**Undue spiritual influence and the permissible interaction of religion and politics**

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The overturning of the election of Lutfur Rahman as Mayor of Tower Hamlets[[2]](#footnote-2) brought to the fore a perhaps generally forgotten element of election law, undue spiritual influence, which previously could have been forgivably seen as a historical curiosity. Whilst the offence has been incorporated into each new version of election legislation, most recently in the Representation of the People Act 1983, it has not been updated to reflect modern commitments to freedom of religion and expression. The offence remains in the same form as in the Corrupt Practices Act 1883 and this was based on common law and the Corrupt Practices Prevention Act 1854. Consequently, it has recently been reconsidered by the Law Commission and by Sir Eric Pickles, as part of his report into electoral fraud. Drawing a line between acceptable expressions of opinions by religious figures and impermissible pressure on religious adherents is a complex matter, which raises difficult questions about the appropriate interaction between religion and politics.

**Law**

The law on undue spiritual influence is part of the broader offence of undue influence prohibited by the Representation of the People Act 1983. S.115(2)[[3]](#footnote-3) states that a person commits undue influence if he:

*Directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting.*

Before *Rahman*, the use of undue influence was principally confined to challenging the perceived domination of Irish politics by the Catholic Church in the nineteenth century, most notably in the 1892 election. There, the Bishop of Meath had issued a pastoral letter stating that ‘Parnellism [Home Rule] was unlawful and unholy, that it was in distinct, direct, and essential antagonism with the principles of Christian morality, and even dangerous to their faith as Catholics,’ and that it was their duty to use their votes to stamp out this moral evil. The results in two constituencies were overturned on the basis that the letter would ‘seriously interfere with the free will of the electors’.[[4]](#footnote-4) These cases widened the earlier law,[[5]](#footnote-5) prohibiting entreaties where no specific religious consequence was threatened but which merely highlighted a voter’s ‘moral duty’ to vote for a candidate.

The law then remained unused for many years, coming back into public focus in *Rahman*. At issue was a letter from 101 Imams and other religious figures strongly calling on Muslims to vote for Rahman, saying that others, by which they meant the opposition Labour party candidate, were trying to divide the Muslim community. It concluded, ‘we express our unlimited support for Mayor Lutfur Rahman and strongly call upon you, the residents of Tower Hamlets, to shun all the propagandas and slanders and unite against the falsehood and injustice.’ The election court judge, Mawrey QC, held that this letter in combination with two occasions where the Chairman of the Council of Mosques of Tower Hamlets, an influential figure locally, spoke alongside Rahman in favour of his candidacy amounted to undue spiritual influence.

Rahman was given permission for a judicial review on whether the law had been interpreted correctly but this was not pursued. Whether the court gave the correct interpretation of the law was therefore not further tested but Mawrey QC acknowledged that this offence required further consideration and probably revision.

**The Problem of Undue Influence**

Despite problems with the current law, some offence of undue influence is necessary. It simultaneously undermines the fundamental right to a free vote and distorts democracy by giving a religious leader or organisation disproportionate power. On an individual level, a vote should express a freely made decision on the best candidate for society or the voter. On a broader scale, democracy is not merely a matter of regular elections but rather encompasses substantive values.

Dahl argues there are five essential criteria to a democracy: voting equality, effective participation, enlightened understanding, control of the agenda and inclusion.[[6]](#footnote-6) Many of these principles would be affected by unrestricted pressure by religious elites on voters, most obviously voting equality. If a religious figure can command his followers to vote in his preferred way then this gives him disproportionate power, particularly where the voters are predominantly from one religion. However, it seems unlikely that apart from within the most tightly controlled religious communities, religious believers will vote for a candidate solely because they have been instructed to do so without any internal consideration of how this fits with their values or needs. What seems more likely is that this is a matter of influence of varying intensity.

