

CHAPTER 7

RELIGIOUS FREEDOM: CHRISTIAN PERSPECTIVES

Norman Doe

In the past fifty or so years, Christians' discussions of civil concepts of human rights in general and of religious freedom in particular are to be found mainly in the scholarship of theologians (often alongside the specific official teaching of particular churches), not in that of lawyers. It is only very recently that legal scholars have begun to address human rights and religious freedom from Christian perspectives – and sometimes (as in theology) this is done on the basis of moral or natural law thinking about conceptual correlatives of civil human rights in the form of universal ethical *duties* incumbent on all humans. However, to-date, neither theologians nor legal scholars have examined in a comparative way the idea of religious freedom as it is treated in and across the *laws* of Christians in their various institutional churches.¹ This represents a serious gap in the literature which this study seeks to remedy. As such, the chapter explores religious freedom from contemporary perspectives of Christians as developed in the regulatory and other normative instruments of international Christian communities and alliances, their member churches (mainly those in the United Kingdom, though reference is also made to churches globally), and, ecumenically, the World Council of Churches. What follows suggests as a typology to address the issues: (1) churches' understandings of religious freedom; (2) churches as advocates of religious liberty in civil society; (3) churches' use of religious freedom as an instrument of ecumenism; (4) churches as beneficiaries of religious freedom under civil law *and* as guardians of their own religious freedom under their internal church laws; and (5) churches regulate/limit their own collective religious freedom, and the individual religious freedom of the faithful, by means of church law, but may also use rights of conscience. The chapter, therefore, connects thinking about religious freedom with church law. The laws and other regulatory norms of churches provide a key expression of Christian thinking about religious freedom as it is translated into action through their own internal norms of conduct. The chapter evaluates Christian approaches and proposes the reform of church law in this field.

THE CHURCHES' UNDERSTANDINGS OF RELIGIOUS FREEDOM

The churches' understandings of religious freedom mirror secular ideas in international law; however, the churches' reasons for religious freedom differ from those of international law; and the churches' understandings are found and elaborated in church teaching not church law. For Christians, *freedom* is an essential for *faith*. For the World Council of Churches: 'God's redemptive dealing with men is not coercive'; thus, 'human attempts by a legal enactment or by pressure of social custom to coerce or eliminate faith are violations of the fundamental ways of God with men. The freedom which God has given...implies free response to God's love'.²

¹ For the idea that the rise of human rights was prefigured and inspired by the churches' historic defence of the dignity of the human person, see e.g. R. Ruston, *Human Rights and the Image of God* (SCM Press, 2004); S. Moyn, *Christian Human Rights* (University of Pennsylvania Press, 2015); see also J. Witte, ed., *Christianity and Human Rights: An Introduction* (Cambridge: Cambridge University Press, 2010); for the suggestion that church law on human rights should be studied, see N. Doe, *Christian Law* (Cambridge: Cambridge University Press, 2013). For the historic Christian approaches to religious liberty, see e.g. K. Taliaferro, ed., *Religious Freedom: Sourcebook of Scriptural, Theological and Legal Texts* (Georgetown University, 2014): the legal texts included are from civil law – there is no comparative study of the contemporary laws of Christian churches.

² 'Statement on Religious Liberty', in the New Delhi Report: The Third Assembly of the World Council of Churches 1961 (New York, 1962) 159.

The Roman Catholic Church has a rich concept of religious liberty. *Dignitatis humanae*, the Second Vatican Council Declaration on Religious Liberty 1965 places religious freedom within traditional church teaching on human dignity. Religious freedom is the cornerstone of a society that promotes human dignity. It is a fundamental human right. It follows on the duty and right of all people to seek the truth about God. It includes freedom *from* and *for* religion. It requires a society *both* to refrain from preventing people from living out their religion *and* to help create conditions for religion to flourish. A free society is one in which people actively seek religious truth and fully live it out in public and private. Moreover, as humans are social, it belongs to groups, not just individuals. So, ‘religious communities’ may: govern themselves; worship publicly; teach and witness to the faith; instruct members; promote institutions to act in accordance with religious principles; appoint ministers; and acquire and administer property and funds. But there are limits: these rights are exercisable ‘provided the just demands of public order are observed’, and ‘subject to certain regulatory norms’. These include: the requirement of ‘the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare’; the right of society ‘to defend itself against possible abuses committed on the pretext of freedom of religion’; the ‘adequate care of genuine public peace’; and ‘a proper guardianship of public morality’. Therefore: ‘religious freedom [should] be everywhere provided with an effective constitutional guarantee and respect be shown for the high duty and right of man freely to lead his religious life in society’.³

The worldwide Anglican Communion has a somewhat less sophisticated account. The Lambeth Conference simply endorses the United Nations Declaration of Human Rights, and, rather crudely, it sees ‘each person’s freedom of thought, conscience and religion’ as an ‘absolute right’.⁴ The laws of churches do not directly address the nature of religious freedom. However, the Principles of Canon Law Common to the Churches of the Anglican Communion (2008) recognises two types of right - inherent and acquired: ‘all persons, equal in dignity before God, have inherent rights and duties inseparable from their dignity as human beings created in the image and likeness of God and called to salvation through Jesus Christ’.⁵ Also, all the faithful, ordained and lay, enjoy such rights to government, ministry, teaching, worship, sacraments, rites, and property as may flow from their human dignity, baptism, the duties of others, ‘and the law of that church’; indeed, in a church there is to be no unlawful denial of equal rights, status or access to the life, membership, government, ministry, worship, rites and property of that church on grounds of *inter alia*, race, colour, sex, sexual orientation, disability or age.⁶

Lutheran ideas on religious freedom also mirror international law, and they place the primary duty to protect it on the State. For example, the Council of the Lutheran World Federation in 2013 issued a Statement on Religious Freedom or Belief which it ‘believes’ is a ‘right given by God’ to all. The Council also affirmed Federation support for United Nations’ work to protect religious liberty.⁷ At national level, the Lutheran Church in Australia has a particularly full treatment of human rights, but religious freedom is not specified: ‘The concept of human

³ *Dignitatis Humanae*: 4-5, 15. These ideas are repeated in numerous other church teaching documents. See also K.L. Grasso and R.P. Hunt, eds., *Catholicism and Religious Freedom* (Lanham: Rowman and Littlefield, 2006).

⁴ For Lambeth Conference 1998 statements, N. Doe, ‘Canonical approaches to human rights in Anglican churches’, M. Hill, ed., *Religious Liberty and Human Rights* (Cardiff: University of Wales Press, 2002) 185.

⁵ Principles of Canon Law Common to the Churches of the Anglican Communion (2008), hereafter PCLCCAC, Principle 26.1-4. See e.g. Anglican Church of (the Province of) Papua New Guinea: Constitution, Art. 3.

⁶ PCLCCAC, Principle 26.7-8. See e.g. the Episcopal Church USA: Canons I.17.5: non-discrimination.

