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Deference or Interrogation? Contrasting Models for Reconciling Religion, Gender and Equality

MOIRA DUSTIN

Abstract

Since the late 1990s, the extension of the equality framework in the United Kingdom has been accompanied by the recognition of religion within that framework and new measures to address religious discrimination. This development has been contested, with many arguing that religion is substantively different to other discrimination grounds and that increased protection against religious discrimination may undermine equality for other marginalized groups – in particular, women and lesbian, gay, bisexual and transgender (LGBT) people. This paper considers these concerns from the perspective of minoritized women in the UK. It analyses two theoretical approaches to reconciling religious claims with gender equality – one based on privileging, the other based on challenging religious claims – before considering which, if either, reflects experiences in the UK in recent years and what this means for gender equality.

Keywords

Gender, women, religion, equality, minorities, discrimination

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Religion and promoting gender equality

This paper begins by considering why religion is problematic for those wishing to promote equality, in particular gender equality.¹ It goes on to consider two theoretical models for reconciling religious and gender equality claims, before considering the viability of these models in the context of developments in UK policy and legislation between 1997 and 2011.² It concludes by discussing the implications for women discriminated against on the basis of both gender and minority religious status, and for gender equality more widely.³

One way in which religion may differ from other protected discrimination grounds (such as gender, disability or ethnicity) is that faith is a chosen rather than an inherent part of a person's identity.⁴ It has been argued that religion, in contrast to these other grounds, corresponds to a political affiliation rather than an immutable element of one's identity.⁵ Whether or not this is true, it does not follow that religious discrimination should not be recognized and addressed. Nasar Meer points out the flaw in the distinction between voluntary and involuntary identities using the example of a Jewish person who could 'pass' for being non-Jewish but could not reasonably be asked to do so. Meer goes on to say: '[I]f we argue

¹ Although outside this paper's remit, it is equally problematic from the perspective of LGBT equality.

² Much of the paper relates to policy and legislation under the Labour governments of 1997 to 2010. A Conservative and Liberal-Democrat coalition government was elected in May 2010.

³ The paper focuses on minority religious populations, in particular Muslim populations, because these have been the focus of much attention from policy makers and academics in the UK in the period covered. That is not to suggest that the tensions between gender and religious claims do not also exist in relation to Christianity.

⁴ In the UK, the Equality and Human Rights Commission's remit covers seven 'protected groups' (age, disability, race or ethnicity, gender, transgender, religion or belief, and sexual orientation) as well as human rights.

⁵ Equality and Human Rights Commission, *Extending the Public Sector Equality Duty to Religion or Belief – EHRC response*, EHRC, 2009.

that people's "difference" is less deserving of protection if it is in any way "changeable", then we are advocating that those subject to discrimination or hostility should choose, where possible, to change their identity in order to avoid discrimination.⁶ Even if this were reasonable, it would not solve the problem that while individuals may choose a religious or non-religious identity, they have no choice over the identity others ascribe to them. A Pakistani British woman's experience of Islamophobia does not necessarily correlate to whether she defines herself as a Muslim. In this sense the voluntary/involuntary distinction is inoperable.

A second argument might be that religion is a private matter, that is, beyond the state's remit. But the perception of religion as a private matter corresponds more to the way the majority religion – the Church of England – has traditionally been lived in Britain than to the way that minoritized individuals such as Muslim, Sikh and Jewish people experience their faith and demonstrate it through visible practices and dress.⁷ It could be argued that because of the centrality of Christianity in British history and tradition and the way it is expressed – if less strongly today – in daily life through Sunday opening hours, religious holidays and state institutions, requiring minorities to keep their religious identities private is in itself a form of religious discrimination.⁸ And if there is a general trend to deprivatize religion, this argument has less force.

Rather than concentrate on whether religion is distinct from the perspective of individual identity, we might consider whether religious claims and the organizations that make them are different to claims and organizations operating in other areas of discrimination. Religious claims are often seen to carry more weight than those made from a secular perspective because religion is understood as a matter of conscience and deep conviction. As Christian Joppke phrases it: '[O]ne has to consider that non-religious impositions are always less exacting on the individual – they

⁶ N. Meer, 'The Politics of Voluntary and Involuntary Identities: Are Muslims in Britain an Ethnic, Racial or Religious Minority?' in *Patterns of Prejudice*, 42, 1 (2008), 77.

⁷ T. Modood, *Multicultural Politics: Racism, Ethnicity and Muslims in Britain*, Edinburgh: Edinburgh University Press 2005, 123-4. Thanks to Yasmin Gunaratnam for the suggested usage of the term 'minoritized': 'I use the term "minoritized" to give some sense of the active processes of racialization that are at work in designating certain attributes of groups in particular contexts as being in a "minority"'. Y. Gunaratnam, *Researching 'Race' and Ethnicity: Methods, Knowledge and Power*, London: Sage Publications 2003, 17.

⁸ A. Phillips, 'Religion: Ally, Threat, or Just Religion?' in J. Casanova and A. Phillips, *A Debate on the Public Role of Religion and its Social and Gender Implications*, Gender and Development Paper 5, Geneva: UNRISD (2009), 5-6.

don't violate a script and ultimate commands to be kept, but challenge mere conventions or customs.⁹ Or as Tariq Modood says: "Because it is required/prohibited by my religion" has a special normative force that obliges us to accommodate it in the way we would not if someone said "because I want to."¹⁰ This is for many the reason why religious claims cannot simply be added to the equality spectrum: from a secular perspective, such claims cannot be challenged because religious organizations and individuals are using a different vocabulary, one that is not available to non-believers. The extent to which religious claims are off-limits may be overstated.¹¹ And one might distinguish between core tenets that are sacrosanct and the practices that stem from them which are not and which are open to interrogation by believers and non-believers alike. However, in public discourse in the UK, much of the debate about authentic interpretations of religious doctrine and what is permissible does not include non-religious perspectives but takes place between members of the religion in question – the disputation about the ordination of women priests in the Church of England for example. Where secular voices are heard, they tend to be hostile to religion *per se* rather than taking a position on what are judged to be the internal affairs of religion.¹²

The strength of conviction that religious claims are more exacting and less open to challenge than other claims is reflected in both international and national legislation, where religion is commonly recognized as a legitimate basis for exemption from universal equality measures. The European Employment Equality Directive, for example, permits member states to maintain national laws or practices allowing churches and other religious organizations to treat people differently on the basis of their religion or belief – stating that where this is a genuine occupational requirement according to that organization's ethos, such differential treatment does not constitute discrimination. The Directive continues:

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in

⁹ C. Joppke, 'The Retreat of Multiculturalism in the Liberal State: Theory and Policy' in *British Journal of Sociology*, 55:2 (2004), 241.

¹⁰ T. Modood, *Multicultural Politics: Racism, Ethnicity and Muslims in Britain*, 181.

¹¹ Phillips, 'Religion: Ally, Threat, or Just Religion?', 6.

