doctrine criticizes the belief that all religions and philosophies are equal, crediting indifferentism to atheistic, materialistic, pantheistic, and agnostic philosophies (or in contemporary circles, philosophers of religion). This is a position, though not named Indifferentism, which accords with Evangelical Churches. Therefore the belief that one religion is as good as another, and that all religions are equally valid paths to salvation is condemned, by Rome, as a heresy. If indifferentism argues that there is no quantifiable evidence to distinguish one religion from another, and if in contemporary judicial circles even identifying apparent differences constitutes a form of politically correct prejudice (seen as a form of discrimination against a particular religious group), then this becomes a form of absolute *Indifferentism*. Kant noted that absolute indifferentism represented a form of disbelief and suspicion, even scepticism.²⁶ Further if this is extended to philosophy then it must be argued that there is no ground, rational or otherwise, for validating any philosophical statement. Ironically, if philosophers of religion are to concur with Kant, this would mean their stance is in keeping with the philosophical ground of the Roman Catholic condemnation of indifferentism. Such indifferentism endorses moral relativism. Neo-Pagan secular liberal humanism, as invoked by the courts, appears to be grounded in a doctrine of religious plurality and indifferentism, which states that all examples of the religious impulse in humanity are to be regarded as equal; likewise the exponents of a neo-Pagan secular liberal humanist position implicitly wait for all to arrive at the position that there is really no “god,” that we have no sure and confident religious knowledge, and *certainly* no revelation, therefore in this all religions must be equal because there is finally no ultimate truth in them.

If foundationalism undermines any theological claims the courts have in passing judgement on Christians, when the judiciary argue for plurality,

26. Immanuel Kant, *Religion within the Boundaries of Mere Reason*. Cambridge: Cambridge University Press, 1998.

it is important to remember that many orthodox theologians have, in the late twentieth century, deconstructed this idea of pluralism by asserting that philosophers of religion proposing a doctrine of plurality were not identifying a plurality but simply asserting a *particular* point of view. Gavin D'Costa has written on this, asserting that whatever position one takes it is a *particular* position, and therefore it is not pluralistic: a pluralistic position is just one among several competing supposedly equally valid positions.²⁷ D'Costa argues that there is no such position as religious pluralism because in distinguishing between so-called *historically respectable* religions such as Christianity and Hinduism, or apparently less respectable religions such as Nazism or the Jim Jones cult, a criterion is invoked, and the use of criteria is a form of exclusivism: the inclusivity of a pluralistic approach is therefore exclusive. However, it must surely be proposed that all viewpoints and positions are, to varying degrees, exclusive: "To say that 'A' is true, it logically requires you to deny the truth of 'not A,' then you are being selective, you are excluding. So any thesis in that sense is exclusive."²⁸

ETHICS AND THEOLOGICAL ANTHROPOLOGY

We are fast approaching the point where the principle is accepted without question that laws passed by a democratically elected government must be absolute. The Russian writer Aleksandr Isaevich Solzhenitsyn understood this only too well from his experience of a dictatorial totalitarian Marxist regime:

At the present time it is widely accepted among lawyers that law is higher than morality — law is something which is shaped and developed, whereas morality is something inchoate and amorphous. This is not the case. The

27. See: Gavin D'Costa, 'The Impossibility of a Pluralist View of Religion,' in, *Religious Studies* 32 (1996), 223-232. See also, Gavin D'Costa, *Christian Uniqueness Reconsidered: the Myth of a Pluralistic Theology of Religions* (Maryknoll, NY: Orbis Books, 1990), and, Gavin D'Costa, *Christianity and World Religions: Disputed Questions in the Theology of Religions* (Chichester: Wiley-Blackwell, 2009). John Hick is one of the leading exponents of a pluralistic doctrine of religion, grounded in a denial of the incarnation. See: Gavin D'Costa, 'Review of The Metaphor of God Incarnate by John Hick,' in *Religious Studies*, 31.1 (March 1995), 136-138. Hick's response to d'Costa was published as: John Hick, 'The Possibility of Religious Pluralism: A Reply to Gavin d'Costa,' *Religious Studies*, 33. 2 (June 1997), 161-166. Hick notes, 'A pluralistic doctrine of religions is grounded in a denial of difference, likewise ethical contradictions are regarded as exclusive, to be denied?' 161.