⁷ Public Statement adopted 13-18 June 2013: <https://www.lutheranworld.org/news/lwf-council-statement-religious-freedom>. Even before adoption of the Universal Declaration of Human Rights in 1948, the Lutheran World Federation, at its first Assembly (Lund, 1947) advocated that minorities should be allowed to practise their religion in their own mother tongue and according to the practices of their own Confession.

rights is based on two convictions: that certain actions against other human beings are wrong no matter what; and that in all circumstances all people are entitled to respect and proper treatment as human beings'. Preserving society belongs to the earthly kingdom in which God rules through the law: governments, as 'ministers of God', must preserve citizens' liberties. Christian citizens have the *duty* to urge their governments to honour human rights - and investigate, protest and agitate for reform where they are ignored or violated. The foundation for this is the dignity of all as creatures of God and the divine command to love neighbour.⁸

In similar vein, United Methodist Church *law* acknowledges 'all persons as equally valuable in the sight of God' each with 'inherent dignity'; and it asserts 'the right of all religions and their adherents to freedom from legal, economic, and social discrimination'.⁹ For the United Reformed Church in Great Britain too 'civil authorities, being always subject to the rule of God, ought to respect the rights of conscience and of religious belief and to serve God's will of justice and peace for all humankind'.¹⁰ And the law of the Presbyterian Church in Ireland states: 'although civil rulers are bound to render obedience to Christ in their own province, yet they ought not...to constrain anyone's religious beliefs, or invade the rights of conscience'.¹¹

With the long Baptist tradition on religious liberty, the General Council of the World Baptist Alliance in 2017 understood that religious freedom is 'a gift of God to all people', regardless of denomination or religion; and it committed itself to the understanding of it enshrined in the United Nations Declaration of Human Rights, Article 18.¹² Likewise at national level: the Baptist Union of Southern Africa accepts 'The principle of religious liberty, namely, that no individual should be coerced either by the State or by any secular, ecclesiastical or religious group in matters of faith'; in turn, as such: 'The right of private conscience is to be respected'.¹³

In short: the churches' understandings of religious freedom mirror those in international law; but their reasons for religious freedom differ from those in international law - religious freedom is the will of God (its theocratic element); churches' understandings of it are found usually in church teaching not in church law; and the primary duty to protect religious freedom rests on the State. Official church teaching adds little to civil concepts of religious liberty. There has also been no attempt by churches, in teaching or law (with the exception of the Roman Catholic Church) to root Christian ideas about religious liberty in universal duties; this matter is ripe for consideration by those engaged in the developing the Principles of Christian Law (see below).¹⁴

THE CHURCHES AS ADVOCATES OF RELIGIOUS FREEDOM IN CIVIL SOCIETY

Churches are advocates of religious freedom in civil society. International church communities assert for themselves either a corporate *right* or *duty* to advocate it, or they *exhort* advocacy by member churches. They assert the right/duty, or issue an exhortation, in their legal instruments. They also have institutions to promote in civil society human rights in general or religious freedom in particular. These legal arrangements are mirrored at the national level of churches.

⁸ Commission on Theology and Inter-Church Relations, *Human Rights* (1994, edited 2001).

⁹ United Methodist Church in Northern Europe and Eurasia: Book of Discipline, pars. 103, 121, 161, 162, 164.

¹⁰ Manual, Basis of Union A, Schedule D, Version I, 8.

¹¹ Code, I.III.13; this cites the Act of the Church of Scotland 1647.

¹² General Council: Bangkok, Thailand, July 5-7, 2017: on religious liberty in Russia; see also: <https://bwonet.org/resources/bwa-currentresolutions>.

¹³ Bylaws, 4.2.7.

¹⁴ For Christian approaches to universal ethical duties, see e.g. N. Doe, ed., *Christianity and Natural Law* (Cambridge: Cambridge University Press, 2017), especially, on natural law in ecumenical dialogue, 164-176.

Roman Catholic Church canon law asserts that church's *right* to advocate: 'The Church has the *right* always and everywhere to proclaim moral principles, even in respect of the social order, and to make judgments about any human matter in so far as this is required by fundamental human rights or the salvation of souls';¹⁵ but there is no specific canonical duty to advocate for religious liberty in society. By way of contrast, the Anglican Lambeth Conference 1998 speaks of a *responsibility* to advocate religious liberty: it calls on 'all faith communities, especially the Christian Church, to acknowledge our responsibility to mobilise our spiritual, moral and material resources' to promote it; and it calls on 'governments of all the nations our Churches represent to strive for creation of just and free conditions for people of all religions' to practise their beliefs freely.¹⁶ But Conference resolutions are not laws; they do not bind the autonomous member churches of the Anglican Communion: the 1998 resolution is a moral *exhortation*. Moreover, no church specifically obliges itself canonically to promote religious freedom: there is an implicit *right* to do so. However, the churches do engage in religious freedom advocacy through their own commissions (some mandated by law, others permissive) on human rights.¹⁷

Protestant churches are different. The *constitution* of the Lutheran World Federation imposes a duty on the Federation to promote 'peace and human rights'.¹⁸ Its Council Statement on Religious Freedom 2013 calls upon its member churches *and* the ecumenical community: to strengthen their commitment to freedom of religion; to cooperate in promoting and defending it in their own societies and internationally; and for its churches 'to intercede with both state and religious authorities for the defence of individuals or groups' whose religious freedoms are being curtailed.¹⁹ The World Communion of Reformed Churches also has a constitutional duty to engage in 'promoting and defending religious, civil, and all other human rights wherever threatened throughout the world'.²⁰ And one of the constitutional objects of the Baptist World Alliance is to defend human rights at global level, 'including full religious liberty'.²¹ It has a Commission on Religious Freedom,²² and it is active in religious liberty advocacy globally.²³

Similar advocacy duties appear in some Methodist laws at national level. For example, the law of the United Methodist Church requires itself: to 'defend religious freedom'; to combat acts of hate or violence based on 'religious affiliation'; to support 'policies and practices that ensure the right of every religious group to exercise its faith free from legal, political, or economic restrictions'; to condemn 'all overt and covert forms of religious intolerance'; and to promote 'the right of all religions and their adherents to freedom from legal, economic, and social discrimination'.²⁴ The Baptist Union of Southern Africa too is to 'maintain religious liberty'.²⁵

An ecumenical Christian Law Panel was formed in Rome in 2013 of church leaders, lawyers and theologians from eight different historic churches worldwide. In 2016 it issued a Statement

¹⁵ *Codex Iuris Canonici* (Code of Canon Law 1983), hereafter CIC: c. 747.2.

¹⁶ N. Doe, 'Canonical approaches to human rights in Anglican churches' (2002) 185 at 187.

¹⁷ E.g. the Episcopal Church in the Philippines has a National Commission on Social Justice and Human Rights, and the Province of the West Indies Synod a Standing Commission on Social Justice and Human Rights.

¹⁸ Constitution, Art. III.

¹⁹ Public Statement adopted 13-18 June 2013: see above.

²⁰ Constitution, Art. V; see also Art. IV: its values include 'the dignity of every person'.

²¹ Constitution, Art. II. See also R.V. Pierard (ed), *Baptists Together in Christ 1905-2005: A Hundred Year History of the Baptist World Alliance* (BWA, Falls Church, Virginia, 2005) 281: 18th Congress, Melbourne: 'human rights are God-given and that violations of human rights are violations of the laws of God'.

²² See: <http://www.bwanet.org/programs/14-programs/mej/65-religious-freedom>.

²³ General Council: Bangkok, Thailand, July 5-7, 2017: on religious liberty in Russia; see also: <https://bwanet.org/resources/bwa-currentresolutions>.

²⁴ United Methodist Church in Northern Europe and Eurasia: Book of Discipline, pars. 103, 121, 161, 162, 164.

²⁵ Constitution, Art. 5.3.

of Principles of Christian Law. These are induced from similarities between the legal systems of their legal systems. The Panel has since established an informal partnership with the Faith and Order Commission of the World Council of Churches in order to feed the principles into that Commission's work.²⁶ The statement provides that: 'All humans, having been created in the image of God, share an equality of dignity and fundamental human rights'; and: 'A church should protect and defend human rights in society for all people'.²⁷ The statement, however, does not deal expressly with religious freedom in society – it could have done, but it did not.²⁸

In sum, for the churches, the primary duty to protect religious liberty is on the State. However, churches assume for themselves either a *right* or else a *duty* to engage in religious freedom advocacy. Episcopal churches tend to use a right of advocacy (express/implicit) and Protestant churches to assume a duty of advocacy. In some churches the duty is imposed by teaching, in others by church law or soft-law, and in some by both. One challenge for churches is to assess whether these mechanisms are sufficient to enable them to engage effectively in religious freedom advocacy. After all, the churches have elaborate norms on more mundane matters. When churches have a duty to advocate religious freedom, the public have a correlative right to this (or at least a legitimate expectation) – when they do not, the public has no such right.

