

Engaging the Moral Issues of our Moment
Reflection 7: Exercising our Religious Conscience and Freedom

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The Australian Constitution contains but a small section on religious freedom. It is found in Section 116 of the charter: “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.” In response to the various issues that are before our consideration – whether it be the proposed introduction of same-sex marriage, or the implementation of assisted voluntary dying, or the removal of all legal privilege for clergy in regards to mandatory reporting of child sexual abuse, or indeed even in regard to the further legalization of abortion – the question that is increasingly raised is whether the Constitution sufficiently protects the rights of people in Australian society to act always in a way that is in accord with their religious conscience.

Indeed, one of the common objections we hear in respect to a change in the Marriage Act concerns the implications of such a change for religious freedom. The questions presented are, Will Churches still have the right to teach and to promote their own perspective on such issues as marriage or gender or life? Or will they be forced to promote also alternative perspectives lest they infringe principles and legislation related to discrimination? Will a Catholic institution be forced by anti-discrimination legislation to accept for employment or for leadership someone in a legally recognized same-sex marriage, for example? Consequently, we hear the argument for a greater consideration of religious rights in balance to the other rights that are currently being sought.

These questions are quite complex. They revolve around two primary issues: firstly, the issue of freedom of religion; and secondly, the freedom of belief. Put simply freedom of religion, according to the United Nations Universal Declaration on Human Rights, is the principle that an individual or community, in public or private, has the right to manifest religion or belief in teaching, practice, worship, and observance. It also includes the freedom to change one's religion or belief. Freedom of belief, however, is different. It allows the right to believe what a person, group or religion wishes, but it does not necessarily allow the right to practice the religion or belief openly and outwardly in a public manner.

Given that the current debate seems to present more about freedom of religion, rather than about freedom of belief, let us stay initially, at least, with this first consideration. In presenting this reflection, however, I want to record my personal limitation in respect to the topic. I am not a social or political philosopher, nor an ethicist. Further, I am also acutely aware that the matter under investigation is taking us largely into uncharted territory where the solutions are not necessarily immediately evident. As a society, we are in a new landscape marked by a competition of rights, and the contours of this terrain have not been fully traversed by any of us. Further, from its previous historical vantage as a parallel system of jurisprudence and law, the Church is now finding its social framework and internal governance and processes increasingly under scrutiny, and more and more brought to accountability to systems of law external to itself. The institution of the Church has often regarded itself as accountable only to its own internal principles. We know the destruction that can occur when ecclesiastical law is proposed as a substitute to civil law. At the same time, ecclesiastical law has its own specificity and requirements in the life of the private association of citizens, which the Church is in civil terms, in a democratic and pluralist society. Therefore, the correlation of civil law and ecclesiastical law is a “cutting edge” consideration – particularly in Australia today. We are just at the very edge of the work that is required to achieve an open and transparent correlation between the civil and the ecclesiastical.

For these reasons, I need to reserve my own right to change and develop the reflection that follows as the issues are negotiated through experience. I cannot present definitive answers to the questions about religious freedom. It will be a far more judicious approach for me to seek simply to identify, and only in some small way to engage, areas in which much detailed conversation and public discussion will be required going forward.

At the foundation of the exercise of freedom of religion is the place of religious conscience.¹ As the document on the Church in the Modern World, *Gaudium et Spes*, of Vatican II states,

Deep within us we discover a law which we have not laid upon ourselves but which we must obey. Its voice ever calling us to love and to do what is good and to avoid evil, sounds our hearts at the right moment . . . For we have in our hearts a law inscribed by God . . . Conscience is a person's most secret core and sanctuary. There we are alone with God whose voice echoes in our depths. (n. 16)