28. Colin E. Gunton, *Revelation and Reason Prolegomena to Systematic Theology*. London: T&T Clark, Continuum, 2008, 58.

opposite is true: morality is higher than the law! Law is our human attempt to embody in rules a part of the moral sphere which is above us. We try to understand this morality, bring it down to earth and present it in the form of law. Sometimes we are more successful, sometimes less. Sometimes we have a mere caricature of morality, but morality is always higher than law.²⁹

Morality is above the law because the law can often be immoral; morality can claim to be atheistic, but all good and right morality issues from God. Are we now moving into God-less ethics: morality issuing from autonomous consequentialist ethics, conceived of by intellectuals who set themselves apart from humanity (claiming to represent people in their best interests), then formulated by the government and judiciary into law, to form the spirit of the age? This issues from the nature of fallen humanity before God; the theological anthropology we must work with asserts that all of humanity is fallen into and contaminated by original sin (Genesis 3), that when we try to do the good we fail and do what we do not want to do (Romans 7). It is now the norm in the West for Secular Liberal Humanists to reject all values and beliefs, ethics and morals; such individuals are expected to invent their own ethics and beliefs, but, to be able to justify their actions and principles and exercise power to change the law to suit their needs. These policy makers and law-givers appear to claim the right to rewrite morals and ethics for their own advancement (while ordinary people have to obey laws and precepts). This is done in the name of the common good on the basis that they will teleologically represent what will be the majority (once the majority, the common herd, are converted). Are the courts inadvertently *favouring* this belief system—a belief system that has been moving away from the Christian for getting on for half a century?

Solzhenitsyn understood the contradictions inherent in supposedly impartial ethics. Writing on the judgements of Lords Justice Laws and Munby, Canon Andrew Pearson notes, quoting Solzhenitsyn:

29. Alekandr Solzhenitsyn, *Warning to the West*. New York, NY: Macmillan, Hill & Wang, 1976, 45-46. There are profound and serious issues here about the relationship between natural, God-given, law, and humanity's rebellion (original sin) against God and how we attempt to seal ourselves off from what is God's will and intent for us (Gen. 3, Rom. 5 and 7) and invent ethics, morality and truth in our own image, then project it as universal. C.S. Lewis knew this ("Without it [Natural Law], the actual laws of the state become an absolute, as in Hegel. They cannot be criticized because there is no norm against which they should be judged": "We have no "right to happiness", *Undeceptions: Essays on Theology and Ethics*, London: Geoffrey Bles, 1971, 265-69). This is also explored in depth in the novels of the Russian writer and prophet Dostoevsky; see: P.H. Brazier, *Barth and Dostoevsky*. Milton Keynes: Paternoster, 2008.

For the logical outcome of such a position is that there is no higher legal and moral authority than the State. Whatever the State decides must be right, for the State is all. And that, of course, is totalitarianism. Under such a system all truth is relative. What the State decides today it can undecide tomorrow. How like communism which, as Solzhenitsyn wrote out of bitter experience, “has never concealed the fact that it rejects all absolute concepts of morality. Depending upon circumstances, any act, including mass slaughter, may be good or bad, it all depends upon the State’s ideology, as defined by a handful of people at any given time.”³⁰

Rules and regulations, edicts and statutes (laws) issue from ideology; Solzhenitsyn continues in this address, “And who defines class ideology? The whole class cannot get together to pass judgment. A handful of people determine what is good and what is bad.” The contradictions in the ethical basis of neo-Pagan Secular Liberal Humanism are therefore manifold. Relativity and plurality demands that all decisions are in constant flux, simply look to the moment. Impartiality is by its nature a biased pretence, the means of merely cloaking tribal sectarian decisions behind the apparent respectability of a higher morality.³¹