THE CHURCH USES RELIGIOUS FREEDOM AS AN ECUMENICAL INSTRUMENT

The ecumenical movement seeks greater visible unity between churches. The laws of most churches carry a duty to engage in ecumenism on the basis of assertions of their own belonging to the church universal.²⁹ However, to what extent do the movement and churches party to it *require* ecumenical collaboration on religious liberty in civil society? The World Council of Churches has a major role here.³⁰ It has issued a number of soft-law documents on religious freedom.³¹ These show how religious freedom may also serve as an instrument of ecumenism.

The Declaration on Religious Liberty was adopted at the First Assembly of the World Council of Churches held in Amsterdam in 1948. First, religious freedom is a key Christian issue:

An essential element in a good international order is freedom of religion. This is an implication of the Christian faith and of the world-wide nature of Christianity. Christians, therefore, view...religious freedom as an international problem. They are concerned that [it] be everywhere secured. In pleading for [it], they do not ask for any privilege to be granted to Christians that is denied to others. While the liberty with which Christ has set men free can neither be given nor destroyed by any Government, Christians, because of that inner freedom, are both jealous of its outward expression and solicitous that all men should have freedom in religious life. The nature and destiny of man by virtue of his creation, redemption and calling, and man's activities in family, state and culture establish limits beyond which the government cannot with impunity

²⁶ See M. Hill and N. Doe, 'Principles of Christian Law', 19 *Ecclesiastical Law Journal* (2017) 138-155.

²⁷ Principles of Christian Law (2016): X.2.

²⁸ An obvious candidate would be: 'The State should recognise, promote and protect the religious freedom of churches corporately and of the faithful individually, as well as their freedom of conscience' – see N. Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013) 397.

²⁹ N. Doe, *Christian Law* (Cambridge: Cambridge University Press, 2013) 279-284.

³⁰ The WCC Constitution does not list promoting human rights or religious liberty as a WCC object.

³¹ Human rights and religious freedom have also surfaced in bilateral and other ecumenical statements and pronouncements: see e.g. L.J. Koffeman, 'Natural law in the ecumenical movement', in N. Doe, ed., *Christianity and Natural Law* (Cambridge: Cambridge University Press, 2017) 162-183.

go. The rights which Christian discipleship demands are such as are good for all men, and no nation has ever suffered by reason of granting such liberties (Preamble).

Secondly, therefore, the rights declared in the instrument ‘shall be recognized and observed for all persons without distinctions as to race, colour, sex, language, or religion, and without imposition of disabilities by virtue of legal provision of administrative acts’ (Preamble). Thirdly, the Declaration enumerates four rights in ways which elaborate on international law:

(1) *Freedom to determine belief*: ‘Every person has the right to determine his own faith and creed’ – this includes: adhering to or changing belief; instruction and education; and access to information to allow personal religious decision and belief. But there are limits, e.g. all ought to take into account their higher self-interests and belief implications for others’ well-being.³²

(2) *Freedom of religious expression*: ‘Every person has the right to express his religious beliefs in worship, teaching and practice and proclaim the implications of his beliefs for relationships in a social or political community’ – this includes teaching, preaching, *persuasion* and activities dictated by conscience.³³ But it is limited by: parental rights to determine religious points of view to which their children are exposed; limitations prescribed by law necessary to protect order, welfare, morals, and others’ rights; and the duty ‘to respect authority at all times’, even when conscience requires taking issue with those in authority or the position they advocate.³⁴

(3) *Freedom of association*: ‘Every person has a right to associate with others and to organize with them for religious purposes’ – this includes freedom to form religious organizations, to seek membership in them, and to sever relationships with them. However: its exercise is subject to the same limits imposed on all associations by way of non-discriminatory laws.³⁵

(4) *Freedom of institutional autonomy*: ‘Every religious organization, formed or maintained by action in accordance with the rights of individual persons, has the right to determine its policies and practices for the accomplishment of its chosen purposes’ - because ‘rights of the individual to religious liberty...become the rights of the religious organization’, this includes its right: to determine its faith and creed; to engage in worship, public and private; to teach, educate, preach and persuade; to express implications of belief for society/government; and to govern itself.³⁶ So that ‘these rights may be realized in social experience’, the State has correlative duties to respect religious autonomy.³⁷ Yet, the (wider) community has the right to require obedience to non-discriminatory laws passed in the interest of the public order and well-being; and: ‘In

³² WCC: Declaration Art. 1.

³³ WCC: Declaration Art. 2: ‘This right requires freedom from arbitrary limitation of religious expression in all means of communication, including speech, press, radio, motion pictures and art. Social and political institutions should grant immunity from discrimination and from legal disability on grounds of expressed religious conviction, at least to the point where recognized community interests are adversely affected’.

³⁴ WCC: Declaration Art. 3.

³⁵ WCC: Declaration Art. 4.

³⁶ The ‘corporate rights’ of the organization include: to determine its form, its government and conditions of membership; to select and train its own officers, leaders and workers; to publish and circulate religious literature; to carry on service and missionary activities at home and abroad; to hold property and to collect funds; to co-operate and to unite with other religious bodies at home and in other lands, including freedom to invite or to send personnel beyond national frontiers and to give or to receive financial assistance; to use such facilities, open to all citizens or associations, as will make possible the accomplishment of religious ends.

³⁷ The State ‘must grant to religious organizations and their members the same rights which it grants to other organizations’, including the right of self-government, public meeting, speech, press and publications, holding property, of collecting funds, of travel, of ingress and egress, and generally of administering their own affairs’.

the exercise of its rights, a religious organization must respect the rights of other religious organizations and must safeguard corporate and individual rights of the entire community'.³⁸

Next, 'On Religious Liberty' was adopted by the Third Assembly, New Delhi, in 1961.³⁹ This embellishes the terms of the Declaration of 1948. First, the mischief: because humankind is 'threatened by many forces which curtail or deny freedom', there is 'urgent need to reinvigorate efforts to ensure that every person has opportunity for the responsible exercise of religious freedom'.⁴⁰ Secondly, theological basis: 'religious liberty as a consequence of God's creative work, of his redemption of man in Christ and his calling of men to his service'. Accordingly: the freedom God has given 'implies a free response to God's love, and the responsibility to serve fellow-men at the point of deepest need'. This represents 'a distinctive Christian basis for religious liberty'.⁴¹ Thirdly, religious liberty is 'a distinctive human right' based on 'the inherent dignity and inalienable rights of all members of the human family'.⁴² The instrument then defines the right in much the same way as the WCC Declaration of 1948.⁴³ Fourthly, duties attend the right: 'The freedom with which Christ has set us free calls forth responsibility for the rights of others. The civil freedom which we claim in the name of Christ must be freely available for all to exercise responsibly'. Fifthly, thus: 'It is the corresponding obligation of governments and of society to ensure the exercise of these civil rights without discrimination. It is for the churches in their own life and witness recognizing their own past failures in this regard to play their indispensable role in promoting the realization of religious freedom for all'.⁴⁴ However, the 1961 text does not require the churches to cooperate in this ecumenically.