¹² Voices such as Richard Dawkins, author of *The God Delusion* (London: Bantam Press 2006) and journalist Polly Toynbee, also President of the British Humanist Association. Toynbee's articles include 'Sex and death lie at the poisoned heart of religion', in *The Guardian*, 14 September 2010.

conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.¹³

To give a practical example, this provision would allow churches to refuse to employ women priests.¹⁴ At national level, several European countries allow exemptions from equality legislation, including gender equality legislation, for religious organizations or on faith grounds.¹⁵

Implicitly or explicitly, such exemptions are based on the belief that having a religious identity and living in accordance with religious beliefs may prevent an employer, employee or service provider from complying with general equality norms. This accords with the interpretation of some religious organizations in the UK and relates to a further significant way in which religion is 'different' from other equality grounds: while organizations representing gender, disability, sexual orientation and race generally exist to confront discrimination, anti-discrimination work is a secondary activity for most organized religions, including those that have become equality 'stakeholders' in the UK.¹⁶ Indeed, some organized religions interpret their religious beliefs as incompatible with full equality for gender and lesbian, gay, bisexual and transgender (LGBT) people.¹⁷ Some are also organized in a hierarchical way with rules that breach equal opportunities practices for women and minorities that are generally accepted by other civil society organizations.¹⁸

This is where the coincidence of recognizing religion as a discrimination ground while at the same time granting exemptions to

¹³ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>, accessed 31 May 2011.

¹⁴ European Union Agency for Fundamental Rights, *Handbook on European non-discrimination law*, 50.

¹⁵ See M. Dustin, *Gender Equality, Cultural Diversity: European Comparisons and Lessons*, London: LSE Gender Institute and Nuffield Foundation 2006, 14. Hege Skjeie discusses religious exemptions to equality in Norway. H. Skjeie, 'Religious Exemptions to Equality' in *Critical Review of International Social and Political Philosophy*, 10:4 (2007), 471-490.

¹⁶ Stakeholders is the term used to refer to the wide range of organizations with an interest or expertise in a particular area of public policy.

¹⁷ In January 2006, Sir Iqbal Sacranie, then head of the Muslim Council of Britain, told the *Today Programme* that civil partnerships were 'harmful' and homosexuality an 'unacceptable' practice. His remarks were investigated by the Metropolitan Police but no charges were pressed.

¹⁸ B. Barry, *Culture and Equality*, Cambridge: Polity Press 2001, 156.

religious institutions that are not given to (or asked for by) other organized interests becomes a threat to gender equality. While equality law and regulations may be drawn up differently for different groups, the routine permission of exemptions applies uniquely to religion. And organized religion is unlike other discrimination lobbies in making claims for recognition of a religious identity and protection from religious discrimination that directly threaten progress towards equality for other groups. Women and LGBT people are most obviously at risk based on conservative or fundamentalist religious readings of what is permissible for women and in terms of sexual activity. But religious claims have presented an obstacle to equality for other groups: the UK's former Disability Rights Commission was drawn into mediation on the question whether it is acceptable for Muslim restaurants and businesses to deny entry to guide dogs.¹⁹

One danger, then, is that demands for religious protection could undermine the rights of other marginalized groups, and that as religion becomes a recognized partner in the equality agenda, these demands are increasingly couched in the language of equality, freedom of speech and human rights. Rather than employ only scripture-based arguments, discrimination by religion can also be justified – paradoxically – using an anti-discrimination vocabulary. In parliamentary debates on the first Equality Bill in the UK in 2005, Earl Ferrers made the argument to the House of Lords that:

[w]e have an Equality Bill saying that all these people [homosexuals and transsexuals] should be equal. However, as my noble friend said, people who have religious convictions often find that they are discriminated against if they do not want to take part in these [gay and lesbian] marriage ceremonies.²⁰

¹⁹ 'No Ban On Guide Dogs Under Islamic Law', Disability Rights Commission news release, 11 December 2002.

²⁰ Equality Bill [House of Lords] Committee Stage, 13 July 2005, available at www.Parliament.uk.

Akbar Warraich and Balchin identify '...a virtual monopoly [in Britain] of the interpretation of Islam, Muslim laws and women's rights within Islam by the extreme Right and conservative Right, the latter often masquerading as "moderates" having co-opted the language of human rights'. S. Akbar Warraich and C. Balchin, *Recognizing the Un-Recognized: Inter-Country Cases and Muslim Marriages and Divorces in Britain. A Policy Research by Women Living Under Muslim Laws*, WLUML 2006, 64.

The more active and promotional way that equality has come to be understood in law and policy is a factor here: if equality is merely the absence of discrimination and discrimination law exists only to address abuses of rights on an individual basis, then extending the law to cover religious discrimination may be unproblematic. Most proponents of equality, however defined, would agree that if an individual is refused employment because s/he is a Muslim, then the law should intervene and provide redress. However, increasingly, achieving equality is seen to require more, and also encompasses recognition or affirmation of individual identity. Nancy Fraser has explored the decline in movements for egalitarian redistribution and rise in the 'politics of recognition'.²¹ Fraser finds the politics of recognition problematic in encouraging 'the reification of group identities'. She also points out that the identity model of recognition tends to 'impose a single, drastically simplified group-identity which denies the complexity of people's lives, the multiplicity of their identifications and the cross-pulls of their various affiliations.'²² This highlights a further problem with recognizing religious claims. If religion is conceptualized as a discrete, homogenous interest and lobby, ignoring the way religious concerns intersect with other aspects of individual identity and the way that is reflected in the forms discrimination takes – for example discrimination based on both gender and a minority religious identity – then including religion within the 'politics of recognition' is likely to be to the detriment of other disadvantaged or marginalized individuals.

The discussion above suggests that the question is less whether religion is different from other discrimination grounds, but rather whether claims based on religion are different from and compatible with other equality claims. I argue that it is the way that religious claims are recognized that is threatening to gender equality. The problem is the combination of recognizing religion as a discrete discrimination ground within a more promotional equality agenda, while at the same time allowing exemptions from general requirements to religious organizations on the basis that it is not reasonable to expect believers to renounce religious tenets even where these conflict with principles and laws that are widely upheld – such as equal access to employment for men and women.

If religion is substantively different to other discrimination grounds, one solution might be simply to exclude it from policy and all the accompanying processes, structures and funding streams. But not only is

²¹ N. Fraser, 'Rethinking Recognition' in *New Left Review*, 3, May/June 2000.

²² *Ibid.*, 112.

this an unlikely change of policy direction in the UK, it would also be to abandon believers or members of religious organizations to the dictates of those organizations, however discriminatory. Moreover if, as will be identified in the section on UK developments below, there is evidence that religious minorities in the UK experience discrimination, disadvantage and harassment that cannot be attributed entirely to race or ethnicity, then most would agree that the government has a responsibility to intervene – with all that involves in terms of engagement with religious organizations. Both these factors give feminists a reason for exploring whether religious and gender-based equality are reconcilable, rather than simply refusing to recognize all religious claims, interests and partners. The following sections considers two possible and contrasting models of reconciliation. None of the writers discussed below is more or less committed to gender equality; where they differ is in their view of the role of the state in relation to organized religion and the extent to which the state is entitled to prohibit religious-based practices that conflict with generally upheld social principles.