More fundamentally, while equality is intuitively profoundly important in a democracy, the principle is not straightforward. A principle of equal weight for each vote is more honoured in the breach than the observance within the UK system, even simply taking into account the distortions the first past the post voting system produces.[[7]](#footnote-7) Other influences on voting behaviour, such as the partisan nature of the written media, are also accepted as, if not exactly benign, then at most an unfortunate side effect of freedom of expression and the legitimate running of businesses. Groups do and seek to, exercise influence. This is not a problem in itself, but rather an important part of democracy and freedom of association, since such groups form mediating institutions between the individual and the state.[[8]](#footnote-8) Nevertheless, it is problematic where one group becomes so dominant and the pressure it exerts so intense that it cannot reasonably be resisted. At some point this pressure must be prohibited.

A second value identified by Dahl of ‘enlightened understanding’, including ‘the right to gather the information necessary to make informed choices’, is also relevant. This may be particularly significant where due to English language difficulties the sources of information a person has access to are limited or where it is religiously prohibited to consider a range of sources. In a fuller sense Schultz also identifies enlightened understanding as encompassing the idea that ‘no-one is the final imprimatur of truth’[[9]](#footnote-9) but this is something for each individual to assess for themselves. It is thus connected to the principle of moral autonomy. Given that an inherent purpose of democracy is to maximise the scope for moral autonomy by allowing voters to choose their political leaders,[[10]](#footnote-10) this value must be protected by the electoral system.

Lastly, undue influence affects the principle of inclusion. Pressure, including family pressure or through kinship networks such as the biraderi network described below, affects the right for all to have their voices heard. Since pressure may be particularly intense for women or younger people, this may mean that they are systematically excluded from the political system.

Undue influence thus affects many of the fundamental values underpinning a functioning political system. However, such influence may be oblique, informal and difficult to separate from acceptable discussions on society and politics which religious figures, like all others, have a right to enter into. How then should undue influence be defined?

**A Threat of ‘Spiritual Injury’?**

In considering that the situation in Tower Hamlets amounted to undue influence, Mawrey QC gavea fairly broad interpretation of the law. A narrower interpretation was put forward by Martin Chamberlain QC, who was asked to provide an Opinion on the law by the media commentator and Church of England priest, Giles Fraser.[[11]](#footnote-11) Chamberlain QC argued that the offence should be read narrowly because of its impact on freedom of expression and criticised the *Rahman* decision because it moved away from the wording of the law, which requires ‘temporal or spiritual injury, damage, harm or loss’ to be threatened, rather than a mere exhortation to religious believers to vote for a preferred candidate. His Opinion though is particularly useful for outlining three categories involving political religious expression, which place differing levels of pressure on a religious believer. These categories are:

1. Where a religious figure told his adherents how to vote on pain of expulsion from a religious group
2. Where a religious figure asserted a moral or religious duty to vote for or against particular candidate
3. Where a religious figure expressed views about the merits of a candidate

Category a) involves the most pressure on believers. That this is clearly impermissible under the current law can be seen in the nineteenth century *County of Longford* case. [[12]](#footnote-12) This prohibited ‘threatening to excommunicate, or to withhold the sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter’. Such a prohibition is required in order to allow religious people to vote free from domineering pressure. Claiming that a deleterious spiritual consequence exists for voting in a particular way may effectively remove any element of choice for a devout believer as may the threat of temporal consequences such as removal from a religious community or from access to a religious privilege. Exit from constitutive groups such as religious communities may be particularly difficult because they ‘shape their members’ senses of themselves as well as their life options’.[[13]](#footnote-13)

There is a normative distinction between matters which are the responsibility of the state and those of the group. In some contexts, such as internal rules for the organisation’s management, the only right the state should guarantee is the right of exit because the matter is within the legitimate sphere of the group. It is not though legitimate for a religious institution to condition membership on who a member votes for. Even those who argue that the state should take a strongly accommodating approach to cultural groups agree that the state must ensure the protection of fundamental human rights.[[14]](#footnote-14) If the state must be militant about any aspect of protecting democracy,[[15]](#footnote-15) then it must be militant about protecting the right to free elections because this is the fundamental basis of democracy itself and is necessary for the protection of further rights through the law.

