

Book Review

Christian Natural Law and Religious Freedom: A Foundation Based on Love, the True, and the Good

Christian Natural Law and Religious Freedom: A Foundation Based on Love, the True, and the Good. By Alex Deagon. Routledge, 2025. Pp 153. ISBN: 978-1040385876.

Review by Myriam Hunter-Henin*

As John Witte Jr recalls in the foreword, Jacques Maritain once said: ‘yes, we agree about the rights, on condition no one asks why’.¹ Yet, Alex Deagon’s monograph precisely raises the question of the why. Not long after his previous monograph in which he put forward a ‘principled framework’ for solving recent controversies over religious freedom across several jurisdictions,² Deagon’s newly published monograph examines the foundations for his proposals. Put together, the two monographs offer a pleasingly exhaustive and coherent view of how and why law should protect religious freedom. Deagon advocates that Christian theological values should not only guide legal reasoning but also ground its legitimacy. In his own words, he ‘develops a Christian Natural Law to identify that religious freedom is grounded in the pursuit of love, the true, and the good and explains how religious freedom enhances these virtues both for the individual and communities’.³ Echoing the characteristically conciliatory tone of his previous monograph,⁴ Deagon argues that this Natural Law theological basis provides a common ground between Christian denominations as well as between Christian scholars. Contrary to the widely held assumption that natural law only resonates with Catholic traditions, Deagon indeed argues that Protestant and Catholic denominations can embrace Natural Law. Protestants can draw on the theme of enabling grace to overcome the limitations caused by sin and accept that divine moral guidance is achievable.⁵ Theological values would also bridge the alleged gap between Natural Law authors such as Finnis, who refers to Natural Law but explicitly leaves aside questions of God’s existence and will,⁶ and those, like Deagon, who promote a transcendental perspective. For Deagon, the undeniable theological inspiration of Finnis’ work reveals an implicit transcendental dimension, which would best be recognised.⁷

Throughout Deagon’s book, theological Christian values thus provide the glue between seemingly different positions. Despite its resolutely Christian foundation, his Natural Law framework, according to Deagon, will also resonate with liberalism as well as with non-Christian denominations. In a conciliatory tone, he asserts that his framework ‘still supports and undergirds the liberal virtues of freedom, equality and democracy’⁸ and that Natural Law

* Professor of Comparative Law and Law & Religion, University College London.

¹ Alex Deagon, *Christian Natural Law and Religious Freedom: A Foundation Based on Love, the True, and the Good* (Routledge, 2025) vi.

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

³ Deagon (n 1) 2.

⁴ See Myriam Hunter-Henin, ‘Book Review: *A Principled Framework for the Autonomy of Religious Communities*’ (2023) 3 *Australian Journal of Law and Religion* 91.

⁵ Deagon (n 1) 22.

⁶ John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 2nd ed, 2011) 48-49.

⁷ Deagon (n 1) 46.

⁸ *Ibid* 8.

reason would meet the liberal requirement of public reason par excellence. As for non-Christian religious denominations, they can relate to Christian theological values, which are universal, and hence adhere to the proposed framework.⁹

In this brief review, I will highlight what I see as Deagon's main contributions both to the 'transcendental' and liberal scholarship on religious freedom. Along the way, I will query two aspects of Deagon's claims: the conciliatory force of theological affinities on the one hand and the compatibility between a transcendental perspective and liberalism on the other.

Theological Affinities and Conceptual Differences

Schematically, the question of 'why' law should protect religious freedom opens the following dividing lines in the scholarship. Some consider that direct protection of religious freedom threatens liberal values.¹⁰ Others argue that religious freedom lies at the core of the liberal framework.¹¹ Some seek reasons for protecting religious freedom within a legal liberal democratic framework,¹² whilst others argue that the foundations for religious freedom are necessarily external, transcendent to liberalism and legal democratic legitimacy.¹³ Through his Christian Natural Law framework as a foundation for the legal protection of religious freedom, Deagon adds his voice to those who seek a heightened protection of religious freedom on transcendental grounds. Within the transcendental jurisprudence, Deagon strives for conciliation. The conciliatory thread lies in theological affinities, which Deagon argues, expand the legitimacy of his framework for religious freedom beyond the Catholic tradition and transcendental scholarship. The question that remains unanswered, however, is why theological proximity guarantees agreement on what constitutes a legitimate legal framework for religious freedom. History has revealed that the lines of religious tolerance and intolerance depend on political rather than theological affinities and fractures.¹⁴ Moreover, on a conceptual level, theological and transcendental dimensions need not coincide. It is one thing to unravel theological values within the liberal framework or offer legal solutions imbued by such values; it is quite another to argue that the legitimacy of legal outcomes lies in a transcendental source. Whereas the former focuses on substantive solutions, in other words, on how to protect religious freedom in specific circumstances, the latter aims at the theoretical question of the why. Theological affinities certainly point to common ground on the how but leave open potential radical divergences on the why. Moreover, if divergences underlying theological affinities may be undermined, the divergence between theological and secular perspectives may conversely be exaggerated. The implicit dichotomy between a disenchanted secular liberalism on the one hand and a transcendental Natural Law framework on the other relies on a 'destructive' version of liberalism based on autonomy,¹⁵ which leaves out denser versions of liberalism amenable to an enhanced protection of religious freedom. Reciprocally, the transcendental Natural Law framework leaves out the line of work within theological jurisprudence which finds in theology, not a new fundamentalism for human rights and

⁹ Ibid 9, 103.

