

Pope Benedict and freedom of religion in the West

Address given by David Quinn at a conference on Religious Freedom: East and West, hosted by the Irish College in Rome

Chaired by Mr Dermot McCarthy, Secretary General to the Government of Ireland

Attended by President Mary McAleese

THE HIGHLIGHT of Pope Benedict XVI's successful visit to Britain last September was his address to the country's political and civil leaders in historic Westminster Hall.

The Pope used the opportunity to draw attention to the growing and deliberate marginalisation of religion from public life in the West.

He said: "I cannot but voice my concern at the increasing marginalization of religion, particularly of Christianity, that is taking place in some quarters, even in nations which place a great emphasis on tolerance. There are those who would advocate that the voice of religion be silenced, or at least relegated to the purely private sphere. There are those who argue that the public celebration of festivals such as Christmas should be discouraged, in the questionable belief that it might somehow offend those of other religions or none."

He continued: "And there are those who argue – paradoxically with the intention of eliminating discrimination – that Christians in public roles should be required at times to act against their conscience. These are worrying signs of a failure to appreciate not only the rights of believers to freedom of conscience and freedom of religion, but also the legitimate role of religion in the public square."

What did the Pope mean in this passage? In what way is religion being marginalised "even in nations which place a great emphasis on tolerance"? In what ways can "intention of eliminating discrimination" forces "Christians in public roles to act against their conscience"?

In my talk today I will try to answer these questions and thereby throw some light on the Pope's remarks.

First of all what do we mean when we speak of religious freedom? What we don't mean is simply freedom of worship, that is, the right to attend religious services, to pray, to read your holy books. This is the kind of very truncated freedom that existed in the last decades of communist rule in Eastern Europe.

Religious freedom encompasses much more than this. It also involves the right of a person to live out their daily lives according to their religious beliefs. However, in a growing number of cases, restrictions are being placed on this right in the Western World. I will provide a number of examples and will begin with Ireland.

A case occurred in 2009 that demonstrated precisely how “the intention of eliminating discrimination” – as the Pope put it – “can act against the freedom of conscience of religious believers”.

The case involved a doctor in Galway who treats couples who are having difficulty conceiving a child. The doctor is a Catholic and he works in a hospital with a Catholic ethos.

Accordingly, he offers an infertility treatment called Napro Technology which is fully compatible with Catholic teaching in that, for example, it does not create embryos outside the womb some of which may later be deemed ‘surplus’ to requirements.

In accordance with his Catholic/Christian beliefs he offers the treatment only to married couples. This is what landed him in trouble. His practice was contacted by a couple who are living together asking whether he would take them on as patients. He was told he would not because they were unmarried.

Annoyed, they filed a complaint against him with the Fitness to Practice Committee of the Irish Medical Council on the grounds that the doctor had discriminated against them due to their marital status.

The Committee heard the complaint and the doctor potentially faced being struck off the medical register.

In the end he was acquitted, but only on a technicality. Seemingly because the couple never actually become his patients he had not refused treatment to a ‘patient’. Also, they did not ask him to refer them to a doctor who would help them. If they had, and he had refused, he may then have been found to be in breach of the Code of Professional Conduct for Doctors.

Had he not been acquitted on a technicality, the doctor would undoubtedly have argued that he is justified in limiting his treatment to married couples because the social sciences show that marriage, in general, is far more stable than cohabitation and therefore is, in general, better for children.

The bottom line, however, is that this doctor found himself in hot water because he was accused of discriminating against this couple on the basis of his religious beliefs.

The fact that he was acquitted only on a technicality is not in the least consoling. What would have happened if these technicalities had not come to his aid? There is every likelihood that he would have been found guilty of professional misconduct. In such an eventuality the message of the Irish Medical Council would have been that Catholic doctors who take their faith seriously are not welcome to work in the field of infertility treatment.

