

Editorial

If one were to judge solely from court cases, parliamentary debates, and arguments on social media, it would seem that religious people and LGBTQIA+ people are implacable foes locked in a ceaseless battle for ascendancy over one another. The most extreme partisans are amplified into the loudest voices in order to rally support for the cause (of religious liberty on one side and equality on the other). Each ‘battle’— a lawsuit, a draft statute, an offensive remark by a media personality — is portrayed as a crucial, make-or-break moment that, if lost, will turn into a slippery slope and prove disastrous for that ‘side’. Viewed from this distorted perspective, rights are a zero-sum game, in which more religious liberty means less equality and more equality means less religious liberty.

But viewing religious people and queer people as natural adversaries is a mistake. ‘It’s only in mediocre books that people are divided into two camps and have nothing to do with each other. In real life everything gets mixed up.’¹ Every religious group has LGBTQIA+ members — whether or not those individuals feel comfortable sharing that with their fellow worshippers. Similarly, religion and spirituality are part and parcel of the lives of many in the LGBTQIA+ community. We do not now, and never have, lived in a world of straight, cisgender religious people on one side of a line and secular, atheist, queer people on the other side of the line. Faith, sexuality, and gender identity permeate our lives and cross the imaginary boundaries that zealots would have us draw to separate us from one another.

Indeed, people of faith and the queer community have much in common. Both groups know the sense of joy from being able to live their authentic selves in public spaces and not be confined to express their identity in the privacy of their home. Both groups know the stress and pain that comes from being judged by the broader society around them as somehow wrong or inferior. In different times, places, and contexts, each group has had the experience of feeling like the world was against them. And whether it comes during adolescence or adulthood, a crisis of faith or a crisis of identity can bring inner turmoil and self-doubt. Far from being natural enemies, these distinct but related experiences should create natural allies.

As Deagon explains in his new book *A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination*,² scholars from across the political, religious, and ideological spectrum yearn for a resolution to continuing tensions and have called for a generosity of spirit, for listening and working together in good faith, for empathy, dialogue, and negotiation which results in real compromise.³ Against those who despair that conflict is intrinsic and intractable, genuine conciliation — some would say an end to the interminable ‘culture wars’ — is achievable. What’s needed is a sidelining of the voices which call for uncompromising outcomes which the other side simply cannot accept. Seeking the perfect can often undermine the pursuit of the good, and dialogue which does not accept the intrinsic dignity and value of all parties is unlikely to win broad support. Traditionalist religious groups need to accept that gay and transgender people are a reality and that they’re not going anywhere. They are not a fad or inferior, and are entitled to the equal dignity owed all humankind. Excessive focus on this one issue surely comes at a cost of the ability of religious groups to disseminate their other core teachings. Fair is fair, however, and advocates for

¹ Boris Pasternak, *Doctor Zhivago* (Pantheon, 1958) pt 2 ch 9 s 14.

² Alex Deagon, *A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination* (Hart Publishing, 2023).

³ Ibid 15.

LGBTIQA+ rights must adjust their expectations by understanding just how deeply rooted binary conceptions of sexuality and gender are in faith traditions around the world. It is not reasonable to demand the sudden uprooting of centuries of theological teachings, viewed by those traditions to be divine in origin, especially as they pertain to the doctrines and practices of a religion in selecting leaders and building communities and institutions for the benefit of its members and the broader society. A ‘one-size-fits-all’ approach to law and morality, or the imposition of a secular uniformity, diminishes the independence, integrity, and diversity of religious groups; an achievement that took the western world centuries of struggle to accomplish and that has resulted in incalculable social goods such as charities, hospitals, and schools — many of which are religious.

This position — a push for reconciliation — is not one that will please everyone. Strident voices on one side will say it gives the fundamental right of religious liberty short shrift and equally strident voices on the other will say it compromises the fundamental right of equal protection under the law. Some will see it as naïve, wishy-washy, or an exercise in ‘both sides-ism’. In our polarised world, the most reasonable voices are often the most quickly dismissed. But in the end, the only alternative to genuine compromise is more of the same aggressive rhetoric and legal/political manoeuvres that diminish all of us.

* * *

Welcome to the second issue of the *Australian Journal of Law and Religion*. This special themed issue on ‘Religious Freedom, Sexuality, and Gender Identity’ is the result of a scholarly colloquium held at the University of Southern Queensland in October of 2022. A wide variety of voices from a diverse array of perspectives were heard during the colloquium. The resulting conversations were frank, respectful, and provided genuinely constructive feedback to the authors.

The best of the papers presented at the colloquium are collected in the pages that follow. Drawing from the themes in his new book, Alex Deagon explains why the current exemptions for religious groups in the *Sex Discrimination Act* need to be reframed. Mark Fowler discusses the protections that international human rights law may offer religious schools. Timothy Nugent asks the provocative question: can the state constitutionally offer legislative protection for ‘statements of belief’ without doing the same for other viewpoints? The high-profile move by Victoria to ban so-called ‘conversion therapy’ for gay and transgender people is discussed by Rhett Martin. Concluding the collection, Rena MacLeod critiques what she perceives as the androcentricity inherent in the overturning of *Roe v Wade* by the Supreme Court of the United States.

To round out the colloquium papers, this issue includes a detailed rejoinder by Nicholas Butler to last issue’s article by Neil Foster on whether state anti-discrimination laws can be broader than the Commonwealth’s in the context of religious schools. The short essays in this issue’s Special Topic Forum include a critique of the way law reform and anti-discrimination commissions cherry-pick international law by Nicholas Aroney, an analysis of the *Sex Discrimination Act*’s definition of gender identity by Patrick Byrne, and an early account of the potential ramifications of Indonesia’s new criminal code by noted Boston University scholar Robert W. Hefner. Book reviews cover the highly anticipated *Law and Religion in the Commonwealth* and the thought-provoking *The Transgender Issue*.

For better or worse, the relationship between religious freedom, sexuality, and gender identity has come to the forefront of law and religion studies in Australia. We hope you agree that the material in this special issue makes a meaningful contribution to that ongoing debate.

Alex Deagon
Jeremy Patrick
Co-Editors