

The Relationship between Church and State

Rt Wor Bro R J Nairn PSGW AMS

Introduction

While we as Masons are forbidden to discuss Religion and Politics within the Lodge, there is nevertheless an imperative that we should at least think about important philosophical issues of the day and discussion on the relationship between church and State is one of these issues of importance.

Many nations are founded on the belief that there should be a separation between Church and State. The Christian concept for this separation is to “render to Caesar the things that are Caesar’s and to God the things that are His”. Both, however, make laws binding on their respective followers – often the same people.

The First Amendment of the Constitution of the United States of America states:-

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...

This has been interpreted by their Supreme Court to require a separation of church and state. This meant the curtailment of government assistance to religious schools and that prayers in school ceremonies were unconstitutional.

The question that arises is whether our Australian constitutional monarchy has a separation of church and state, while retaining the Queen as the titular head of government, who is simultaneously the head of the Church of England.

The Australian Constitution states:-

“The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth”.

Regarding the Australian Government’s power to provide funding for non-government schools, a High Court interpretation of this section is that:-

“The fact is that s.116 is a denial of legislative power to the Commonwealth and no more ... The provision therefore cannot answer the description of a law which guarantees within Australia the separation of church and state”.

In a recent article in a University of Sydney on-line journal states:-

“Australia does not have a legally entrenched principle or even a vague set of conventions of the separation of church and state.”

Defining any separation between Church and State is not simple for many issues arise for which the State feels compelled to make laws but which can be considered moral issues or issues of faith of concern to a Church. As both Church and State can enact laws, then where they overlap or conflict, the question must arise – “Are the views of the State to be honoured above those of the Church?” The reconciliation of these views is one of the great philosophical questions of the day.

This is administered differently at different times and in different countries and it worth examining some of these relationships. They show us that the Church and State have been intimately intertwined in different ways. There are many contrasts.

Forms of National Government

Some States are or have been a **Theocracy**, which is a form of government in which a deity is the source from which all authority derives. It is a form of government in which God is recognized as the king or immediate ruler, and his laws are taken as the statute-book of the kingdom.

Some States are **republics**, which, retaining over-riding powers, normally guarantee freedom of religion and enact specific legislation to protect this.

Some States are a **Constitutional Monarchy**, which retain a Monarch, who endorses statutes into law, but which restrict His/Her powers through an elected Government and a Constitution. He/She may be, and often is, the head of a State Church.

Rights of religious bodies to enact different forms of Law

Sectoral Law – Sectoral law is the law passed by parliaments (or ruling bodies) binding on all citizens. However these may not be the only laws governing citizens as religious bodies may be given the power to enact statutes binding on their followers.

Sharia Law - Sharia is a theocratic law and encompasses all aspects of a Muslim's life. The overriding principle of Sharia is justice. It is very broad and includes all ordinary ways of life. It regulates religious duties like prayer and fasting and giving to charity. It also includes how you behave towards other people. It includes commercial law, inheritance law and family law and can thus conflict directly with sectoral law if they co-exist.

Church Law – Religious bodies may be given the right by the State to enact statutes. For instance, the Church of England in Britain has a legislative body, the General Synod. Synod can create two types of legislation, **measures** and **canons**. **Measures** have to be approved, but cannot be amended, by both Houses of the British Parliament before receiving the Royal Assent and **becoming part of the Civil Law of England**. **Canons** require Royal Assent, but form the law of the church, rather than the law of the land. Members of the church are subject to its canons but non-members are only subject to the Church's measures (as well as other Laws of the State).

Appointment of Church and State Leaders

Some States have endorsed a particular religion as being the official or State Religion. State religions are official or government-sanctioned establishments of a religion, but neither does the state need be under the control of the religion (as in a theocracy), nor is the state-sanctioned religion necessarily under the control of the state.

Most Kings or Emperors are or have been crowned "by the Grace of God", which was usually conveyed by the Pope or an Archbishop. This grace conveyed a "Divine Right" to rule.

Bishops, on the other hand, were initially chosen by the local clergy and lay Christians with the consent of neighbouring bishops. The Council of Nicaea in 325 decreed that the consent of the metropolitan bishop was normally required. Later, state authorities demanded their consent for the election of bishops, usually to ensure that their citizens were not subject to "foreign" influences from outside their borders.