Notably, the doctor had very few defenders when this story broke in the media indicating that religious freedom may be at more of a premium in Ireland than we think.

There is another example from the field of medicine worth giving. In Ireland recently, pharmacists were given the green light to sell the so-called ‘Morning-After-Pill’ without prescription. As this can act as an abortifacient it is quite obviously not without controversy. In

other jurisdictions pharmacists have refused to stock it, sometimes getting into trouble with the law as a result.

Is an Irish pharmacist required to stock it? It seems so. The Pharmacists' Society of Ireland's Code of Conduct makes no provision whatsoever for freedom of conscience – whereas the Code of Conduct for Irish doctors makes some small provision.

The code for pharmacists indicates that pharmacists must stock whatever is lawfully available in the State and they have no right to refuse to sell a customer a product on conscience grounds.

This obviously puts pharmacists who do not wish to sell a product that can act as an abortifacient in a very difficult position and ultimately would make it very hard for such pharmacists to work in their chosen field.

Those who argue that pharmacists must sell whatever is lawfully available in the State argue that pharmacists cannot be permitted to refuse someone their 'right to medical treatment' as they put it and cannot be allowed to 'impose' their morality on others.

But of course the question is who is imposing their morality on whom? It can equally be argued that the State is imposing its morality on pharmacists. What happens if an abortion pill like the RU486 can be sold through pharmacists? That won't time anytime soon in Ireland, but it can be sold through pharmacists in other jurisdictions.

Country by country and state by state, the law differs in regard to the conscience rights of doctors, nurses and pharmacists. In some American states pharmacists are forced to sell whatever is lawfully available. In other states they are under no such obligation, and in others still they are required to sell it only if it cannot be conveniently obtained elsewhere.

To give you a further indication of the growing clash between the conscience rights of medical practitioners and the law, consider the McCafferty report which last year was before the Parliamentary Assembly of the Council of Europe.

This sought to 'regulate conscientious objection', a rather telling and worrying phrase I'm sure you will agree.

Ms McCafferty, a British Labour MP, was worried that if doctors could exercise their right to conscientious objection then women, and others, might be refused 'vital' medical treatments. She had abortion particularly in mind.

To ensure no woman could ever be refused what she termed 'an emergency' abortion, she proposed that no medical institution could refuse to perform an abortion on the grounds that a medical institution, not being a person, doesn't have a conscience. The implications of this for Catholic and other religious hospitals is crystal-clear. Such a hospital would not be permitted to abide by its ethos.

Secondly, Ms McCafferty proposed that a doctor could only refuse to perform an abortion if there was a colleague on hand to do it instead. In other words, a pro-life doctor would be forced

to go through his career hoping he was never put in a situation of having to choose between his conscience and the law.

The McCafferty proposal was defeated after a concerted effort involving, among others, Senator Ronan Mullen. I addressed a meeting in the Council of Europe building in Strasbourg myself giving the freedom of conscience argument.

But there are already some countries and states in which it is the law that a doctor or nurse must perform, or help to perform, an abortion if asked. A nurse in New York is suing her hospital after it forced her to help perform an abortion.

For years Sweden has allowed no room for conscientious objection in its hospitals with regard to this issue. A woman's 'right' to abortion trumps all other considerations.

In fact, just recently the Swedish parliament voted by an overwhelming majority to instruct its members of the parliamentary assembly of the Council of Europe to campaign against the right of conscientious objection and to restore the McCafferty report to its original form. Sweden is not a country that is friendly to freedom of religion and conscience.

Back to Ireland. Recently we made civil partnerships available to same-sex couples. Among the other effects of this law is that a church hall would have to be rented out to a same-sex couple if they wished to hold their reception there. Considerations of ethos are not to be counted.

As a letter from the Department of Justice put it, 'no-one can be exempted from their obligation not to discriminate', a clear example of how the State is increasingly setting aside all pretence at moral neutrality. The use of the word 'obligation' tells its own story. I will speak more on the real meaning of 'discrimination' a little later in my talk.

