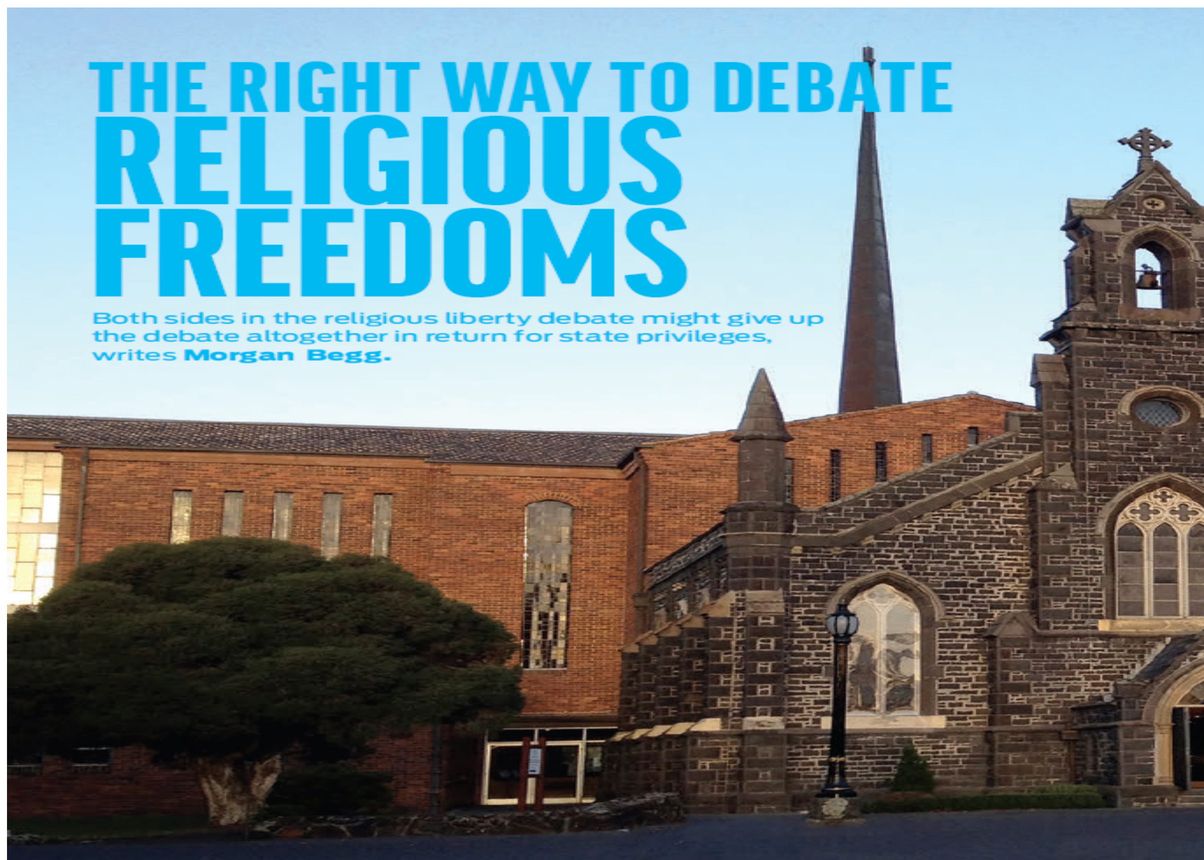

The Right Way to Debate Religous Freedoms

Publish Date:

December 2017

Both sides in the religious liberty debate might give up the debate altogether in return for state privileges, writes Morgan Begg.

The federal parliament's bipartisan *Marriage Law Survey (Additional Safeguards)* Act, introduced in September, was a watershed moment in the religious freedom debate in Australia. The Additional Safeguards law implemented a range of measures to regulate communication during the Australian Marriage Law Postal Survey. Fundamentally, it includes a provision to prohibit the vilification of a person because of their 'religious conviction, sexual orientation, gender identity or intersex status'.

> WE ARE WITNESSING A SIGNIFICANT SHIFT IN HOW RELIGIOUS FREEDOM IS PROTECTED— FROM A FREEDOMS FRAMEWORK TO A FRAMEWORK BASED ON LEGAL PRIVILEGES.

The law itself is a significant restriction of freedom of speech, amounting to a quasi-blasphemy law at the federal level. It represents a significant shift in how Australian governments seek to protect religious beliefs—moving from a freedoms framework to a framework based on legal privileges.

A new book from the United States is instructive of how the debate has been held to now. *Debating Religious Liberty and Discrimination* is a point/ counterpoint style book between John Corvino, a philosophy professor from Wayne State University in Michigan, the Heritage Foundation's Ryan T. Anderson, and PhD candidate Sherif Girgis. While the book is written solely from the American perspective, it relates to issues that are increasingly important throughout the West.

