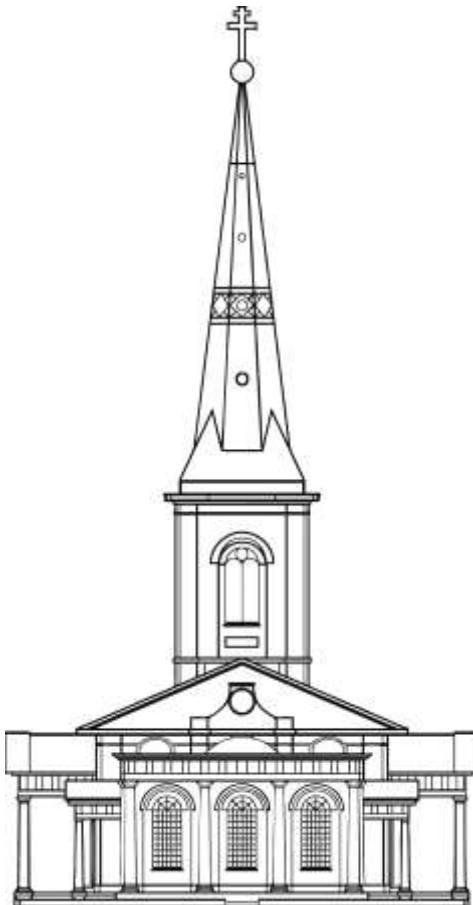


# ST JAMES' CHURCH, KING STREET, SYDNEY



## 'MY KARMA RAN OVER MY DOGMA' - *on why the church does not need Religious Discrimination legislation*

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## The Origins of Modern Religious Freedom

Back in 2018 I wrote an article on the origins of the idea of religious freedom in modern representative democracies, and especially the United States of America. The beginnings of this idea arose from a political desire to stop one group of Christians (the Puritans) persecuting and killing members of another group (the Quakers). Sadly, Christians killing one another in the name of God has been a commonplace through history, probably at its worst in the seventeenth century European Wars of Religion, which were the bloodiest conflicts, on a per capita basis, in modern history.

After the War of Independence, the United States developed a Constitution and polity that involved a series of ‘checks and balances’ to try and ensure that no one person or group of people had the capacity to dominate and persecute another or control the affairs of state. It is perhaps something that has been honoured ‘more in the breach than in the observance’ over time, but it was a high ideal.

In the United States, religious freedom was encapsulated in the First Amendment to the Constitution (as part of the Bill of Rights), viz:

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*

Similar wording is to be found in Section 116 of the Australian Constitution. In other words, Australia already has religious freedom recognised in its Constitution. The argument that it does not exist is a fallacy and the desire to have legislation to support religious discrimination has little to do with religious freedom and more to do with the privilege of religious institutions and their *nomenklatura*.

## Religious Discrimination

Despite ongoing public debate, an ambivalent government report in 2018, and a lack of community support, the argument for legislated religious discrimination remains with us under the current Federal Government. This is probably because of vested interests, both religious and secular, that want to see such legislation pass in an effort either to shore up religious privilege on the one hand, or to attach other agendas to the argument such as unfettered freedom of speech and the winding back of current anti-discrimination legislations on the other.

There are good reasons why Australians and, more particularly religious bodies, do not need this legislation. It will be harmful to minorities, religious dissidents, the wider community, and the religious institutions themselves.

This legislation is firstly a political matter and secondly a religious one. It is a good example of how in many modern contexts religion has become a sub-set of politics. In other words, what comes first is the political agenda, (be it conservative, progressive, or green), followed by involvement in a religious institution that reflects one's political values.

Religion in this context is used as an unassailable justification for holding a particular political view, without recognising the irony that people of other religious/political persuasions are doing the same thing! As Bob Dylan sang: '*...and you never ask questions when God's on your side*'.

The recent controversy surrounding the **Citipointe Christian College** in Brisbane has become a case study in what lies behind the desire of some religious institutions to have religious discrimination legislation. It centred on the requirement of parents to sign a contract declaring certain religious beliefs and allowing the school to expel students 'who do not adhere to the College's doctrinal precepts', including sexuality.

What this contract exposed is the imposition of a religious test to access the school's educational services. Religious tests, however, are also applied in some other contexts, such as employment contracts for school staff and participation in school councils. Of course, any educational institution will want to have staff and students support the ethos and values of the school. The question here, however, centres on the specifics of the 'doctrinal precepts' and that schools receive government money to provide educational services.

What is a reasonable doctrine upon which a contract may be based? There are many statements of faith from which to choose: the *Apostles Creed*, the *Westminster Confession of Faith*, the *Catechism*, and other such fundamental religious declarations. The Citipointe Christian College case, however, goes beyond general Christian belief to include specific beliefs regarding sexuality.

So, could the religious tests for access to church facilities such as education, aged care, hospitals, and welfare support require recipients of these services to 'believe' in other doctrines such as 'transubstantiation', or the 'eternal generation of the son', or the 'penal substitutionary theory of the atonement'? Unsurprisingly, the imposition of such arcane doctrines would receive short shrift from the general public and most religious people as well. Nevertheless, imposition of specific dogmas is a good way of ensuring compliance and control of those inside the institution by restricting employment benefits and services to those who believe and do the 'right things'.

There is a side-issue here touching on competence. Should a school employ the best teacher for the job or one who holds a particular ideological position but is less qualified or even competent to do what they are paid to do? The Anglican Diocese of Sydney lost a considerable amount of its financial assets in the global financial crisis because of a lack of financial acumen, bad advice, and poor governance. Perhaps it may not have happened if competence and probity had been the first priorities in the investment strategies of church trust funds?