In our Catholic understanding, conscience must be formed. Conscience is not a feeling. Conscience is not what I *feel* to be right or true. Conscience rather is an informed, and measured, personal conclusion about the rightness or otherwise of something that emerges only through a process of accountability to something other than myself. As the moral theologian, Gerald Gleeson indicates, conscience, therefore, is not a 'private' matter. To form our conscience genuinely we must pitch our own limited perspective on something before a greater, collective wisdom. There can be no authentic conscience without this dialogue between myself and a whole community of interpretation and reflection. For this reason, we read in the Catechism of the Catholic Church,

In the formation of conscience, the Word of God is the light for our path; we must assimilate it in faith and prayer and put it into practice. We must also examine our conscience before the Lord's Cross. We are assisted by the gifts of the Holy Spirit, aided by the witness or advice of others and guided by the authoritative teaching of the Church. (n. 1785)

I think we see this lived out particularly in the example of the one whom I like to consider the 'apostle of conscience,' St. Thomas More. Thomas More was the 16th century Chancellor of England under Henry VIII. Gregarious and avuncular by nature, More loved entertaining guests at table at which the corruption of the papacy at the time often become the subject of merriment. More knew the corruption of Rome. And yet, for Rome he died. He felt one way; and acted another. With great inner turmoil, he placed his own opinions before something larger than his own subjectivity, with the outcome that in conscience he identified he could act only one way, yes even at the price of his own life. Conscience is not the triumph of subjectivity over objectivity, but the child of that tortuous dialogue between subjectivity and objectivity.

As Gleeson rightly implies, this dialogue is going to be one that each of us is drawn increasingly in the pluralist society in which we live and where there are so many competing voices claiming to tell us what to do. The time in which we live is historical because of the various influences that have shaped modern consciousness, as we have outlined in earlier reflections, and because of the sociological shift that is occurring through our moment in history. We are not living in a theocracy where the religious perspective has dominance, either explicitly or implicitly. We are now exercising our Christian lives in a truly secular, pluralist society. Therefore, our challenge is to negotiate the co-existence of our religious and Catholic perspective alongside others, some of which may eventually become enshrined in law.

Let us explore this challenge of co-existence from several angles.

¹ In what follows on the topic of conscience, I am indebted to the summary of Rev Professor Gerald Gleeson, "Is a Catholic Free to Follow their Conscience?" Adult Faith Formation Series, Catholic Diocese of Broken Bay, 2012.

From the perspective of civil law, the Church is a private association subject to the law of the land. But what happens when the public law of the land and the internal law of the private association conflict? We may well see such a conflict in legislative responses to the recommendation of the Royal Commission into Institutional Responses to Child Sex Abuse that remove the legal privilege of clergy in respect to mandatory reporting of child abuse, so that the law no longer recognizes the inviolable seal of the Sacrament of Penance and Reconciliation. Thus, the rights of a religious community, as a private association, to exercise its life according to its values are counterpoised against legislation designed for the protection of children. In the proposal for the introduction of same sex marriage we may see the rights of a religious community to promote and to exercise its own view of marriage counterpoised against the rights of people not to experience discrimination. In the move to legalize voluntary assisted dying, the rights of a religious community not to act in a way that is antithetical to its principles may conflict with the right of a citizen to access what is legally available to them. This competition of rights is further accentuated by the insertion of the private association of the Church into the provision of education, health and social services for which in large part it is funded by public money.

To further complicate the issue, the question must also be asked as to what constitutes legitimate religious practice? Is a practice 'religious' simply because it attracts that designation? And therefore, is the right to that practice absolute simply because of its designation? One thinks, for example, of the practices of genital mutilation or child marriage which can be promoted under the guise of religious principles. Should those practices be maintained with rights? We would not think so. Something cannot be religious, therefore, simply because a private association declares it such. Defining something as genuinely religious, and worthy of legal protection, is therefore a vexed question, though a necessary one. Perhaps one way of thinking through the issue is to propose that only those practices which can be demonstrated to be universally inserted into the life of an entire religious tradition are those that should attract legal protection. If, however, such protection cannot be granted by the law of the land for such identified practices, then in the concrete circumstances of a conflict of rights, personal religious conscience would require deliberate engagement. And such may be what will be required by Catholic clergy if their long held legal privilege associated with the Confessional is removed by legislation. The inevitable outcome is the possibility of their civil disobedience.