We have so far dealt with the situation where a religious organisation compels a person to vote in a particular way by threatening either spiritual or temporal consequences. At the other end of the spectrum is behaviour referred to in category c) above where a religious figure merely expresses their views about a candidate. Religious figures, like all others, have a right to freedom of expression, including on political matters. Religions tend to be complete belief systems, providing guidelines for an ideal society and instructions for a way of living. It is therefore unsurprising that religious figures will share their views on political matters, including on particular candidates. To forbid religious figures from such expression would amount to a disproportionate interference with Art 10 ECHR or Art 10 taken with Art 14 by singling out religious influence from other influences which have similar effects.

Of even less concern in terms of election law is where a religious figure expresses a view on a political issue, such same sex marriage, rather than specifically informing voters of their preferred candidate, since this poses less pressure on religious believers. As merely one issue in an election, this is only a factor for the voter to take into account on the basis of the candidate’s views on a number of issues. Furthermore, a requirement not to intervene in religio-moral issues in general places a far greater burden on freedom of expression and religion than a prohibition on endorsing a particular candidate. Such issues may be core parts of the religion and disseminating religious teachings on such matters may be a religious obligation. A prohibition would also deeply affect the role of religions as mediating institutions between individuals and the state.

It is important to clarify what I mean by ‘concern’ in the paragraph above and what Mawrey QC may have meant by the ‘misuse of religion for political purposes’ in his judgment. Religion may of course be misused as a matter of theological or moral opinion but it is not the state’s responsibility to declare what is religiously correct. It can only be the state’s concern if the exercise of a right or the state’s ability to protect rights is affected. Of course some may be concerned by *any* religious interference (as they would see it) in political matters but we need to distinguish between acts perceived as improper as a matter of policy and those which should be made illegal. There is a large philosophical literature on the extent to which religious motivations may legitimately be used as a foundation for political choices, [[16]](#footnote-16) but even if we accept that political decisions should not rest on comprehensive doctrines such as religion, this does not mean that doing so should necessarily be illegal. We may of course disapprove of religious influence in politics on the basis that religion is irrational or even dangerous and seek to combat its influence as a political matter, but that is not at all the same as arguing that it should be illegal for religious figures to make statements on such matters and that an election result should be set aside if they do.

Any offence then should prohibit religious figures from seeking to influence religious voters by suggesting that they will be exposed to deleterious spiritual consequences or temporal consequences such as removal from the religious community. It should not prohibit, without more, a religious figure merely expressing their views on a candidate. More complex though is the situation in category b) above where a religious figure states that it is a candidate’s moral duty to vote for a particular candidate. It was Chamberlain QC’s view that this is not prohibited by the legislation but this was censured in the Meath cases and in *Rahman*.

As a preliminary point, it is not wholly clear that the letter in issue in *Rahman* did amount to ‘informing the faithful as to their religious duty’. Certainly the letter called on Muslims to vote for a particular candidate, but the arguments were political and not religious. It could be paraphrased as, ‘Rahman has done much for our community in terms of providing services and creating equality and other candidates will divide the community and create Islamophobia’. Stating that it is beneficial to vote for a particular candidate because he brings benefits to an ethno-religious group is not at all the same as saying that there is a duty to vote for that candidate as a matter of religious doctrine.

There is evidently a variety of possible meanings to there being a ‘moral or religious duty’ to vote for one candidate or another. In more authoritarian religions there may be no distinction between telling voters that it is their moral duty to vote in a particular way and for voting otherwise to amount to a sin subject to spiritual consequences. How though should this be treated if this is not the case?

This question cannot be answered in the abstract. It is important that this discussion does not become too technical because the answer cannot be divorced from the intended audience and the likely impact on them. The letter in *Rahman* was very influential and was of course designed to be. It was published in a newspaper with a readership of 20,000, republished elsewhere and shared on social media. It was aimed at a strongly religious community and, as it was published in Bengali, would have reached audiences who may not have had access to other information shared by the supporters of other political parties. Language difficulties and economic and political marginalisation will have an impact. The law must take account of this, although it is of course important that decisions are not based on mere stereotypes as the nineteenth century Irish cases appear to be.