While Ireland refused to give any truck in this regard to religious sensibilities, Britain made some allowance. In Britain, church halls cannot be compelled to put themselves to any use that is contrary to their ethos. This allowance was allowed under a Labour government.

It is the same in certain American states, including one of its most liberal, Vermont. It is not the case in New Jersey, however, where a Methodist church was successfully sued because it refused to rent its hall to a same-sex couple who wished to hold their civil union reception there.

Belief in traditional sexual morality is increasingly been depicted as equivalent to racist bigotry. The problem this is going to present the Churches and other religions, as well as individual believers, is immense.

Indeed it is already causing great difficulties. In Britain, Catholic adoption agencies have been forced to close because they believe in traditional sexual morality. The same has happened in Boston.

A Christian foster couple in England, who have been fostering children for many years, all below the age of 12, can no longer foster children because they believe in traditional morality. The logic of this is that anyone who believes what the Churches have always taught about sexual morality is not a fit parent.

There is even pressure to designate the teaching of religion itself to children as a form of 'child abuse'. This is the line taken by influential figures such as Professor Richard Dawkins and Professor Daniel Dennett in America, two of the leading 'new atheists'.

Asked about this on Irish radio recently, Professor Dennett said that 'religious indoctrination' is a form of 'child abuse'. He wasn't asked what he meant by 'indoctrination' but the chances are he believes millions of religious parents are indoctrinating their children and therefore 'abusing' them. What does he expect the law to do?

Allied to this kind of thinking is a certain school of thought which sees children as small autonomous adults to be 'rescued' from undue parental influence. This is why in Spain, for example, there is a compulsory civics course in schools which many Spanish Christians find repugnant to their beliefs. There has been a big clash between the Spanish government and the Spanish Church over this course and marches have taken place against it.

Overall, the notion of Church/State separation is increasingly being interpreted in a way that really means the separation of religion from society, or at least from public life.

Properly understood, what Church/State separation means is that there cannot be a state-imposed religion.

The first country to practice Church/State separation was the United States in reaction to the existence of a State-Church in Britain which forced many dissenters to flee to what became the United States.

Church and State were separated as much for the protection of the Churches as of the State. This is often forgotten.

In fact, European history in the 19th and 20th centuries is replete with examples of the State seeking to crush the Churches, or at least to greatly curtail their legitimate place in society.

In Eastern Europe as we know, there was an attempt to deal with the problem of religion once and for all by destroying it utterly and millions of religious believers lost all freedom and very many lost their lives.

But Church/State separation most certainly does not mean that religious believers are to be barred from partaking in public life as religious believers.

Last year when the Catholic bishops of Ireland very mildly expressed reservations about the Civil Partnership Bill, one Government Minister – under the last Government obviously – expressed his "shock" at the statement.

He accused the bishops of "interference" and of "intruding" on "matters of State". He advised the hierarchy to "stick to the spiritual needs of their flock".

Another Government Minister said that politicians should not let religion "cloud" their judgement, and that he leaves his religious values outside his office when legislating. What values does he bring to bear, one wonders?

We can see a pattern here. It is not simply that the law of the land is allowed to bear no trace of Christian or religious influence, it goes even further. Churches and religious communities, and by extension all those who belong to them, have no right to even try and influence the laws of the lands in which they live, and that any attempt to do so is illegitimate and somehow undemocratic.

Few other groups in society have to operate under similar handicaps. For example, socialists can bring their values to bear on the law in a manner that some find objectionable. The same applies to those who believe in a free market.

Feminists are allowed to campaign for their policies even though some people find some of their policies controversial.

None of these groups are accused of interference in the public and political life of the State even though many disagree with their policies.

However, those who hold to religious values are being treated differently. They are told that they can hold their particular values in private but that those values can have no bearing on public life.