At times, rulers demanded not only their consent to an election made by others but the right to choose the bishops directly or at least the right of veto. For instance Catherine the Great of Russia, an Orthodox Christian, appointed Roman Catholic Bishops in Poland because she

would not tolerate these decisions being made outside Russian-dominated Poland. But the Code of Canon Law of 1917 stated that in the Latin (Roman) Rite, the decision rested with the Pope. The privileges enjoyed by secular authorities have gradually diminished, especially since the Second Vatican Council (1962–1965), which said that these should no longer be granted.

Examples of Relationships between Church and State

The Vatican – A Theocratic Dictatorship

The Fundamental Law of Vatican City State, which was promulgated by Pope John Paul II on 26 November 2000, is the main governing document of the Vatican's civil entities. It declares (Art. 1 §1) that “The Supreme Pontiff, Sovereign of Vatican City State, has the fullness of legislative, executive and judicial powers.”

Also that “legislative power, except for those cases which the Supreme Pontiff intends to reserve to himself or to other subjects, is exercised by a Commission” (or the Pontifical Commission for Vatican City State) which is composed of a Cardinal President and other Cardinals, all of which are named by the Supreme Pontiff for a term of five years.

The Pope rules absolutely as a representative of God and is considered to be infallible.

Great Britain – A Constitutional Monarchy

Today, the British Queen is synonymously the Head of the Church and the Head of State, with the ultimate power of refusing to sign statutes into law. The authority to rule the State was not removed by Magna Carta although the Ruler’s power was severely curtailed.

Bishops in Britain are nominated by a Nomination Committee to the Prime Minister (acting on behalf of the Crown) for consideration, between two nominees. He is expected to recommend the first named. The diocesan College of Canons then meets to 'elect' the new bishop. These protocols are designed to protect the relationship between Church and State.

In Australia today a Church of England Bishop is elected by a special Diocesan Synod.

The British Church retained its own Courts and perpetrators of some crimes could elect to be tried by a Church Court rather than a Civil Court (although this is currently not active).

Denmark – A Christian Constitutional Monarchy

The Danish Constitution requires that the monarch must be a member of the state Church. It also stipulates that "The Evangelical Lutheran Church shall be the Established Church of Denmark and, as such, it shall be supported by the State." However it ensures that citizens are not obliged to pay personal contributions to any religion other than their own.

Non-members do not pay church tax, but an additional state subsidiary accounts for 12% of the Church's income. This means every citizen, even a non-member, contributes to the State Church. In addition, the bishops’ salary is fully paid by the state.

The debate about separation of church and state emerges occasionally in Denmark. The current arrangement is supported by most political parties. It has been challenged for decades by the left wing and by atheists; more recently also by some ideological liberals and some members of free churches. Immigrant groups and the Muslim society are divided on the issue, as some think official Christianity is preferable to a purely secular state

Malaysia – an Islamic Constitutional Monarchy

The Head of State in Malaysia (the Agong) has largely ceremonial powers and the appointment rotates between the Sultans of each State. The Government is democratically elected, the largest party (UMNO) being multi-racial. The Constitution provides that every person has the right to profess, practice and propagate his own religion. There is freedom to carry on missionary work among non-Muslims. Racial riots in May 1969 saw the need for a “Sedition” Act which seeks to minimize racial explosions caused by incendiary discussions of race and religion.

The various States have legislative power to make Islamic laws and personal and family law of Muslims and create Syariah courts with jurisdiction over Muslims only to try Islamic offences, but with limited penal powers. Therefore there is, in many States, a dual law regarding social or religious matters. For instance, a Muslim may be married under Syariah law or under Civil law but must adhere to that choice during the marriage.

Malaysia, in common with many Islamic States, funds the building of Mosques.

Bhutan – a Buddhist Constitutional Monarchy

Bhutan, a Himalayan Kingdom, is a Buddhist Constitutional Monarchy where about one third of the population are monks for life. Until 2008 it was an absolute monarchy but now the King of Bhutan is head of state. Executive power is exercised by a council of ministers, headed by the Prime Minister and Legislative power is vested in the bicameral Parliament under democratic principles with a multi-party system.

Since the 1980s efforts have been made to preserve the traditional culture and, although different religions are tolerated, it is forbidden to proselytise and converts are punished. The law provides for freedom of religion and the religious institutions have a duty "to promote the spiritual heritage of the country while also ensuring that religion remains separate from politics" and that religious institutions and personalities remain "above politics." Religious personalities are prohibited from voting.

The Religious Organizations Act of 2007 aims to protect and preserve the spiritual heritage of Bhutan through providing for the registration and administration of religious organizations and a Government Ministry regulates, monitors, and keeps records on all religious organizations in Bhutan, which are in turn required to register.