Finally, the World Council of Churches has a Commission on International Affairs.⁴⁵ It has a working group on 'human rights and freedom of religion or belief'.⁴⁶ In 2003 the Commission offered its 'Religious Freedom and Liberty in the Emerging Context' which also sees protecting religious freedom as a 'shared obligation: between State and Church, between the churches themselves, between individual Christians and the churches themselves, [and] between Christians and people of other faiths'.⁴⁷ However, the Commission also recognises the need 'to review and revisit the definition' of religious liberty 'in light of the experience of churches'. It does so on the basis that: (a) 'religion has emerged as a key factor in the civil and political life of nations'; (b) religion is now seen variously as theology, as ethics and values, and as a bearer of culture;⁴⁸ (c) 'official state religion' with 'constitutional and legislative powers and privileges' may jeopardize 'the freedom of citizens to choose and practice the belief of their choice'; (d) 'the secular and plural basis of the state is under widespread assault and religious

³⁸ WCC Declaration (1948): <https://www.religlaw.org/content/religlaw/documents/wccdecreliglib1948.htm>

³⁹ WCC 'On Religious Liberty', *Journal of Church and State*, Vol. 5, No. 2 (November 1963), pp. 243-245.

⁴⁰ WCC: On Religious Liberty 1.

⁴¹ WCC: On Religious Liberty 2 and 3.

⁴² WCC: On Religious Liberty 4 and 5: the latter repeats terms of the UN Declaration Article 18.

⁴³ WCC: On Religious Liberty 7: the 'inner freedom' (and rights to information); 8: the right to manifest (worship, teaching, practice and observance); 9: the right to change religion 'without external coercion or disability'; 10: other human rights linked to religious liberty (e.g. assembly, expression, and self-governance).

⁴⁴ WCC: On Religious Liberty 11.

⁴⁵ Established in 1946, its work was extended in 2006 when it was merged with three other WCC bodies: the Commission of the Churches on Diakonia and Development, the Commission of the Churches on Justice, Peace and the Integrity of Creation, and the Reference Group on Inter-religious Relations and Dialogue. It has 35 members nominated by churches and regional ecumenical organizations within the WCC, and meets annually.

⁴⁶ WCC: <https://www.oikoumene.org/en/what-we-do/ccia>.

⁴⁷ CCIA: Religious Freedom and Liberty in the Emerging Context (18 December 2003).

⁴⁸ 'Freedom of Religion and Belief': Public Statements and Issues of the CCIA, Edited by Semegnish Asfaw and Mutua Kobia: <https://www.oikoumene.org/en/resources/documents/commissions/international-affairs/freedom-of-religion-documents-of-the-ccia>.

extremism and intolerance is on the rise'; and (e) 'difficult questions arise for the ecumenical movement which has declared opposition to proselytism'.⁴⁹ In similar vein, the Faith and Order Commission in 2013 saw 'religious freedom as one of the fundamental dimensions of human dignity',⁵⁰ and in 2016, a discussion on 'Religion and Religious Freedom in International Diplomacy' was organized at the 33rd session of the UN Human Rights Council by the United Nations special rapporteur on freedom of religion or belief, the delegation of the European Union to the UN in Geneva, and the World Council of Churches. It found too that advancement of religious freedom literacy in international diplomacy is an increasing need.⁵¹

In sum: whilst the legal systems of most churches contain a duty to engage in ecumenism, the evidence suggests that it is *not* a principle of Christian law that churches must collaborate with ecumenical partners in promoting religious freedom in civil society; the law of no church seems to specify such an ecumenical duty.⁵² While they may have an obligation to *promote* religious freedom, they have no *legal* duty to *cooperate* with ecumenical partners in discharging that duty. However, the World Council of Churches does assume for itself a duty to engage in promoting religious freedom in civil society - but the responsibility which it recognises for the churches to *collaborate* with each other to do so is an *aspirational norm* only - it not a legal duty - the member churches are autonomous and the World Council of Churches has no competence to force them to do so. There can only be a legal duty on a church to collaborate with ecumenical partners in promoting religious freedom in civil society if the church in an exercise of its own autonomy, imposes such a duty upon itself. And whether the churches should impose upon themselves a legal duty to collaborate is of course a matter for debate.

THE CHURCH MUST SAFEGUARD ITS OWN CIVIL RELIGIOUS FREEDOM

Needless to say, as a matter of formal secular constitutional law,⁵³ churches are beneficiaries of religious freedom under civil law - and they assert their autonomy in their own church law. Church and State are independent but potentially cooperative guardians of the religious liberty of churches. For example, from the perspective of the State, the collective religious freedom of a church is of course recognised by civil law in the United Kingdom. The Human Rights Act 1998 incorporates the European Convention on Human Rights into national law including Article 9 on religious freedom. The Act provides, on 'Freedom of thought, conscience and religion', that: 'If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the

⁴⁹ See: <https://www.oikoumene.org/en/resources/documents/commissions/international-affairs/human-rights-and-impunity/religious-freedom-and-liberty-in-the-emerging-context>. See also D. Kessler, ed., *Together on the Way: Official Report of the Eight Assembly of the World Council of Churches* (Geneva: WCC, 1999), 192-194 (Declaration) and 195-206 (Statement). See also the Joint Working Group (Roman Catholic Church and WCC), Seventh Report, 1998: <https://www.oikoumene.org/en/resources/documents/commissions/jwg-rcc-wcc/seventh-report-of-the-joint-working-group>.

⁵⁰ *Common Vision*, op cit., paragraph 60. See also Archbishop R. Williams, 'Human Rights and Religious Faith', Ecumenical Centre, Geneva - 28 February 2012.

⁵¹ WCC 23 September 2016: <https://www.oikoumene.org/en/press-centre/news/wcc-holds-discussion-on-religious-freedom-literacy-and-diplomacy>.

⁵² However, the Roman Catholic Church requires itself to collaborate ecumenically on *human rights*: see the *Directory for the Application of Norms and Principles of Ecumenism* (Vatican: 1993) par. 64.

⁵³ It is beyond the scope of this study to examine instances of churches as victims of religious liberty violations under either international or national law: see e.g. United Nations Special Rapporteur on Freedom of Religion or Belief Annual Reports to the Human Rights Council, Commission on Human Rights and General Assembly: <https://www.ohchr.org/en/issues/freedomreligion/pages/annual.aspx>.

importance of that right'.⁵⁴ The most common justifications offered for the State to respect religious autonomy are: the collective right to manifest religious belief in the external forum; the institutional separation or mutual independence of churches and the State; and, the churches are essentially private bodies – therefore, the State should play no part in their internal affairs.⁵⁵

From the perspective of State law, in the United Kingdom, the legal incidents of the ecclesial freedom are well-known, as are the pressure points. For example: all churches enjoy: (1) the status under civil law of voluntary religious organisations and their rules are classified as terms of a contract entered into by their members - but they are enforceable in State courts only in property matters or if a civil right is involved; (2) the collective right, as their members have the individual right, to religious freedom - unless State interference in its exercise is prescribed by civil law, for a legitimate aim, or necessary for democracy; (3) the use of their disciplinary process against ministers, itself not susceptible to judicial review; (4) the non-applicability of civil employment law to their ministers (unless there is legal evidence of a relationship of employment, as for instance in providing chaplaincy care in hospitals); (5) freedom to educate the faithful in supplementary schools (which if registered are subject to inspection by the State); (6) the advantages of charitable status – if they provide a public benefit, meet the civil standards of financial accountability, and are registered as charities with the civil Charity Commission; and (7) the facility to negotiate with civil government the enactment of bespoke parliamentary statutes in order to facilitate and protect their institutional structures, doctrines and property.⁵⁶

From the perspective of churches, the Principles of Christian Law (2016) provide that a church is 'autonomous' in its system of government to carry out the mission of Christ (which includes proclaiming the Gospel, administering sacraments, and serving the wider community).⁵⁷ Thus, for example, a church has the right to acquire, administer, and dispose of property, to seek legal personality under civil law to do so, to receive funds, and to make rules for the administration and control of its finances (but civil law on financial accountability must be complied with).⁵⁸ However, the Principles, in its section on Church and State Relations,⁵⁹ provide: 'A church should cooperate with the State in matters of common concern, but each is independent in its own sphere; the faithful may participate in politics save to the extent prohibited by church law; and cooperation between a church and the State may be exercised on the basis of: (1) the establishment of, or other formal relationship between, a church and the State; (2) an agreement or civil legislation negotiated freely with the State; (3) the juridical personality which a church or institutions within it may enjoy under civil law; (4) the registration of a church in accordance with the provisions of any applicable State law; (5) the fundamental institutional autonomy of a church in carrying out its lawful objects and its freedom in these areas from intervention by the State.'⁶⁰ These principles are derived in part from the laws of institutional churches in the United Kingdom. Whilst separate institutionally and functionally, church and State are related.