Reconciling gender and religion: privileging religious claims

Martha Nussbaum has addressed the dilemma of recognizing religious claims without compromising gender equality in a number of works.²³ For Nussbaum, the right to religious self-determination is not optional and something that can be easily discarded if it conflicts with gender equality. On the contrary, '[r]eligion is given a high degree of deference and protection in many constitutional conceptions, as it will be in mine.'²⁴

Underpinning much of Nussbaum's writing is the belief that individuals should be able to pursue their own conception of the good as

²³ The ideas outlined here are taken from several pieces of writing so should not be seen as representing a unified model by Nussbaum. The works are: M. C. Nussbaum, 'A Plea for Difficulty' in J. Cohen, M. Howard and M. C. Nussbaum (eds.) *Is Multiculturalism Bad for Women?* by Susan Moller Okin, Princeton: Princeton University Press 1999; M. C. Nussbaum, *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press 2000; M. C. Nussbaum, 'Rawls and Feminism' in S. Freeman (ed.) *The Cambridge Companion to Rawls*, New York, NY: Cambridge University Press 2003, 488-520.

²⁴ Nussbaum, *Women and Human Development: The Capabilities Approach*, 190. Nussbaum's 'Capabilities Approach' deserves more discussion than there is space for here but it claims that a better way of addressing poverty and development issues than in current models is through focusing on human capabilities – 'what people are actually able to do and to be' in a way that is 'based on a principle of each person as end' Nussbaum, *Women and Human Development: The Capabilities Approach*, 5).

far as possible and that the state should facilitate and not impede them in doing so. Within that context, she argues:

To be able to search for an understanding of the ultimate meaning of life in one's own way is among the most important aspects of a life that is truly human. One of the ways which this has most frequently been done historically is through religious belief and practice.²⁵

Nussbaum suggests that liberals have not really acknowledged or understood the importance of religion because it is seen as 'little more than a bag of superstitions'.²⁶ She points to the good that can come out of a religious identity, using her own example as a Reform Jew. But Nussbaum also recognizes that women's ability to exercise the full range of human capabilities is often limited in what she describes as 'traditional religious cultures'.²⁷ If religious self-determination is non-negotiable, the question then becomes how to determine the extent to which it is reasonable to constrain the free exercise of religion to ensure gender rights. Nussbaum uses John Rawls' distinction between comprehensive and political liberalism.²⁸ Under the former, liberal values such as autonomy 'pervade the fabric of the body politic, determining not only the core of the political conception but many non-core social and political matters as well.'²⁹ Under the latter, citizens are required to endorse the core values – such as the equality of all citizens – as political values only. Nussbaum's preferred framework of political liberalism is based on the 'fact of reasonable disagreement in society, and the existence of a reasonable plurality of comprehensive doctrines about the good, prominent among which are the religious conceptions.'³⁰ This means that citizens, including religious believers, must accept the political equality of women as citizens but do not have to accept that men and women are equal as a 'comprehensive moral value'. In contrast, comprehensive liberalism would require citizens to accept values such as gender equality in all areas of society including voluntary associations (and she includes religious organizations in this category). Nussbaum finds political liberalism preferable to comprehensive

²⁵ Nussbaum, *Women and Human Development: The Capabilities Approach*, 179.

²⁶ Nussbaum, 'A Plea for Difficulty', 105.

²⁷ Nussbaum, *Women and Human Development: The Capabilities Approach*, 188.

²⁸ J. Rawls, *Political Liberalism*, New York: Columbia University Press 1993.

²⁹ Nussbaum, 'A Plea for Difficulty', 109.

³⁰ Nussbaum, 'A Plea for Difficulty', 109.

liberalism in showing greater respect for citizens' reasonable comprehensive views.

As a guiding principle, Nussbaum suggests the United States Religious Freedom Restoration Act of 1993:

This act prohibits any agency, department or official of the United States, or of any state, from 'substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability', unless the government can demonstrate that this burden '(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'³¹

Guided by this model, Nussbaum supports laws of general applicability over religious claims in several cases. But she concludes that 'as long as the freedom of individuals to change their religion is also firmly established', the state should not dictate the internal practices of a religious body. To provide a concrete example, the Roman Catholic Church should not be compelled to hire women priests, which is a religious function, though it probably should be compelled to employ female janitors on the same basis as men.³²

Nussbaum stresses on several occasions the need for any adequate approach to such dilemmas to recognize the diversity of views and evolution over time that exists within all religious traditions. In discussing the case of Shah Bano, which led to the Muslim Women's Bill in India, she points out that one of the main problems was the Indian government's failure to listen to the range of Muslim (and other) opinions on the case, instead 'accord[ing] legitimacy to a small group of established patriarchal clerics as the true representatives of the community...'³³ This might suggest that conflicts between religious and gender equality claims can sometimes be resolved by opening up the debate to a range of opinions, including dissenting opinions within the religious institution in question and giving

³¹ Nussbaum, *Women and Human Development: The Capabilities Approach*, 198-199.

³² Nussbaum, *Women and Human Development: The Capabilities Approach*, 228.

³³ Nussbaum, *Women and Human Development: The Capabilities Approach*, 226. In 1978 Shah Bano, an elderly Muslim woman living in Madhya Pradesh, was made destitute when her husband divorced her and applied for maintenance under the uniform Criminal Procedure Code. The case led to much public debate on Muslim personal law and the need for a uniform civil code, and was exploited by Hindu fundamentalist groups. It culminated in 1986 when the Indian government passed the Muslim Women's (Protection after Divorce) Act, denying all Muslim women the maintenance rights other Indian women were entitled to under the Criminal Procedure Code.

legitimacy to dissenting opinions. However, Nussbaum does not pursue this as her main strategy. Yet if gender equality is categorized as a ‘compelling government interest’ – as it must be for states that are signatories to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), European directives on gender equality and the many other international instruments affirming the principles of gender equality – surely the state should recognize a gender-friendly over a gender-discriminatory interpretation of religious principles.

Instead of plurality of debate, however, Nussbaum prioritizes individual rights of exit as a safeguard for women. But exit only works if individuals view their religious identity as similar to membership of a voluntary organization. Nussbaum’s experience may have been one of choosing the most progressive of the variety of interpretations of Judaism on offer, but that is not the experience of many women. The overreliance on exit and its limitations have been recognized, in particular in relation to forced marriage.³⁴ When the organization in question contains your family, friends and all those who provide support in the context of a sometimes hostile or racist environment, the factors are weighted against exit as a realistic solution.

Moreover, the most pernicious forms of religious discrimination can produce internalized norms of subordination that invalidate exit as a solution. Cass Sunstein, considering how governments should respond to discriminatory behaviour by religious institutions, argues that:

The remedy of ‘exit’ – the right of women to leave a religious order – is crucial, but it will not be sufficient when girls have been taught in such a way as to be unable to scrutinize the practices with which they have grown up. People’s ‘preferences’ – itself an ambiguous term – need not be respected when they are adaptive to unjust background conditions; in such circumstances it is not even clear whether the relevant preferences are authentically ‘theirs’.³⁵

Sunstein highlights a further problem with Nussbaum’s position: that the choice of individual women to subordinate themselves perpetuates norms that may have a detrimental impact on all women. This suggests that, even

³⁴ A. Phillips and M. Dustin, ‘UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit’ in *Political Studies*, 52 (October 2004), 531-551. See also Skjeie, ‘Religious Exemptions to Equality’, 477.