THE GOSPEL AND RELIGIOUS LEGALISM

The Gospel needs freedom to be preached, freedom to survive unmolested, regardless of what the State may believe. The state’s position if it claims impartiality is clear: it cannot side with one religious party or another, or even its own position; all must be regarded as equal. Not to do so is a form of deceptive theocratic religious legalism. In effect we now have a revival of religious legalism; for decades liberals have decried such an approach, essentially to forge ethical change in their churches and in society generally, yet now that they are the main-stream, they seek refuge behind a religious legalism as rigid as the interpretation of Mosaic Law by the Scribes and Pharisees. Having spent decades decrying blasphemy, scorning the name of God, a liberal elite issuing from the post-WWII socio-cultural revolutions (the “1960s”) have invented new secular blasphemy laws, purporting to protect homosexuals,

30. A Parsons, ‘On the Judges & the Christian Conscience,’ in, *Kensington Parish News*, Spring 2011, 6, quoting from, Solzhenitsyn, *Warning to the West*, 57-58.

31. See, J. Ward, ‘Impartiality is Biased,’ in, *Spectrum*, 21.2 (Summer 1989), 105-109.

and presumably other life-style identity groups who may feel sensitive about their sexual practices (so far these new blasphemy laws exclude bestiality, paedophilia, incest, polygamy, *et al*, however, it is surely only a matter of time...). Atheistic secular blasphemy laws are a form of religious legalism and are reflected in main-stream politics. Lords Justice Laws and Munby adopt a particular position, identifiable as issuing from the dominant religion and religio-political belief system in Britain, namely neo-Pagan Secular Liberal Humanism; therefore, religion is to be valued by the nation state as long as its adherents accord to it no intrinsic value or significance politically or socially, and do not expect it to influence or change the body politic. This is religious atheism, atheocratic legalism backed up by the power of the courts drawing on the European Convention of Human Rights, which states that. “Everyone has the right to freedom of thought, conscience and religion ... and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance,”³² however, “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”³³ Christian belief is therefore constrained according to the subjective, variable, and often arbitrary decisions of law makers. By contrast the First Amendment (Amendment 1) to the United States Constitution, part of the Bill of Rights, prohibits the making of any law respecting an establishment of religion, or state religion, further it prohibits impeding the free exercise of religion, infringing on the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances. In effect many would agree with Ronald Reagan (40th President of the United States) that The First Amendment was not written to protect the people from religious values it was written to protect religious values from government tyranny. The opposite appears to be true with the European Convention on Human Rights, given that Laws and Munby quote Article 9 in defence of their discrimination.

In terms of Lords Justice Laws and Munby, if they are to argue that they are “secular judges serving a multi-cultural community of many faiths,” further,

32. The European Convention of Human Rights, Article 9, Clause 1, quoted by Munby in §.46 in his judgement on Eunice and Owen Johns.

33. *Ibid*, Clause 2, quoted by Munby in §.46 in his judgement on the Johns.

that “the laws and usages of the realm do not include Christianity, in whatever form,” and that the “aphorism that ‘Christianity is part of the common law of England’ is mere rhetoric,”³⁴ if British law does not issue from a Christian perspective, if Britain never was a Christian nation, then they are wrong to work against a Christian heritage, they cannot claim that they need to assert a multi-cultural and a multi-faith perspective by legislating against Christians (in the assumption that ethnic people are never Christian), because according to their belief system this Christian heritage never existed. However, if they acknowledge the Christian basis of British law and its institutions, also that the majority religion in this country as represented by the ten-yearly census and by opinion polls is Christian then at the very least they should not actively discriminate against Christians, more pertinently they should democratically allow a degree of privilege and dominance to a Christian perspective (especially given that their current position gives privilege and dominance, precedent and authority to their neo-Pagan Secular Liberal Humanist religion, which is therefore a numerical minority).³⁵

Given the degree of Machiavellian politicking and demands from all groups for representation for their interests, while seeking to oppose a group they disagree with, then the only solution, if we acknowledge the principle of equality which neo-Pagan Secular Liberal Humanism as a religious belief system appears to subscribe to, and if Munby and Laws wish to be truly neutral, and if Munby wishes to believe that the legislation that he represents is “essentially and necessarily objective,” then they must accept the opposition by orthodox Christians to homosexuality as on an equal plane with those who seek to promote homosexuality. Therefore in principle of law those who *oppose* a particular personal ethic and the lifestyle and identity that issues from that position, must be seen as on an equal footing to those who seek to promote a particular personal ethic and the lifestyle and identity that issues from that position. It is theologically illiterate and nonsensical to oppose what one group perceive to be discrimination by discriminating against another. Neutrality and impartiality thus defined must be the position for a secular society defined by liberal humanism. This position of apparent impartiality is

