Nine Questions about Religious Freedom

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Neither the pope in secular matters nor the emperor in spiritual matters has any authority.

Accursius
Acknowledgments

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Preface

Religious freedom is important to all Australians, not just those of religious faith, because it is a human right which helps make our diverse and democratic society strong. It helps to ensure that diversity is a reality, not just an empty slogan, because it protects the freedom of minorities whose beliefs and practices do not conform to the ruling values and assumptions of the day. It also provides a critical measure of how deeply a society is committed to democratic freedoms. It is a signal of a strong commitment to these freedoms when religious freedom is genuinely valued and generously protected. It is an early warning that not all is well when religious freedom is increasingly treated with suspicion or seen as a problem that needs to be closely constrained.

For believers and non-believers alike, religious freedom is an essential pillar of a strong and decent society, and the purpose of this paper is to show how this is so. Its focus is not primarily on current challenges to religious freedom, although some of these are touched on in the course of the argument. Nor is the paper written as a polemic. Its mode is reflective and discursive, shaped by the hope that in taking some time to wander through the larger landscape in which religious freedom fits, it might just be possible to return to the specific issues of the moment in a different spirit. Meandering through this landscape will not make irreconcilable differences disappear, but it might make it possible to approach them in a spirit of generosity and friendship rather than mistrust and enmity. The possibility of a life in common in a pluralistic and secular society, not just on the issue of religious freedom but on other issues as well, depends on our willingness at least to try this. If we prefer to let our differences make us enemies, a life in common is cast into serious doubt.

The paper is structured around a short series of questions with the intention of clarifying what religious freedom is, what it is not, and why it is important. There is of course much more that could be said on each of these questions and there are some questions which are not explored: for example, the different categories of rights, and their foundations and historical development; the role played by mistrust of institutions in general and of Christian churches in particular — especially in light of their failures on issues such as sexual abuse — in generating scepticism about religious freedom; specific issues such as proselytism, and public funding and tax concessions for faith communities; and practical examples of how specific issues, as well as conflicts of rights, might be better resolved. The intention is to provide a high-level discussion for a non-specialist readership of some of the fundamental points for a deeper appreciation of the nature of religious freedom, not a comprehensive account of every facet.

Unsurprisingly for an essay produced by a public policy institute at a Catholic university, the paper is strongly informed by a Catholic perspective but it is has not been written for Catholics only. Religious freedom is a universal human right, not a special claim for privilege by one denomination or the particular possession of one faith against others. To spell out Catholic appreciation of this essential point, a section of the paper focuses on the Second Vatican Council’s landmark declaration on religious freedom, Dignitatis humanae (1965). The centrality of respect for freedom in this declaration, specifically the freedom of individuals to seek the truth and to order their lives in light of the truth they find, may surprise readers unfamiliar with Catholic teaching in this area. It is a teaching which has deep roots in the social doctrine of the church, which may also be a surprise for some Catholics. It holds that truth and freedom must go together, and that an act of faith, if it is to be genuine, must be made freely.
Finally, because of the fraught nature of the topic it may be helpful to clarify two points which in other circumstances one might quite comfortably take for granted. Firstly, the views set out in this paper are merely those of the authors and should not be mistaken as representing the views of anyone else (even when, as indicated in a few places, work that the authors have contributed in other places is drawn upon). Secondly, this essay is meant to be a contribution to a conversation that is already well under way. It is by no means the final word.

Religious freedom should be a source of peace, something which deepens hope in the possibility of a world where difference does not always inevitably mean conflict, even if conflict sometimes inevitably remains. This paper was written in pursuit of this hope. May it be shared by all its readers.
Nine Questions about Religious Freedom
Introduction: Why do we need to talk about religious freedom?
Religious freedom occupies a strange place in human rights. It is one of the foundations of democracy and a peaceful, stable society. It is recognised in international treaties as one of a handful of fundamental and inviolable human rights. Yet what it means and what it protects are not well understood, even by those who are religious.

In a secular society like ours it can be easy to overlook what religion contributes to the community, and for people who are not religious it can be difficult to appreciate why faith is so important to individuals. This is one reason why religious freedom is not well understood. Another reason is that for many people, faith is treasured as something very personal and lived out simply each day without encountering much hostility or opposition. Living peacefully in a largely tolerant community like Australia, they do not feel any need to justify their right to believe what they believe or to live the way they live.

Unfortunately this situation is changing. A number of significant challenges to religious freedom have emerged around issues such as the meaning of marriage, the operation of anti-discrimination and anti-vilification laws, and respect for freedom of conscience in healthcare and other professions. These challenges highlight the need to reflect more deeply on what religious freedom means, why it is important, and how it helps to keep a diverse, democratic society strong. This paper is a contribution to this task.

In the first year of his pontificate Pope Francis succinctly summarised the challenge religious freedom faces from strong secularist tendencies in democratic societies today, and how this works against pluralism:

A healthy pluralism, one which genuinely respects differences and values them as such, does not entail privatising religions in an attempt to reduce them to the quiet obscurity of the individual’s conscience or to relegate them to the enclosed precincts of churches, synagogues or mosques. This would represent, in effect, a new form of discrimination and authoritarianism. The respect due to the agnostic or non-believing minority should not be arbitrarily imposed in a way that silences the convictions of the believing majority or ignores the wealth of religious traditions. In the long run, this would feed resentment rather than tolerance and peace¹.

Religious freedom fosters tolerance and peace. It helps to build up a society which genuinely respects and values differences. It works against resentment and conflict. It is a source of resistance to authoritarianism. With other fundamental rights, it should be at the heart of diverse democratic societies, not pushed to the margins.

It is often said that Australia is a very secular country, and on many measures we are. The World Values Survey, for example, found that between 1995 and 2012 the percentage of Australians who said that religion is important in their lives fell from 48 per cent to 31 per cent, while those saying that religion was not at all important to them rose from 19 per cent to 37 per cent. In light of this it is no surprise that over the same period the percentage who said they do not believe in God rose from 19 per cent to 34 per cent. But 64 per cent still reported some level of belief in God in 2012 (down from 75 per cent in 1995)².

¹. Francis, Apostolic Exhortation Evangelii gaudium (24 November 2013), §255.
². World Values Survey (www.worldvaluessurvey.org), Wave 3 (1994-98) & Wave 6 (2010-14). In Australia, the Wave 3 survey was carried out in 1995 and the Wave 6 survey in 2012. Sample sizes for Australia were
It was easier in the past than it is today to measure religious life within clear categories. The number of those belonging to the major Christian denominations and the number of regular attenders on Sunday are falling, and the churches as organisations share in the general decline of trust which is affecting all institutions. This is occurring alongside the emergence of new movements within the churches and outside them which are renewing faith and re-energising the service of others.

At the same time, the other great religious traditions of the world have successfully taken root in Australia and are becoming more prominent and important in our community, as the decade between the 2006 and the 2016 censuses highlights. In total, the non-Christian faiths comprised 8.2 per cent of Australians in 2016 (approximately 1.92 million people), compared to 5.6 per cent in 2006 (and 0.7 per cent in 1966). Major traditions such as Hinduism (1.9 per cent or approximately 440,000 people) and Islam (2.6 per cent or approximately 600,000 people) have increased their small number of adherents significantly since the 2006 Census (up from 0.7 and 1.7 per cent respectively). Other traditions such as Sikhism are also growing (from approximately 26,000 people in 2006 to 126,000 in 2016)\(^3\).

A marked change in recent decades has been the increase in the number of those who are not religious at all or do not have any formal religious affiliation. The number of people with “no religion” (30.1 per cent in 2016 – a little over 7 million people – compared to 18.8 per cent in 2006, or 3.7 million people) makes it now the largest single “religious” grouping in the country. One of the most interesting developments underlying these figures is that some who describe themselves as having no religion on the census nevertheless shape their lives around forms of spirituality which combine beliefs and teachings from a range of different traditions in a very personal way\(^4\).

These changes suggest that it is more accurate to describe contemporary Australia as a pluralist, rather than secular, society, because behind a distinctly secular face, there is an increasingly complex and diverse religious life. We are a country of many religious minorities, and this now includes the different Christian traditions. Although they are usually counted up together to make a majority of the population (52.1 per cent in 2016, compared to 63.9 per cent in 2006), each Christian denomination in itself is a minority (Catholics 22.6 per cent, Anglicans, 13.3 per cent, Uniting Church 3.7 per cent; each falling in their share of the total population from 2006 by 3.2, 5.5 and 2.0 percentage points respectively)\(^5\). This is underscored by the increasing diversity of belief, practice and devotion between the different churches, and even within them, something which is also true of the other faith traditions.

