

Book Review

A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination

A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination. By Alex Deagon. Hart, 2023. Pp. 264. ISBN: 978-1-50995-063-8.

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In his beautifully written and well-researched monograph, Alex Deagon develops a ‘peaceful coexistence approach’, based on Christian foundations, to bolster the autonomy of religious communities and ensure more conciliatory ways to deal with current tensions between religious autonomy and equality interests. Deagon’s monograph offers a valuable contribution to our understanding of both the conceptual underpinnings of religious freedom and the complexities of the case law in that area. Grounded in three jurisdictions — Australia, the United States, and England — the analysis revisits well-known clashes between equality and religious interests in the case law as well as constitutional debates over state–religion arrangements. Thanks to the chosen structure, Deagon demonstrates what his approach would concretely change in the existing case law but also, why these amendments would be consistent with the respective legal/political/cultural traditions of each of the jurisdictions under scrutiny. To scholars of comparative law, this functional approach focused on cases, combined with an exploration of debates ‘from within’ each jurisdiction, will be appealing. To scholars of law and religion, Deagon’s innovative framework for religious freedom cases will also be of great interest. In this brief review I will focus on two aspects which I have found of particular importance: one relates to the pluralism which Deagon seeks to foster and the other relates to the Christian foundations of his project.

The goal of pluralism

Contrary to what his explicit Christian foundations might suggest, Deagon does not seek to systematically favour religious (Christian) interests, but to open the way for compromises, ‘for the pursuit of the good of pluralism and diversity through a proportionate, reasonable accommodation of difference’.¹ Deagon thus rejects arguments excluding religious interests outright for the mere reason that they feature in the commercial sphere or are made by individual, rather than collective, religious vendors. Since religious commitments extend to every activity and every aspect of the believer’s life, any abstract predetermined filters would draw arbitrary lines of exclusion. Reciprocally, Deagon acknowledges that competing interests must be considered: same-sex couples who are denied a particular service because of the vendor’s religious objection will always suffer a harm, albeit of varying intensity depending on circumstances. Solutions to these conflicting interests, Deagon argues, should be sought in a spirit of compromise, in accordance with theological values of dignity and love. For example,

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¹ Alex Deagon, *A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination* (Hart, 2023) 6.

in the American *Hobby Lobby* case,² in which religious employers objected to federal regulations requiring corporate entities to provide their employees with insurance coverage for contraceptive services, a compromise might be to allow exemptions from contributions pertaining only to abortifacient contraceptives.³ In relation to religious vendors, Deagon suggests that exemptions could be limited to marriage-related services, on the condition that the goods and services are reasonably available elsewhere and that the sincerely-held religious objections had been clearly publicised in advance.⁴ Many undoubtedly would strike the balance differently — arguing either that the preference in favour of certain objections (abortion, same-sex marriage) interferes with religious beliefs or that the interests of same-sex couples are insufficiently protected. As part of this debate on the best way to foster pluralism, Deagon's concrete proposals for conciliation in hard cases merit attention.

It is precisely for the sake of the pluralism that religious groups bring to society that, in regard to disputes involving the internal beliefs of a religious organisation and discrimination against an individual, Deagon argues in favour of the religious groups. As long as a religious reason is put forward by the religious organisation: 'the standard should be a presumption of deferral to the religious organisation, but with an opportunity for the party discriminated against to present evidence that the discrimination was not related to the religious ethos (beliefs and behavioural standards) of the organisation'.⁵ Given the difficulties for victims of discrimination to adduce evidence in support of their claim, the position of the group will consequently almost inevitably prevail. One may wonder whether the protection owed to collective religious ethos, for the sake of pluralism, warrants precluding pluralism within religious groups themselves. It is not clear whether the preference to groups will automatically align with theological values. Can religious groups always be trusted to implement virtues of love and compassion in the absence of any meaningful judicial oversight? This debate over the meaning of pluralism may hide deeper controversies over the foundations of religious freedom.

Christian foundations

According to Deagon, Christian virtues can resonate with everyone, Christian or non-Christian, religious or non-religious. That is because 'Christian virtues are universally desirable and universally achievable regardless of one's particular perspective'.⁶ Besides, Christian virtues should be particularly appealing to inclusive liberals committed to democratic pluralism since 'a religion-friendly secular approach which has the objective of a shared harmonious space is actually just the secular outworking of the theological peaceful coexistence approach'.⁷

However, the historical complicity between the liberal framework and Christian theological values also raises challenges. Given the embeddedness of the liberal framework in Christian values (at least in the three selected jurisdictions), might such renewed emphasis on Christian foundations not risk reinforcing the exclusion of non-Christian voices? Besides, if the liberal framework is just the reworking of theological values, one may query how the latter would fare better than the former in fostering harmony. More fundamentally, the overlapping of values between the liberal and Christian approach need not lead to equating one with the other. Deagon states that his approach is post-secular but not post-liberal, explicitly rejecting the secularism

² *Burwell v Hobby Lobby Stores*, 573 US 682 (2014).

³ Deagon (n 2) 102.

⁴ *Ibid* 89.

⁵ *Ibid* 99.

⁶ *Ibid* 21.

⁷ *Ibid* 20.

of Rawlsian liberalism.⁸ The whole purpose of Rawlsian liberalism however was, having characterised *both* secular and religious belief systems as comprehensive doctrines, to derive a common freestanding framework from an overlapping consensus, on terms acceptable to all as free and equal.⁹ The question here remains how the peaceful coexistence framework (derived from a comprehensive doctrine) can be acceptable to all — a question admittedly that Deagon explicitly leaves outside of the scope of the present book¹⁰ but which the reader is bound to raise nonetheless.

The debate is not merely theoretical. One key distinction between a ‘religion-friendly liberal approach’ based on a deliberative conception of democracy,¹¹ and one founded on Christianity, resides in the role given to the principle of revision according to which citizens, individually and collectively, are expected to revise their commitments as they engage in the shared project of living together. Under a deliberative democratic approach, the principle of revision will be core to a conception of liberty, tied to the horizon of change and to a dialogical account of democratic debate. On the contrary, revision need not feature under a theological reading. Another key difference is the role of courts. Under a deliberative democratic approach, courts, as democratic actors, are to contribute to a dialogical understanding of religious freedom by intervening to ensure a balancing of competing interests where contestations emerge. But they are also bound by it, compelled to resist the urge to obliterate one set of those competing interests. In that respect, it would have been interesting, for example, for Deagon to explore recent pro-religious originalist interpretations by the United States Supreme Court¹² and explain how his own ‘peaceful coexistence approach’ differs from and might help counter it.

It is the attribute of innovative approaches to prompt further questions. The ones I have raised here are testimony of the richness of Deagon’s analysis. To anyone keen to overcome the current dichotomous narratives and foster pluralism, I would highly recommend this important and timely book.

⁸ Ibid 24.

⁹ John Rawls, *Political Liberalism* (Columbia University Press, 2nd ed, 1996) 133.

¹⁰ Deagon (n 2) 5.

¹¹ Which I put forward in *Why Religious Freedom Matters for Democracy. Comparative Reflections from Britain and France for a Democratic ‘Vivre Ensemble’* (Hart, 2020).

¹² *Dobbs v Jackson Women's Health Organization*, 597 US __ (2022).