For the Roman Catholic Church: there is no authority but from God; the 'political community and public authority are based on human nature and therefore...belong to an order established by God'; political authority must be exercised within the limits of the moral order; and it is 'the

⁵⁴ Human Rights Act 1998, s. 12. The inclusion of the section was itself the product of religious lobbying.

⁵⁵ See e.g. N. Doe, *Law and Religion in Europe* (Oxford: Oxford University Press, 2011) 117-119.

⁵⁶ See e.g. M. Hill, R. Sandberg and N. Doe, *Religion and Law in the United Kingdom* (Kluwer, 2014).

⁵⁷ Principles of Christian Law (2016) I.1.4-5.

⁵⁸ Principles of Christian Law (2016) IX.1.1-3, 3.1 and 4.1.

⁵⁹ Principles of Christian Law (2016) X: 'The churches have a wide variety of legal experiences in terms of their relationship to or institutional separation from the States in whose territorial boundaries they function'.

⁶⁰ Principles of Christian Law (2016) X.1.

role of the State to defend and promote the common good of civil society', i.e. 'the sum total of social conditions which allow people...to reach their fulfilment'. However, 'in their own domain, the political community and the church are independent from one another and autonomous' but should develop a 'mutual cooperation' in favour of the welfare of all.⁶¹ Nevertheless, canon law itself recognises the qualified applicability of State law to the church: 'When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law'.⁶² In turn, for the faithful, 'unjust laws...would not be binding in conscience'.⁶³ Moreover, canon law regulates appointing papal legates to States, forbids clerics to hold public office if this means sharing in civil power, asserts church rights to appoint bishops are not conceded to civil authorities, and enables church tribunals not to impose a penalty if the faithful have been/will be 'sufficiently punished by the civil authority'.⁶⁴

This stance is shared broadly by Anglicans as to their view of the State,⁶⁵ cooperation with it, the applicability of civil law,⁶⁶ recourse to State courts in disputes among the faithful, and deference to the State.⁶⁷ Lutherans have the doctrine of the 'two kingdoms' - earthly and heavenly.⁶⁸ For example, for the Lutheran Church of Australia: the doctrine 'does not call for a separation of church and state but for a proper distinction between them'; God rules 'all people, Christians and non-Christians, in his earthly kingdom through the agency of secular government [and] law' and 'he rules all Christians in his spiritual kingdom...through the gospel [and] grace'.⁶⁹ Christians are 'citizens of two kingdoms', each 'mutually dependent'; the church needs the State for religious liberty and the State needs 'the prayers and intercessions of the church'.⁷⁰ The church has 'every right' to be 'the conscience of society' and 'hold governments...accountable to the public, and ultimately to God'. Thus: 'church and state must be clearly distinguished but not separated' though 'each has its own area of competence and responsibility': the State must not interfere with proclamation of the gospel, and 'the church must not use the agency of the state...to promote the gospel or Christianise society'; in turn: 'The Church...ought not to interfere...in the affairs of the State: but it must bear witness to the truth...and may...for the instruction of its members and as a public testimony, have to condemn or approve acts of the State' even if 'oppression and persecution' follow.⁷¹ While Lutherans are subject to 'the laws of the land', 'Obedience to all forms of human government is never absolute but always limited and conditional. If it means disobedience to God, our allegiance

⁶¹ Catechism of the Catholic Church (1994): pars. 1918-1924, 1927; GS 26, 74, 76.

⁶² CIC: c. 22; see e.g. cc. 98 and 110: guardians/adoption; c. 1284: property; c. 1290: secular contract law.

⁶³ Catechism of the Catholic Church (1994): pars. 1897-1942; GS 29-31.

⁶⁴ CIC: cc. 285, 362-367, 377, and 1344.2.

⁶⁵ See the (Thirty-Nine) Articles of Religion (1562), Art. 37: Of the Civil Magistrates: the monarch has 'the chief Government of all estates...Ecclesiastical or Civil' but does not administer God's Word or the Sacraments.

⁶⁶ PCLCCAC: Principle 46.2-3: processing data; 71-75: civil marriage; 77.5-7: civil law on disclosure of information in breach of the seal of the confessional; 80.1-2: trustees must comply with civil law.

⁶⁷ Church of Ireland: Constitution, VIII.26.4: the Court of General Synod hears no matter which 'in the opinion of the lay judges, is within the jurisdiction and more proper to be submitted to the...decision of a civil tribunal'.

⁶⁸ Augsburg Confession (1530), Art. 16: 'all government and all established rule and laws were instituted by God for the sake of good order, and...Christians may without sin occupy civil offices and engage in...civil affairs'; also: 'the gospel does not overthrow civil authority, the state, and marriage but requires that all these be kept as true divine orders' (or 'orders of creation'), unless to do so would mean disobeying God (Acts 5:29).

⁶⁹ Statement on the Two Kingdoms, 1-2: Rom. 13:1-5 and 1 Peter 2:13 and 14 are cited.

⁷⁰ Statement on the Two Kingdoms, 1-2: 'when the state becomes tyrannical...it exceeds its God-given bounds. Then we are freed from our obligation to obey it' (1 Peter 2:13; 1 Tim. 2:1-2).

⁷¹ Theses on the Church, par. 16.

to God must come first'.⁷² However, church and State need to cooperate in common matters, the church must obey civil laws, but recourse should not generally be had to secular courts.⁷³

Methodism is similar. The law of the United Methodist Church, for instance, closely resembles that of Australian Lutherans. First: 'civil government derives its just powers from the sovereign God'.⁷⁴ Second: 'Separation of church and state means no organic union of the two, but it does permit interaction' - a State should not 'promote particular religious beliefs' nor 'attempt to control the church, nor should the church seek to dominate the state'; rather: 'The rightful and vital separation of church and state, which has served the cause of religious liberty, should not be misconstrued as the abolition of all religious expression from public life'.⁷⁵ Third: 'The church should continually exert a strong ethical influence upon the state, supporting policies and programs deemed to be just and opposing [those] that are unjust'.⁷⁶ Fourth: 'It is the duty of all Christians, and especially of all Christian ministers, to observe and obey the laws...of the governing or supreme authority of the country of which they are citizens...and...encourage and enjoin obedience' to them.⁷⁷ But, fifth: 'governments, no less than individuals, are subject to the judgment of God'; the church recognises therefore 'the right of individuals to dissent when acting under the constraint of conscience and, after having exhausted all legal recourse, to resist or disobey laws that they deem to be unjust or that are discriminately enforced' - but by 'refraining from violence' and 'being willing to accept the costs of disobedience'.⁷⁸ Some ministers make the declaration: 'While respecting the law, I will act to change unjust laws'.⁷⁹ Methodist laws also enable cooperation with the State. The Methodist Church in Great Britain enjoys the protection of its trusts by State law devoted specially to it,⁸⁰ while its trustees may not sponsor meetings to support political parties, they may permit occasional use of property for political meetings by non-Methodist bodies and sponsor meetings to promote discussion of public issues in the context of Christian theology, provided there is no 'detrimental effect on the peace and unity of the Church'.⁸¹ And in the Methodist Church in Ireland: 'No lawsuit relating to churches [or their property] shall be commenced without the consent of the General Committee...except by direction of the Conference'; otherwise parties pay the costs incurred.⁸²

The (Presbyterian) Church of Scotland is a national church, its autonomy protected by the civil Church of Scotland Act 1921 - and the Presbyterian Church of Ireland has State law devoted exclusively to it.⁸³ In the United Reformed Church too: 'Christ, the only ruler and head of the Church, has therein appointed a government distinct from civil government and in things spiritual not subordinate thereto', and 'civil authorities, being always subject to the rule of God, ought to respect the rights of conscience and of religious belief and to serve God's will of

⁷² Statement on the Two Kingdoms, 3: this cites Acts 5:29.