³⁵ C. Sunstein, ‘Should Sex Equality Law Apply to Religious Institutions?’ in J. Cohen, M. Howard and M. C. Nussbaum (eds.) *Is Multiculturalism Bad for Women? by Susan Moller Okin*, Princeton: Princeton University Press 1999, 88.

if it were acceptable to give individual women the stark choice between gender equality outside their religion or oppression within it, the legitimacy this gives to discriminatory practices is unacceptable.

A related argument is that a non-interventionist, seemingly neutral position often reinforces existing power imbalances. Sunstein's point that individual cases reinforce wider discriminatory norms suggests that in allowing gender discrimination on religious grounds the state is not a neutral protector of religious freedoms but is actively promoting women's inequality. Or as Hege Skjeie phrases it: 'When the state grants general exemption rights from anti-discrimination legislation to religious communities, it has unilaterally sided with the "majorities within", and formally imposed on gender equality a duty to yield.'³⁶ One might also reasonably ask why respect for individual freedom – in this case religious freedom – is generally at the expense of women. If a church claimed that it needed to exclude black people as candidates for priesthood in order to protect its religious identity, this would no longer be seen as reasonable.³⁷

How could what Nussbaum calls the 'religious dilemma' be resolved in a way that respects self-determination on religious grounds without allowing gender inequality to persist outside of the political arena? One way is by rejecting simplistic conceptions of religion and gender that position them as necessarily in opposition. Nussbaum recognizes the plurality of voices within any organized religion, but fails to take the further step of recognizing the state's right to challenge claims made by religious authorities about the fundamental tenets of their religion and related practices – claims that often rely on an unvarying, non-negotiable, patriarchal interpretation of religious orthodoxy.

Reconciling gender and religion: challenging religious claims

A contrasting position is provided by theorists who are willing to engage with religious arguments but on the basis that they are open to interrogation. There are now many writers challenging monolithic interpretations of Islam and Muslim identity.³⁸ Ziba Mir-Hosseini, for

³⁶ Skjeie, 'Religious Exemptions to Equality', 488.

³⁷ As Nussbaum herself notes: 'It is characteristic of many modern debates that racial discrimination is taken to be an impermissible expression of religious tradition, while sex discrimination is taken to be just the way things have always been.' Nussbaum, *Women and Human Development: The Capabilities Approach*, 229.

³⁸ For example M. Sunder, 'Piercing the Veil' in *Yale Law Journal*, 112 (2003), 1399-1472; Z. Mir-Hosseini, 'The Quest for Gender Justice: Emerging feminist voices in Islam' in *Women Living Under Muslim Laws Dossier 26*, WLUML, 2004; L. Ahmed, *Women and*

example, argues that by ignoring the context within which Islamic texts emerged as well as the existence of alternative texts, secular fundamentalists are as guilty as Muslim traditionalists of 'essentializing and perpetuating difference, reproducing a crude version of the Orientalist narrative of Islam.'³⁹ Janet Afary has written of women's attempts to reinterpret the Qur'an in a feminist light, stating that they 'may not seem radically egalitarian from a secular feminist perspective', but they have an impact and 'have opened a breach in conservative ideology at a time when there was anyway popular dissatisfaction with the heavy-handed patriarchy of the Islamist regime.'⁴⁰

The argument that a strongly secular position might undermine rather than empower Muslim women is fully developed by Madhavi Sunder in 'Piercing the Veil'.⁴¹ Sunder argues that international law, premised on Enlightenment ideas of freedom, constructed religion as 'inherently personal, uncontestable, homogeneous, and communal.'⁴² Law and religion then coexist but only on the basis that they are separate spheres, with law dominant in the public realm and religion in the private. The democratic principles that govern public life are not applied to the private realms of culture, religion and community, where the claims of 'fundamentalist or traditional leaders' are consistently upheld, ignoring the larger plurality of voices. Religion has therefore been allowed to develop as a sphere without rights. By failing to acknowledge the views of religious 'dissenters', law has given women no option but exit if they want to claim their rights. Sunder gives illustrations in support of her argument: the admirable goals of the Convention on the Elimination of Discrimination Against Women (CEDAW) for protecting women in the private sphere have been foiled by state reservations – or exemptions – from the Convention in areas where

Gender in Islam: Historical Roots of a Modern Debate, New Haven: Yale University Press 1992; J. Afary, 'The War Against Feminism in the Name of the Almighty: Making Sense of Gender and Muslim Fundamentalism' in *New Left Review*, July-August (1997), 89-110; A. An-Na'im, 'Human Rights in the Muslim World: Socio-political Conditions and Scriptural Imperatives, a Preliminary Inquiry' in *Harvard Human Rights Journal*, 3 (1990), 13-52. This paper focuses on challenges to patriarchal interpretations of Islam but similar work is taking place in relation to other world religions. See, for example, the work of Judith Plaskow, author of *The Coming of Lilith: Essays on Feminism, Judaism, and Sexual Ethics 1972-2003*, Massachusetts: Beacon Press 2005.

³⁹ Mir-Hosseini, 'The Quest for Gender Justice', 2004.

⁴⁰ Afary, 'The War Against Feminism in the Name of the Almighty', 107 (writing in the context of Iran).

⁴¹ Sunder, 'Piercing the Veil'.

⁴² *Ibid.*, 1419.

CEDAW obligations conflict with state religious or customary law. But as Sunder points out, deferring to religious leaders' arguments for reservations fails to recognize women dissenters within religious communities who oppose their country's reservations and the religious interpretations on which they are based:

These women argue that their governments – and the international human rights community have improperly deferred to traditionalists and so-called cultural leaders' interpretations of private laws without taking proper account of modernizing views.⁴³

Sunder demonstrates the harmful impact for women of either a non-interventionist approach, in which exit is the only option for minorities within minorities, or a model of state intervention based on a public/private distinction that ignores discrimination outside the public domain. She argues that this is no longer acceptable:

Individuals in the modern world increasingly demand change *within* their religious communities in order to bring their faith in line with democratic norms and practices. Call this the New Enlightenment: Today, individuals seek reason, equality and liberty not just in the public sphere, but also in the private spheres of religion, culture, and family.⁴⁴

Like Mir-Hosseini, Sunder argues that there is a third way beyond the religion or rights dichotomy based on conceiving religion as 'an ever-shifting, subjective construct'.⁴⁵ This empowers women to 'reconstruct religious and cultural norms in ways that reflect modern, international human rights principles and women's own current needs and aspirations'.⁴⁶ It is not enough for the state to provide the right to exit or guarantee freedom in the public sphere only. Legal decision-makers need to recognize the 'dynamism' of religious communities and cease 'privileging the norms of religious elites'.⁴⁷ In practice, this should mean that when a specific dispute is brought before decision-makers, elites and dissenters should be placed on an equal footing. This approach – which Sunder calls 'passive proceduralism' – would replace traditional legal understandings of religious rights that affirm the right of religious leaders to impose their

⁴³ Ibid., 1427.