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\(^2\)048 and 1,477 respectively. The percentages for those reporting that religion is important in their lives combine both those who said religion was “very important” and those who said it was “rather important”.

3. Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia – Stories from the Census 2016* (Cat. no. 2071.0). Some detailed numbers have been extracted from the ABS’s TableBuilder datasets (http://www.abs.gov.au/websitedbs/censushome.nsf/home/tablebuilder). A census is conducted every five years in Australia, but comparing the 2016 results to those ten years earlier (rather than to the 2011 census) helps to highlight more clearly the changing religious composition of the country.

4. Ibid. This is partly reflected in the high level figures for “no religion” in the 2016 Census, which includes “Secular Beliefs and Other Spiritual Beliefs”. See *Census of Population and Housing: Census Dictionary 2016* (Cat. no. 2901.0).

5. Ibid. Interestingly, these changes in the percentage of the population affiliated with each denomination make it appear as if Catholics had a bigger fall over this period than the Uniting Church. While the shares have changed, however, when the changes are considered in terms of the number of people affiliated with each denomination, Catholics increased by 3.2 per cent and Uniting Church members decreased by 23.4 per cent (with Anglicans decreasing by 16.6 per cent). We are grateful to Dr Robert Dixon for this observation.
Religion in its many forms is not fading away but growing in importance around the world, and even in Australia. Studies undertaken by the Pew Research Center show that while countries like Australia are becoming more secular, the rest of the world is becoming more religious. The proportion of the global population which is religiously unaffiliated is projected to fall to 12.5 per cent by 2060, down from 16 per cent in 2015. At the same time, Christianity (at 32 per cent) and Islam (at 31 per cent) will together account for nearly two thirds of the world’s population (compared to half the global population – 31 per cent and 24 per cent respectively - in 2015). The profile of religious populations will also be younger than that of unaffiliated or “secular” countries.

Like any human activity, religion can be a force for good or a force for evil. Individuals and organisations motivated by their faith care for some of the most abandoned and oppressed people, draw attention to crimes and injustice which are sometimes overlooked, and work in dangerous situations to bring about peace. At the same time, religious conflict bitterly divides some societies and causes immense destruction.

Religious persecution is one of the major causes of the dramatic increase in the number of refugees. The attempts of some governments and non-government forces to control or suppress different religious communities cause constant suffering and discrimination. Religious minorities are persecuted by governments in many countries, including Sri Lanka and Myanmar for example, and Islamist terrorism is responsible for genocide against ancient religious communities in the Middle East.

Terrorism casts a long shadow of fear and death across many societies, and fear is undoubtedly one reason why the idea of religious freedom is treated with suspicion by some people. In Western countries, fear of religion is predominantly directed against Islam and Muslims. In Australia, where the Muslim community is drawn from many different nations and traditions, fear sometimes obscures how successfully the majority of Muslims have become part of our community.

Other religious traditions are targets not so much of fear as of hatred. The resurgence of anti-Semitism towards the Jewish community in Europe and in some quarters in other Western countries is a reminder of the strength of religious and racial hatred. Christianity too is increasingly a target of hatred, not only for some of its teachings on moral issues such as marriage and sexuality, respect for human life, and human dignity. A worrying increase in the desecration of churches in different countries in Europe suggests that its teachings about its faith are also hated.

6. Pew Research Center, *The Changing Global Religious Landscape*, 5 April 2017. Global population as a whole is projected to increase by 32 per cent by 2060, and although the numbers of those who are religiously unaffiliated will increase, their share of global population will fall, primarily because of significantly lower birth rates compared to religious populations. The report observes: “By 2055 to 2060, just 9 per cent of all babies will be born to religiously unaffiliated women, while more than seven-in-ten will be born to either Muslims (36 per cent) or Christians (35 per cent)”. Deaths are also projected to exceed births for the religiously unaffiliated (“natural decrease”) and all other religious groups, except Christians and Muslims, during this time.


8. See for example the cases recorded in Observatory on Intolerance and Discrimination Against Christians in Europe, *2015 Report*.
In Australia today, thankfully, fear and hatred of different religious traditions and between different religious communities are not the norm, even though there are some tensions and problems can occur. This is an achievement we should not take for granted. We need to keep working to ensure that it continues. Respect for religious freedom helps to make this possible.

It is situations where fear and hatred can come into play, if only at the margins, which remind us most powerfully that human rights are not just for people like ourselves. Human rights are universal, shared by every human being. Among other things, they protect what makes us different from each other. They protect those who think differently, whose beliefs or ideas others find strange, ridiculous or even “offensive”, and especially those whom some people hate and fear. Religious freedom is one of these rights.
What is religious freedom?9
For most Australians it is a matter of basic fairness for people to be able to put their beliefs into practice and not to be forced to act against them. Religious freedom is a form of this basic fairness. It is not a privilege claimed by religious people for special treatment. It is a fundamental human right, the “manifestation” or exercise of which is, like other fundamental rights, limited by the need to respect the rights of others and the common good.

Religious freedom also means that individuals can practise their religion freely in public, as citizens, and not just in private life. People are entitled to live out their beliefs in co-operation with others who share their faith. Coming together around a common purpose and shared beliefs to build up community and help people in need is the main way in which religious people contribute to strengthening a democratic society.

It is important to appreciate that religious freedom is part of a larger whole. It does not sit in isolation within the concept of human rights but is an integrated and essential part of it. There are three foundational principles of human rights which are particularly important for clarifying this:

- rights are universal: they belong to each and every human being, and the rights of some individuals or some groups are not more important than the rights of others.

- rights protect different things which are each important for a fulfilling life. Clearly some rights (e.g. rights protecting people against torture) seem more important than others (e.g. the right to property). But both protection from torture and the right to property are two fundamental aspects of what respect for human dignity means. Without both we are not really free and we are not able to flourish as we should. Because we need all the different good things which rights protect (life, health, freedom, family, thought, expression, religion, etc.), not just a selection of them, we should approach rights wherever possible as a matter of “both/and”, rather than “either/or”.

- rights belong to individuals who live in communities which can need protection too. For this reason, organisations and institutions are also granted rights, both on their own behalf and as part of the collective exercise of rights and freedoms by individuals (religious schools, for example, assist parents in exercising their freedom to decide the religious and moral education of their children10). Because we “should act towards one another in a spirit of brotherhood” (Universal Declaration of Human Rights, Article 1), rights should be exercised in solidarity with other people. For this reason the exercise of many rights — whether by individuals alone or collectively, or by organisations — must sometimes be limited to protect the rights and freedom of others.

These principles also apply to religious freedom. To take each one in turn: like other rights, religious freedom is a universal human right. It belongs to every person, whether or not they are religious. Freedom of religion is the right to believe or not to believe, to adopt, reject or

9. Some of the text in this section is taken or adapted from the submission of the Catholic Archdiocese of Sydney to the Australian Human Rights Commission inquiry on Freedom of Religion and Belief in the 21st Century (March 2009).
10. See Article 18 (4) of the International Covenant on Civil and Political Rights (1966), set out in footnote 39 below.
change beliefs as we decide for ourselves. Partly for this reason it is often called “freedom of religion and belief”. Religious freedom arises from our nature as believing creatures.

Consideration of questions of value and meaning seems to be an inescapable part of being human. In searching for answers, no one seems to be satisfied with solutions simply of their own devising. Human beings tend to seek answers to these questions in something greater than themselves.

For many religious people this source of answers will be God, but non-religious people too have ultimate sources – human dignity, justice, freedom, equality, progress, reason, the environment – which affirm their individual sense of life’s goodness and the importance of working to make things better. These ultimate sources are in effect revered for the way they go to what is real and true about life, and usually lead to some sense of obligation to live consistently with it. In this sense, questions of meaning and value are religious questions to which we seek religious answers, even if they take the secular forms of atheism or agnosticism.

Because fundamental human rights protect all the things we need to make a full life possible, they have to go together. They should not be placed in opposition to each other or downgraded in importance because some rights — the right to be free from unjust discrimination, for example — are treated as over-riding others.

Understanding different human rights as going together, rather than pulling apart, also highlights the way they make each other possible and reinforce each other. Unless the right to life, for example, is respected, respect for all other rights is placed in doubt, at least to some extent.

In a similar way, respect for freedom of religion and belief both depends on respect for freedom of conscience, freedom of thought, freedom of expression, and freedom of assembly, and supports them in turn. Unless great care is taken, restricting religious freedom unfairly can mean restricting other freedoms as well.

