

Religion essays - disestablishment of the church of england



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Disestablishment of the Church of England

“ Then render to Caesar the things that are Caesar’s; and to God the things that are God’s”

“ Yesterday we asked for toleration, today we ask for religious equality; tomorrow we shall demand the disestablishment of the Church of England.”

The ambiguous position enjoyed by the Church of England in the United Kingdom is one that deserves a shrewd analysis in terms of its compatibility with the interests of liberal democracy. The current constitutional settlement has faded from the spotlight over the course of the past century despite being a highly contested issue during the late nineteenth century, due, in the most part, to other more pressing issues beginning to surface. The last time the issue was considered as a whole was in 1970 but it was observed that there was a general lack of knowledge on behalf of the British public on Church-State issues and as such the matter was left as it was. However, in a new era of equality the issue must be readdressed and rectified in the interests of democracy in an increasingly multi-faith nation. The issue transcends the awareness of the British public on the issue and should be focused on the disestablishment of the Church of England as a matter of democratic imperative. To best understand what is being compromised it is important to first outline what exactly “ establishment” is, what it has afforded the Church of England and how such a settlement came into existence.

The current settlement is due in the most part to Henry VIII and his break from Rome, and a brief overview of the history of the Church of England is <https://assignbuster.com/religion-essays-disestablishment-of-the-church-of-england/>

important to understand the nature of the subsequent laws establishing the Church by law. Henry VIII broke away from the Roman Catholic Communion due to the failure of the Pope to grant an annulment of his marriage to Katherine of Aragon. The Act of Supremacy 1534 recognised Henry as the Supreme Head of the Church of England, making the nobility swear an oath recognising his supremacy. When Elizabeth I became Queen in 1558 she had Parliament pass the Act of Supremacy in 1559 restoring the position of the Church of England but rewording the oath recognising her as the Supreme Governor of the Church, as the Bible recognises Jesus Christ as the Head of the Church.

The idea of “ establishment” is one that remains difficult to define, as there was no single statute that created the settlement that remains today, rather it was a progressive approach that is best defined through the key privileges enjoyed by the Church of England. In Chapter 1 I shall outline what establishment is and seek to produce a working legal definition in order to outline the current constitutional settlement. In this chapter I shall also explore the concept of disestablishment and previous attempts to disestablish the Church of England from the late nineteenth century to as recently as January/February 2008 when the issue once again began to build momentum with a view to highlighting how previous failures fell short of achieving religious equality. The chapter shall end with an examination of the idea of secularism and how it may not only be preferable to advocate state neutrality, but also fundamental in the interests of liberal democracy.

In Chapters 2 to 4 I shall look more closely at three different elements of establishment and outline the consequent democratic deficiencies and make <https://assignbuster.com/religion-essays-disestablishment-of-the-church-of-england/>

recommendations as to how they may best be rectified. The main privileges that characterise the established religion are; the 26 Anglican Bishops occupying ex-officio positions in the House of Lords; the role of the Monarch; and the Governance of the Church of England. Each of these issues will be dealt with in detail in an attempt to illustrate how the Church of England has been woven into the fabric of political and legal life in the United Kingdom and the subsequent problems that stem from this relationship, with particular emphasis on issues of democratic concern. To briefly identify the key problems that each of these privileges create they shall be introduced at this point in order to set the scene for the rest of this introduction.

In Chapter 2 I will address the controversial issue of the House of Lords, however, discussion is restricted solely to the twenty-six Anglican Bishops. The Archbishops of Canterbury and York; the Bishops of London, York and Winchester along with the next twenty-one bishops in order of seniority sit in the House of Lords by virtue of their position within the Church. There are issues of democracy and representation within the upper chamber; however, this is not within the remit of this paper. Attempts have been made recently to address the issues in the House of Lords with the recommendation that the number of Bishops be merely reduced to sixteen. The report also recommended that other faiths should be introduced to the Lords, an idea that will only serve to further discriminate and alienate those not in the privileged few. This privilege highlights an inequality in that one religious group has been afforded the opportunity to sit in Parliament, a privilege that should be viewed with the knowledge that the Church of England can lobby

for its own interests in the corridors of power while other religious groups must lobby in the traditional way.