⁷³ Constitution, Art. IV.1: in property disputes a congregation must (under 1 Cor. 6) 'make every effort to avoid action in the civil courts'; 21: indemnification of church officers party to proceedings in secular courts.

⁷⁴ United Methodist Church in Northern Europe and Eurasia: Book of Discipline, par. 103, Confession of Faith, Art. XVI; par. 164: State as servant of God.

⁷⁵ Ibid. Book of Discipline, par. 164.

⁷⁶ Ibid. Book of Discipline, par. 164.

⁷⁷ Ibid. Book of Discipline, par. 103, Articles of Religion, Art. XXVI.

⁷⁸ Ibid. Book of Discipline, par. 164: 'Citizens have a duty to abide by laws duly adopted by orderly and just process of government'; 'We assert the duty of churches to support those who suffer because of their stands of conscience represented by nonviolent beliefs or acts'.

⁷⁹ Methodist Church of New Zealand: Laws and Regulations, Introductory Documents, III Ethical Standards for Ministry, Responsibilities to the Wider Community, 2.

⁸⁰ Constitutional Practice and Discipline, Bk. I, Methodist Church Act 1979.

⁸¹ Constitutional Practice and Discipline, Standing Order 921.

⁸² Regulations, Discipline and Government, 29.20.

⁸³ Irish Presbyterian Church Act 1871.

justice and peace for all humankind’;⁸⁴ yet, again, the church has State law devoted exclusively to it.⁸⁵ Members of the United Free Church of Scotland should not approach the courts of the ‘civil power’ to resolve their disputes.⁸⁶ Baptists also advocate the institutional separation with limited cooperation. For instance, for the Canadian National Baptist Convention: ‘Church and state should be separate’; moreover: ‘The state owes every church protection and full freedom in the pursuit of its spiritual ends’, and in providing this no ‘denomination should be favoured by the state more than others’. Also: ‘Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. The church should not resort to civil power to carry out its work’.⁸⁷ However, the Baptist Union of Great Britain is the subject of civil parliamentary statute exclusively devoted to it.⁸⁸

Generally, the churches themselves (at least in the United Kingdom), in their postures on their own religious liberty, agree with and participate freely as beneficiaries in the religious freedom regime in civil law. Whether any civil regime, in which churches participate and acquiesce, should be reformed by the State is different issue – and many churches may, and sometimes do, litigate the application of this regime to them if the State acts to limit their exercise of freedom. Certainly, the churches assert their own freedom, their institutional autonomy and separation from the State – but at the same time they cooperate with it, have tailor-made State legislation to protect their own interests, and obey its law, unless the faith itself is threatened.

THE CHURCH REGULATES/LIMITS ITS OWN INTERNAL RELIGIOUS FREEDOM

Christians understand that the church was born free but with responsibilities fixed by divine law: to proclaim the Gospel; to worship; and to provide care for people. To what extent, then, do churches permit internal religious freedom? The pattern which emerges is that churches *reverse* the image of religious liberty appearing in civil law and which they advocate when it comes to the regulation of their own internal affairs. Civil law begins with the *right* to religious liberty and moves to limits on its exercise. Church law begins with *duties* on the faithful and moves to freedoms found in exceptions to rules, norms relax the law, and rights of conscience.⁸⁹

Religious freedom *within* a church - and the extent it is enjoyed by the faithful – is defined by the law of that church (alongside its belief and doctrine). Theology articulates Christian belief (the primary stimulus for law), it proposes values (the primary source of law), it contemplates action (the primary focus of law), and it animates these values in norms of conduct (the primary character of law).⁹⁰ Many of the Principles of Christian Law (2016), induced from their laws, indicate how laws of the historic churches have a profound effect on religious freedom within those churches, arising not least from the very nature of church law. They illustrate well the delicate balance between ecclesial *freedom* and permissible *limitations* on its proper exercise.

First, as to *purposes of church law as servant*: church law exists to serve a church in its mission and witness to the salvific work of Christ; laws constitute the institutional organisation of a church and facilitate and order its activities. Theology may shape law and law may realise

⁸⁴ Manual: Basis of Union, A, Sch. D, Version I, 8.

⁸⁵ United Reformed Church Acts 1972, 1981 and 2000: on e.g. trusts for places of worship.

⁸⁶ Constitution, Art. V.II.8.

⁸⁷ Constitution, Art. 3, Statement of Faith, Art. XVII: ‘The state has no right to impose taxes for the support of any form of religion. A free church in a free state is the Christian ideal, and this implies the right of free and unhindered access to God on the part of all men...without interference by the civil power’.

⁸⁸ Baptist and Congregational Trusts Act 1961.

⁸⁹ See e.g. N. Doe, *Law and Religion in Europe* (Oxford: Oxford University Press, 2011) 122.

⁹⁰ N. Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013) 29-41.

theology in norms of conduct and should conform to the law of God, as revealed in Holy Scripture and by the Holy Spirit.⁹¹ Secondly, as to *structure, effect and relaxation*: church laws principally deal with ministry, government, doctrine, worship, rites, discipline, and property. They consist of various juridical formulae, such as precepts, prohibitions and permissions, and may be cast as principles and rules, rights and duties, functions and powers. Laws may be binding or exhortatory. Importantly, all members of a church are subject to its laws as are its institutions, to the extent that the law provides. A church may have in place a mechanism to enforce and vindicate the rights and duties of the faithful. However, a law may be relaxed, by competent ecclesial authority, by means of dispensation, economy or some other form of equity for the spiritual good of the individual and the common good of the ecclesial community.⁹²

Thirdly, there is *the rule of law*: an ecclesial institution must comply with the law and may be subject in the exercise of its functions to such substantive and procedural limitations as may be prescribed by law;⁹³ and a local church, its assembly and other institutions, such as a council, meeting, session or other body, has such authority and functions as are lawfully inherent to it or conferred upon it by the institutions of the wider ecclesial entity to which it belongs.⁹⁴

Fourthly, *the balance between freedom and its limited responsible exercise* is evident in principles about the Christian faithful, who constitute the people of God. All the faithful should be equal in dignity. Baptism generates duties and rights for the faithful.⁹⁵ The law of a church should set out the basic rights and duties of all its members. The laity should promote the mission of the church, and bear witness to the Christian faith through their lives in the world. A lay person should: engage in the collective ecclesial life, in proclaiming the Word of God, participating in worship, and receiving the sacraments; maintain such Christian standards in their private lives as are prescribed by law; and practise daily devotion, private prayer, Bible reading, and self-discipline, bringing the teaching and example of Christ into every-day life, upholding Christian values, and being of service to the church and wider community.⁹⁶ Ordained ministers: must be authorised by their church to exercise ministry, namely: to preach the Word of God, teach the faith, administer the sacraments, and provide pastoral care; they must, for instance, fashion their ministry after the example of Christ; lead their private lives in a manner which befits their sacred calling; and account for their ministry to the competent authority in the manner prescribed by law.⁹⁷ The same notions of freedom and its limited and responsible exercise are also found, for example, in principles on church governance; church discipline (as administered in church courts/tribunals which must respect due process but may impose sanctions); doctrine and worship (and any person who offends church doctrine may be subject to church disciplinary process); rites of passage; ecumenism; property and finances.⁹⁸

What follows provides some examples of the laws from which these principles are drawn. On the one hand, there are church laws which *restrict* freedom. First, laws are *binding* on the faithful; for instance, the law of the Evangelical Lutheran Church in Canada states: ‘Each lay diaconal minister shall covenant to abide loyally by the constitution, administrative bylaws and

⁹¹ Principles of Christian Law (2016) I.3.