Being free to investigate, reflect, and change our minds, to debate and ask questions, to organise around shared beliefs and concerns, to argue for our views and to try to persuade others, to hold to our convictions about what is right and wrong in the face of pressure or coercion: these things are all essential to the freedom to search for answers to questions of meaning and value.
What are the limits of religious freedom?
Exercising rights in solidarity with other people not only establishes appropriate limits and safeguards, but also provides an important guiding principle for situations where rights come into tension with each other.

Freedom of religion and belief is a fundamental human right, but like many other rights it is not an absolute. One of the most important limits on the exercise of fundamental human rights is respect for the fundamental rights of others. What this means in practice is that we should not assert different rights against each other as some sort of contest where the winner takes all and imposes his or her beliefs on the loser.

For Catholics, the governing principle here was set out in Dignitatis humanae, the Second Vatican Council’s Declaration on Religious Freedom (1965):

> It is one of the major tenets of Catholic doctrine that man’s response to God in faith must be free: no one therefore is to be forced to embrace the Christian faith against his own will. This doctrine is contained in the word of God and it was constantly proclaimed by the Fathers of the Church. The act of faith is of its very nature a free act11.

What follows from this is that Catholic beliefs and teachings are not to be imposed on anyone, but proposed for people to accept or reject as they freely decide for themselves. Pope John Paul II underscored this principle in 1990 in speaking of the mission of the church to bring the truth about Jesus Christ to all nations:

> On her part, the Church addresses people with full respect for their freedom. Her mission does not restrict freedom but rather promotes it. The Church proposes; she imposes nothing. She respects individuals and cultures, and she honours the sanctuary of conscience12.

This respect for freedom as an essential part of the dignity of the human person lies at the very heart of religious freedom. With it goes respect for the intellect, will and conscience of the individual13.

Religious freedom upholds human dignity by protecting people from having the beliefs of others — whether religious, secular or political — imposed on them. This means protecting people from being coerced to act against their beliefs or unjustly prevented from living them out in society. It also protects them against pressure to hide their beliefs or confine them to private life; as well as from being forced to censor themselves or to limit their participation in society to avoid bullying or intimidation.

The other major limit on the exercise of rights comes from the common good14, from living in society with other people. Most people appreciate that if we are each to have a significant

14. On the common good, see the Compendium of the Social Doctrine of the Catholic Church (2004), §§164-66: “The principle of the common good . . . stems from the dignity, unity and equality of all people”. It means “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily”. It is not simply the sum total of the goods of a society, let alone the greatest good of the greatest number, but an indivisible life in common which belongs to everyone and to each person, which fosters “the good of all people and of the whole person” through co-operation and solidarity. Although what it requires specifically will depend on social conditions in any given time and place, the common good is always connected to respecting and promoting the dignity and rights of the person. In the modern world it comprises
level of freedom, no one’s freedom can be absolute. Laws regulating or limiting rights in appropriate ways aim to give everyone in a diverse and democratic society room to move without conflict always arising.

Restrictions to protect public safety and order and which prevent others being endangered or harmed are largely taken for granted as necessary and reasonable. However, important issues arise when restrictions of rights seem to target particular groups who might be of concern to the police or security services, or have the effect of providing only limited protection to vulnerable people such as refugees, or disadvantaged groups such as people living with a disability. There are often important considerations behind restricting rights, but because of the impact it can have on individuals and communities it needs to be approached very carefully.

Less clear and more contested are laws fostering a particular idea of a good society, often supported by people with deep personal commitments to this vision, which limit the rights of some to expand the rights of others. Current examples arise from issues such as: the application of anti-discrimination laws and how they affect religious freedom; the reach of anti-vilification laws and their impact on freedom of speech; laws legalising abortion and euthanasia or assisted suicide and how they restrict freedom of conscience; and the implications of gender theory and same-sex marriage, both of which foreshadow significant limits on each of these rights and some others.

On each of these distinct issues there are divergent views about the extent to which the rights and beliefs of some groups should be advanced at the cost of constraining the rights of others. In different ways they also reflect the expansive vision of individual autonomy which so powerfully shapes our society. Autonomy is a great good and Australians value the high level of personal freedom and independence in our country. The question is how well this is balanced with a strong sense of the common good, of the public consequences or social impacts of private choices we often assert as a right.

Our appreciation of the common good — that often we are best placed to find fulfilment and realise our individual potential by co-operating with others and seeking their good as well — is not as well-developed or as powerful as our appreciation of personal autonomy and our subjective understanding of human rights. This makes the negotiation of the tensions between different rights more fraught. It also contributes to the increasingly acrimonious tone of public discussion of these sorts of issues, which alienates people from each other and hardens hearts and attitudes.

Tensions between rights should be resolved with both the dignity of the person — which includes those who need protection or are unable to speak for themselves, especially children and people who are mentally incapacitated — and the common good in mind. This requires a willingness to find a solution based on mutual respect rather than suspicion. Where there is good faith on all sides, there should be generosity towards beliefs and ways of life we do not share or even oppose. It should also entail a working assumption that solutions which force people to seriously compromise their deepest beliefs will be avoided wherever possible.

(among other things) a commitment to peace, effective government and the rule of law, “the protection of the environment, and the provision of essential services to all, some of which are at the same time human rights: food, housing, work, education and access to culture, transportation, basic health care, the freedom of communication and expression, and the protection of religious freedom”.
How does religious freedom help build community?\textsuperscript{15}

People come together with others who share their faith to live out their beliefs. In this way they form communities of believers. Like other groups, most religious communities encourage participation in society, a sense of solidarity with other people, and helping those in need. They also want to maintain their own distinctive culture and beliefs, which helps to enrich society and make diversity a reality rather than a slogan.

Religious communities often generate a range of initiatives to help people and build a good society. For example, the St Vincent de Paul Society (Vinnies) in New South Wales has 387 local conferences, usually parish-based. In 2016-17, a little under 19,000 members and volunteers helped over 60,000 people in their local areas. This included making almost 161,000 visits to people in need — an average of over 400 each day — at their homes, in hospitals and nursing homes, and in support centres and prisons. They provided not only personal support and practical help such as referrals, but also over $17.4 million dollars in financial assistance, raised from donations\textsuperscript{16}.

This sort of contribution to the wider community is not just a social service but a work of religion. The Society’s mission is “to live the Gospel message by serving Christ in the poor with love, respect, justice and joy, and by working to shape a more just and compassionate society”\textsuperscript{17}. In this, it reflects a foundational teaching of the Gospels. In the Gospel of St Mark, Jesus is asked “Which commandment is first of all?” Jesus answers:

‘The first is, “Hear, O Israel: the Lord our God, the Lord is one; you shall love the Lord your God with all your heart, and with all your soul, and with all your mind, and with all your strength”. The second is this, “You shall love your neighbour as yourself”. There is no other commandment greater than these’ (Mk. 12:28-31).

Love of God and love of neighbour are inseparable for Christians, and these two commandments call individual believers to reflect constantly on their own life, the impact they have on those around them, and how they can help others. A similar link between faithfulness to God and helping those around you is a feature of most religious traditions.

The way in which faith and action run together shows that religious belief is never simply a private matter. This reflects a larger reality about human experience. Beliefs and ideas about meaning and truth, right and wrong — religious and non-religious alike — are conclusions about what is real and important in life. Whether they concern how we should live or how things should be in a good society, for all of us they serve as a basis for action in the world.

It is often argued that religious people should quarantine their beliefs from any public activity in which they may be involved, from public debate, and even from the way they carry out their profession or occupation. There are a number of problems with this argument. To begin with, it is simply unfair: it allows everyone to act on their beliefs, except religious people.

\textsuperscript{15} Some of the text in this section and in the following section is taken or adapted from the submission of the Catholic Archdiocese of Sydney to the Australian Human Rights Commission inquiry on Freedom of Religion and Belief in the 21st Century (March 2009).

\textsuperscript{16} St Vincent de Paul Society NSW, Moving Forward: Annual Report 2016-17, 7 & 43. It is interesting to note that in 2011-12 the number of local conferences was 424, and the number of members was 5,178, compared to 4,282 in 2016-17. The number of volunteers in 2011-12 was approximately the same as in 2016-17 (14,416 compared to 14,499), reaching higher numbers each year in between.

\textsuperscript{17} St Vincent de Paul Society NSW, Our Society, Our Plan: Strategic Plan 2013-18, 5.
This sort of unfair treatment is usually called discrimination. The bigger problem with this position, however, is that human life just does not work that way.