More generally, we can insist, according to the principles of religious freedom, that an institution clearly established for religious purposes, and which formally bears the name of a religious tradition, has the right to promote its religious values and practices to those who freely choose to associate with it. This should be irrespective of its sources of funding, an issue which needs to be considered as its own discrete question. For the protection of religious freedom there should be a legitimate expectation that all who are drawn formally into the life of a religious community, either by free personal choice or by freely chosen professional engagement, will not publicly conflict with its internal religious values and practices. A religious tradition should have the right to insist that those who publicly represent its institutions have values that reflect what the tradition believes and practices. These rights, too, should enjoy the protection of law.

It is, however, not reasonable that, in the exercise of its life externally in society, a religious association discriminate on ethnicity, religion, sexual identity or any other status. It would be wrong, both civilly and according to the Gospel itself, for a Catholic hospital, for example, to exclude people from its care because of their ethnicity, culture, religions, sexual identity or moral status.

Though these principles may be relatively clear for formally constituted associations of people, such as an organized Church and its public identified institutions, the difficulty arises regarding the exercise of *individual* religious belief in a pluralist, secular society. Though every citizen has the right to their

religious beliefs, may those beliefs be exercised in a discriminatory way towards others? Even though the actual circumstances of the case are often used out of context, this is the question at the heart of the famous story of the Northern Ireland baker who refused to make a cake for a same-sex couple, and was prosecuted for discrimination. This is much more difficult to answer for it raises the inter-relationship between freedom of belief and freedom of religion with which we began the reflection. Personally, I admit I require much further examination of this issue. It seems to me, initially, that it is very difficult in a pluralist society to sanction legally the exclusion of service of others because of their identity or morality, unless their intention was criminal in nature. We don't currently have this right by law currently, and if we were to be allowed by law to do this in the future I fear that we would be setting up a most perilous social system. Logically, of course, people would then have the right to exclude us from their professional service because of our religious belief, and the right to exclude us from their professional engagement precisely because we are Catholic. Would this be what we want for ourselves? I think the result of being able to legally sanction who one could include or exclude in the conduct of one's secular business, even though one's profession may be motivated by personal religious belief, could only be the most dangerous form of sectarianism through which our society would spiral into fragmented ghettos.

The discussion for what contributes best to social cohesion in a secular, pluralist society will, perhaps, be focused, on the one hand, exploring how to maintain the right to religious belief in such a way as not to be discriminatory of others, and, on the other hand, how to promote religious freedom which, essentially, is a right to free association. It is in this public conversation, and in our willingness to be engaged in it, that our future resides not only as a society, but yes, even as a religious people seeking to live out the life of the Gospel in an alien land.

This now brings to conclusion my series of seven reflections on engaging the moral issues of our moment in history. Our times are challenging. But they are also full of possibility. They must be if we truly believe in the power of the Spirit of God. We live in a time of transition from one epoch to another. The Spirit calls us to be those who remember, fully remember, those who savour the memory of Christ Jesus, the memory of the rich tradition which is ours, the lived experience of 2000 years of experience of this person Jesus of Nazareth. And at the same time the Spirit calls us to be those of vision, and new possibility. In the words of the Irish theologian, Anne Kelly, "we are a people born of memory and dreaming hope. The tradition within which we find ourselves . . . comes as the bearer both of memory and possibility . . . we share the task of sharing our story and vision with the next generation so that hope and history may rhyme."²

In the midst of the challenges that face us a community of faith re-imagining ourselves in a new context, may we never surrender this responsibility and opportunity.

² Anne Kelly, "The Agenda for Theology in Ireland Today II," *The Furrow* 42 (1991), 699.