This attitude of aggressive secularism – as the Pope and others have called it - is reaching out from the political sphere into the public square in general and down to the level of the individual religious believer.

Thus, not only can religious values have no bearing on the law of the land, but symbols of those values cannot be seen in public spaces, especially spaces controlled by the State. Nor, in some instances, can private individuals wear the symbols of their religion to the work-place or express their values in the work-place.

A particularly extreme example of this campaign to create a naked public square was the decision by the European Court of Human Rights in 2009 to order Italy to remove crucifixes from the walls of classrooms in State schools. Fortunately this was overturned for reasons I will return to.

In Switzerland people voted in favour of a ban on minarets. In France, the wearing of the burqa in public has been banned.

In Britain, individual Christians are now regularly targeted by anti-discrimination and hate crime legislation resulting in numerous cases of direct persecution of individual religious believers.

There was the example of Ben and Sharon Vogelenzang who run a guest house in England. This couple, both of them Christian, made the mistake of debating the subject of Islam with a Muslim guest.

The guest reported the couple for harassment and they were prosecuted under Section 5 of the Public Order Act.

In the end they were declared innocent but only after suffering severe loss of business due to the adverse publicity they received. In their case the legal process and its attendant consequences were punishment enough.

Then there was effect the nurse who was suspended from work for offering to pray for a patient.

An airport employee was told not to wear a crucifix to work.

A secretary at a school was disciplined because she emailed friends asking them to pray for her young daughter who she felt was being victimised over her Christian beliefs at the school in which she works.

As for faith-based schools, these are regularly accused of being 'sectarian' and even of practising 'educational apartheid'.

Indeed a new document from the Irish Human Rights Commission suggests that denominational schools could be in breach of human rights because the ethos of a denominational school can permeate the whole school making it impossible for a child to escape it.

A Dutch father in Co Leitrim used this type of argument against the local Catholic school. He had withdrawn his child from religion class but was annoyed when he heard his son was in class for morning prayers and when the Angelus was said.

The child could, of course, be removed from class during prayers as well, but there is an argument that this would make the child feel too excluded from too many of the activities of the school and that the best answer is to make the schools non-denominational.

This kind of thinking goes a long way towards explaining the original ECtHR crucifix decision of 2009 and similar campaigns to rename Christmas holidays and Christmas trees, and against displaying cribs in public places, namely that certain symbols or actions are by their nature exclusionary.

However, surely we can see that there is a big difference between symbols or actions that are directly intended to make a particular group feel threatened and symbols or actions that might represent a particular belief but are not directed against anyone.

An example of the first type of symbol might be the swastika. When it is daubed on Jewish headstones, as has happened, it is directly intended as an act of aggression.

No-one could reasonably say, however, that displaying a crucifix in a State classroom is an act of aggression.

Nonetheless, the public display of religious symbols does make certain people uncomfortable, so let's address the issue.

First of all, on whom does the burden of proof rest in this argument? Does it rest on those who want religious symbols removed, or on those who want them to stay? Arguably it rests on those who want them removed because if something is a very-long standing and accepted practice,

then it is up to the critics to demonstrate that something in the culture has changed sufficiently to justify the removal of the symbol.

What has changed could, of course, be the shift in a society from being a homogeneous one to a pluralist, multi-ethnic one.

In Ireland we have occasional arguments about the practice of our national broadcaster, RTE, of ringing the Angelus bells at midday and 6pm each day.

This practice dates back to the 1950s when Ireland was an overwhelmingly Catholic and Christian country.

Critics of the practice point out that Ireland is now far more multi-ethnic than it was and that playing the Angelus twice a day, every day, is offensive to minority groups.

However, what is interesting is that this argument is rarely made by those religious and ethnic minorities. Rather it is made by secularists who reject all religion, just as in Italy it was a secularist parent who took her case against Italy to the ECtHR.

On the contrary, when there was one of those occasional campaigns against the Angelus a few years ago, the practice was defended by the Church of Ireland Archbishop of Dublin, as well as by representatives of the Jewish community.