⁴⁴ Ibid., 1403.

⁴⁵ Ibid., 1424.

⁴⁶ Ibid., 1445.

⁴⁷ Ibid., 1466.

views on members. Sunder recognizes that this assumes women and other disempowered groups have the capacity to challenge religious leaders, which is not always the case. To address this she also proposes a 'robust proceduralism' on the part of the state in promoting discourse and giving women the educational and economic tools they need to challenge accepted norms.⁴⁸

We might also look to Nancy Fraser's alternative model of recognition here. Although not addressing the particular question of religious claims, Fraser suggests focusing on promoting parity of participation 'to establish the subordinated party as a full partner in social life, able to interact with others as a peer.'⁴⁹ She argues that 'by establishing participatory parity as a normative standard, the status model submits claims for recognition to democratic processes of public justification, thus avoiding the authoritarian monologism of the politics of authenticity and valorizing transcultural interaction, as opposed to separatism and group enclaves'.⁵⁰ Applied to the questions under discussion here, this could mean empowering dissenting voices within religious institutions to challenge the interpretations of religious doctrine that deny them their rights.

In contrast to models that defer to or privilege religious claims, the approach put forward here is based on a willingness to challenge religion in all areas of life. A position of unquestioning respect for religion leads to a ready acceptance of established and conservative views as to what religion is and what it requires. Sunder starts from a different perspective: women should not be required to choose between their beliefs and their rights and secular individuals and states should not collude in that false dichotomy but recognize the scope for discussing and contesting religious claims from within. This position recognizes the importance of religion to individual self-determination but sees religious interpretations and claims as open to contestation by both insiders and outsiders.

⁴⁸ Ibid., 1468.

⁴⁹ Fraser, 'Rethinking Recognition', 114-115. The work of Amy Gutmann and Denis Thompson is also relevant in attempting to reconcile fundamental differences using the model of 'deliberative democracy'. A. Gutmann and D. Thompson, *Democracy and Disagreement*, Cambridge, MA: Harvard University Press 1996.

⁵⁰ Fraser, 'Rethinking Recognition', 119.

Developments in the UK after 1997

How does any of the above map on to experiences in the UK? Do either of these approaches correspond to experiences in the UK, and what have been the implications for minoritized women?

Britain is usually identified as a secular state that makes some concessions to the established religion, the Church of England. These include the position of the monarch as head of both state and the Church of England, and a requirement for daily worship of a broadly Christian nature in schools.⁵¹ In civil society, religious organizations have played a role in addressing disadvantage and providing welfare for many years but with little formal recognition or public debate about their role.⁵² However, in the period after 1997, religious organizations took a more visible role in policymaking, and the equality legislation and institutional framework encompassed religion in a new way – reflecting what has been identified as the global trend of the ‘deprivatization’ of religion.⁵³

At the same time, events contributed to a new or renewed preoccupation with minority religious identities, specifically Muslim identities and Islam.⁵⁴ And since the 2001 Census first included a question on religious identity, it became possible to separate British Asians into categories including Muslim, Sikh and Hindu, and demonstrate that in a range of areas – health, education, employment and housing – Muslims experience greater disadvantage than members of other minority religions.⁵⁵ And while ‘multiculturalism’ became a term with largely negative connotations, the Labour government addressed minority

⁵¹ The legal requirement for daily collective worship in school dates back to the 1944 Education Act and is restated in Section 70 of the 1998 School Standards and Framework Act. Parents can remove a child from worship and schools can apply to their local Standing Advisory Council on Religious Education (SACRE) for exemption from the ‘broadly Christian’ requirement.

⁵² Many well-established charities and trusts have religious roots, such as CAFOD, YWCA (now renamed Platform 51) or the Joseph Rowntree Charitable Trust and Foundation, as do many small local organizations working to address disadvantage in their communities.

⁵³ Casanova, *Public Religions in the Modern World*.

⁵⁴ Gurpreet Kaur Bhatti’s play *Behzti (Dishonour)*, playing at Birmingham Rep, was closed down in 2004 due to opposition on the grounds that it demeaned Sikhism. The author was forced into hiding after receiving death threats. On 7 July 2005 a series of bombings carried out by four Muslim men (three of whom were British born citizens of Pakistani origin) on the London transport system killed more than 50 people (*Report of the Official Account of the Bombings in London on 7th July 2005*, HC1087, London: The Stationery Office, 11 May 2006).

⁵⁵ Office for National Statistics, *Focus on Religion*, 2004, ONS.

religious identities and concerns to an unprecedented degree, embracing the concept of 'multifaith engagement'.⁵⁶

This is not to suggest that concerns arising from the more public role of religion in the UK relate only to religious minorities. However, this paper's particular concern is with the impact on minoritized women of the changing relationship between the state and organized religion. While it identifies policy trends and legislation relating to religion in general, it focuses on the way that the government engaged with minority religious interests and organizations and the impact for women.

One way in which the state embraced religion was through explicit support for religious schools and state funding for them. Prime Minister Tony Blair made it clear that he viewed religious schools as a positive feature of the education system.⁵⁷ When the Labour government was formed in 1997, only Christian and a small number of Jewish schools received state funding, but after 1997 the number of state-funded schools for minority religions increased, partly in recognition of the need for a more balanced treatment of majority and minority religions.⁵⁸

Support for faith schools often appeared to conflict with the rejection of multiculturalism mentioned above. The government-commissioned *Cantle Report* into the 'riots' of 2001⁵⁹ suggested that segregated

⁵⁶ In the early 21st century the view that multiculturalism as a policy model was not working took hold in the UK as in other Western European countries. See M. Dustin, *Gender Equality, Cultural diversity*, 3. See also T. Modood, *Multicultural Politics*, 201, on the 'retreat from multiculturalism'. For a defence of multiculturalism, see W. Kymlicka, 'The Rise and Fall of Multiculturalism? New Debates on Inclusion and Accommodation in Diverse Societies' in *International Social Science Journal*, 61:199 (2010), 97-112.

⁵⁷ Jodie Reed identifies an enthusiasm in government for rebuilding the link between religious organizations and schools: J. Reed, 'Religion renewed? The right path for English schools' in *Public Policy Research*, 12:4 (2006), 253.

⁵⁸ In 1998, just after the Labour government came into office there were 7,219 maintained denominational primary and secondary schools, of which the majority were Church of England with 24 Jewish and no Sikh or Muslim schools recorded (*Statistics of Education. Schools in England 1998*, available at <http://www.education.gov.uk/rsgateway/DB/VOL/v000130/1045x.pdf>, accessed 3 January 2011. In November 2010, there were nearly 7,000 maintained faith schools, the majority still Church of England but now including 38 Jewish, 11 Muslim, 4 Sikh and 1 Hindu school. See <http://www.education.gov.uk/schools/leadership/typesofschools/b0066996/faith-schools>, accessed 3 January 2011.