By its very nature as hidden, and often informal and amorphous it is hard to estimate the impact of pressure on voters, although it is raised frequently as a problem by interviewees in research.[[17]](#footnote-17) There appear to be specific issues in some Pakistani and Bangladeshi communities which may increase the likelihood of undue influence and also election fraud.[[18]](#footnote-18) Akhtar points to the existence of *biraderi* kinship networks among Pakistani, Bangladeshi and Kashmiri communities.[[19]](#footnote-19) This is partly due to the nature of chain immigration, where people from the same location and often from the same extended family immigrate to the same area. While these networks have positive effects in helping immigrant communities adjust to life in a new country, they can replicate hierarchal and patriarchal cultural structures and in particular can be used to help secure a ‘block vote’ for preferred candidates, with the obvious result of making undue influence more likely. These networks may also be particularly important because ethnic minority voters are much less likely to be personally contacted by political parties than other voters, meaning that their sources of information may be more limited.[[20]](#footnote-20) Problems related to undue influence are likely to fall disproportionately on women in Pakistani and Bangladeshi communities as they are less likely to be in paid employment and more likely to have poor English skills and thus be economically and politically marginalised. Furthermore, Sobolewska et al also point to the existence of what they call ‘family voting’, where husbands and fathers instruct the rest of the family how they should vote. This is particularly significant for postal voting where a vote may not be secret from a voter’s family.[[21]](#footnote-21) There is though evidence that the influence of *biraderi* networks is lessening among younger people and so their influence may wane in future.

Taking into account the cultural and religious context within which the statements are made may mean that the same statement may be treated differently depending on who it is said by. This is not a fatal inconsistency. A similar issue arises in undue influence in private law where there is a debate as to whether the conduct of the influencer or the effect on the influenced is critical. Birks and Yin have argued that the core of undue influence is not the unconscionability of the defendant’s conduct but the ‘excessively impaired consent’ of the victim.[[22]](#footnote-22) Similarly, here we are concerned principally with preventing disproportionate influence and individuals’ rights to freely exercise their ballot. Therefore what is important is not necessarily the degree of influence sought but the effect the influence has or would reasonably be likely to have on the voter. This has significance for the way the offence should be framed.

**Proposed reform**

We have discussed in broad terms the kinds of situations which should or should not be covered by the law. How then should this incorporated into legislation? Even before the Rahman case, the three United Kingdom Law Commissions had been considering reform of electoral law, including the question of undue spiritual influence. The conclusion in their interim report was radical: they proposed to remove any specific mention of religion in the offence. Instead the offence of undue influence would be committed if there was ‘improper pressure’ of any kind. This would exist if, ‘it involves the commission or threat of commission of an illegal act’ or there was ‘pressure which a reasonable person would regard as improperly impeding the free exercise of the franchise’.[[23]](#footnote-23) It held that it was necessary to ‘distinguish proper campaigning (which includes persuading, warning, arguing, all of which involve pressure, which the voter must decide on) from improper infringements on the exercise of the franchise (which eliminate or restrict the choice of the voter).’[[24]](#footnote-24) It did though consider the division between the two to be difficult to distinguish and held that it would reconsider this issue further in its final report, due in 2017.

Although the Electoral Commission approved of the wording of this new offence and the removal of any specific mention of religion,[[25]](#footnote-25) this was objected to in Sir Eric Pickles’ report ‘Securing the Ballot’. He argued that spiritual leaders were unique in that they ‘may cause religious voters to believe they have no real choice in how they should vote’[[26]](#footnote-26) whereas statements made by the ‘media, business or other special interest groups’ would be understood as opinion.

