

The McDonald Distinguished Christian Scholars Conference
“Is Religious Liberty Under Threat? Trans-Atlantic Perspectives”

University of Oxford, 23-25 May 2018

CONFERENCE REPORT

Cohosted by the McDonald Center at Oxford University and the Center for the Study of Law and Religion at Emory University, this public conference featured lectures by a dozen leading scholars from the United States and the United Kingdom. The conference marked the 10th anniversary of the McDonald Center at Oxford, and the culminating event in the McDonald Distinguished Christian Scholar Lecture Series, hosted by the Emory Law and Religion Center. The McDonald Agape Foundation provided generous funding.

The conference opened with a keynote by Mary Ann Glendon, Learned Hand Professor of Law at Harvard Law School, and former Commissioner on the United States Commission of International Religious Freedom. It closed with a keynote by Sir Mark Hedley, former Justice at the High Court in the United Kingdom who has adjudicated several complex cases on religious objections to health care, and euthanasia. In between, pairs of UK and US jurists teamed up to address common themes: Mark Hill, QC (Cardiff, Pretoria) and John Witte, Jr. (Emory) on the historical foundations of religious freedom in the Western legal tradition; Roger Trigg (Warwick) and Francis

Beckwith (Baylor) on the distinct qualities of freedom of conscience and religion in modern political and scientific theory; Julian Rivers (Bristol) and Kathleen Brady (Emory) on the growing tension between religious freedom and other fundamental rights; Norman Doe (Cardiff) and Richard Garnett (Notre Dame) on the roles of modern churches in the protection of human rights and religious freedom; and Nigel Biggar (Oxford) and Cécile Laborde (Oxford) debating the place of soft religious establishments in modern liberal societies.

Almost every speaker answered the conference question – “is religious liberty under threat?” – with a clear and worrisome yes. Mary Ann Glendon mapped the bitter persecution, genocide, rape, enslavement, forced displacement and forced conversion of Christians, Jews, Muslims, Baha’is, Yazidis, Hindus, Sikhs, and others in more than 100 countries around the world. But, she said, their grim plight is far too little known or reported even by human rights groups or international diplomats. The picture is less dire in the liberal West: “few victims of religious persecution have lost their lives, but many are losing their livelihoods and ability to participate in public life while being true to their deepest beliefs.” And even worse, many liberal citizens and academics now think that religion and religious freedom are no longer worth protecting or must at least give way to other fundamental rights claims. Julian Rivers sounded a similar theme, showing how aggressive new norms of equality and non-discrimination in the United Kingdom are eclipsing the religious freedom of individuals and groups, and empowering government to second guess and overturn internal religious decisions that have long been impervious to secular judgment. Richard Garnett, Francis Beckwith, and Kathleen Brady all showed how modern culture wars over sexual liberty have led private citizens, corporations, and government officials alike to attack religious freedom as an outmoded

impediment to true liberty for all. Roger Trigg argued that modern scientific and rational philosophies often undercut religious arguments in modern discourse. Norman Doe showed that, besides the strong statements of Vatican II, many modern churches have not developed a sturdy and distinct enough theology or church law of human rights and religious freedom to offer sustained criticisms of the shifting secular status quo. And Mark Hedley documented poignantly how the deprecation of religion and religious liberty has made it doubly difficult for courts to deal with religious objections to contraception, abortion, receipt of health care, or end-of-life decisions.

To be sure, several speakers made clear, some of this hostility to religion and religious freedom has been self-inflicted by some of the church's own failings – the pedophilia crisis brought on by selected clergy, the financial self-dealing by some enterprising church leaders and members, the worldly pleasures and pursuits the church has sometimes embraced at the cost of true sacrificial discipleship. Some of it is also a function of the growing worry about the rapid growth of religious extremism, terrorism, and xenophobia and persistent practices of patriarchy, chauvinism, and inequality. But a good deal of the attack on religious freedom is driven by those who pretend to be neutral, rational liberals in favor of liberty, but in fact are seeking to establish and enforce ruthlessly their own secular forms of faith in the name of far less loving and forgiving gods than the Trinitarian God of Christianity, who created the world with natural law and order, sent his only son to his death to redeem it, and inspires us to do good, seek justice, and love God, neighbor, and self.

Religious freedom should not be so imperilled. After all, Mark Hill and John Witte both documented, the Anglo-American common law tradition learned, through hard and cruel

experience, that religious freedom is a cornerstone of ordered liberty. In England, religious freedom has been a key and an ever more inclusive guarantee set out in legal documents from the Magna Carta (1215), to the English Bill of Rights (1689) and Toleration Act (1689), to the Human Rights Act of 1998. In the United States, religious freedom is the first guarantee in the Bill of Rights of 1789, and it still stands tall in the latest federal and state religious freedom restoration acts. The Universal Declaration of Human Rights (1948), too, and its international human instruments progeny, have made freedom of religion, belief, and conscience, and freedom against religious discrimination a centerpiece of human dignity, fraternity, liberty, and peace. To deprecate religious freedom is to violate clear and longstanding legal commands. Moreover, while the sad and unseemly side of the modern church often captures the media, several speakers argued, we tend to ignore the powerful witness, inspiration, and service the church offers the world through its countless forms and forums of charity and ministry in sanctuaries, charities, schools, hospices, orphanages, diaconal centers, emergency shelters, foodbanks, counseling centers, health and humanitarian missions and programs of all sorts. We tend to ignore the critical role that religious organizations play as strong buffers against state overreach, as generous advocates of human rights for all, and as vital zones of liberty in times of political crisis and transition. Churches provide massive and incalculable public goods that the law should robustly protect – “much like the law protects clean air and clean water,” in Richard Garnett’s apt phrase.

Robust protection of religious freedom in modern liberal societies might even take the form of a soft religious establishment, as prevails today in Anglican England, Lutheran Scandinavia, Catholic Spain, or Orthodox Greece. This was the argument of Anglican divine Nigel Biggar, with surprising support from liberal philosopher Cécile Laborde. A

modern liberal state, Biggar argues, “needs more than liberal laws and rights; it needs citizens who are so formed as to vote for liberal laws, to obey them, and to exercise their legal rights with liberality.” These laws and rights depend on “comprehensive doctrines” to give them content, coherence, and cogency and to form citizens who respect and protect them. Since so many dangerous and “unreasonable comprehensive doctrines” are afoot today, the liberal state would do well to maintain a soft establishment of generous and peaceable historical religions as a means of “defending and promoting a culture that forms liberal citizens.” Such religious establishments can work, however, Laborde argues, so long as they can accommodate competing visions of the good life and good society, particularly those of newly arrived Muslim emigres and newly powerful LGBTQ advocates. And certain features of traditional religious establishments – like appointing clergy, assigning bishops to the House of Lords or holding royal weddings in Anglican cathedrals alone – might be better left to private choice than to state mandate.

John Witte, Jr.

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