No human being lives in neatly divided public and private worlds. In addition to our private lives and our public roles there is the social domain which encompasses both. For example, family life is very personal and private, but it does not end there. It is also social; firstly because it is a group of people who are often living together or otherwise closely connected, and it provides the basis for all sorts of social interactions with other individuals, families and groups. The values and habits which are learnt in the family also have an important social dimension because they help to shape the life of the local community and society more broadly.

Making a rigid distinction between private belief and public action when it comes to the role that religious people play in a democratic society is misleading in two further ways, both for policy making and public understanding. It treats the agencies providing an array of services to society on behalf of religious communities (hospitals, aged care, schools, welfare and other services for vulnerable groups of people) as just another type of non-government or not-for-profit organisation. In doing so, it denies or discounts the importance of the religious beliefs which inspire these works and generate the energy and commitment which make them possible.

It also reflects a failure to take faith seriously. It treats religious belief as nothing more than a form of subjective or personal opinion, with no real significance beyond the individual who holds it. No one has to like religion or even be interested in it, but placing it wishfully on the same level as a personal interest or superstition is not helpful to a full understanding of the world in which we live.

Faith so powerfully informs the way believers live, the actions they take, and the shape of communities because it is a matter of considered and deeply-held conviction. As a result, it brings many good things with it. Like other forms of conviction — philosophical, ideological, political, economic, moral — religious convictions can also be wrong or unjust, and they can lead to oppression or destruction. Dealing with this reality, however, is not helped by misunderstanding what religion is.

The right to freedom of religion and belief is a fundamental human right because of religion’s importance to people as a matter of deep conviction. This is why it protects not only the freedom of religious people to pray and worship, but also the freedom to live out their beliefs in the services they provide for the wider community, and to operate these services in accordance with their beliefs. It also protects the right to publicly explain their beliefs and to propose them for the acceptance of others.

Religious freedom is sometimes spoken of as if it means little more than freedom of worship, with faith-based services to the wider community excluded from its protection. This has the effect of reducing it to something like a narrow concept of toleration for minorities with strange opinions. In part, this reflects the incomprehension of some about what religion is. In part, it reflects the hostility of others to religion in itself. It also reflects a lack of curiosity and interest in those who are different to us, which does not help to strengthen a diverse democratic society.
In the face of this incomprehension and hostility, religious freedom protects not only the right of individuals and religious communities to fully participate in the life of a democratic society, but also the contribution they make to building it up. This means protecting their freedom to live out their beliefs in the public and social domains, as local volunteers and in their agencies and services, respecting always the rights and freedoms of others.

On his visit to the United States in September 2015, Pope Francis met with Hispanic Americans and other migrant groups to speak to them about religious freedom and captured these ideas very succinctly:

> Religious freedom certainly means the right to worship God, individually and in community, as our consciences dictate. But religious liberty, by its nature, transcends places of worship and the private sphere of individuals and families. Because religion itself, the religious dimension, is not a subculture; it is part of the culture of every people and every nation.\(^\text{18}\).

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\(^{18}\) Francis, Address to the Meeting for Religious Liberty with the Hispanic Community and Other Immigrants. Philadelphia (26 September 2015).
Is religious freedom dangerous for a secular society?
Religious believers in Australia are citizens who have the same rights and responsibilities as everyone else to take part in public debate and to participate in politics. Religious leaders are also entitled to contribute to public discussion, and in doing so carry out an important responsibility to their communities and to society as a whole.

For Catholics, participation in politics and the public square is primarily the vocation of lay people rather than bishops and priests, who can also contribute to this work in different ways. It can take many forms including leading agencies or works sponsored by different parts of the church, taking the initiative to form independent groups and associations to address important issues or needs, and individual involvement in a range of political and social groups.

Whenever people from different faith traditions take part in public discussions, particularly on contentious issues, there are some who try to exclude or discredit their contribution by claiming that “religious” views have no place in debates about “secular” matters. Underlying this claim sometimes is an assertion that religious arguments are inherently irrational while secular arguments are all about “reason”. Typically this claim arises when the concerns that religious people raise — whether about euthanasia, same-sex marriage, refugees and asylum seekers, or the poor and unemployed — inconveniently highlight issues which some would prefer not to discuss.

There are two common public arguments in favour of restricting religious freedom. The first is that religion is a potential source of conflict and division in society. The second is that religious people want to impose their beliefs on others, and given the opportunity, will try to use the law and government to do so. Both these concerns treat religion as a threat to the fundamental rights and freedoms of others, which puts religious freedom in an unusual category as a “dangerous” human right which can only be allowed with great caution. The impact of Islamist terrorism has deepened this view and, helped to generate greater support for restrictions on the exercise of religious freedom more generally.

Looking at Australia over the last fifty or sixty years, however, the concern that religious belief and diversity are potential sources of conflict is not supported by the historical record. A dramatic rise in the religious diversity of the country has been accompanied by a steep decline in the sectarian differences between Christians which featured significantly in our history up to the middle of the twentieth century.

More recently, there have been tensions in relations with newer ethnic and religious groups, particularly in the context of concerns about terrorism and security. For the most part, however, different religions in Australia usually combine devotion to their own beliefs and traditions with respect for other faiths, often accompanied with a willingness to establish good relations and some level of co-operation. A shared commitment to the rule of law, to equality under the law, and to applying the law consistently to everyone in our community, are essential elements in maintaining this situation.

Religious freedom is not the problem in situations of tension, but part of the solution. Pope Francis has observed that religious freedom is:

> a fundamental right which shapes the way we interact socially and personally with our neighbours whose religious views differ from our own. The ideal of inter-religious dialogue,
where all men and women, from different religious traditions, can speak to one another without arguing. This is what religious freedom allows.\(^{18}\)

History is of course replete with examples of religion becoming entangled with political power, and the world today provides more examples. The Catholic Church has not been immune to this at different times. In earlier centuries this was sometimes because of feudal and dynastic reasons and assumptions about the role of the church in a specifically Christian society. At the local level in different places, this has sometimes occurred because of issues around political patronage and property.

In other situations the church acquired political power or influence because of the way in which it became a means for a community under the domination of other powers to express and preserve its distinct cultural and national identity — Ireland, Quebec and Poland are three examples. Situations can still arise in the developing world today (as it did in ancient times during the collapse of the Roman empire) when government breaks down, especially during natural disasters or civil war, and bishops or other church leaders have to effectively become civil administrators to ensure that people are helped and protected.

One of the most important safeguards against the inappropriate involvement of religion in politics is the separation of church and state. This tends to be understood today primarily as a principle which protects the state and society against the encroachments of religion. There is an assumption in this that religion is in some way a threat to democratic society that has to be guarded against. In reality, however, this principle was first conceived to protect faith communities from being dominated or controlled by government. The separation of church and state is meant to ensure the independence of both.

We take for granted the freedoms and opportunities of modern, democratic, secular societies today, forgetting how utterly different they are from societies across most of human history. In those societies, religion and political authority were not separated but bound closely together. One of the reasons Christians were persecuted in the Roman empire prior to Constantine was that they refused to worship the Roman gods. Religion was used to legitimise political authority, so refusing to offer sacrifice to the gods not only made Christians impious but a threat to the stability of society.

Separating church and state, religion and politics, has been one of the major currents of Western history, and its origins lie in the efforts of the early church to secure its independence from political rulers in matters of faith, as well as in arranging its own internal affairs. This struggle began with the conversion of Constantine, which put an end to the persecution of Christians but brought with it the Emperor’s intense interest in theological questions and the appointment of bishops. This struggle led in time to the first clear formulation of the separation of “church and empire” as a principle, which was provided not by a thinker of the Enlightenment but by Pope Gelasius I in the fifth century.\(^ {20}\)

A major foundation of the separation of church and state in the West comes from the Gospels, especially from Jesus’ teaching to “render unto Caesar the things that are Caesar’s, and to God the things that are God’s” (Lk. 20: 20-26). More radically still, as Pope Benedict

19. Ibid.
XVI has argued, the universality of Jesus’ teaching broke with the assumptions of his time that religion must be embodied in a particular social order; that a particular faith requires a particular social order as the only legitimate way of arranging life in common\textsuperscript{21}.

As Pope Benedict has observed (with others before him), “the Sermon on the Mount [Mt 5-7] cannot serve as the foundation for a state and a social order. . . . Its message seems to be located on another level.” Ultimately, the consequence of this was that “concrete juridical and social forms and political arrangements [could] no longer be treated as sacred law”. The absence of social and political prescriptions in the teaching of Jesus released the political and social order “from the directly sacred realm, from theocratic legislation”. It allowed different societies to work out their own arrangements for their time and place in the light of his message, because this message is universal and not bound to any particular time or place or people\textsuperscript{22}.