⁵⁹ 'During the spring and early summer of 2001, there were a number of disturbances in towns and cities in England involving large numbers of people from different cultural backgrounds and which resulted in the destruction of property and attacks on the

communities were undermining social cohesion and expressed concern 'that some existing faith schools appear to be operating discriminatory policies where religious affiliations protect cultural and ethnic divisions'.⁶⁰ The report was highly influential, but its concerns about faith schools were not acted upon. In the following period, the introduction and expansion of new types of state schools with greater freedom from local authority control, such as academies, heightened concerns about both an increase in the number of faith schools and the extent to which such schools are able to avoid regulation and may discriminate in their employment and admissions policies.⁶¹

During the same period, government policy documents were increasingly recognizing religious identities through the concept of 'faith communities'. A Faith Communities Unit was established in the Home Office in 2003, alongside units working on race and community cohesion, 'to lead on Government engagement with faith communities'.⁶² Recommendations made in 2004 for cooperation between government and faith communities suggested that government departments should '[p]ursue "faith literacy" and participate in internal faith awareness training'.⁶³ In 2008, a new 'framework for partnership in our multifaith society' identified the building blocks for 'effective dialogue and social action involving people with different faiths and beliefs and those with none'.⁶⁴ The Faith Communities Capacity Building Fund was established to strengthen the capacity of faith organizations, distributing more than

police.' Home Office, *Community Cohesion: A Report of the Independent Review Team Chaired by Ted Cantle (the Cantle Report)*, 2001, Foreword. Available at <http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/DownloadDocumentsFile.aspx?recordId=96&file=PDFversion>, accessed 3 January 2011.

⁶⁰ Ibid., 33.

⁶¹ See, for example, debates on the Academies Bill [House of Lords] Committee Stage, 23 June 2010 (available at www.parliament.uk). Academies are publicly funded schools that operate independently of central or local government control.

⁶² The Unit subsequently moved to the Department for Communities and Local Government.

⁶³ Home Office, *Working together: Cooperation between Government and Faith Communities*, London: Home Office Faith Communities Unit 2004, 1, available at <http://www.communities.gov.uk/documents/communities/pdf/151393.pdf>, accessed 3 January 2011.

⁶⁴ Department for Communities and Local Government, *Face to Face and Side by Side. A framework for partnership in our multi faith society*, 2008, 9, available at <http://www.communities.gov.uk/documents/communities/pdf/898668.pdf>, accessed 3 January 2011.

eleven million pounds to more than nine hundred single and interfaith organizations over a two-year period.⁶⁵

In these initiatives the boundaries between religious and ethnic minorities often appeared blurred with religion becoming a proxy for race or ethnicity: for example, the 2005 strategy to increase race equality and community cohesion promised funding for faith communities and protection against religious discrimination.⁶⁶ Faith-based organizations were seen as a channel for the government to engage with BME communities, perhaps encouraging minorities organizing at local level to do so on the basis of religious rather than ethnic identity to improve their chances of securing public funding.⁶⁷

Religious interests were incorporated in government-led working groups and consultation processes in a new way. In 2004, a new inter-departmental official committee was announced to 'provide a vehicle for the exchange of good practice on matters relating to faith and other ethical belief systems and of information about the Government's discussions and consultations with faith communities.'⁶⁸ The Government Equalities Office (GEO)'s Senior Stakeholder Group was established to 'provide advice to the GEO and its Ministers on how to further strengthen equality protection and to streamline the law.' In 2011, the Group's membership included representatives of the Catholic Bishops' Conference of England and Wales and the Religion and Belief Consultative Group.⁶⁹

Of particular concern was the increase in public commissioning of

⁶⁵ Supplementary memorandum by the Community Development Foundation submitted to the Select Committee on Communities and Local Government Committee, 16 July 2008. Available at

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/369/369we09.htm>, accessed 3 January 2011.

⁶⁶ Home Office, *Improving Opportunity, Strengthening Society: The Government's strategy to increase race equality and social cohesion*, London: Home Office 2005, 46 and 39. See also the earlier Home Office document: *Home Office, Strength in Diversity. Towards a Community Cohesion and Race Equality Strategy*, London: Home Office Communications Directorate 2004.

⁶⁷ National Council for Voluntary Organisations, *Faith and voluntary action: an overview of current evidence and debates*, NCVO, 2007, 18, available at http://www.ncvo-vol.org.uk/sites/default/files/UploadedFiles/NCVO/Publications/Publications_Catalogue/Sector_Research/Faith_and_Voluntary_Action_0.pdf, accessed 3 January 2011.

⁶⁸ Home Office, *Working together: Cooperation between Government and Faith Communities*, London: Home Office Faith Communities Unit 2004, 4.

⁶⁹ Details at http://www.equalities.gov.uk/equality_act_2010/senior_stakeholder_group.aspx, accessed 3 January 2011.

religious organizations to deliver public services. In 2008, the government announced its intention to 'remove the barriers to commissioning services from faith-based groups.'⁷⁰ This was opposed by humanist, secularist and women's organizations based on the risk that religious organizations would discriminate against employees, potential employees and service users.⁷¹ However, the contracting out of public services to organizations, including religious organizations, appeared likely to intensify under the new coalition government elected in May 2010, as it relies on the voluntary sector to deliver the Big Society at the heart of its manifesto in the context of drastic public sector cuts.⁷² In 2011, the government awarded the Salvation Army, a faith-based organization, a large contract for providing support to trafficking victims in place of a women's organization specializing in services to victims of sex trafficking.⁷³

Turning to legislation, the European Employment Directive in 2000 led to the inclusion of religion alongside other grounds for discrimination, and required EU member states to introduce anti-discriminatory employment legislation in these areas. In the UK, regulations were introduced in 2003, preventing discrimination in employment on the grounds of religion or belief (and sexual orientation).⁷⁴ The 2006 Equality Act extended protection against discrimination on religious grounds and established the Equality and Human Rights Commission, responsible for all areas of equality – including religion or belief – and human rights. The Racial and Religious Hatred Act, also passed in 2006, created a new offence of incitement to religious hatred to parallel provisions on incitement to racial hatred. In 2010, a second Equality Act was passed, including a new single equality duty on public bodies – replacing earlier gender, race and disability duties and also covering age, sexual orientation, religion or belief,

⁷⁰ Department for Communities and Local Government, *Communities in Control. Real People, Real Power*, 2008, 43.

<http://www.communities.gov.uk/documents/communities/pdf/886045.pdf>, accessed 3 January 2011.

⁷¹ Brap, *The 'Religion or Belief' Equality Strand in Law and Policy: Current Implications for Equalities and Human Rights. A 'State of the Nation' Report*, Birmingham: brap 2009, 67.

⁷² <http://www.cabinetoffice.gov.uk/content/big-society-overview>, accessed 3 January 2011.

⁷³ The Salvation Army is an evangelical Christian church and registered charity. See Ministry of Justice announcement at <http://www.justice.gov.uk/news/feature090511b.htm>, accessed 25 May 2011.