As more and more countries introduce changes to the statutory definition of marriage, the question of how to treat age-old ideas about the traditional institution of marriage in the face of sexual orientation and identity discrimination laws has caused significant concern and legal conliict. In particular this relates to faith based organisations and businesses that are managed in accordance with the proprietor's religious convictions.

Corvino's pro-discrimination law perspective argues that such laws are necessary to combat the dignitary harm suffered by seekers of weddingrelated services but who are rejected. In counterpoint, Anderson and Girgis argue that such dignitary harm does not warrant coercive powers of the state to effectively rub out fundamental individual liberties.

Nonetheless, Corvino is an increasingly rare example of a representative of the left that is willing to engage with liberty concerns in good faith and to put forward solutions.

The main problem with Corvino's contribution is not an uncommon feature of the debate. His key argument is that exemptions in anti-discrimination laws for religious purposes amounts to, or can amount to, a form of legal 'privilege'. However, this is a gross distortion of the word privilege. A privilege in the law refers to a special right created for the benefit of a person or class of people. For instance, creating a special right to initiate litigation under antidiscrimination laws would be more appropriately described as a privilege. But retaining your freedom from those laws—a freedom that existed prior to its creation—cannot be regarded as a privilege.

Until now, advocates for religious liberty have called for specific exemptions in anti-discrimination laws to enable people to live their lives in accordance with their faith. But this is problematic at a conceptual level, because 'religious liberty' is not an isolated concept: it involves several fundamental freedoms that, bundled together, form a broader freedom.

> CORVINO'S KEY ARGUMENT IS THAT EXEMPTIONS IN ANTIDISCRIMINATION LAWS FOR RELIGIOUS PURPOSES AMOUNTS TO, OR CAN AMOUNT TO, A FORM OF LEGAL 'PRIVILEGE'.

These fundamental freedoms include the freedom to proclaim a particular worldview, a freedom to associate with others who share that worldview, and the freedom to live a life according to those

beliefs.

It is safe to say that the left has now abandoned any pretence that these values are worth defending, particularly when they conflict with same sex marriage. Most recently, the same sex marriage proposal put forward by Victorian Liberal Senator James Paterson in the days before the survey results were announced— which included broad-ranging protections from state and federal antidiscrimination laws for religious or conscientious objectors with a ‘relevant marriage belief’—was immediately rejected by the main organisations advocating for religious beliefs.

Pro-discrimination law campaigner Rodney Croome claimed before the survey results were announced that a Yes vote would equate to an explicit rejection of freedom, saying it would mean respondents ‘voted for full equality, not discrimination in new forms.’ Anna Brown of The Equality Campaign went even further by equating the Paterson proposal to historical government policies that favoured white migration, saying ‘Australia turned its back on this type of discrimination when it ended the White Australia Policy.’ This sort of behaviour is counterintuitive from a political perspective. Normally, agreeing to retain liberties would ease the passage of reform. This is how a substantial amount of anti-discrimination laws have been passed with such muted debate. For instance, the inclusion of exemptions for faith-based schools in various pieces of anti-discrimination laws was often used in a way to assure families that they would not get caught in the regulatory crossfire that such laws would create.

This intuitive approach has been completely abandoned in the marriage debate. This is a disturbing development that, on the 500 year anniversary of the protestant reformation that many believe was important for kick-starting an era of religious liberty, marks a fundamental turning point against those same freedoms.

Ironically, Anderson and Girgis, in their arguments for religious liberty, refer to the progressive Puritanism that is seeking to force conscientious objectors into conformity with the new understanding of marriage through anti-discrimination laws. Puritanism was a form of Protestantism in 16th and 17th century England that sought to purify the Church of England of its surviving Catholic characteristics. In the various debates surrounding sexuality and marriage, Anderson and Girgis argue that:

> against the best of the Liberal tradition itself, and with portentous wider implications, a progressive has arisen on these issues – an effort to coerce conscientious dissenters to live by the majority’s views: to punish the moral heretic.

In light of how the left has given up on even paying lip service to fundamental freedoms in this area, it is hard not to agree with the accusation. The question arises now for religious liberty advocates whether they too will embrace state privileges. The *Marriage Law Survey (Additional Safeguards) Act* represents a concerning step towards a privilege framework where faith-based complainants embrace victim status to justify using the power of the state to bring to bear against their oppressors.

Not only is this futile for Christians—according to the proponents of identity politics, Christianity is a historical institution of oppression that can never benefit from victimhood status—this framework really only benefits the state, where ultimately everyone loses out on freedom.

To ensure that this is only a temporary development and to avoid religious freedom slipping towards this privilege framework, a proper and complete understanding of the philosophical foundation and wider cultural benefits of religious freedom will be increasingly vital. For this reason, Debating Religious Liberty will be regarded as an important resource in the years ahead.