Religions can be tempted by political power, but political power can also be tempted by the authority of religion or the aura of the sacred, which can very easily attach to apparently secular purposes, as the history of the twentieth century shows\textsuperscript{23}. The separation of church and state is one protection against this. The life of faith lived well is another, as Pope Francis reminds us:

Our various religious traditions serve society primarily by the message they proclaim. They call individuals and communities to worship God, the source of all life, liberty and happiness. They remind us of the transcendent dimension of human existence and our irreducible freedom in the face of any claim to absolute power. . . . They call to conversion, reconciliation, concern for the future of society, self-sacrifice in the service of the common good, and compassion for those in need. At the heart of their spiritual mission is the proclamation of the truth and dignity of the human person and all human rights\textsuperscript{24}.

\textsuperscript{22} Ibid. 114 & 118.
\textsuperscript{24} Francis, Philadelphia Address on Religious Liberty.
What do Catholics believe about religious freedom today?25
The Catholic understanding of religious freedom changed significantly with the Second Vatican Council (1962-65). This occurred through the working out of the principles of Catholic social teaching elaborated by Pope Leo XIII in the last decades of the nineteenth century; and through the recovery of foundational Christian understandings about both the appropriate roles of government and the church, and the centrality of freedom to an act of faith26.

Leading up to the Second Vatican Council in 1962, the approach of the Catholic Church to religious freedom was reflected in the work of the Theological Commission which was preparing preliminary documents for the Council. The Commission saw the need for the Council to consider the question of church-state relations.

The Commission took the view (not uncommon among Catholics at that time) that if most citizens of the state were Catholic, the state too had a duty to profess Catholicism. Those few citizens of other faiths were not seen as having the right to profess their religions, although the state might tolerate them for the common good. In countries where the majority were non-Catholic, the church argued that Catholics had the right to be completely free to profess their faith and the church should be free to undertake its mission.

International understanding of religious freedom had developed significantly in the years after the Second World War. In 1948 the World Council of Churches at its first assembly in Amsterdam published a declaration on religious liberty. Declaring that “an essential element in a good international order is freedom of religion”, the WCC specified four rights including: “every person has the right to determine his own faith and creed”; and “every person has the right to express his religious beliefs in worship, teaching and practice, and to proclaim the implications of his beliefs and relationships in a social or political community”.

Four months later the General Assembly of the United Nations approved the United Nations Declaration of Human Rights recognising “the inherent dignity and the equal and inalienable rights of all members of the human family”. Article 18 provided:

   Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Pope John XXIII recognised the need for the church’s approach in this area to develop so as to better respond to new social and political circumstances. A major resource for this task was the social teaching of the church, particularly Pope Leo XIII’s encyclical Rerum novarum (1891), and Pope Pius XI’s encyclical Quadragesimo anno (1931), both of which articulated a compelling defence of the rights of individuals and families against the power of the state and the unregulated economy27.

Drawing on this tradition and developing it further, in 1963 John XXIII outlined the church’s commitment to human rights in his encyclical *Pacem in Terris*, writing that:

> Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.

One of those rights was “that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public”\(^{28}\).

In 1965, Pope Paul VI promulgated *Dignitatis humanae*, the Council’s Declaration on Religious Freedom. The document had gone through six complete redrafts before agreement was reached by the bishops. One of the principal authors of the declaration, Fr John Courtney Murray SJ, saw work on the declaration as an urgent matter for the Council. He was concerned that the Catholic Church was late in bringing its authority to the question in a situation where, despite continuing violations of religious freedom in the world, “the principle itself is accepted by the common consciousness of men and civilised nations”\(^{29}\).

One of the issues confronting the Council was how to acknowledge the right to religious freedom without it being confused with secular ideas of individual freedom and autonomy released from any notion of objective truth; what we would describe today as relativism.

*Dignitatis humanae* addresses this problem by making it clear that “the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself”. As human beings, “that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility”, we have “a moral obligation to seek the truth, especially religious truth”, and once it has been found, to live out our lives “in accord with the demands of truth”\(^{30}\).

Fulfilling this obligation to seek out the truth requires freedom, which means both “immunity from external coercion as well as psychological freedom”. This freedom belongs to everyone, even “those who do not live up to their obligation of seeking the truth and adhering to it”\(^{31}\). It is an obligation which cannot be enforced, because it falls “upon the human conscience”. “As the truth is discovered, it is by a personal assent that men are to adhere to it”\(^{32}\).

It is for all these reasons that the Council could declare that:

> The human person has a right to religious freedom. This freedom means that all persons are to be immune from coercion on the part of individuals or of social groups and of any human power, [in such a way] that no one is to be forced to act in a manner contrary to their own

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31. Ibid.
32. Ibid. §3.
beliefs, whether privately or publicly, whether alone or in association with others, within due limits\(^{33}\).

Because we are social creatures, religious freedom also means the freedom to give external expression to one’s faith, to “share with others in matters religious” and to profess one’s “religion in community”. Governments should take the religious life of its citizens seriously “and show it favour, since the function of government is to make provision for the common welfare”\(^{34}\).

While governments should not use their power to “command or inhibit acts that are religious”\(^{35}\), “due limits” means that those exercising religious freedom have to pay appropriate regard to the common good. The Council acknowledged this repeatedly in \textit{Dignitatis humanae}. Observing and accepting “the just demands of public order” is one of the duties that goes with religious freedom. In maintaining public order, governments can constrain the exercise of freedom of religion to protect the rights of all citizens, to maintain the public peace, and to preserve public morality. In doing so, however, governments must not act in an arbitrary or unfair or partisan manner\(^{36}\).

\textit{Dignitatis humanae} teaches that religious freedom as a right arises not only from respect for the dignity of the person and respect for a person’s freedom, but from the duty that each person has to “seek the truth . . . and to hold fast to it”. However the powerful influence of moral relativism today makes it difficult to understand religious freedom and freedom of conscience as much more than a right to have our own personal passions and commitments “respected”.

The “solution” democratic societies deploy to deal with the diversity of passions and commitments in a modern society, particularly in the matters of religion and conscience, is to treat them as being only subjectively important to the people who hold them. What this means practically is that they have to be confined to the private domain so that they do not intrude into public or professional life. At a time when people are disenchanted, disengaging, and increasingly divided, this is unlikely to be sustainable, for the simple reason that it trivialises what is most important to people.

Reflecting on the nature of life, our responsibilities to others, and what helps to make for a good society can bring people to inconvenient conclusions. Relativising and privatising these conclusions effectively excludes them from public discussion as if they were simply irrational or bigoted. This helps to impose an “official” view about certain subjects on public life and our life in common, and makes for intolerance of different perspectives, rather than mutual respect. As political developments in recent years have shown, people are increasingly unwilling to accept official views on many things.

Counter-intuitively perhaps, religious freedom actually encourages both a sense of common purpose and a spirit of friendship, because it reminds us that we are united in a search for truth, even if the conclusions we reach are radically opposed to each other. Living together in this shared search requires listening, engagement and being able to disagree without hatred, not silencing and exclusion. As we speak to each other about our different convictions, we

33. Ibid. §2.
34. Ibid. §3.
35. Ibid.
36. Ibid. §7.
need to keep in mind that “the truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power”37. Imposing “truth” on other people calls its claim to be the truth into serious doubt.

37. Ibid. §1.
What does the law in Australia say about religious freedom? A year after the Vatican Council concluded, the United Nations finalised the *International Covenant on Civil and Political Rights* (ICCPR), which brings greater specificity to the right of freedom of religion than in the original 1948 *United Nations Declaration of Human Rights*. Australia is a signatory to this convention and it plays an important part in human rights law in our country.

It is a reflection of how cherished the right to religious freedom is in international law that under the Covenant it cannot be suspended or limited in times of national emergency. Most rights under the ICCPR — including rights we usually think of as essential to a democracy such as freedom of speech, freedom of association, equality before the law and the right to privacy — can be limited (or “derogated”) to the extent strictly required by the demands of the situation “in time of public emergency which threatens the life of the nation”. This is not the case for freedom of religion. Along with rights such as the right to life, protections against torture and slavery, and the right to be recognised as a person before the law, it is “non-derogable”.

Australia signed the ICCPR in 1972, which came into force when it was formally adopted by the international community in 1976. The convention began to play a role in Australian law in 1980, but our commitment to religious freedom has a much longer history. It was a subject of debate and discussion in the Constitutional Conventions which led to Federation and an Australian Constitution. Speaking to the 1897 Constitutional Convention, the future Prime Minister Edmund Barton expressed the prevailing view about the separation of church and state, and freedom of religion:

> The whole mode of government, the whole province of the State, is secular . . . The whole duty is to render unto Caesar the things that are Caesar’s, and unto God the things that are God’s. That is the line of division maintained in every State in which there is not a predominant church government which dictates to all civil institutions.

