

# **LIBERTY, RIGHTS AND THE RULE OF LAW: PROTECTING FREEDOM OF RELIGION IN BUSINESS FROM STATE COERCION**

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Classic liberalism as espoused by Hayek is concerned with the liberty of the individual. This ideal of liberty prioritises the protection of a person's recognised private sphere. The state's monopoly powers of coercion, under this view, should be limited so far as possible to protecting the individual's private sphere from coercion by others. Such liberty is inseparable from the rule of law under which a person's private sphere may only be interfered with by prospective, general and abstract rules that are known and certain and apply equally, in the sense of not applying to known persons, places or objects. Under such a view of liberty, the need for the protection of fundamental or human rights should be unnecessary but may be expedient in the case of easily endangered rights. There is evidence of increasing conflicts involving businesses and the state in a number of economically important jurisdictions, such as the United Kingdom and the United States over issues of religion and progressive legal policies which raise important questions as to the nature of liberty, rights and the rule of law.

The ability to form a limited company in the United Kingdom for any lawful purpose has existed since the mid-Victorian era; the legislation embodies the possibility, for example, that this might be done for religious purposes. Well-known companies originally established on religious lines remain an important part of the business landscape. The obstacles in the development of similar businesses today are formidable amidst an ever more intrusive legal and regulatory framework, which although seemingly general in nature bears disproportionately on such businesses. There are formidable arguments for facilitating the creation and growth of such companies: they are an essential part of a pluralist democracy, they increase social capital and the high trust society fundamental to economic growth, their interaction with religious communities has led to a good track record of encouraging social mobility and they strengthen civic society and traditions of good governance. The United Kingdom has no great tradition of religious freedom and the relevant provisions of the European Convention on Human Rights are qualified and weak. Judicial approaches to religious freedom in a business context are often discouraging, especially by comparison with other jurisdictions such as the United States, where there is a more robust and protective legislative framework.

This paper analyses the conflicts that have taken place involving businesses and the state over issues of religion in the United Kingdom and United States, whether they have been satisfactorily resolved and explores alternative approaches that might better protect corporations and in particular their controllers against state intrusion. Specifically, it will evaluate the contribution that might be made by concepts derived from classic liberalism and how they might balance the interests of both businesses and others affected.