



A Principled Framework for the Autonomy of Religious Communities

Alex Deagon

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Freedom of religion and belief has many facets. It is mostly commonly thought of in terms of individual liberty. However, as article 6 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief makes clear, it also has a collective element. It includes the freedom of religious communities to self-organise and self-govern. This freedom can, however, impinge upon the rights and freedoms of individuals. Given the scope of religious belief and practice, religion can touch upon almost every aspect of a person's life.¹ As I have previously observed:

It may influence what they eat and drink, what they wear, whom they associate with, how they raise their children, when they wake up and when they go to sleep, which day they work and which they rest. It can even influence how they interact within civil society and, in a democracy, whom they vote for.²

The potential for contestation between freedom of religion and belief, particularly as it relates to the autonomy of religious communities, is vast. Recent debate has focused on balancing the rights of the LGBTIQ+ community and those of the religious community, although arguably this is a false dichotomy not least of which because religious communities include members of the LGBTIQ+ community and vice versa.

This book offers a fresh approach to this ongoing debate focusing on what the author refers to as a Principled Framework based upon the theological virtues of dignity, humility, patience, generosity, kindness, forgiveness and compassion. The analysis is therefore grounded in an unashamedly Christian framework. While Deagon makes some claim to the universality of these virtues, this aspect of the framework is under-developed. Furthermore, the framework is applied to three Christian majority counties, namely Australia, the United Kingdom and the

¹ *Adelaide Co. of Jehovah's Witnesses Inc. v Commonwealth* (1943) 67 CLR 116, 124.

² Renaë Barker, 'Rejecting Security: A Comparative Analysis of the Rejection of Security, Public Safety and Public Order Concerns as a Ground for Restricting Freedom of Religion in Religious Dress Cases' in Tania Pagotto, Joshua Roose and Greg Marcar (eds), *Security, Religion and the Rule of Law* (Routledge, 2023).

United States. Articulating a universal framework based on comparative religious analysis drawing out truly universal virtues grounded in major world faiths as well as applying the framework to non-Christian majority countries would be a natural extension of Deagon's work. He has, however, laid the groundwork for considering new approaches based upon theological or religious frameworks as opposed to, for example, human rights frameworks to the ongoing need to balance freedom of religion and belief, discrimination, and equality in the context of the autonomy of religious communities.

The book is divided into four parts. Part I sets up the framework used throughout the book as well as providing justification for the research and the jurisdictions chosen for the analysis. Part II outlines the existing legal frameworks of Australia, the United States and the United Kingdom. All three jurisdictions are, to various degrees, federations. Deagon therefore limits the analysis to federal laws in the case of Australia and the United States, and to English law in the case of the United Kingdom. While confining the analysis in this way is sensible given the scope of a single-author book, it sometimes feels like the analysis is missing half the story. Significant issues related to the autonomy of religious communities are worked out at the local and State level. For example, education, by virtue of sections 51 and 52 of the *Australian Constitution* is a state-based issue. Deagon does address the interaction between religious schools and the federal *Sex Discrimination Act 1984* (Cth), but additional issues such as curriculum and governance of religious schools are not covered. Despite this limitation, Part II offers a helpful introduction to the legal frameworks governing the autonomy of religious communities in all three jurisdictions.

Part III applies Deagon's Principled Framework to each jurisdiction in turn. In each case, he concludes that increasing the level of positive association between the state and religion would lead to greater religious autonomy and greater compliance with the virtues underlying his Principled Framework. For Australia he proposes moving towards (what he terms) mild establishment; in the United States he argues for pluralism; while in the United Kingdom he suggests substantive establishment. Given his framework is based on Christian virtues, is applied in Christian majority countries and aims to increase the autonomy of religious communities, this result is perhaps unsurprising. His approach is also contrary to many models of the interaction between the state-religion relationship and freedom of religion which typically suggests that freedom of religion and belief is maximised somewhere between accommodation and separation.³ Again this result may be due to Deagon's focus on religious communities in Christian majority countries. Typologies or models of state-religion relationships typically focus on individual liberty and place a greater emphasis on the freedom of religion and belief of minorities. In challenging this accepted wisdom, Deagon offers a fresh perspective. It would, however, be interesting to apply his framework to countries with a stronger positive association between the state and religion as well as non-Christian majority countries.

³ See, for example, WC Durham and GG Scharffs, *Law and Religion: National, International, and Comparative Perspectives* (Aspen Publishing, 2019) 121–174.

A Principled Framework for the Autonomy of Religious Communities offers a new way to try and balance discrimination and equality in order to promote the autonomy of religious communities. While the analysis has some limitations it offers a foundation for further research and analysis. Given the perennial debate about how best to balance the rights of individuals and communities, new approaches to the problem should be welcomed and explored.

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Reconciling Theology

Paul Avis

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Paul Avis offers the reader a coherent reconciling theology that robustly challenges the current lack of enthusiasm for ecumenism. Ecumenism is not a utopian illusion. Substantial advances have been made. But apathy and ecclesiastical self-sufficiency remain, despite the numerical collapse of the established churches in Europe and the USA. Avis follows T.T. Torrance in claiming that any theology (or ecclesiology) which is faithful to Christ 'cannot but be a theology of reconciliation'. The Church is in essence 'a community of the reconciled'. Christian division fatally undermines the credibility of mission and Avis criticises the complacent acceptance of contemporary 'denominationalism'. Unreconciled Christian communities are a 'counter-sign' of the Kingdom of God.

A significant chapter for readers of the *Ecclesiastical Law Journal* is entitled 'Polity and Polemics'. A shorter version of this had already appeared in the *Journal* (18.1, 2016, pp 2-13). Avis explores the relationship between ecclesiology, polity and their practical outworking in ecclesiastical law. Avis essentially argues that polity, following Richard Hooker, is essentially applied ecclesiology. For him, church polity is the 'conceptual space between ecclesiology and canon law'. Not all canonists adopt this threefold distinction. The distinguished Roman Catholic Ladislav Órsy SJ does not explicitly speak of polity in a masterly survey of various understandings of the relationship between theology and canon law.¹ Nevertheless, like Avis, Órsy also starts with brokenness of the one Church of Christ and of the constant need of reform of

¹ See his summary of this relationship in the opening chapter of J Beal, J Coriden and T Green (eds), *New Commentary on the Code of Canon Law* (New York, 2000).