It is instructive that the delegates to the Convention did not think it was inconsistent with the separation of church and state to include an acknowledgement of God in the Constitution itself. Thanks to the efforts of another Convention delegate, Patrick McMahon Glynn, the Australian Constitution, as approved by the Australian people and enacted by the Imperial

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38. Some of the text in this section has been taken or adapted from Fr Frank Brennan SJ, “Conscience and Religion, Freedom and Respect, Due Process and Contemporary Politics”, (paper presented at the “Religious Freedom in an Age of Equality” conference, Melbourne, 23 September 2016).
39. Article 18 of the *International Covenant on Civil and Political Rights* provides for religious freedom as follows:
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
40. *International Covenant on Civil and Political Rights*, article 4.
Parliament, set out in its preamble that the people were “humbly relying upon the blessing of Almighty God” in uniting “in one indissoluble Federal Commonwealth under the Crown”.

The Australian Constitution also makes a specific provision for religious freedom in section 116:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

This provision echoes some of the language of the First Amendment of the Constitution of the United States, but it has been interpreted and applied much less expansively, reflecting the different histories of the two countries and their different approaches to constitutional law.

Section 116 includes four prohibitions, but those prohibitions apply to the Commonwealth and not to the States. The Commonwealth is prohibited from making laws which interfere with freedom of religion, but that prohibition might not extend to all other Commonwealth activities. The constitutional limitation on Commonwealth legislative power relates to the “establishment”, “observance”, “free exercise” and any “religious test”. Even though the constitutional guarantee limits the power of the Commonwealth in this area, it does not explicitly create a personal or individual right to religious freedom.

Another important question concerns what constitutes a religion under Australian law. The High Court of Australia has given a broad reading to the concept of religion. In 1983, ruling on the application of the Church of the New Faith (the Church of Scientology) for charitable tax exemptions on the basis that it qualified as a religion, High Court judges identified various characteristics for recognising a set of beliefs and practices as a religion.

Two of the justices (Acting Chief Justice Mason and Justice Brennan) highlighted two criteria; “first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief”, emphasising that “canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion”.

Two other justices (Justices Wilson and Deane) set out five elements which define a religion. Firstly, a set of ideas and practices is unlikely to be a religion unless it “involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses”. Following from this, it must: “relate to man’s nature and place in the universe and his relation to things supernatural”; and be “accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance”. The final elements are that “however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups”, and “that the adherents themselves see the collection of ideas and/or practices as constituting a religion”.

42. *Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* (1983) CLR 120 (‘Scientology Case’).
43. Ibid. 136.
44. Ibid. 174.
The Australian Law Reform Commission (ALRC) thinks these definitions are wide enough to apply to most religions, “but may raise questions about their application to, for example, Buddhism or indigenous religion or spirituality”\(^{45}\).

The law’s attempts to define the major features of a religion underscore that religious freedom is not a claim for special privilege by a particular religious community such as the Catholic Church. It is a right which belongs to everyone. This means it must be accorded to all other faiths and religious organisations, no matter how small they are or how strange or novel their beliefs and practices might seem to be to others.

Respecting freedom of religion and belief does not mean treating every conviction as equally valid, or that every exercise or manifestation or belief is equally permitted. The ALRC notes the important distinction between the right to adopt a religion or system of belief as one chooses for oneself, which is unlimited, and the exercise or manifestation of that religion or belief, which can be limited to protect public safety and order or the rights of others:

> Clearly, the right to manifest religion or belief ‘does not always guarantee the right to behave in public in a manner governed by that belief’. That is, once a belief is ‘manifested (that is, implemented) in action, it leaves the sphere of absolute protection, because the manifestation of a religious belief may have an impact on others’\(^{46}\).

Restrictions on the exercise of religious freedom must be made on a principled basis that applies to all religions, in particular the responsibility to protect the fundamental rights and freedoms of other people. Whenever people might be prepared to countenance restrictions on the religious practices of small religious groups or major religious traditions, it should be on the basis that the same principles apply to everybody.

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Where do challenges to religious freedom issues in Australia come from?

In many places in the world today religious freedom is a matter of life and death. At a time of rising religious persecution and conflict, which has seen people killed and enslaved because of their faith, houses of worship attacked and destroyed, different communities targeted by mob violence or terrorism, and a massive increase in the number of refugees and displaced people, Australia remains a place of immense safety and freedom for members of all religious traditions.

Whatever challenges confront religious freedom in Australia, persecution is not among them. There is no denial of freedom to worship and people are free to choose or change their religion, or to have no religion at all. Our laws do not protect religious beliefs or communities from scrutiny and debate, or punish people solely because they criticise them (although the operation of anti-vilification laws in some circumstances could change this). All of this is good, and it is important to keep it in mind when considering the very different sorts of challenges that religious freedom faces in a democratic society.

Nonetheless, there are issues which pose serious challenges for religious communities in Australia. Some of the most important to date have arisen in areas such as relationships and sexuality, and respect for life at its beginning and end in healthcare. In other Western countries religious freedom issues have also arisen in the area of social justice, when laws targeting vulnerable groups such as illegal immigrants have attempted to prohibit religious groups from providing them with assistance, including sacramental and pastoral support. So far, this is not the case in Australia.

Questions concerning relationships and sexuality, beginning of life issues such as abortion and particular reproductive technologies, and end of life issues such as euthanasia and assisted suicide, are quite distinct from each other. They are complex and multi-faceted and engage many deeply felt concerns on all sides. A common thread running through each issue however, is a powerful idea of autonomy which has its origins in the commitment of democratic societies to the dignity of the person and respect for each individual’s freedom.

Across these quite different issues, the commitment to autonomy seems to work itself out in a similar way. It leads to an insistence that certain preferred positions on these questions are the only ones available to people who are genuinely committed to justice and fairness. Those who do not agree with these preferred positions because they are motivated by different convictions about justice and fairness are characterised as discriminatory, bigoted or judgemental, or as wishing to impose their own values on other people.

One of the implications of this approach is that allowing people to act on such different convictions is treated as a threat to the autonomy of others. This is seen as something which cannot be tolerated in a decent society. It is also asserted that permitting some people to withhold endorsement of some preferred position and to act on this in their public or professional activity “disrespects” or disparages the choices of those with whom they disagree.

48. For an analysis of this phenomenon and the intolerance it generates towards religious faith, particularly the Christian faith, see Mary Eberstadt, It’s Dangerous to Believe: Religious Freedom and its Enemies (Harper, New York: 2016).
Forcing debate about these important issues into such an exclusionary or restrictive framework makes conflict inevitable, because it refuses to allow room to disagree. One example is the issue of legal recognition of same-sex relationships, whether through anti-discrimination and equality laws, bills of rights, civil unions or same-sex marriage. This has been accompanied in different Western countries by a strong tendency to mandate public endorsement of new concepts of marriage, family and sexuality, and punish those who are unable to comply.

Examples from overseas include: closing down church-run adoption and fostering services which, because of their beliefs about marriage, family and the best interests of the child, are unable to place children with same-sex couples\(^{49}\); increasing pressure to restrict what religious schools can teach about marriage, family, and sexuality if it runs counter to the new understanding\(^{50}\); requiring civil marriage celebrants and registrars to assist at same-sex marriages and civil unions despite their religious or conscientious objections\(^{51}\); and penalising people who do not believe in same-sex marriage, even to the point of forcing them out of their jobs or businesses\(^{52}\).

Healthcare is another area where, to protect autonomy as a supreme value, dissent on some controversial issues is increasingly not tolerated. The Victorian Abortion Law Reform Act provides an example of the restrictions placed on health practitioners’ right to conscientious objection. It requires practitioners with a conscientious objection (which may or may not be a religious objection) to assist women seeking an abortion by referring them to another practitioner who is willing to perform this procedure\(^ {53}\). In effect, this leaves many health practitioners in the situation where following their conscience can breach the law.