The Law Commissions’ proposal therefore raises issues of both substance and form. Substantively, it draws an appropriate distinction between a religious figure’s freedom of expression and religion, and pressure that cannot be tolerated given the fundamental nature of free elections to democracy. By focusing on the impact on the voluntariness of the person’s vote, the offence is given a clear underpinning based on fundamental concerns relating to the right to vote and the protection of a person’s moral autonomy. The distinction made between ‘proper campaigning’ and pressure which ‘eliminates or restricts’ the choice of the voter, reflects the discussion above of the types of behaviour that should be prohibited. Religious believers cannot be expected to withstand pressure caused by threats that they would be required to leave their religious community or that they will suffer terrible spiritual consequences. On the other hand they can be expected not to be unduly pressurised by a religious leader merely providing an opinion on a candidate.

**A specifically religious offence?**

The proposed form of the offence and in particular whether it should include a specific reference to religion is more complex. The principle of legal certainty would seem to suggest that religious influence should be specifically referred to in order to provide greater guidance to religious leaders. However, as *Rahman* showed, the problem with the current law was not that religious leaders could not be expected to know that the law applied to them, but that it was very unclear *what* the law prohibited. Given that the Law Commissions’ proposal would make the law much clearer by providing a distinct objective standard the removal of a reference to religion does not materially affect the clarity of the law.

Nevertheless there should still be specific reference to religious pressure if it is qualitatively or quantitatively different from other types of pressure. The religious consequences of an action can be extremely important to believers and claims made by religious leaders could greatly influence voters. On the other hand, the fact that some religious voters may be particularly vulnerable because of language barriers or other marginalisation, does not mean that religion is uniquely different from other forms of social pressure. Although the Pickles report supports retaining a reference to religion, his assertion that ‘bullying a voter by asserting that they will ‘burn in hell’ for not supporting a candidate is ultimately no different from threatening physical violence or from an employer threatening to sack a worker’[[27]](#footnote-27) surely suggests the opposite, since it acknowledges that religion does not pose unique kinds of pressure. As for religion being a problem on a quantitative basis, the extent of the problem is hard to estimate particularly in assessing how much pressure is subjectively imposed on voters. However, the mere seeking of influence is likely to be publicly known, unless it is a very insular religion, in which case the numbers affected are likely to be very small. The paucity of reported cases would suggest that it is not a widespread problem, although this may need further research.

Furthermore, not referring to religion specifically lessens the problem of discriminatorily singling out religious expression. It is in some ways an anachronism that spiritual injury is specifically referred to in the offence at all, since it rests on stereotypical assumptions about the role of the Catholic Church in Ireland in the nineteenth century. Some of the media coverage of *Rahman* suggested that the case was an unjustified intrusion into the affairs of an unpopular religious minority in the same way more than a century later. Making clear that spiritual influence is simply one way of committing this offence may help ameliorate these concerns. For the sake of legal certainty it may be useful to specifically include that ‘pressure’ may mean both religious and non-religious pressure but there are strong arguments against a specifically religiously-based offence.

**Conclusion**

Undue spiritual influence has been a rather forgotten area of law. However, it is not unimportant and is in need of re-examination. Whilst the appropriate interrelation between religion and politics is highly contested, the focus should be on the fundamental values of the democratic process, such as equality and inclusion and how these are affected by religious coercion. In basing the offence on the question of whether the pressure was sufficient to impede the free exercise of the franchise, the Law Commission’s proposal draws appropriate lines between free expression and inappropriate pressure.