Chapter 3 is concerned with the Monarch and the dual role of Head of State and Supreme Governor of the Church of England, as well as the anti-Catholic sentiment in the laws on the Protestant succession. The Monarch is the Supreme Governor of the Church of England and as such must take an oath to defend the protestant faith. The Monarch is a figure of British unity and to represent a single religion is to alienate people from other faiths and the non-religious. The Act of Settlement 1700 requires a Protestant succession and as such it is forbidden to marry a Roman Catholic. This discrimination not only promotes exclusion to the people of Britain, many of whom belong to the Roman Catholic community, but also calls into question its compatibility with the Human Rights Act.

In Chapter 4 I shall look at the governance of the Church of England and how it is restricted in its own management. This Chapter will highlight the pitfalls for the Church of England itself as being by law established. The Prime Minister is responsible for appointing Bishops and other senior clergy of the Church of England, a role that has been altered recently by new Prime Minister Gordon Brown who shall now merely act as a postman and pass the recommendations to the Queen. This is a time consuming process and a waste of government resources on a privilege that is enjoyed by no other religion. However, whether any other religion would campaign for this is questionable as it restricts the Church's control over itself. This issue of governmental control is also evident in the making of Church laws. Church laws are made by Measures that must be passed by a single vote in each

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House of Parliament. They cannot be amended; they must simply be passed or rejected. This also concerns Human Rights and the right of the church to self-govern without government interference.

All these issues will be addressed in relation to their compatibility with the interests of liberal democracy in the United Kingdom as a whole. As a model of democracy I shall take Robert Dahl and his work on political equality. Dahl is one of the most noted commentators on political power and he provides an outline of representative democracies in Europe and a model of an ideal democracy. His observations characterised representative democracy in Europe as consisting of; government decisions and policies being accountable to locally elected politicians; free elections; freedom to stand for election; free expression; freedom of information; freedom of assembly. This analysis defines European democracy as being representative, accountable and free, in terms of human rights. His ideal model of democracy outlines what he believes a true democracy should strive to achieve, that is; effective participation; equality in voting; gaining enlightened understanding; final control of the agenda; inclusion; and fundamental rights. Dahl believes that political equality is desirable for governing a state and the only political system that derives its legitimacy and political institutions from the idea of political equality is a democracy. In order to examine what political institutions would be necessary in a democratic state he constructed an ideal concept of democracy as a basis for comparison with the actual models of democracy already in existence. To this end I shall condense the basis principles of democracy as observed by Dahl and using them to construct my own ideal model of democracy so that it may be compared with the current

constitutional settlement in the United Kingdom in relation to the Church of England.

The basic principles that I have extracted from Dahl's ideal model are; free elections; representation; participation; accountability; equality; enlightenment; inclusion; and fundamental rights. From this I have devised my own model which will be used to highlight the democratic deficits of the privileged position of the Church of England. My analysis will be based on the principles of; representation, accountability, participation; equality; inclusion; plurality; and human rights under the European Convention on Human Rights and Fundamental Freedoms.

CHAPTER 1: ESTABLISHMENT AND STATE NEUTRALITY

1. 1 Establishment

The concept of " establishment" is one of great complexity which bears no single accurate definition, making it difficult to assess what exactly any disestablishment of the Church of England would entail. In order to effectively assess the current constitutional settlement it would be appropriate to explore the idea of establishment and what defines establishment in the first instance.

The Chadwick Commission provided a definition of establishment as " the laws which apply to the Church of England and not to the other churches." Legal writer Peter W. Edge has commented that the Chadwick definition is only concerned with the Church of England, whereas the idea of establishment may be an abstract term which has simply been applied to the

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Church of England. By examining the Chadwick definition Edge has developed a fuller legal definition of establishment:

“ A religious organisation is established where there are laws which apply to that particular religious organisation, qua that religious organisation, which do not apply to the majority of other religious organisations.”