⁹² Principles of Christian Law (2016): I.4: later laws may abrogate earlier laws; laws are prospective and not retrospective unless this is clearly provided for in the laws; and laws should be clear, stable, and coherent.

⁹³ Principles of Christian Law (2016) IV.5.

⁹⁴ Principles of Christian Law (2016) IV.5.3.

⁹⁵ Principles of Christian Law (2016) II.1.

⁹⁶ Principles of Christian Law (2016) II.3.

⁹⁷ Principles of Christian Law (2016) III.3.

⁹⁸ Principles of Christian Law (2016): IV: governance; V: discipline; VI: doctrine and worship; VII: rites of passage; VIII: ecumenism; IX: church property.

enactments of this church’;⁹⁹ the Presbyterian Church in New Zealand requires that: ‘All members of congregations...must comply with the Book of Order’;¹⁰⁰ and Baptist norms may require ‘strict adherence’ to the ‘rules and regulations’.¹⁰¹ Secondly, the actions of church bodies or officials must be lawfully authorised; the Methodist Church in New Zealand is typical: ‘No minister shall permit anything to be done in any Church under the responsibility of such Minister which is not in accord with the laws and usages of the Church’.¹⁰² Thirdly, church law is enforceable; for instance, in the Methodist Church of Ireland: ‘All members...of the Church are subject to its government and discipline, and are under the jurisdiction and care of [its] Courts...in all matters of Doctrine, Worship, Discipline, and Order in accordance with the Rules and Regulations [which are] made by the Conference’.¹⁰³ Fourthly, the faithful have duties and rights: the Roman Catholic Code of Canon Law sets out ‘The Obligations and Rights of all Christ’s Faithful’ and ‘The Obligations and Rights of the Lay Members of Christ’s Faithful’,¹⁰⁴ and Methodist laws provides lists of ‘privileges and duties’ of church members.¹⁰⁵

On the other hand, there are facilities which enable freedom in the form of the relaxation of law, limited doctrinal dissent, and conscientious objection – but the use of the facility is not unrestricted. First, dispensation: for instance, Roman Catholic canon law defines *dispensation* as: ‘the relaxation of a merely ecclesiastical law in a particular case’. Dispensation may be granted, ‘within the limits of their competence, by those who have executive power’, and by others ‘whether by virtue of the law itself or by lawful delegation’. However, it must not be granted without ‘a just and reasonable cause’, or to relax laws constituting juridical institutions or acts. A bishop may dispense for the good of the faithful, but cannot dispense from procedural or penal laws, or in cases reserved to the Apostolic See; and the Pontiff has wide dispensing powers; but there is no appeal/recourse against a judgment or decree of the Roman Pontiff.¹⁰⁶

Secondly, doctrinal dissent: once again, ecclesial regulation of doctrine neatly illustrates the reversal by church law of the image of religious liberty in civil law. According to the Principles of Christian Law (2016), the faithful should be encouraged to believe church doctrine (the official teaching of a church). The faithful should respect, honour and uphold church doctrine. Ordination candidates may be required to assent to the doctrine of their church. Each church has the right to determine the limits of permissible theological opinion, and to interpret its own doctrine and doctrinal standards, as well as the right to enforce its own doctrinal standards and discipline. Anyone who offends church doctrine may be subject to disciplinary process.¹⁰⁷ For example, Roman Catholics have an absolute duty to give an assent of faith to infallible and definitive doctrine - doctrine declared part of the deposit of faith ‘must be believed with divine and catholic faith’ and the faithful are ‘bound to shun any contrary doctrines’,¹⁰⁸ and ‘religious submission [*obsequium*] of intellect and will is to be given to non-definitive doctrine - that is, ‘any doctrine which either the Supreme Pontiff or the College of Bishops, exercising their authentic *magisterium*, declare upon a matter of faith or morals, even though they do not intend to proclaim that doctrine by definitive act. Christ’s faithful are therefore to ensure that they

⁹⁹ Constitution, Art. X.3.

¹⁰⁰ Book of Order, 2.2.

¹⁰¹ Jamaica Baptist Union: Constitution, Art. V.

¹⁰² Laws and Regulations, s. 2.26.1.

¹⁰³ Constitution, s. 5 and Regulations, Discipline and Government, s. 5.

¹⁰⁴ CIC: Book II, Part I, Titles I and II.

¹⁰⁵ Methodist Church in Great Britain: Constitutional Practice and Discipline, Deed of Union 9.

¹⁰⁶ CIC, cc. 87-93; c. 333: pontiff.

¹⁰⁷ Principles of Christian Law (2016) VI.3:

¹⁰⁸ CIC: cc. 749, 750.

avoid whatever does not accord with that doctrine'.¹⁰⁹ Some must make a profession of faith; soundness in faith is required in ordination candidates; and all the faithful must observe the decrees the Church issues in order 'to propose doctrine and proscribe erroneous opinions'.¹¹⁰ The church may discipline the faithful engaged in heresy, apostasy, schism, and blasphemy.¹¹¹ Those who teach a doctrine condemned by the Pontiff or an ecumenical council or who perniciously reject non-definitive doctrine may be punished with just penalties - unless after warning by the Apostolic See or by the ordinary the persons retract.¹¹² However, the faithful have a right and sometimes duty 'to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church', and to the other faithful, but in so doing must have 'due regard for the integrity of faith and morals and reverence towards their pastors, and consideration of the common good and the dignity of persons'.¹¹³ All engaged in theological study have the right of free enquiry and expression - public dissent may be allowed if grounded in a 'true respect for the *magisterium* even while disagreeing with it on a particular point'.¹¹⁴

Protestant laws also require conformity with church doctrine but enable debate about it. For instance, Lutheran ministers must uphold church doctrine in teaching;¹¹⁵ and members' must 'ensure faithful adherence to the Confession' and 'apply discipline when departure from the doctrine of the Church is evident' - but 'differences of opinion...should not be held to in a way which hinders friendly discussion, and makes submission to the Scriptures difficult or...impossible'; indeed, 'pious opinions can enrich the church [and] have often stimulated thinking and discussion on central matters of faith'.¹¹⁶ Likewise, in Methodism, members are admitted on profession of the faith; 'No person shall be appointed to office in the Church who teaches doctrines contrary to those of the Church, or who holds doctrines likely to injure the peace and welfare of the Church'.¹¹⁷ Ministers may resign if unable to subscribe to doctrine.¹¹⁸

Thirdly, provision may exist to excuse or justify conduct based on conscientious objection. For example, in the Presbyterian Church of Scotland: 'A member or office-holder of the Church is free to believe that all the words of the Bible are together literally the Word of God, but that is not required of all members and office-bearers. Likewise a member or office-bearer is free to believe that all the doctrines in the Westminster Confession are fundamental, but again that is not required'; thus: 'The constitutional possibility of different beliefs is what allows the Church to be described as a "broad" Church'.¹¹⁹ Similarly, in the Presbyterian Church in America: 'God alone is Lord of the conscience and has left [the conscience of the individual] free from any doctrines or commandments of men (a) which are in any respect contrary to the Word of

¹⁰⁹ CIC: c. 752; see F.A. Sullivan, 'The response to the non-definitive exercise of magisterium', 23 *Studia Canonica* (1989) 267: *obsequium* has been translated respectively as 'submission' and 'respect'.

