

Transcript

Sacred and secular

Julian Rivers

Julian Rivers:

I'm Julian Rivers. I'm professor of Jurisprudence at the University of Bristol Law School. Jurisprudence is basically legal theory, or the study of law, in general. And my particular bit of the law, in general, that I'm interested in, is law and religion.

Interviewer:

And how did you get involved or interested in religious issues?

Julian Rivers:

I started getting interested in law and religion, really, as soon as I started studying law because I was aware from my own background that religions are very complex social phenomena. But they also contain bits that are very law-like. So as you study law, you realise parallels between religions as systems of law, and then the law that you study, secular law at university.

And I also noticed that, actually, very little was being said about the relationship at all in the mainstream law curriculum, or even actually in optional subjects, or in textbooks or anywhere. So I started thinking hang on, there must be something to be said here and something to be done here. That was back in the late 1980s, early 1990s.

So I started thinking about these topics. I started writing a bit. And then, of course, it started becoming much more publicly contentious, and people realised that there were a whole host of issues to do with law and religion. So in a sense, I was lucky I got ahead of a wave of enthusiasm or interest.

Interviewer:

And why do you think is freedom of thought, conscience, and religion is such an important right? And why is it so important in society?

Julian Rivers:

Yeah, OK. So we can think about law and religion from a number of different perspectives. And obviously, human rights, the human rights perspective is one of those perspectives. And right at the centre of human rights, as they relate to religion, is freedom of thought, conscience, and religion.

Some people say it's the core right or the basic human right because it touches on fundamental questions of human identity, and worth, and value, the way we think about ourselves, who we think we are, the way we think about our world, the world we inhabit, our relationships with other people, and basically, what we make of life. So thought, conscience, and religion is really the core of human identity. And if we care about people, and we care about protecting people, we're going to care about what they think about themselves, their ethical views, their moral views, and their religious views.

Interviewer:

So could you give me some examples of where religious belief might feed into those ethical values?

Julian Rivers:

OK, so we just want to unpack for a moment or two those three words, thought, conscience, and religion because they're actually quite different. So thought is obvious enough, it's just any sort of ideas about what you take to be true. And interestingly, there's very little law, case law, on freedom of thought because it's not manifested, or it doesn't appear in any obvious concrete form other than what people think.

Conscience gets a little bit more interesting because when you think about conscience, you think about conscientious action, or conscientious objection, and not doing things that you think are wrong, or not being complicit in other people's wrongdoing or bad behaviour. And so, that can stretch from anything from pacifism, for example, the refusal to join in a war, that you think is unjust, through to a refusal to join in carrying out an abortion, if you think that that involves the termination of a life of an unborn child.

So that begins then to raise some very tricky moral issues and issues over which people obviously disagree. When it comes to religion, you get something massive because religion manifests itself in all sorts of ways, in rituals, in teaching, in lifestyle, in diet, in dress. And it switches on a whole host of problematic areas that we could think about.

Interviewer:

So have you come across any cases perhaps where there's been clashes of either between various religions or between the desire to manifest a religious belief and other issues?

Julian Rivers:

Yeah, I think it's tempting when we think about freedom of thought, conscience, and religion to dive into the tricky areas, or the controversial ones where you have clashes of rights, where one person's religious belief or ethical belief contradicts another person's religious or ethical belief. But I think we should start with the central territory, the main ground. And the main ground is not ethically controversial.

So if we're thinking of a very recent current example, we've heard in the media, just recently, the case of a woman with a family from Sudan, who converted from Islam to Christianity, and then faces death. So these things are not just about 17th century intolerance and persecution, we're talking about 21st century intolerance and persecution as well.

And that I think should remain at the heart of what we mean when we talk about freedom of religion. So I think before we get onto the controversial stuff, the difficult stuff about the boundaries, we have to remember that at the core of freedom of thought, conscience, and religion is the protection of the human person, who happens to think differently from their surrounding culture, their surrounding society. And that's really important.

Now, we come onto some tricky areas. Of course, we do know there are loads of tricky areas. One very obvious tricky area that we're all, I think, familiar with at least in the Western world, is how we negotiate the boundaries over competing views of sexual ethics. Particularly not so much, although, it was a case as well over gender roles but now very much so with questions around sexuality, and the

extent to which we require people to adhere to a certain public view of the limits of appropriate sexual behaviour, and the extent to which we allow people to disagree about that, and to mould their environment according to their own ethos.

And then we have all sorts of obvious cases. For example, we can think of the case that went up to the Supreme Court in the UK recently, the bed and breakfast case where we have a couple who run a home as a bed and breakfast. And they're refusing access to a same-sex couple because they don't want to be complicit in what they see as immoral behaviour. And the question there is, whether the state and society is right to say, "I'm sorry, you may take your views but your views are not appropriate in the public sphere. You must accept the new ethic of non-discrimination in grounds of sexuality," or whether we say, "Now that's an area in which you're allowed to differ from your surrounding culture. That's an area in which you have liberty, freedom."

That's a big problem in that there aren't easy answers to questions like that. When we talk about freedom of religion, we can pick any number of contentious examples. There are some quite high-profile people maybe. You may be aware of them from the media, for example, cases around wearing the headscarf.

And do we think that in public spaces, particularly, Islamic women, Muslim women should be prevented from wearing, I don't think many people particularly object to having a head covering as such, but should they be prevented from covering their face, in particular, should they be prevented from covering their eyes? And I think we all differ slightly on where we would draw the boundaries between religious liberty and the requirement to make yourself known in public contexts, for example, the context of a trial, or of a passport photograph, or a public hearing in parliament, or something like that, or possibly just walking down Oxford Street going shopping.

So that's one area, the area of religious dress that has become quite contentious. But there are some other really tricky areas. The Supreme Court in the UK ruled, just a couple of weeks ago, on a rather problematic case involving the trusts of Sikh property, some Sikh temples, Gurdwaras in Birmingham and High Wycombe, and questions of who controlled that property? And that question of control touched on some very difficult divisions, disagreements within the Sikh community as to who the successor was to the original founding Saint.

And secular courts really don't want to go there, but you have to go there to solve the religious property dispute. And you have to be able to say who controls property. You can't just let it up to social disagreement and social pressure. The law has to give an answer.

So there are some very high-profile cases involving freedom of religion, which we're all aware of and we argue about. But there are also some quite tricky technical issues which aren't so well known in which lawyers have to grapple with questions of religious disagreement, ethical disagreement, and form a view that somehow respects the right of the individual person to freedom of thought, conscience, and religion.