¹⁰ See, eg, Cécile Laborde, *Liberalism's Religion* (Harvard University Press, 2017).

¹¹ See, eg, Cass Sunstein, *On Liberalism: In Defense of Freedom* (MIT Press, 2025).

¹² See, eg, my own book: Myriam Hunter-Henin, *Why Religious Freedom Matters for Democracy: Comparative Reflections from Britain and France for a Democratic 'Vivre Ensemble'* (Hart, 2020).

¹³ E.g. Joel Harrison, *Post-Liberal Religious Liberty: Creating Communities of Charity* (Cambridge University Press, 2020).

¹⁴ For a sociological perspective on religious conflict amongst Christian denominations in 17th century Britain, see Anna Keay, *The Restless Republic: Britain Without a Crown* (William Collins, 2022).

¹⁵ Deagon (n 1) 1, 4.

religious freedom, but a corrective to the dominant secular logic undergirding it.¹⁶ In this more nuanced version of theological work, religion does not displace liberalism or the idea of rights but enters into a constructive engagement with secular liberal modernity.¹⁷ The theological affinities between theological and transcendental authors does not therefore necessarily point to conciliatory positions. The genuine line of opposition, that cuts across secular and theological constructions, lies in the commitment (or not) to liberalism. In that regard, the compatibility between transcendental jurisprudence and liberalism is doubtful.

Transcendental Jurisprudence and Liberalism

Deagon argues that his Natural Law framework embraces liberal values. His previous monograph indeed positioned itself outside of secularism but within liberalism. As Deagon moves on in this book to questions of foundations, however, the opposition between his Natural Law framework and liberalism emerges clearly. First, the emphasis on (theological) values, without any concern for the institutional and procedural guarantees that might accompany the elucidation and implementation of these values in concrete cases, would fall short of the notion of safeguard at the core of liberal democracies.¹⁸ For sure, Deagon explicitly leaves outside ‘the epistemological question (how we know the natural law through reason)’ to focus on ‘the theological question (its source and grounding),’¹⁹ but under a liberal framework, only the former could guarantee legitimate, fair, and equal protection of religious freedom. The impasse on the question is therefore revealing. The question for Deagon is not essential because, precisely, the essence of legal legitimacy under his framework would reside elsewhere, in its divine source. That is also probably why Deagon does not linger on the question—crucial for liberals—on the acceptability of the terms of legitimacy. As long as these terms are accessible and plausible to all, the difficulty that some may face in accepting them is, for Deagon, ‘beside the point.’²⁰ Secondly, the insistence on the good and the true takes precedence, in Deagon’s thoughts, on rights and freedoms. Certainly, the idea of the good and the true in Deagon’s framework encapsulates rights and freedoms. However, in instances of clash, the good, as construed by collective religious organisations, will trump conflicting manifestations of religious freedom by dissident members.²¹ By contrast, I would argue that the priority on rights is an incontestable feature of liberalism. In light of such radical divergence, the reader would have welcomed a systematic comparison between the proposed framework and the secular liberal alternatives in their diverse versions. In its absence, the reader might still wonder why Deagon’s Natural Law framework should be characterised, not only as a translation exercise of secular liberal public reasons into Christian theological terms (in a traditional avoidance strategy that pushes deep disagreement aside²² and leaves each and every one the task to make

¹⁶ Zachary R Calo, *Faithful Presence and Theological Jurisprudence: A Response to James Davison Hunter*, (2013) 39(5) *Pepperdine Law Review* 495, 515.

¹⁷ *Ibid* 503.

¹⁸ Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (University of Chicago Press, 1997).

¹⁹ Deagon (n 1) 9.

²⁰ *Ibid* 2.

²¹ See Deagon (n 2) 99.

²² Christopher McCrudden, *Litigating Religion: An Essay on Human Rights, Courts and Beliefs* (Oxford University Press, 2018) 87. McCrudden notes that the use of public reason in the public forum may push the problem (of finding common intelligible grounds) aside rather than solve it.

sense of public reasons in their own terms) but, as Deagon claims, *the best option*²³ for all, one that lives up to solving disagreement on principles.²⁴

Going back to John Witte Jr's quote from Jacques Maritain, 'yes, we agree about the rights, on condition no one asks why', it seems that disagreement that emerges when asking 'why' about religious freedom nowadays no longer merely refers to the content of the right, but to the very role of rights in our (liberal) societies. It is no surprise therefore that Deagon's new book on the foundations of religious freedom provokes disagreement. Whether one agrees with the proposed framework or not, however, we may all agree that Deagon hereby makes an important contribution both from 'within' what I would call the 'transcendental' scholarship on religious freedom and from 'outside', prompting further reflection on liberalism's core commitments.

²³ Deagon (n 1) 5.

²⁴ Cass Sunstein, 'Incompletely Theorized Agreements in Constitutional Law' (2007) 74(1) *Social Research* 1. Sunstein argues that since people can often agree on constitutional practices, and even on constitutional rights, when they cannot agree on constitutional theories, well-functioning constitutional orders try to solve problems through incompletely theorized agreements.