In his definition of establishment Edge highlights that establishment, as a legal construct, is not primarily a question for the Church of England, rather, like other legal constructs it is open for debate by all members of the state, not just those which it affects directly. This opens the discussion up as an issue of national importance and thus warrants this discussion on the compatibility of “ establishment of religion” with the interests of liberal democracy in the United Kingdom. To claim that a particular religion is not the religion of the majority of the population is not a sound basis for a legal discussion, however, to examine the ramifications, values and limits of a legal doctrine is a legitimate endeavour.

Edge claims that there are four main areas of the law that characterise establishment; the constitutional laws; the civil laws; the criminal laws; and fiscal and property laws. While this is indeed true it is only the first element, the constitutional laws, that shall be the focus of this paper due to the focus on constitutional reform and good governance. Law is not monolithic as it varies in form, principle and structure so to delve into the individual civil, criminal, fiscal and property laws would not be feasible under the remit of this paper.

The “ laws of establishment” are not a separate category of law which has been created under one statute, rather, it was a progressive approach that may be defined through the key privileges enjoyed by the Church of England. Phillimore J commented on the current settlement:

“ A Church which is established is not thereby made a department of the state. The process of establishment means that the state has accepted the Church as the religious body in its opinion truly teaching the Christian faith, and given to it a certain legal position, and to its decrees, if rendered under certain legal conditions, certain civil sanctions...the Church of England is a continuous body from its earliest establishment in Saxon times.”

However, the argument that the Church of England best represents the Christian faith no longer holds any water. The National Census of 2001 indicates the following data on religious affiliation for Great Britain: 71. 8 per cent Christian, 2. 8 per cent Muslim, 1 per cent Hindu, 0. 6 per cent Sikh, 0. 5 per cent Jewish and 0. 3 per cent Buddhist, whereas 15. 1 per cent of the population had no religion and 7. 8 per cent of people chose not to state their religion. Although almost 72 per cent of British people profess to be Christian, the Church of England represents only one of many Christian denominations in Britain. It has also been contested that these statistics are inaccurate as association with Christian denominations is based on individuals being brought up in nominally Christian households. Furthermore, it has been suggested that a decline in Church attendance represents a need to disestablish an institution that is gradually losing support and which may in turn undermine the legitimacy of a government that affords state privilege to such an institution.

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The idea of disestablishment is not a new concept, indeed it was very popular at the end of the nineteenth century before other issues dominated the political agenda. However, recently there has been an emergence in the call for disestablishment and the issue is once again creeping up the agenda.

1. 2 Attempts to Disestablish in the late 19th Century

By tracing a brief outline of failed attempts at disestablishment it is hoped that attention will be drawn to the significance and magnitude of disestablishing the Church of England and how the reasons for failure over a hundred years ago have no basis for opposition to any such attempt in the 21st Century. Furthermore, there is an overriding democratic imperative which should not be ignored in the light of religious equality and human rights.

The late nineteenth century represented a period of intense interest in the disestablishment of the Anglican Church in England on the basis that such disestablishment is essential in achieving religious equality. This concept was most prominent with the Nonconformists who were the frontrunners of disestablishment in the latter part of the nineteenth century.

Although disestablishment was widespread among Nonconformists there was discontent surfacing amongst the Anglican community who acknowledged that there were shortcomings in being controlled by a multi-faith House of Commons.

One reason for the failure of disestablishment in England was the historic lack of unity among Nonconformists over this issue throughout much of the
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nineteenth century. The Liberation Society was never successful in convincing people outside the Anglican Church that a separation of church and state was fundamental in the aspiration of religious equality.

A second reason for failure to disestablish the Anglican Church in England was the attitude of W. E. Gladstone, the Liberal leader during most of the late nineteenth century. Although Gladstone was an advocate of religious equality, as his administration's parliamentary record showed, he was defiant in his support of the Established Church of England. Despite renegade members of the society working outside the party their failure only highlighted the importance of the support of a major political party in any attempt to legislate on disestablishment.