¹¹⁰ CIC: cc. 833; 1029: sound faith (ordination); 378: strong faith (bishops); 865: adult baptism; 754 (decrees).

¹¹¹ CIC: c. 751: the offences; c. 1364: the penalties; c. 1369: blasphemy.

¹¹² CIC: c. 1371.

¹¹³ CIC: c. 754 and c. 212.3.

¹¹⁴ CIC: c. 218.

¹¹⁵ Lutheran Church in Great Britain: Rules and Regulations, Responsibilities and Duties of Pastors, 1-24.

¹¹⁶ Lutheran Church of Australia: Constitution, Art. VI.7; Public Doctrine and Pious Opinion, 1984, ed. 2001.

¹¹⁷ Methodist Church in Great Britain: Constitutional Practice and Discipline, Deed of Union 7; Standing Orders 010(1).

¹¹⁸ Methodist Church in Ireland: Regulations, Discipline and Government, 4E.07: i.e. if 'unable to subscribe to Methodist doctrine'; Methodist Church of New Zealand: Laws and Regulations, s. 2.6.1.2: withdrawal on grounds of 'good faith and conscience'.

¹¹⁹ *The Constitution and Laws of the Church of Scotland*, edited by J.L. Weatherhead (Edinburgh: Church of Scotland, Board of Practice and Procedure, 1997) 26; but, 27: 'In no case is individual conscience a valid reason for disobedience', Act XXVI, 1959: ministers may object in conscience to re-marriage after divorce; if members consider church law contrary to God's Word, they may inform the church but must obey it until it is changed.

God, or (b) which, in regard to matters of faith and worship, are not governed by the Word of God. Therefore, the rights of private judgment in all matters that respect religion are universal and inalienable'.¹²⁰ Nevertheless, as is the case in the Irish Presbyterian Church, in a serious case discipline may follow commission of a doctrinal offence if it is provable from Scripture.¹²¹

Finally, some churches operate rights of conscience with regard to ritual,¹²² particularly with regard to the re-marriage of divorced persons. For instance, in Anglicanism, a minister may refuse to solemnise the marriage of a divorced person on grounds of conscientious objection.¹²³ In Lutheranism: 'A pastor may marry a divorced person or persons provided that the situation has been thoroughly worked through in the light of the church's teaching on marriage and divorce, and the pastor can officiate with a good conscience'.¹²⁴ In Methodism: 'Divorce does not of itself prevent a person being married in any Methodist place of worship'; but: 'Under no circumstances does the Conference require any person authorised to conduct marriages who is subject to the discipline of the Church as a minister, deacon, probationer or member to officiate at the marriage of a particular couple should it be contrary to the dictates of his/her conscience to do so'. Therefore: those authorised to conduct marriages 'but who for reasons of conscience will never officiate at the marriages of couples in particular circumstances shall refer such couples to an authorised colleague who is not so prevented'. If a request is received 'to conduct prayers for a same-sex couple the person approached should respond sensitively, pastorally and with due regard to established good practice'; 'no minister or layperson is required to act in any way contrary to his/her own conscience'; but 'Methodist premises may not be used to bless same-sex relationships'.¹²⁵ The Presbyterian Church of Wales is similar: 'the Connexion does not lay on any minister the duty of officiating at the marriage of a divorced person if, in so doing, he would be acting against his own conscience and judgment, and that of the elders'.¹²⁶

Conclusion

There is very little difference between understandings of religious freedom in secular law and those of Christians, save that religious freedom is a gift of God. The historic churches assume for themselves a duty to engage in advocacy for religious freedom in civil society. In some the duty is imposed by church teaching, in others by church law or soft-law, and in some by both. While the World Council of Churches assumes for itself a duty to engage in promoting religious freedom in civil society, the churches impose on themselves no *legal* duty to *cooperate* with ecumenical partners in discharging that duty. Whereas they may be beneficiaries of collective religious liberty under civil law, the churches have robust assertions in their laws of their own religious freedom in the form of institutional autonomy, but they also provide for cooperation with the State and compliance with civil law. Nevertheless, the churches regulate and limit the exercise of religious freedom by the faithful within the church. This is inherent to their use of laws to facilitate and order ecclesial life, the nature and binding effect of church law, the rule of law in ecclesial life, and processes for ecclesiastical discipline. However, the pattern which emerges is that the churches *reverse* the image of religious liberty in civil law (which they themselves advocate) when it comes to the regulation of their own internal affairs. Civil law

¹²⁰ Book of Church Order, Preface II.1; II.8: 'No church judicatory may make laws to bind the conscience'.

¹²¹ Presbyterian Church in Ireland: Code, 132.

¹²² E.g. United Reform Church in Great Britain: Basis of Union 14: 'The rights of conscience allow that no...minister shall be compelled to administer baptism in a form to which s/he "has a conscientious objection"'.
¹²³ PCLCCAC, Principle 71.

¹²⁴ Lutheran Church of Australia: Marriage, Divorce and Re-Marriage, III.1-3.

¹²⁵ Methodist Church in Great Britain: Constitutional Practice and Discipline, Standing Order 011A; and Bk. VI,

Pt. 2, s. 15.

¹²⁶ Presbyterian Church of Wales: Handbook of Rules, 9.4.

begins with the *right* to religious liberty and moves to limits on its exercise. Church law begins with *duties* on the faithful and moves to freedoms found in exceptions to rules, norms to relax church law, and rights of conscience, whose distribution is inconsistent as between traditions.

In light of these findings, there is a strong case for the Christian Law Panel, in its partnership with the Faith and Order Commission of the World Council of Churches, to debate the degree to which it is possible to induce from the laws of the historic churches principles of Christian law with regard to religious freedom. It is suggested here that either such principles may be based on juridical assumptions, related to church teaching, about religious freedom, or else that the historic churches should debate reform of their laws to capture a more distinctly Christian understanding of religious freedom which more fully relates religious liberty to the theology of duties deducible from universal moral and ethical principles around the duty and correlative right of all humans to seek religious truth. Another challenge is for churches to assess whether their laws are sufficient to enable/oblige them to engage in wider religious liberty advocacy.

Nevertheless, the following are offered as a basis for this debate. First, religious freedom is a necessary element of the Christian faith, a gift of God, and part of the divine plan for all humankind. The State should recognise, promote and protect the religious freedom of churches corporately and of the faithful individually. The free pursuit of religious truth is a universal value and the State should respect and facilitate this. Secondly, churches should be advocates of religious liberty for all in civil society – each church should have institutions dedicated to its promotion in the public sphere. Thirdly, the churches should cooperate together in the promotion of religious freedom in civil society as part of the ecumenical enterprise for greater visible Christian unity. Fourthly, each should act as a guardian of its own religious freedom and institutional autonomy in civil society in order to promote its divinely-given mission and witness. Fifthly, on the basis that all the faithful in a church are equal in dignity by virtue of their baptism, a church should in its laws clearly define the limits on the exercise of its own religious freedom by ecclesial institutions within it and by the faithful who are members of it. However, the extent to which a church through its law provides for conscientious objection and the appropriate relaxation of its norms on grounds of individual conscience is a matter for that church in an exercise of its own autonomy, notably with regard to matters of doctrine and faith.