Medical professionals should be allowed to act according to their deeply held convictions and beliefs, consistent with the right to conscientious objection protected by the United Nations Declaration of Human Rights and in the ICCPR, and recognised in international and national codes of professional ethics\(^ {54}\). The law in Australia should uphold the right of a doctor to

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49. See for example, United States Conference of Catholic Bishops, “Discrimination against Catholic adoption services”, USCCB Fact Sheet (2017); “Last Catholic adoption agency faces closure after Charity Commission ruling”, The Telegraph, 19 August 2010; and more generally, Eberstadt, It’s Dangerous to Believe, Chapter 5.
50. See for example, “Compulsory sex education: Human rights campaigners criticise government over faith school ‘get-out clause’”, The Independent, 2 March 2017. A recent example from Australia is the anti-discrimination complaint brought against Archbishop Julian Porteous, the Catholic Archbishop of Hobart, for distributing the Australian Catholic Bishops Conference pastoral letter on the same-sex marriage debate to Catholic schools, on the grounds that its teaching about marriage and sexuality was offensive and demeaning. See “Catholic bishops called to answer in anti-discrimination test case”, The Australian, 13 November 2015.
51. See for example the case of Lillian Ladele, discussed (with other matters which formed an appeal to the European Court of Human Rights in 2012) in “Christian discrimination claims heard by Europe court”, BBC News, 15 January 2013; and “Lillian Ladele is the real loser in Christian discrimination rulings”, The Guardian, 17 January 2013. For a Canadian example, see “Commissioner who refused to marry same-sex couple loses appeal”, CBC News, 23 July 2009; and “Same-sex nuptials can't be refused on religious grounds, Saskatchewan court rules”, The Globe and Mail, 10 January 2011.
52. A number of examples of workers being demoted or sacked for expressing their support for traditional marriage are provided in Coalition for Marriage (UK), “Punished For Believing In Traditional Marriage: 30 Cases”, 9 April 2016. See also the examples summarised and referenced in Eberstadt, It’s Dangerous to Believe, xii-xiv.
54. Article 18 of the United Nations Declaration of Human Rights (1948) provides for freedom of conscience (along with freedom of thought and religion) as follows:
conscientiously object to carrying out or referring for an abortion without any personal or professional disadvantage.

The sorts of considerations about freedom of conscience and religion that apply to abortion also apply to the legalisation of euthanasia or assisted suicide. Doctors and other healthcare professionals should not be forced to participate in this against their conscience and neither should they be expected to provide a referral to another medical practitioner, either for the administration of a lethal injection or for a prescription for self-administered lethal medication, should they have a conscientious objection to participating in any way in such a procedure.\textsuperscript{55}

The rights of religious communities which provide aged care and end-of-life care must also be respected. In some countries, Christian aged care facilities have been penalised by courts and governments for refusing to allow assisted suicide or euthanasia to be performed on their premises.\textsuperscript{56} Individuals with conscientious or religious objections to abortion have been ordered to assist in the procedure, and threatened with being excluded from studying for or practising their professions in healthcare if they refuse to comply.\textsuperscript{57}

The growing intolerance towards the right to conscientious objection in healthcare is reflected in a statement developed by a group of influential bioethicists meeting at the Brocher Foundation in Switzerland in June 2016. The statement describes conscientious objection to abortion or “medical assistance in dying” as “indefensible”. It calls for conscientious objectors to be examined before tribunals for sincerity and “reasonability”, and “to compensate society and the health system for their failure to fulfil their professional obligations”. It also calls for medical students to learn “how to perform basic medical procedures they consider to be morally wrong”, because they should be required to perform these procedures in “emergency situations”.\textsuperscript{58}

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Article 18 of the \textit{International Covenant on Civil and Political Rights} (cited at footnote 3\textsuperscript{9} above) makes a similar provision. Section 4.2.3 of the Australian Medical Association’s Code of Ethics makes provision for freedom of conscience as follows:

- Recognise your right to refuse to carry out services which you consider to be professionally unethical, against your moral convictions, imposed on you for either administrative reasons or for financial gain or which you consider are not in the best interests of the patient.

It also requires doctors to inform patients of any conscientious objection they may have (Section 2.1.12).\textsuperscript{55}

- Section 7 of Victoria’s \textit{Voluntary Assisted Dying Act 2017} recognises the right of a “registered health practitioner” (a term which includes doctors, nurses, pharmacists and psychologists) not to provide or facilitate assisted suicide.\textsuperscript{56}

- See for example, “Salvation Army ordered to permit assisted suicide”, SW1 (Swiss Broadcasting Service), 6 October 2016; and “Diest rest home must pay damages after refusing euthanasia”, \textit{Flanders Today}, 1 July 2016.

For more information on both cases see: “Swiss Christian nursing home must allow assisted suicide”, \textit{The Catholic Herald}, 26 October 2016.

- See for example, Swedish Human Rights Lawyers, “Swedish Midwives file complaints to the European Court of Human Rights”, 14 June 2017; “Catholic midwives must supervise abortions, Supreme Court decides”, \textit{The Telegraph}, 17 December 2014; and “Pro-life health professionals in conflict between conscience and career”, \textit{Deseret News}, 17 March 2012.

This example highlights an important feature common to all the issues discussed in this section: much of the energy driving many of the challenges to religious freedom and conscientious objection comes from within the community. Historically, human rights were seen as a protection first and foremost against the power of the state. Today, while significant challenges arise from laws and government regulations and policies, a hardness of feeling against these rights is also clearly apparent among various non-government organisations, some community and activist groups, and the attitudes expressed over social media. When these different voices come together to advance a particular issue or to discourage dissenting voices, it is not unusual for those who disagree to experience something which feels like intimidation.

This situation provides another reason for being clear about what religious freedom is and why it is important. Religious freedom and conscientious objection protect people from being compelled to endorse or co-operate with activities which they consider, as a matter of conviction, to be wrong. Conscientious objection in particular can be the last protection of very vulnerable people. In other times and places these rights have allowed people to speak out against injustice and evil when no one else will. Restricting these rights unfairly is not simply a matter of restricting the freedom of religious organisations or isolated individuals. It also deprives society of a voice of conscience.
Is religious freedom discriminatory?\textsuperscript{59}

A particular area of concern for religious freedom in Australia is the interpretation and impact of anti-discrimination laws. Most of these laws at state and federal level include “exemptions” or “exceptions” for religious communities (and other communities for various purposes) so that they can administer their own affairs and run their schools and services in ways which are consistent with their beliefs. In this way, exemptions are a form of protection for religious freedom, although the word “exemption” tends to suggest a special privilege which exempts a religious community from the laws which apply to everyone else. Acknowledging this problem, the Australian Law Reform Commission has suggested giving further consideration “to whether freedom of religion should be protected through a general limitations clause rather than exemptions”\textsuperscript{60}.

A particular focus concerns whether, in employing people, religious bodies are entitled to exercise a preference for those who are actively committed to their mission, and if so, how far this preference can extend. In the setting of a religious school, a legislative approach which focuses on the “inherent requirements” of a role could significantly restrict the circumstances in which a religious employer could require staff to support the mission of the service. It might be argued that the principal and the religion teachers need to support the mission as an inherent requirement of their role, but not support staff or teachers in other subject areas in the school.

In practice today, the concern here is not so much about being able to employ only those who share a particular faith in a religious agency or service, but having the freedom to ensure that a least a critical mass among the staff share this commitment and witness to it in their work and lives. There is also strong concern that an “inherent requirement test” in anti-discrimination laws could force faith-based schools and organisations to hire staff who do not support — or who even oppose — the religious community’s beliefs and mission.

As Cardinal Pell has pointed out, “church agencies and schools are not exempt from anti-discrimination law”. At the same time, “parliaments are obliged by international human rights conventions like the ICCPR to provide protection of religious freedom in any laws which would unfairly restrict the right of religious communities to operate their schools and services in accord with their beliefs and teachings”. The argument is about treating religious groups like others in the community:

\begin{quote}
Should the Greens have the right to prefer to employ people who believe in climate change, or should they be forced to employ sceptics? Should Amnesty International have the right to prefer members who are committed to human rights, or should they be forced to accept those who admire dictatorships? Both cases involve discrimination and limiting the freedoms of others, and without it neither organisation would be able to maintain their identity or do their job effectively\textsuperscript{61}.
\end{quote}

In their submission to a federal government inquiry into consolidating anti-discrimination law in 2012, Professors Patrick Parkinson and Nicholas Aroney observed that:

\textsuperscript{59} Some of the text in this section has been taken or adapted from Fr Frank Brennan SJ, “Conscience and Religion, Freedom and Respect, Due Process and Contemporary Politics”, (paper presented at the “Religious Freedom in an Age of Equality” conference, Melbourne, 23 September 2016).

\textsuperscript{60} ALRC, Traditional Rights and Freedoms, 159.