Although Gladstone was the driving force in disestablishing the Church in Ireland he remained persistent in his views towards the Church of England. In an attempt to weaken the call for disestablishment he addressed specific grievances against the Church of England, which in turn picked apart any argument constructed in favour of disestablishment.

Without changing his views on the Church of England, Gladstone displayed a greater tolerance for eventual disestablishment in Scotland and Wales. In 1885 he admitted that the Established Churches in both Scotland and in Wales serviced a small minority of the people and there would be no issue in allowing each nation to decide upon its own fate. But he argued that the situation in Wales was more difficult than in Scotland because the Church in Wales was organically one with the Church of England.

Possibly the most significant factor in the failure to disestablish the Church of England was because as a political issue it became overshadowed by more pressing emergent issues. Irish Home Rule destroyed any chance of disestablishment being a hot political topic in the 1885 general election, which was worsened by disagreement over the issue of Home Rule between the Nonconformists and the Liberal Party.

1. 3 Recent Attempts to Disestablish

In the late 1980s and early 1990s MP Tony Benn proposed two Bills to disestablish the Church of England, the first in 1988 which only had one operative section:

“ The Church of England shall cease to be established by law, and no person shall, after the passing of this Act, be appointed or nominated by Her Majesty or any other person, by virtue of any existing right of patronage, to an ecclesiastical office in the Church of England.”

He also addressed the disestablishment of the Church of England in his Commonwealth of Britain Bill in 1991 where it was proposed that the Church of England be “ disestablished” and powers over doctrine and faith be transferred to the General Synod. Both Bills were unsuccessful and they highlighted what a huge operation it would be to “ disestablish” the Church of England. However, complexity and length are not legitimate grounds for the government to avoid the issue, especially when democracy, the foundation of British society, is being compromised.

Current Archbishop of Canterbury, Dr Rowan Williams, has added fuel to the increasing demand for a complete disestablishment of the Church of England. Speaking on BBC Radio 4's "World at One" he commented that adopting parts of Islamic Sharia law would help maintain social cohesion. These comments prompted an unforeseeable backlash and public uproar, in turn leaving many questioning the place of religious leaders in public life, and more specifically, the position of the Church of England as the established church. Co-director of think-tank "Ekklesia", Jonathan Bartley, commented that: "Letting go of privilege is a far better witness to the Christian message than either clinging on to it, seeking to preserve it on a wider basis, or speaking for others rather than engaging them as equals."

A motion calling for the disestablishment of the Church of England has been listed in the House of Commons as 666. Labour MP John Austin, who has repeatedly tabled Early Day Motions urging disestablishment, put down his latest motion on January 9th 2008 as MPs debated scrapping Britain's blasphemy laws, the law of blasphemy itself representing Christian privilege protected by the law.

1. 4 Secularism

Secularism is the principle of state neutrality in religious life whereby the state and its institutions grant no religious privileges to any religious group or organisation. By the very definition of secularism it is clear that the United Kingdom cannot call itself a secular state until it has cut official ties with the Church of England, to which it grants numerous religious privileges over all other religions and none. The concept of secularism does not compromise

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religious belief, nor does it seek to undermine a persons individual religious convictions, rather, it suggests the parameters which are acceptable in terms of religious plurality whereby an individual can manifest his or her religion. Secularism is a goal which any state that calls itself a democracy should strive to achieve and I shall outline the merits of such an objective as well as highlighting how religion in public life may undermine the interests of democracy.

Due to increasing religious pluralism in the developed west organised religion and the interests of democracy have become increasingly “ uneasy bedfellows”. The existing Christian denominations must now be added to an increasing number of new cults and, more significantly, substantial Muslim and other non-European religious communities who find the existing settlement between religion and the state problematic. This growing religious plurality is evident in the United Kingdom yet the Church of England remains by law established despite its capacity to marginalize other faith groups and those of no faith. The settlement is highly discriminatory and has created an unnecessary conflict. If religion were to have no role in public life then every group would be on a level playing field with equal opportunity to influence public decisions by way of interest groups. As to those who do not belong to any religious organisation the establishment of a state religion has placed primacy on religion and thus discriminates against those who do not hold any beliefs.