Nevertheless, what doesn't make sense in all of this is that most Christian churches understand that the works of evangelism and teaching the faith require openness, hospitality, and grace toward people. To do otherwise invites criticism of social tribalism, exclusivity, and self-centredness. Any organisation will eventually die if it becomes arrogant and closed to the world around it. The imposition of religious tests as a basis for access to church services and employment (outside of religious professionals such as clergy) would therefore seem to be self-defeating and regressive.

Moreover, every action invites a reaction. In the case of Citipointe Christian College, moves were taken to review its accreditation with the possibility of losing government funding. The argument was that if the school would not abide by the law then it should not be supported with taxpayer money, religious privilege notwithstanding. It had the potential to trigger something bigger with respect to religious institutions receiving both tax concessions and government funding.

### **The Government Giveth...**

This raises another question regarding religious discrimination legislation; why would religious intuitions wish to place themselves under such direct legislative control? A principle of creating good legislation is that it not only is available to the government that enacts it but may also be amended or repealed by a future government that may be less enamoured with it. For example, the Whitlam government provided for free tertiary education in 1974, but the Hawke Government removed it by bringing in the HECS scheme in 1989.

There is a social policy principle called **Unintended Consequences** that recognises legislative and regulatory policies do not always produce what was intended. Three types of outcomes are identified:

1. *Unexpected benefit*, where a windfall was received by parties that were not intended to receive it (such as the educated middle-class that gained a financial benefit for the Whitlam free tertiary education policy that was intended for the children of the working class),

2. *Unexpected drawback*, where a detriment is received by those who expected to receive a benefit (such as soil salinity problems in irrigation areas), and
3. *A perverse result*, where an intended solution makes a problem worse (such as the introduction of cane toads in Queensland to kill the cane beetle).

The proposed Religious Discrimination legislation needs to be looked at through the principle of Unintended Consequences. New legislation will need to be tested to determine its scope and applicability. Some people will therefore wish to challenge it, and given its contentious nature, there could be several cases actioned in the public interest. It will therefore require religious institutions not only to meet their legal costs to defend themselves but also the need to manage the bad press that is likely to result.

The principle of the **separation of church and state** is implied in Section 116 of the Constitution but is blurred in the Australian context. The idea is that religion should not interfere with the affairs of state and the state should not interfere with the affairs of religion. In other words, the state should set up the means for religious freedom and then disengage from the governance of religious groups. To some extent this is reflected in the parliamentary acts that have established the major Christian denominations, and which authorise them to manage their own affairs through synods and trustees, with accompanying ordinances or canons.

But there is a problem. In the case of the Anglican Church of Australia, the independence of dioceses from each other, and to a great extent the General Synod, has allowed for a **diversity of doctrinal expression** and practice to exist within the church. So, a same-sex couple who are legally married can have their marriage blessed in the Diocese of Wangaratta but not in the neighbouring Diocese of Melbourne, even though the General Synod's Appellate Tribunal has determined that there is no reason why such blessings cannot occur in a church. It is doctrine determined by a simple vote of synod!

The separation of church and state also broke down when the Federal Government established the *Royal Commission into Institutional Child Abuse*. The government had to act to protect vulnerable citizens from abuse by church members and the subsequent failure of church leaders to protect them. Once again, it demonstrated the inability of church institutions to behave morally and legally; it also begs the question as to why they should be given unique protection under any new legislation.

The 'Government giveth and the Government taketh away...' – statutes do not provide a guarantee of future privilege or status. Such things can be removed by the Parliament if a need arises. Why would religious institutions wish to put themselves in this situation and make their privilege beholden to the good-will of government?

## The Benefit to Religion

What has become clear is that the proposed Religious Discrimination legislation is not about religious freedom, indeed it is not much about religious people as individuals at all. Instead, the legislation is about religious institutions and their power over assets and their corporate life, and control of social practices and behaviours of their own people.

There is a claim that the legislation is about '**freedom of speech**'. This phrase affirms a democratic principle that seeks to ensure people can express ideas and opinions without fear of retaliation or persecution. It is also recognised as a basic human right. Nevertheless it does not allow people to defame, vilify, incite violence, or motivate insurrection.

An irony is that some religious institutions wish to claim a freedom to criticise and condemn those with whom they disagree, yet do not wish to allow that freedom to extend to their own adherents. The debate about same-sex marriage and the Anglican Church is but one example. I am aware that in the Diocese of Sydney at least one priest was refused renewal of his licence if he continued to speak in favour of same-sex marriage, and two others, who are theologians and in good standing in the wider church, were refused permission to preach in Diocesan churches. It seems that the intention is to silence dissent inside the institution while claiming a right to freely speak on community issues outside it.

Many older people will remember the unbridled **sectarianism** in Australia that dominated religion up to the 1960s. It was tribal, vicious, and discriminatory; often spilling over into employment and promotion prospects in the workplace and setting limits on social interaction and cooperation. There is a resonance of sectarianism in the effect of the Religious Discrimination legislation, which allows religious employers to exercise religious tests upon their staff and exclude people (including school students) with whom they disagree.

All of this gives the impression of giving benefit to those inside the institution at the expense of the common good. In this way the church becomes an exclusive club or sect that exists for the benefit of its members rather than a communion or gathered community that welcomes all people. The effect of religious discrimination legislation is that it prioritises dogma and ideas over good and reasonable behaviour. Sadly, the long-term effect of it on the mission of the church will not be positive.