More recently, senior members of the Irish Muslim community said they had no objection to the Angelus. In fact, minority religious communities are generally appreciative of the Angelus because they take it as a sign that the State broadcaster acknowledges the place of religion per se in Irish life.

In any event, the images that accompany the ringing of the bells on TV have been stripped of explicitly Catholic imagery in order to make the practice more acceptable to a wider range of people.

But there is the broader question of whether a given society, even one that is becoming increasingly multi-cultural, is allowed to recognise its historical and cultural roots and whether it is allowed to have a substantive content that not all of its members may be able to identify with?

It must be remembered again that there is a world of difference between societies that merely acknowledge their roots through, for example, the public display of certain symbols, and societies that seek to crush or legally marginalise those with different beliefs.

The Jewish academic, Joseph Weiler, gave evidence against the crucifix decision at an ECtHR appeal in July 2010.

In his submission, Professor Weiler, who is from the New York University School of Law, said that the “message of tolerance towards the other should not be translated into a message of intolerance towards one’s own identity”.

He added that Europe's growing multiculturalism meant that "the democratic cohesion of society is dependent on the ability to uphold national symbols around which all society can coalesce".

Professor Weiler, who has previously condemned European 'Christophobia', said that it would be strange if a State's tolerance meant that it "had to abandon national symbols, and strip from its cultural identity, any symbol which also had a religious significance, even in circumstances where the majority of its population, which may be secular, accept such because of its historical significance".

He also insisted that tolerance toward one view should not lead to intolerance against others. He explained that part of what makes Europe so rich and unique is its ability to have on the one hand respect for religious freedom of all, and on the other, a cultivation of its diverse identities.

By way of illustrating his point, we can point out that in Western societies, Muslims are permitted to worship and to freely practice their religious beliefs (certain aspects of Sharia law excepted) and the public display of crucifixes and other Christian symbols in no way impinges on this.

Logically speaking, the argument in favour of a 'naked public square' should be extended beyond religious symbols. If the capacity of something to give offence is reason enough to remove it from a public place, then where do we stop?

The streets of our cities display statues of famous people who have made their mark on our histories. But very few of these people would win universal approval

On Dublin's main street – O'Connell Street – there is at one end a statue of temperance campaigner, Fr Theobald Mathew, and at the other a statue of trade union activist, Jim Larkin. The only way to ensure no-one at all could be offended by either of these statues would be to remove them both. (In fact, the overwhelming majority of people object to neither).

Indeed, if we continue to push the argument, what would happen to symbols of the nation-state, or even of the EU? In any given country there will be people who do not identify with that country's national symbols, and may even find them threatening. There are many people who do not like the EU and therefore do not like its symbols.

In fact, to teach the children of migrants the history of their new country is by definition somewhat exclusionary in that it fails to teach them their own history. (This, of course, is exactly why the history syllabus in some countries has been increasingly stripped of its specifically national character).

The overarching point I am attempting to make is that once a society attempts to define itself as something, anything, it is impossible for it to appeal to everyone. The only alternative to this is to drain your society of any identity at all.

The only kind of society that will offend no-one is one that doesn't believe in anything, including itself. But the irony is that not even this will avoid controversy because many people will continue to insist that their societies must stand for something and that they must not deny important and valuable parts of their own cultural heritages.

Perhaps an alternative is to deny only the religious part of our heritage. However, if we are asked to do this, then the agenda of those making such a demand become extremely plain because why else would they single out religion from all the other things that might give offence?

It is not only religion that has proven itself to be at times a divisive force. Nationalism, and nation-states generally, have also been extremely divisive, and the 'cure' for nationalism, the EU, is also divisive to many people, a threat to their national and cultural identities.

So in the end, as Joseph Weiler says, the answer to living peacefully together is not the creation of a naked public square that may end up singling out religious believers and reducing them to a type of second class citizenship.