One case put forward for secularity, that is the secularisation of public life, is the “ Jefferson Compromise” which was defended by Richard Rorty. Rorty argues that modern democrats should privatise religion without trivialising it <https://assignbuster.com/religion-essays-disestablishment-of-the-church-of-england/>

and that the religious experience is appropriate for what we do with our aloneness in an open and civil society where one is entitled to freedom of religious worship. He submits that a democratic polity thus has no choice but to ensure that religious believers are guaranteed their freedom to worship their God in private in return for the right of non-believers to live without religious deception within the public domains of civil society and the state. Such an argument seems logical yet the United Kingdom has failed to guarantee such rights to all its citizens. The submissions by Rorty have many merits, most prominent of these being the principle of equality whereby he outlines a pact in which each individual's own beliefs are protected through the absence of religion in public life.

Secularists believe that democracy requires the separation of church and state and that citizens be emancipated from state and ecclesiastical dictat in order that they may worship according to their conscience and ethical judgements. In the bible Jesus is quoted as saying "Render to Caesar the things that are Caesar's; and to God the things that are God's". This phrase is ambiguous but essentially refers to a separation of the spiritual and the earthly realms, or, the separation of the church and the state. This presupposes an open and tolerant civil society which operates within a pluralist structure in order to avoid bitterness so that each person can enjoy religious freedom without being confined to the dogmatic beliefs and codes of conduct of others.

In a case before the European Courts the issue of secularism was addressed in relation to the wearing of a headscarf and a conflict with constitutional law. In *Sahin v Turkey* (2005) it was held that the Constitutional Court's <https://assignbuster.com/religion-essays-disestablishment-of-the-church-of-england/>

reliance on the principle of secularism was paramount in the ban on wearing religious attire and that “ where the values of pluralism, respect for the rights of others and, in particular, equality before the law were taught and applied, it was understandable that the authorities should wish to preserve the secular nature of the constitution and so consider it contrary to such values to allow religious attire to be worn”. In this case it is apparent that the European Courts perceived secularism as a fundamental principle of democracy in Turkey and as such religious belief and the freedom to manifest such beliefs were secondary to the principles of democracy. I submit that in constructing any model of democracy one of the fundamental components should be state neutrality in public life. Secularism is a key concept in any democratic state and presents the only logical and fair means of protecting every persons right to individual belief and right to non belief.

CHAPTER 2: ANGLICAN BISHOPS IN THE HOUSE OF LORDS

2. 1 Background

The presence of the twenty-six most senior bishops of the Church of England in the House of Lords is a precarious situation and arguably the most visible manifestation of establishment. The current constitutional settlement is a hangover of Medieval times, which predates the Reformation and reflects the historical position of Anglican bishops as prominent land owners and advisers to the Crown. Until the mid-nineteenth century the Anglican episcopate constituted a significant faction of the second chamber, however, the Diocese of Manchester Act 1847 and the subsequent Acts disestablishing the Churches of Ireland and Wales provided for the current arrangement of

twenty-six bishops. Automatic membership to the chamber is associated only with the five historically pre-eminent sees of Canterbury, York, London, Durham and Winchester, while the twenty-one other seats are filled on the basis of seniority. The twenty-six seats held by the Anglican bishops are the only formal provision made for the representation of religion in the second chamber in its present form, and while other members of the House of Lords have strong links with various faith groups, and might be seen as providing *de facto* representation of the viewpoints and beliefs of such groups, it is only the Church of England that has seats reserved for its representatives.

It is anomalous that bishops should sit in the legislature *ex officio* as this results in a duplicate representation of religious views. This discriminates not only against other religions, whether they are Christian or non-Christian groups, but also against the non-religious, who, as I shall discuss in more detail later, have no formal representation based solely on being non-religious. I am not advocating that such provisions should be made, for either other religious groups or non-religious groups, rather, in the interests of plurality and equality the most logistic and ascertainable goal would be to eliminate any form of representation based solely on religion, and to that end, and within the remit of this discussion, the twenty-six seats held by the Anglican bishops should be revoked.