\textsuperscript{61} Cf. Cardinal George Pell, “Protecting our Freedoms”, Sunday Telegraph, 6 March 2011.
Great care needs to be taken to ensure that a focus on the first-mentioned right (freedom from discrimination) does not diminish the others (e.g. freedom of religion, association and cultural expression and practice). This can readily happen, for example, if freedom of religion is respected only grudgingly and at the margins of anti-discrimination law as a concessionary ‘exception’ to general prohibitions on discrimination. It can also happen if inadequate attention is paid to freedom of association and the rights of groups to celebrate and practise their faith and culture together.62

These dangers are real. Some advocates for reform of anti-discrimination laws have a tendency to place a very high value on “non-discrimination” and to concede “exceptions” based upon freedom of religion, association or cultural expression only with great reluctance, if at all. Although they sometimes recognise that there is a need to give due weight to all human rights, it is generally not acknowledged that posing the question as one of identifying exceptions to the principle of non-discrimination prejudices the inquiry in its favour. The practical result is that the rights to freedom of religion, association and culture, are treated as rights of lesser importance.

Clear protections for religious freedom — described as protections, rather than exemptions which have to be proven to apply — are required so that faith communities can witness to their faith with integrity. At the same time, Catholic institutions must also be faithful to their commitment to respecting the dignity and freedom of every person. For example, it is not necessarily hostility which might lead some people to conclude that Catholic schools would be contradicting their own beliefs if people involved in same-sex relationships were excluded from employment in key positions, while heterosexual people in relationships which also do not reflect Catholic teaching still qualified. The same principles should apply to everyone.

When these issues arise within Catholic agencies and services, the emphasis should always be on seeking a pastoral resolution wherever possible, which respects the rights and dignity of all concerned. This approach should be applied more generally in the community, resetting the defaults from suspicion to a spirit of generosity, friendship and trust which accepts differences and does not require people on either side to compromise their deeply held convictions.

In Dignitatis humanae, the Vatican Council stated: “government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens”63. As John Courtney Murray commented in his published notes to the Declaration, “this statement about equality before the law as an element of the common welfare has an accent of newness in official Catholic statements. It is important for the construction of the full argument of religious freedom”64.

63. Dignitatis humanae §6.
Ten Principles of Religious Freedom

The reflections on the different aspects of freedom of religion and belief which have been offered in this paper can be set out as a series of principles. They start from the fact that religious belief is a considered and deeply-held conviction which powerfully informs the way believers live, the actions they take, and the shape of communities. It is not just another form of subjective or personal opinion significant only for the individual who holds it. Religious freedom arises from the universal human search for the truth about our nature, the world we live in, and how we should live.

1. Freedom of religion and belief is a universal human right.
Religious freedom belongs to every person, because most people look for answers to questions of meaning and value in something greater than themselves. Many religious people look to God, but non-religious people also draw on ultimate sources of meaning which are not of their making, such as ideas about human dignity, justice, freedom, equality, and the environment. In one sense, questions of meaning and value are religious questions even when our answers are atheism or agnosticism.

2. Religious freedom is based on respect for individual freedom.
“The act of faith is of its very nature a free act” (Dignitatis humanae §10). Religious freedom is the right to believe or not to believe, to adopt, reject or change beliefs as we decide for ourselves. It protects freedom by protecting people from having the beliefs of others — religious, secular or political — imposed on them. Catholic beliefs too are not to be imposed on anyone, but proposed for people to accept or reject as they decide freely for themselves.

Religious freedom upholds the intrinsic dignity of people who think, believe, worship and live differently. It protects them against pressure to hide their beliefs, or from being forced to censor themselves or limit their participation in society to avoid bullying or intimidation. It defends them from discrimination, exclusion or punishment because of their beliefs. Religious freedom is especially important in protecting people whose beliefs or ideas others find strange, ridiculous or even “offensive”, and particularly communities which may be hated and feared because of their beliefs.

4. Religious freedom should be exercised in solidarity with other people.
Like many rights, religious freedom is not an absolute. It is limited by respect for both the rights of others and the common good. Because our sense of autonomy is often stronger than our sense of the common good, agreeing on the limits of rights can be fraught. Tensions between rights should be resolved wherever possible in a spirit of mutual respect, not suspicion, and with generosity towards beliefs and ways of life we do not share or even oppose. Restrictions on religious freedom should be made only on the basis of principles which apply to everyone.

5. Religious freedom is more than freedom of worship or a right to tolerance.
The persecution of people in different parts of the world because of their religious beliefs shows how important basic protections such as freedom to worship and the right to be tolerated are, but religious freedom does not end there. It is a much larger freedom which makes it possible for individuals and faith communities to witness to their beliefs with integrity and as full members of their society, not only in worship but in professional life, public life and service to the wider community.
6. Religious freedom allows individuals to practise their religion freely and publicly as citizens, and not just in private life.
The claim that religious people should quarantine their beliefs from public debate and even from the way they carry out their profession or occupation is unfair and discriminatory, because it allows everyone except religious people to act on their beliefs. No human being lives in neatly divided public and private worlds. Beliefs about meaning and truth, right and wrong — religious and non-religious alike — are conclusions about what is real and important in life. For everyone, they serve as a basis for their action in the world.

7. Religious freedom means people are entitled to live out their beliefs in the way they serve the rest of the community.
Coming together around a common purpose and shared beliefs to help those in need is one of the main ways in which religious communities encourage participation in society and work to build up a sense of solidarity. Religious freedom protects not only the right of people to live out their beliefs in co-operation with others who share their faith, but also the right to establish and operate services for the wider community that are faithful to the beliefs which inspired them, and which are reflected in their work.

8. Religious freedom is not a claim for special treatment.
It is a basic fairness for people to be able to put their beliefs into practice and not to be forced to act against them. Religious freedom protects this basic fairness. It is not a claim for a special privilege or an exemption for religious communities from laws which apply to everyone else, and describing it in these terms is misleading. Religious freedom is a fundamental right which ensures there is a space for religious communities to live out their beliefs, while also respecting the dignity and freedom of other people.

9. Religious freedom reinforces other fundamental rights.
Religious freedom is part of a larger whole. It does not sit in isolation but is an integrated and essential part of human rights. Because these rights protect the different things we need to make a full life possible, they have to go together and they should not be placed in opposition to each other. Freedom of religion both depends on respect for rights such as freedom of conscience, freedom of thought, freedom of expression, and freedom of assembly, and supports and reinforces them in turn. Placing religious freedom in doubt places these other rights in doubt as well.

10. Religious freedom makes democratic societies stronger.
Religious freedom protects not only the right of individuals and religious communities to fully participate in the life of a democratic society, but also the contribution they make to building it up. Because religious freedom and related protections such as conscientious objection protect people from being compelled to co-operate with activities which they hold, as a matter of conviction, to be wrong, they also help to encourage people to speak out against injustice and evil when no one else will. Good societies need these voices.
Conclusion
Speaking about religious freedom in 2015, Pope Francis highlighted how treasuring their traditions in a spirit which extends justice and mercy to all is part of the contribution religious communities can make to fostering hope and friendship in the societies to which they belong. Hope and friendship sometimes seem to be in short supply today, both in public debate and our life in common. This is another reason why a deeper appreciation of religious freedom is needed, and why the efforts of some to erode it must be resisted.

In a world where various forms of modern tyranny seek to suppress religious freedom, or . . . try to reduce it to a subculture without right to a voice in the public square, or to use religion as a pretext for hatred and brutality, it is imperative that the followers of the various religious traditions join their voices in calling for peace, tolerance and respect for the dignity and the rights of others65.

Working for “peace, tolerance and respect for the dignity and the rights of others” might be described as the vocation of religious freedom today. Pluralist democratic societies like Australia need people who live out this vocation. A renewed commitment to religious freedom, approached generously, will help to ensure that this remains possible.

65. Francis, Philadelphia Address on Religious Liberty.
The PM Glynn Institute
The PM Glynn Institute was established by Australian Catholic University in 2016 to provide the Catholic community with a standing capacity to analyse public policy issues of concern not only to the Catholic Church and its services, but to the wider Australian community as well.

The PM Glynn Institute is named after Patrick McMahon Glynn (1855-1931). One of the founders of the Commonwealth of Australia, he contributed to public life as a barrister, a writer, and parliamentarian who served as a minister in three Federal governments. The Institute’s work is shaped by the proposition that understanding the contemporary world also means considering religion and the foundations of faith as important and enduring features of the social and political landscape, both in Australia and globally.

Its role is to generate new approaches and new thinking on public policy issues, and to develop well-supported and practical proposals to address them. Key areas of focus are religion and democracy, the future of human rights, and hope and confidence in Australian society.

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