⁷⁴ UK legislation refers to 'religion or belief' but as organizations like the British Humanist Association often point out, the 'belief' element tends to be overlooked.

pregnancy and maternity, and gender reassignment.⁷⁵ The duty reflected the more complex understanding of equality mentioned above in requiring public bodies to have 'due regard' not only to the need to eliminate discrimination, but also to advance equality of opportunity and foster good relations between different groups. It was the second and third 'arms' of the duty that caused concern on the part of those who saw a threat from organized religion – fearing it would lead to the promotion of religion – including discriminatory interpretations of religion.⁷⁶

The Equality Act 2010 contained the same exemptions for organized religion that were contained in earlier legislation.⁷⁷ These raised fears that religious organizations would use such exemptions to discriminate against employees and service providers, or that individuals would use them to discriminate against other individuals. Following the introduction of the 2003 regulations, a number of employment discrimination cases involving religion came to court, including that of a local authority registrar unwilling to perform civil partnership ceremonies on the basis of her religious convictions.⁷⁸ In this case, the court of appeal found that religious belief did not exclude the registrar from performing her civil partnership duties, perhaps supporting the government's argument that the religious exemptions had been drawn sufficiently tightly, applying only to a small number of posts that exist to promote and represent religion. Much in line with Nussbaum's position, the Equality Act's explanatory notes give the following examples of how exemptions should apply:

This exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if he is gay, but it may apply if the youth worker mainly teaches Bible classes. This exception would not apply to a requirement that a church accountant be celibate if he is gay.⁷⁹

⁷⁵ Information at http://www.equalities.gov.uk/equality_act_2010.aspx, accessed 3 January 2011.

⁷⁶ See for example, *End Violence Against Women, Second Reading Briefing. Equality Bill, 2009*, available on the End Violence Against Women website www.endviolenceagainstwomen.org.uk, accessed 3 January 2011.

⁷⁷ Contained in Schedule 9, part 1 of the Act.

⁷⁸ *London Borough of Islington v Ladele* (Liberty as Intervener), Appeal No: UAEAT/0453/08/RN, Decision of 10 December 2008.

⁷⁹ Explanatory notes for the Equality Act 2010, available at <http://www.legislation.gov.uk/ukpga/2010/15/notes/contents>, accessed 3 January 2011.

This corresponds with Nussbaum's argument that the state should defend its 'compelling interests' (in this case preventing discrimination), while at the same time showing respect for religion by allowing religious organizations to manage 'practices internal to the conduct of the religious body itself.'⁸⁰ Reconciliation of religious demands and equality is achieved by drawing a distinction between what is and is not a fundamental requirement of the religion in question. However, there is no consideration of whether the state has a role in questioning what *are* the fundamental requirements of religious institutions.

The government saw the narrowness of the exemptions in the legislation as sufficient safeguard against discrimination by religious organizations. However, the less visible effects of the developments identified above are a concern. Without recognition of the diversity of religious views, the claims made on religious grounds may go unchallenged and be taken as universally accepted orthodoxy. For example, the Muslim Council of Britain's guidance for schools states that '[i]n public ... girls should be covered except for their hands and faces, a concept known as "hijab"' – failing to recognize the perspectives of the many Muslim parents who choose not to dress their daughters in this way. It also says that 'girlfriend/boyfriend as well as homosexual relationships are not acceptable practices according to Islamic teachings' and advises against mixed gender sex education that 'compromises [children's] sense of modesty and decency.'⁸¹

This is not official guidance and it is unclear how widely the publication was disseminated in schools. However it suggests that the less tangible attitudes and behaviours promulgated as religious orthodoxy may be at least as problematic from liberal, human rights or feminist perspectives as the 'practices' that have been associated with minority religions – forced marriage and 'honour' based violence – but are rarely defended by religious authorities in the UK. Expectations of modesty, the requirement of obedience to patriarchal authority, restrictions on female education and employment – all of these exist throughout society, and religious discrimination is often reflected in or reflects discriminatory attitudes that are widespread among religious and non-religious communities. The point is that discrimination may be more difficult for girls

⁸⁰ Nussbaum, *A Plea for Difficulty*, 14.

⁸¹ Muslim Council of Britain, *Towards Greater Understanding. Meeting the needs of Muslim pupils in state schools. Information & Guidance for Schools*, MCB 2007, 20, 47 and 48.

(and women) to challenge or overcome when identified with religious authority.

The problem here is not necessarily religion, however defined, so much as the choice of religious representatives and the organizations that the government recognizes as stakeholders. For many years, the Muslim Council of Britain was the main or only Muslim representative in government working groups and committees.⁸² There were efforts to engage with young Muslims and Muslim women – in recognition that the Muslim community was too often represented only by its ‘traditional’ leaders. The Muslim Women’s Network was set up in 2002 by the then Minister for Women Patricia Hewitt with the support of the Women’s National Commission. In 2006, the Network published *She Who Disputes – Muslim Women Shape the Debate*, a report based on the views of more than two hundred women on a range of issues. As might be anticipated from Sunder’s analysis of religious dissent, the interviewees ‘were keen to explain that the Islam that they embraced was distinct and different from the artificially stark, gendered religion envisaged by protagonists on both sides of the divide.’⁸³ However, the way policy processes work means that minority religious views were represented by a few of the longer-established and better-funded organizations. Unless the issue was a ‘women’s issue’, women and women’s organizations were rarely invited to sit at the table.

Conclusion

This paper has identified a shift away from the tacit role of religion in public life in the UK towards its more formalized inclusion in policy and legislative processes. After 1997, religion became an organized lobby and permanent part of the political process for advancing equality alongside gender, race

⁸² See J. Birt who argues that the MCB emerged in response to the demand by then Home Secretary Michael Howard for a single Muslim representative body for administrative convenience, and that it has remained ‘the only show in town’ in the eyes of the government. See J. Birt, ‘Lobbying and Marching: British Muslims and the State’ in T. Abbas (ed.), *Muslim Britain. Communities under Pressure*, London: Zed Books 2005, 92-106. See also H. Ansari who argues that ‘[t]he British establishment, finding it confusing and impracticable to negotiate with myriad bodies claiming to be the authentic voice of Muslims in Britain, applied pressure on Muslim communities to create a unified Muslim organization, similar to the British Board of Jewish Deputies, which could represent their interests and with whom negotiations could take place.’ H. Ansari, *Muslims in Britain Report*, Minority Rights Group International 2002, 20.

⁸³ Muslim Women’s Network, *She Who Disputes. Muslim Women Shape the Debate*, Muslim Women’s Network and Women’s National Commission 2006, 63.

and other equality interests. Religious claims, including those made by members of minority religions, were increasingly recognized alongside claims based on race, gender, disability, sexual orientation, transgender status and age. On the one hand, religion came to be treated on a par with other claims, as a logical extension of gender and race equality. On the other hand, there remained a highly deferential approach to religion: believers and non-believers appeared to accept that certain tenets of religion are so deeply held that they are not open to debate, certainly not by outsiders. There was little recognition that 'far from being homogeneous and fixed, religion and culture are and *ought to be* plural, contested, and constantly evolving to meet the changing needs and demands of modern individuals.'⁸⁴ The tendency by the government to homogenize religions failed to recognize the diversity of religious views and interests, in particular those of women and other marginalized individuals. Gender and religion were treated in isolation with an overly deferential attitude to the latter. As a result, women facing discrimination within religious communities had to choose, as Sunder puts it, between religion and their rights in relying on exit from those communities rather than public support in modifying them from within.

