

HOW SHOULD SECULAR COUNTRIES WORK?: DENMARK, AUSTRALIA, AND THE COEXISTENCE OF RELIGIOUS RIGHTS AND LGBT RIGHTS

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I. ABSTRACT

Although the legal practicalities of this Bill have been questioned, it deserves a response. This submission proposes that the diversity of the general population can and should be represented and protected in the public schools of a democratic nation, e.g. with the coexistence of religious rights and LGBT rights. The provisions of this Bill conflict with that goal.

In this submission, I will first examine freedom of religion in Denmark with reference to the 2016 visit of the United Nations Human Rights Office of the High Commissioner. In particular, the ongoing role of secularism in a diverse society as well as anti-hate provisions and other forms of protection.

Secondly, I will examine the social and legal passage of LGBT rights in this historically Christian-majority nation, which has been comparatively progressive on these issues during the post-WWII era, alongside most other Scandinavian countries. However, I will also explore the challenges which remain in Denmark, especially for those who face multiple discrimination, such as transgender people and LGBT Danes from a predominately Muslim ethnic minority background.

I will then conclude on the type of issue this legislation has raised and how it reflects the tension found in both Australia and Denmark with regard to freedom of religion and minority rights.

II. FREEDOM OF RELIGION IN DENMARK

A secular nation need not be thought of as oppositional to religion or its practice; indeed, it can be thought of as a facilitator of protected religious diversity, an inclusive eco-system of varying faiths and non-belief. Such a state cannot be maintained without diligence. It requires legislation and governance that protects freedom of religion and commitment to democratic principles.

In the report of the United Nations Human Rights Office of the High Commissioner on its mission to Denmark (the United Nations report), the country's historical and contemporary affinity with Lutheran tradition is noted.¹ This religion's tendency toward internal devotion may have helped in its adaptation to a transformed secular society in the 20th century. With the modern trend of immigration, however, new religious traditions have taken root, and Denmark's status as an inclusive secular nation welcoming to diverse religious practice has been actively put to the test.

In that respect, since Islam has become the country's second largest religion, tensions have risen over the idea of Danish identity. Due to following unfamiliar practices comparative to long-established Lutheran tradition, according to the United Nations report, it is not entirely

¹ UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion and belief on his mission to Denmark*, UN Doc A/HRC/34/50/Add.1 (28 December 2016) para 71.

uncommon for Muslims to be viewed as less Danish than other groups.² As these new and distinct forms of religious representation in the societal landscape--such as mosques--become more familiar, though, there is hope that aspirations of an inclusive society will be fully realized, even if the echo chambers and polarization which social media can often produce continues to imperil broader tolerance and understanding.³

Meanwhile, in an attempt to help alleviate these tensions and protect minority religious groups from potential hatred, the nation's long unused blasphemy laws were kept in place by the sitting government in 2015. The United Nations report suggests this was misguided, however, since: (a) existing hate speech provisions should already cover protection against such harmful behaviour; and (b) the perpetuation of blasphemy laws are inconsistent with the ideals of free speech inherent to international law, under both EU and United Nations policy.⁴ Instead, non-restrictive inclusive measures to protect religion should be encouraged in a truly secular and democratic country.

III. LGBT+ RIGHTS IN DENMARK

Denmark has long been at the forefront of advancing LGBT rights in the modern era. In fact, not only was it the first country to legally recognize same-sex relationships in 1989, but one of its first citizens to make use of this law was a gay pastor.⁵ Moreover, when same-sex marriage was introduced in 2012, the practice was largely accepted by the Lutheran Church as well as wider

² Ibid.

³ Ibid, para 72.

⁴ Ibid, para 55-56.

⁵ Ibid, para 57.

society.⁶ This occurred despite the narrative that notions of freedom of religion, under the guise of traditional values, can only play an antagonistic role and be at odds with notions of gender and sexual equality. Although such an unfortunate narrative of homophobia and intolerance has occurred--and continues to occur--within some conservative religious groups and a significant number of other nations, this is an example of the inclusivity that a nation with a fundamental commitment to universal human rights can provide.

However, challenges do remain for the acceptance of Denmark's LGBT community. In a 2009 study exploring homophobia in the country, a hate crime survey of young people based on sexual orientation was referred to which found that 12% had experienced corresponding physical assault and 39% verbal assault.⁷ The study further referred to another survey which said that bullying, stifled promotion and dismissal were the chief types of discrimination facing homosexuals in the labour market, and also cited a local case of a bakery employee who was awarded compensation due to harassment over his sexual orientation in 2007.⁸

Otherwise, the social isolation which transgender people face is another major front in this struggle, with a 2006 incident of refused store service cited by the homophobia study.⁹ Beyond this, predominately Muslim ethnic minorities who identify as LGBT face the spectre of multiple discrimination. People in this category have been found to potentially face both racial discrimination from within the LGBT community and homophobic discrimination from within the immigrant community.¹⁰

⁶ Ibid, para 59-60.

⁷ Danish Institute for Human Rights COWI, *The social situation concerning homophobia and discrimination on grounds of sexual orientation in Denmark*, (March 2009) para 17.

⁸ Ibid, para 29.

⁹ Ibid, para 54.

¹⁰ Ibid, para 55.

IV. CONCLUSION

These themes relate to the recent legal and political movement for religion protection in Australia, a nation theoretically as democratic and secular as Denmark. The issue is that the action to address the noble outcome of anti-discrimination religious protection can also provide religious parties with extraordinary privileges which could negatively impact the anti-discrimination rights of others, including the LGBT community. As it stands, religious organizations already hold exemptions to discrimination with religious purpose, such as in the right of religious schools to discriminate in regard to sexuality or marital status. The concern is that wider reform could be used more as a weapon than any kind of metaphorical shield.

As seen in the aspirational secular example of Denmark, primary adherence to traditional religious identity is not necessary for religious freedom. In true practice, religious freedom requires a diversity of expression, inclusive of all kinds of religion and lack of faith. Ultimately, the desire for religious freedom should not come at the cost of inclusivity in a modern democratic society.

In this vein, the provisions of this Bill threaten the inclusivity of our nation's public schools. Instead, the goal of our national education policy should be for every student to feel welcome in the classroom and receive protection from discrimination at school.

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