Instead the answer is to acknowledge your cultural heritage, including the religious part of that heritage, but to do so in a way that does not impinge on the freedom of others. For example, Muslims who live in Western countries should be free to practice their religion within very broad limits, to partake in public life as Muslims, but it is unreasonable to expect their new homes to deny their Christian heritage in order to accommodate them.

The same applies to secularists. They should no more expect Europe to deny its Christian roots, than Christian should expect Europe to deny the legacy of the secular Enlightenment.

Between World War II and today, that had been more or less the arrangement in most Western European countries, but this agreement is now under threat from those who wish to make our societies deny who and what they are.

In the end, of course, the ECtHR overturned its original decision. It probably did not anticipate that so many Governments would object to it so strongly, although notably Ireland was not one of them.

The Grand Chamber of the Court rejected the original ECtHR finding that the Crucifixes represented "powerful external symbols" and said that there was "no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils".

It held that, "the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation of the respondent State".

It added: "The Court must moreover take into account the fact that Europe is marked by a great diversity between the States of which it is composed, particularly in the sphere of cultural and historical development."

And if a State school can display a crucifix, it is certainly that case that cribs can be displayed in hospitals and other public places.

That decision by the Grand Chamber was certainly a defeat for the 'naked public square'.

Unfortunately, and as I hope this talk has made clear, there are many other battles to be fought and the one of the chief ones is against certain interpretations of the principle of non-discrimination, or equal treatment. Again, the Pope had highlighted this many times, including in his Westminster Hall address.

We find that whenever there is a clash between equality, however that might be defined, and some other right, such as freedom of belief, freedom of expression, freedom of association, freedom of religion and conscience, those rights are having to give way because they are dismissed as manifestations of 'prejudice' and 'bigotry'.

But of course, the principle of equal treatment simply says that similar situations should be treated in similar ways. It allows different situations to be treated in different ways. This is an absolutely vital distinction that to some extent shows us a way out of our bind.

This distinction was employed by the French Supreme Court last year when it ruled that France's law restricting marriage to opposite sex couples was not discriminatory and did not breach the equality provisions of the French Constitution.

And of course the relevant difference with regard to marriage is that an opposite-sex couple can provide a child with a mother and a father, a same-sex couple, however loving, cannot.

Therefore, so long as we believe that motherhood and fatherhood are complementary and of intrinsic value to a child, it makes sense to give special support to marriage in its present form, even if not all married couples have children. No such rational argument can be found in favour of banning inter-racial marriage.

To quickly take another example, again from the debate over schools, if we judge that denominational schools are inherently discriminatory then the logic is that denominational schools must be brought to an end.

But this is a direct attack on the right of parents to send their children to a school that reflects their ethos in favour of one-size-fits-all schools that inevitably will have a view of the human person and so will not be neutral with regard to values. Again, the State will be favouring one morality over another.

What we require, and in all too many cases what we are not getting, is reasonable accommodation between conflicting rights. Normally when rights clash, as they will, we seek reasonable accommodation.

At a conference last year in Dublin organised by The Iona Institute Professor Roger Trigg of Oxford University had this to say: "It is a fundamental democratic principle that we allow freedom for beliefs and practices which we do not share, and which may go against the views of the majority. The fact that there have to be limits to any freedom does not mean that fundamental beliefs cannot often be accommodated. There is such a thing as 'reasonable accommodation.' Europe seems to be drifting away from the views of the early Enlightenment which saw religion as an indispensable support for our beliefs in such principles as freedom and equality, and human dignity. It is simply assumed that these can be torn from their Christian

roots and continue to flourish. Whether that is so is doubtful, but the views of the later Enlightenment introduce prejudice against religion in all its forms.”

This prejudice wishes to reduce freedom of religion to freedom of worship only. This is a trend all religious believers, and anyone who believes in true religious freedom, must vigorously challenge.

Thank you.