The way in which religion was deprivatized thus has more in common with the deferential approach than with the interrogatory model discussed in this paper. Religion was invited to join the equality debate and participate in wider political processes but on a privileged basis. Deference to religious claims was reflected in the exceptions for religion written into equality legislation. These assume that religious freedom requires religious institutions to be exempt from otherwise universally upheld standards of behaviour. As a result, views and practices that would be condemned in other civil society organizations are accommodated by the law in the case of religion. Rather than promoting equality by confronting sexist or homophobic practices by religious organizations, the state has accepted such views as integral to believers' religious identity. Here one can see the distinction between political and comprehensive values reflected in the principle that there needs to be a 'compelling interest' for intervening in the internal affairs of religious organizations – with gender discrimination rarely seen as sufficiently compelling. Yet it is often unclear whether certain beliefs and practices are essential for the body of believers, or

⁸⁴ Sunder, 'Piercing the Veil', 1441. Nussbaum also states that '[t]he humanity of religion means that its practices are fallible, and need continual scrutiny in the light of the important human interests that it is the state's business to protect.' Nussbaum, *Women and Human Development: The Capabilities Approach*, 238-239.

rather serve the interests of the leadership of the more established religious organizations. As Sunder suggests, this allows ‘religious leaders [to] take advantage of a legal tradition that does not think critically about the internal political dimensions of religion and that presumes religion is imposed without internal contest or claims of right.’⁸⁵

As an alternative, building on Sunder’s model would allow the possibility of recognizing religious identities without undermining gender equality. To take an example, when the Muslim Council of Britain is accepted as the representative voice of British Muslims, and its Secretary-General says that civil partnerships are harmful and homosexuality an unacceptable practice, this will be interpreted as an authoritative statement of the Islamic position on the issue. However, if such a statement were used to spark an open debate engaging a range of Muslim and other voices – voices such as Safra, an organization by and for LBT Muslim women – then an alternative view of what an Islamic identity requires and allows might slowly begin to emerge.⁸⁶

If we extend beyond the details of British policy and legislation to consider some of the hypothetical dilemmas presented as examples of the conflict between religion and gender, Sunder’s approach is again illuminating. Cass Sunstein lists some plausible dilemmas, including a Catholic university that refuses to agree tenure to women teachers and Jewish schools that refuse to admit girls.⁸⁷ But these are only dilemmas because the discriminatory interpretation of Judaism and Catholicism is deferred to and accepted as the only legitimate interpretation of these faiths. If the Jewish families seeking access to the schools and the Catholic women seeking employment as teachers were recognized as having their own – legitimate – interpretations of the requirements of their faith, the situation shifts. Now there is a lobby within the religious lobby, demanding equality in a way that more closely conforms to the state’s general interest in equality and which could lead religious organizations to question whether discriminatory practices are part of their core doctrine or whether they may be ‘no more than the sedimentation of previous prejudice.’⁸⁸

Such an approach would perform a service to those within religious communities or with religious beliefs whose views are not heard. Religions are often represented by the more conservative or fundamentalist voices,

⁸⁵ Sunder, ‘Piercing the Veil’, 1424-1425.

⁸⁶ www.safraproject.org accessed 3 January 2011.

⁸⁷ Sunstein, ‘Should Sex Equality Law Apply to Religious Institutions?’, 86-87.

⁸⁸ Phillips, ‘Religion: Ally, Threat, or Just Religion?’, 14-15.

with opposition coming from a similarly uncompromising secular lobby.⁸⁹ Recognition of the heterogeneity of religious communities could erode perceptions that Muslims and Catholics for example (and probably in particular) are universally or inevitably opposed to women's and gay rights when the reality of individuals' relationships with the dictates of religious authorities is more complicated.⁹⁰ In allowing exemptions from equality legislation for the purposes of organized religion, the state misrepresents those who do not wish to use their religion as justification for discrimination.

I recognize that the discussion above inevitably oversimplifies the theoretical positions discussed for the purposes of my argument. Equally, I recognize that governments do not choose between polar positions such as privileging or challenging religious claims, that policies are made on the basis of the status quo in combination with a range of competing interests that have not been addressed here, and that progress is incremental and based on what is possible rather than on abstract models. Depending on extending engagement to minority religious organizations that are perceived to be more progressive may also be naïve – such organizations tend to be small and under-funded and lack the capacity for strategic engagement at national policy level.⁹¹ It is similarly naïve to assume that those who are discriminated against reject discrimination against others and that giving them a voice will instantly transform religious values. And simply giving a voice to gender-friendly perspectives within religion will not change outcomes unless those voices start to 'win the argument'. Gender

⁸⁹ For example, the government received a large number of responses to its consultation on the Equality Bill in 2008 from Christian organizations opposing protection on LGBT grounds (see <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>, accessed 3 January 2011). When *Jerry Springer – the Opera*, a musical with a high level of profanity that suggests that Jesus Christ might have been homosexual, was screened in January 2005, the BBC received more than 45,000 complaints. Protests came from Christians but not the mainstream Church of England. http://news.bbc.co.uk/1/hi/entertainment/tv_and_radio/4154071.stm, accessed 3 January 2011.

⁹⁰ Survey evidence has shown that 97% of American Catholic women have used contraception suggesting a dissonance between religious prescriptions and the reality of many believers' lives (reported in Phillips, 'Religion: Ally, Threat, or Just Religion?', 16).

⁹¹ The UNRISD Religion, Politics and Gender Equality project highlights some of the difficulties in relying on feminists in religious communities for woman-friendly religious interpretations, suggesting that 'internal reform movements on their own may not be sufficient for egalitarian change' (United Nations Research Institute for Social Development, 'Religion, Politics and Gender Equality. Research and Policy Brief 11', UNRISD, 2011, 4).

equality is itself a contested concept and is understood very differently by different women. And some women freely choose to submit to what many feminists would view as patriarchal religious authority.⁹² Having said all that, it is still the case that the relationship between religion and public policy in the UK has developed through polarized debates, with religion too often represented by conservative and traditional voices, and with the opposing voices that are most often heard coming from a secular lobby that is hostile to any public role for religion.

If religions were monolithic, ahistorical and unchanging, it would indeed be difficult to include religious claims in a democratic system based on principles of equality and human rights. Then the only solutions to the 'religious dilemma' would be to reject religion or confine it to the private sphere. But, as many writers and activists within religious communities are demonstrating, religion does not have to be conceived in this way. Women should not have to choose between their rights and their faith, and the state can support them by refusing to exempt religion from its core societal values, such as gender equality. By facilitating the inclusion of dissenting voices, the state therefore has a role to play in encouraging religious organizations to become more democratic and responsive to their members and to wider societal values as they change over time. Privileging religious claims without questioning them is harmful to women and girls within religious organizations and communities and undermines the government's commitment to gender equality on every level. If religious claims are to be included and recognized within governmental equality frameworks, they need to be evaluated – and, where necessary, challenged – according to equality principles as with any other claim.

⁹² J. S. Jouili, 'Beyond Emancipation: Subjectivities and Ethics Among Women in Europe's Islamic Revival Communities', in *Feminist Review*, 98:1 (2011), 47–64.