2. 2 Proposed Reform of the House of Lords

The broader issue of reforming the House of Lords has been a hot topic throughout the last decade, and while reformation of the upper chamber is

not the focus of this paper, the subsequent reports and papers published recently address the issue of the Anglican bishops in the upper chamber.

The Fifth Report of the Public Administration Select Committee has been the most radical in its approach to the senior bishops *vis* their position in the House of Lords:

“ If we are serious about equipping Britain with a modern Parliament and constitution, it is time to modernise this aspect of our constitution too, and to bring to an end formal representation of the church in Parliament...we recommend that the Bishops of the Church of England should no longer sit *ex officio* from the time of the next general election but one.”

This report has recognised both the dated nature of our constitutional settlement and the need to get rid of the bishops in order to fully modernise Parliament. However, both the Wakeham Report and the government's two white papers on the issue defend the position of the Church of England in Parliament. While they recommend that the bishops should remain the Wakeham Report and the 2001 White Paper agree that the number of seats so reserved should be reduced from twenty-six to sixteen, while the 2007 White Paper claims that assuming that the overall size of the House was to be reduced twenty-six Anglican bishops could not be justified.

Recommendation 1

The twenty-six Anglican Bishops in the House of Lords should cease to sit in this House on an ex officio basis

While the Wakeham Report and the White Papers agree that the number of bishops should be reduced to sixteen they diverge on their approach to accommodating representatives of other religions. The Wakeham Report recommends that 26 seats should be reserved for the religious representatives of the nations of the United Kingdom, and based on the population of each of the nations in the United Kingdom twenty-one seats should go to Christian denominations in England, and five to members representing the Christian denominations of Scotland, Northern Ireland and Wales. It recommends that of the twenty-one places reserved for Christian denominations in England, sixteen should be reserved for the Church of England. The Wakeham Report recommends that the Appointments Commission should be responsible for selecting the ten members from other Christian faith, five from England and five from Scotland, Northern Ireland and Wales collectively, and should also ensure that five seats are reserved for members of non-Christian denominations. The Report is careful to mention the significance of secular views as well as religious views, and recommends that both be accommodated in the new format of the house, however, the Report fails to make any provisions to reserve such seats for secular representatives as they have done for the religious.

The main difficulty in accepting the presence of the Anglican bishops in the upper chamber is that membership rates of the Church of England are skewed by its membership methods. Establishment has afforded the Church of England an ideology of membership which differs from any other denomination in the UK as it operates on an involuntary basis, accepting all

members who do not take positive steps to set themselves outside of its community at any point in time.

Recommendation 2

The method of membership to the Church of England should be on a voluntary basis like every other denomination in the UK so to allow every person born in England the free will to either select their own religion or none at all.

Perhaps it is the case that from the outset the Wakeham Commission was restricted in its scope as the White Paper establishing the Royal Commission explicitly stated that the twenty-six Anglican bishops were to remain in the House. It states:

“ The Government does not propose any change in the transitional House of Lords in the representation of the Church of England within the House. The Bishops often make a valuable contribution to the House because of their particular perspective and experience. To ensure that contribution remains available, the Government proposes to retain the present size of the Bishops’ bench which we accept is justified...”

It has been claimed that this diktat must have tested the Commission’s ingenuity to the limits as to how to justify the unjustifiable.

The White Paper 2001 lacks a lot of the detail that the Wakeham Report has provided in its approach to accommodating other representatives of religion.

It claims that the proposals set out by the Wakeham Report are unattainable

as many other denominations and faith groups lack the hierarchical structure
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that would deliver readily identifiable representatives and that there are more faith groups than there are proposed seats. The White Paper simply recommends that the Appointments Commission should ensure that it appoints representatives of the other faith communities in the United Kingdom. While the