Germany – A Republic

Since 1517, when Luther's 95 theses were published and the reformation began, Germany had been in a state of religious dissension of concern to the State. It remained turbulent for many years.

From 1545 the Counter-Reformation began in Germany and lasted until, in 1547, Holy Roman Emperor Charles V defeated the alliance of Protestant rulers. The Peace of Augsburg in 1555 brought recognition of the Lutheran faith, but the treaty also stipulated that the religion of a state was to be that of its ruler. This became the primary cause of the 30-years war (1618-1648) which was initially between various Protestant and Catholic states of the Holy Roman Empire, but it gradually developed into a more general conflict involving most of the great powers. On 15 May 1648, the Peace of Münster was signed between the Holy Roman Empire, France and Sweden, ending the Thirty Years' War.

A further sharp controversy broke out in 1837-38 in the largely Catholic Rhineland over the religious education of children of mixed marriages, where the mother was Catholic and the

father Protestant. The government passed laws to require that these children always be raised as Protestants. In 1840, the new King Frederick William IV ended the controversy by agreeing to most of the Catholic demands.

Bismarck in the 1870s would not tolerate any base of power outside Germany (Rome) having a say in German affairs. He launched a "culture war" against the power of the Pope and the Catholic Church in 1873, but only in Prussia.

This gained strong support from German liberals, who saw the Catholic Church as the bastion of reaction and their greatest enemy. The Catholic element, in turn, saw the National-Liberals as its worst enemy and formed the Centre Party. Catholics, although about a third of the national population, were seldom allowed to hold major positions in the government. After 1871, there was a systematic purge of Catholics in the interior ministry, which handled all police affairs. Jews were likewise heavily discriminated against.

The national constitutions of 1919 and 1949 guarantee freedom of faith and religion. The constitution of 1949 also states that no one may be discriminated against due to their faith or religious opinions.

Religious communities that are of sufficient size and stability and are loyal to the constitution can be recognized as statutory corporations, which gives them certain privileges, for example being able to give religious instruction in state schools and having membership fees collected by the German revenue department as "Church tax" - a surcharge of between 8 and 9% of the income tax. The status mainly applies to the Roman Catholic Church, the mainline Protestant EKD, a number of Evangelical Free churches and Jewish communities. There has been much discussion about allowing other religious groups like Muslims into this system as well.

France – A Republic

The Constitution of France states "France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law, without distinction of origin, race or religion. It respects all beliefs." It makes no further mention of religion or power-sharing with the church.

Daily life in France is governed by a much larger number of detailed regulations and laws. The natural consequence of having too many laws is that people have less respect for, and pay less obedience to, them. When affairs become too detailed, it is natural to shy away from the detail and look for the principles instead. Some laws may seem unnecessary or even irritating to us but we tend to obey them anyway. The French are more philosophical about that. This applies to both secular and Church laws.

In France, the age of reason resulted in an attitude where it is considered to be politically suicidal to invoke a religious tenet in a political debate rather than a logical reason. The principle of separating the Church from politics is far more ingrained in the national culture. It is fundamental to apply the principle not the dogma.

Historically the French Kings were invariably more powerful than their Popes and frequently ignored edicts from Rome. Dissatisfaction with Rome has a long history and played a large part in the revolution, but even Napoleon ordered the Pope to attend his coronation (but not to crown him). Moral law, as expressed by the Church, has less significance than secular law in France although many are only obeyed when it suits.

Iraq – An Islamic Republic

The Iraqi Constitution of 2005 promises several civil liberties including freedom of speech, freedom of religion, freedom of peaceful assembly, freedom of expression, a free press, and a right to have a private life. All such personal liberties contain two main exemption clauses, namely that the Iraqi Council of Representatives has the power to define what these freedoms mean, and that no freedom may conflict with Islamic morality.

Islam is the official state religion, and no law may be enacted or enforced that violates the "undisputed" teachings of Islam. The Law of Personal Status governs the manner that religious courts may settle disputes among Muslims living in Iraq in the area of marriage, divorce, custody of children, inheritance, endowments and other similar religious matters. These rulings are binding, unless they conflict with some other provision of the Iraqi legal system.

Christians, Jews and other minorities are covered partly by the Personal Status Law, partly the Civil Law and partly their own personal status legal systems.

Iran – An Islamic Republic

The constitution of Iran has been called a hybrid of theocratic and democratic elements. It vests sovereignty in God, but mandates popular elections for the presidency and the parliament." However all democratic procedures and rights are subordinate to the Guardian Council and the Supreme Leader, whose powers are spelled out in the Constitution.