1. \* Teaching Fellow, University of Southampton [↑](#footnote-ref-1)
2. *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB). [↑](#footnote-ref-2)
3. As amended by the Electoral Administration Act 2006 s.39(1), meaning that it was no longer necessary to demonstrate that voters had *actually* been induced to vote or refrain from voting, as the Court of Appeal had held in *R v Rowe ex parte Mainwaring* [1992] 4 All ER 82. [↑](#footnote-ref-3)
4. *Northern Division County of Meath* (1892) 4 O’M & H 185; *Southern Division County of Meath* (1892) 4 O’M & H 130. [↑](#footnote-ref-4)
5. *County of Longford* (1879) 2 O'M & H 6. [↑](#footnote-ref-5)
6. *R. Dahl, Democracy and its Critics (Yale: Yale University Press, 1989) p222.* [↑](#footnote-ref-6)
7. See e.g. *G. Gudhin and P.J. Taylor, Seats, Votes, and the Spatial Organisation of Elections (Colchester: ECPR Press, 2012)*. [↑](#footnote-ref-7)
8. See for example *P. L. Berger & R. Neuhaus, To Empower People: The Role Of Mediating Structures In Public Policy (Washington DC: AEI Press, 1987)*. [↑](#footnote-ref-8)
9. *Schultz, Election Law and Democratic Theory (Farnham: Ashgate, 2014) p51.* [↑](#footnote-ref-9)
10. *Dahl, Democracy and its Critics (Yale: Yale University Press, 1989).* [↑](#footnote-ref-10)
11. *M. Chamberlain QC, The Representation of the People Act 1983 and The Law of “Undue Spiritual Influence” During Election Campaigns* **:** https://www.scribd.com/document/265200758/Lutfur-Rahman-judgment-Spiritual-Influence. [↑](#footnote-ref-11)
12. (1879) 2 O'M & H 6. [↑](#footnote-ref-12)
13. *D. Borchers and A. Vitikainen ‘On Exit: Ideas, Context, Topics and Open Questions’ in D. Borchers and A. Vitikainen, (eds*) *On Exit: Interdisciplinary Perspectives on the Right of Exit in Liberal Multicultural Societies* (Berlin: Walter de Gruyter & Co, 2012) p4. [↑](#footnote-ref-13)
14. See eg *P. Horwitz, First Amendment Institutions* (Cambridge, MA: Harvard University Press, 2013). [↑](#footnote-ref-14)
15. See *A. Sajó,(ed) Militant Democracy (The Hague: Eleven International Publishing, 2006).* [↑](#footnote-ref-15)
16. See eg, P. Campos,‘Secular Fundamentalism’ (1994) 94 Colum. LR 1814; *J. Rawls* *Political Liberalism, 2nd ed, (New York: Columbia University Press, 2005)*. [↑](#footnote-ref-16)
17. *M. Sobolewska et al, Understanding Electoral Fraud Vulnerability in Pakistani and Bangladeshi Origin Communities in England (London: Electoral Commission, 2015).* [↑](#footnote-ref-17)
18. *S. Wilks-Heeg, Purity of Elections in the UK: Causes for Concern (York: Joseph Rowntree Reform Trust Ltd, 2015).* [↑](#footnote-ref-18)
19. *P. Akhtar, British Muslim Politics: Examining Pakistani Biraderi Networks (London: Palgrave Macmillan, 2013).* [↑](#footnote-ref-19)
20. *Sobolewska et al, Understanding Electoral Fraud Vulnerability in Pakistani and Bangladeshi Origin Communities in England (London: Electoral Commission, 2015).* [↑](#footnote-ref-20)
21. *Sobolewska et al, Understanding Electoral Fraud Vulnerability in Pakistani and Bangladeshi Origin Communities in England (London: Electoral Commission, 2015).* [↑](#footnote-ref-21)
22. P. Birks and C. Yin in J. Beatson, *Good Faith and Fault in Contract Law* (Oxford: Clarendon, 1995). [↑](#footnote-ref-22)
23. *Law Commission, Scottish Law Commission and Northern Ireland Law Commission, Electoral Law: An Interim Report (London: Law Commission, 2016)* p148. [↑](#footnote-ref-23)
24. *Law Commission, Scottish Law Commission and Northern Ireland Law Commission, Electoral Law: An Interim Report (London: Law Commission, 2016)* p148. [↑](#footnote-ref-24)
25. *Electoral Commission, Electoral Commission Response to Sir Eric Pickles’ Review and Recommendations on Electoral Fraud* (London: Electoral Commission, 2016). [↑](#footnote-ref-25)
26. *E. Pickles, Securing the Ballot: Review into Electoral Fraud (London, Cabinet Office, 2016) p45.* [↑](#footnote-ref-26)
27. *Pickles, Securing the Ballot: Review into Electoral Fraud (London, Cabinet Office, 2016) p45.* [↑](#footnote-ref-27)