34. Lord Justice Munby on the Johns case, Case No: CO/4594/2010, §39.

35. According to the 2001 census religious affiliation was: Christian 72.0%; Muslim 3%; Hindu 1%; Sikh 0.6%; Jewish 0.5%; Buddhist 0.3%; other religious affiliation 0.3%. See: <http://www.statistics.gov.uk/CCI/nugget.asp?ID=460&Pos=1&ColRank=1&Rank=326>.

still particular and tribal because it discriminates through an attempt at being indiscriminate, but it is an improvement on the current interpretation of the law by Lords Justice Laws and Munby. The judiciary, *per se*, is not immune from being prejudiced or discriminatory: the laws of the nation states are not God—*eritis sicut Deus*.

CONCLUSION

Liberals both within and without the Anglican establishment reported the Johns judgement as a useful corrective, they were pleased with what Lords Justice Laws and Munby ruled.³⁶ Contrary to this the Johns judgment *is not* a useful corrective. Supporters of Laws and Munby argued that there was a lack of rigour and reasoning in the apologetic arguments of Christian minorities when legislated against; but the same is true of Lord Justice Munby's judgment. We have seen how weak and insubstantial the doctrine of religion of Laws and Munby is, whereby the liberal establishment in Britain sees itself as non-religious, even irreligious, as if it were a neutral belief-system. The law is not impartial; impartiality outside of God is a logical impossibility and a deception—law makers, along with judges and juries, are as partisan as Pilate in their Messianic pretensions: *eritis sicut Deus*. Munby and Laws comment that the precepts of any one religion, any belief system, cannot, by force sound any louder in the general law than the precepts of any other, however, both are blinded by their establishment status, as if they were somehow passing judgment from a neutral and impartial, a disinterested, indifferent and indiscriminate position. On the contrary, they merely represent the dominant religion—which sounds louder than any other—in this country, that is, neo-Pagan Secular Liberal Humanism. In the wider context, and outside of criminal law, the field of personal morality must be free of state control and interference. In conclusion we can assert that to be truly neutral and religiously impartial (given that religion, at best, is a flawed human response to the veiled revelation of God), to be “essentially and necessarily objective,” as the judiciary believes itself to be, is essentially an attribute of God; for the judiciary to attempt impartiality they must accept, as we have established, the

36. See: Editor, “The Johns Judgement: a Useful Corrective,” *The Church Times*, 7720 (4 March 2011), 14.

opposition to a particular personal moral stance as equal to those who seek to promote a particular personal moral stance.

But this is not necessarily the Church's position. The Church's position is clear from revelation and scripture, church tradition and reason, and this accords with that of orthodox Christians who refuse to promote homosexuality as equal and legitimate before God, however, perhaps the Church has been too hasty in the past to judge and condemn? Perhaps the Church should wait and see. All ethical positions, all these questions and issues, should stand as complementary dialectics, to become supplementary dialectics eschatologically, waiting for all to be resolved in the *eschaton*. None of us are in a position to pass judgement on others—particularly Lords Justice Laws and Munby—especially in the realm of personal morality. Any claim to impartiality will be prejudiced and flawed, it is just that Laws and Munby's impartiality appears universal and true and genuine because they represent the *zeitgeist*, the current dominant world view in Britain. It would be wiser to hold fire, await the *eschaton*, because attempting to close this complementary dialectic through the exercise of political authority issuing from a self-referential, even self-reverential, hegemonic élite and exercised by secular liberal humanist religio-political apparatchiks, results in these issues ending in paradox and greater discrimination. All sins are forgivable, except the sin against the Holy Spirit, a warning all should heed, all parties should seek repentance before the Lord.³⁷

37. "Truly I tell you, people can be forgiven all their sins and every slander they utter, but whoever blasphemes against the Holy Spirit will never be forgiven; they are guilty of an eternal sin." Mark 3:28-29