The legal code is based on Sharia law, although many aspects of civil law have been retained, and it is integrated into a civil law legal system. The judiciary in Iran is an independent power but is under the purview of the Ministry of Justice. Parliamentary bills pertaining to the constitution are vetted by the Council of Guardians.

The constitution holds that the investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief. It also states that assemblies are not detrimental to the fundamental principles of Islam.

Vietnam – a Communist State

The established religions in Vietnam include the doctrines of Confucianism and Taoism from China, as well as a strong tradition of Buddhism. Vietnam is one of the least religious countries in the world with only 27% of the population acknowledging a religion. Of these 46% are Buddhist and 32% Christian. Like other Communist States, Vietnam's communists embraced a militantly atheistic stance against religion. They were also influenced by anti-colonial and nationalist traditions in Vietnam. The Communist Party in the North from 1954 and from the South from 1975, attacked many traditional religious practices and folk beliefs. After the Communists won the war and reunified Vietnam, the government in Hanoi turned to suppress religion with great force.

Many Buddhists had been opposed to the war and when the Communists achieved victory the Buddhist peace activist Cao Ngoc Phuong was branded a 'war criminal' by the Hanoi regime. Many of the Buddhists who burned themselves in protest of the Communist government belonged to the United Buddhist Church of Vietnam, which was banned by Hanoi afterwards.

Both Hindu and Muslim Chams, the indigenous people, have experienced religious and ethnic persecution and restrictions on their faith under the current Vietnamese government,

with property confiscation and forbidding them from observing their religious beliefs. Hindu temples were turned into tourist sites. Vietnamese police stormed a Mosque.

Generally Christians are forbidden to join the ruling Communist Party and therefore have limited promotional prospects in Government Departments.

Russia – A Communist State

Prior to the revolution, the Church in Russia had become restricted by the State to counter the Church's conservative attitude to the social reforms begun by Peter the Great. This also had the effect of restricting rather than enhancing the ability of the Church to voice its concerns on behalf of Christian values in questions of social justice.

The year 1917 was a major turning point for the history of Russia, and also the Russian Orthodox Church. The Tsarist and Provisional governments were overthrown. The Bolsheviks took power in October 1917 and declared a separation of church and state. The government seized all church lands. Thus the Russian Orthodox Church found itself without official state backing for the first time in its history. The Church was caught in the crossfire of the Russian Civil War and many leaders of the Church supported what would ultimately turn out to be the losing side, the White movement. According to Lenin, a communist regime cannot remain neutral on the question of religion but must show itself to be merciless towards it. There was no place for the church in Lenin's classless society.

By contrast, since the fall of the Soviet Union, under which religion was actively prohibited, religion has had an upsurge in affiliation with Orthodox Christianity in Russia. Between 1991 and 2008, the share of Russian adults identifying as Orthodox Christian rose from 31% to 72%. Russia is a secular State and religion in Russia is diverse, with a 1997 law naming Christianity, Islam, Buddhism, and Judaism as important in Russian history. Orthodox Christianity is Russia's traditional and largest religion, deemed a part of Russia's "historical heritage" in the 1997 law. Nevertheless, the church is being closely watched, and both the atheists and non-believers feel free to criticize its actions. The left-wing opposition supporters can even go to extremes, mocking the more conservative initiatives of the church.

Conclusion

In Australia, although we generally seek to separate the law and religion, we accept that politicians may be given a 'conscience vote' or may speak freely about their religious convictions on a social issue. Certainly the Churches speak out in the pulpit or media on social issues and expect some degree of attention when they do so.

Similarly separation between Church and State does not mean that one has dominance over the other. They should stand as free, equal, independent and co-operative bodies. In Australia the Commonwealth cannot make laws "for imposing any religious observance, or for prohibiting the free exercise of any religion". Conversely, a religious body cannot make laws binding on citizens other than their own and they have very limited powers to enforce obedience.

In Germany the church was, at one time, an instrument of the State, administered by a Government Ministry. This became necessary to resolve religious wars. This has possibly harmed both the church and the State by turning people away from the traditional churches and reducing respect for politicians. It also set a necessary precedent by intervening in a religious war.

With current religious conflicts being resolved by international bodies by warfare means, the question of separation takes a different meaning.

Freedom to follow our own religion is guaranteed. However every freedom has a responsibility attached to it and, if we wish to sustain freedom of religion, then our responsibility is to show respect for all other peoples' religion as well as our own.