

Book Review

John Corvino, Ryan T. Anderson, and Sherif Girgis.
Debating Religious Liberty and Discrimination.
New York: Oxford University Press, 2017. vii + 343 pgs.

Reviewed by Dan Brockway,
Adjunct Instructor of Theology
Fuller Theological Seminary, Pasadena, CA.



With *Obergefell v. Hodges* (2015) the U.S. Supreme Court established same-sex marriage as the law of the land in all fifty states. The ruling also shifted the debate around marriage equality into a dispute pitting the religious freedom of socially conservative business owners and county clerks against the equal rights of sexual orientation and gender identity (SOGI) minorities. After an introduction outlining the historical development of religious liberty in the United States, this book presents two essays from the opposing sides of this divide. Philosopher and LGBT rights advocate John Corvino articulates the anti-discrimination view, while Ryan T. Anderson of the Heritage Foundation and Sherif Girgis argue for religious liberty. The two essays are followed by rebuttals from the opposing side.

The core claim of Corvino's essay is that religious liberty has morphed into religious discrimination. He argues that religious exemptions to generally applicable laws constitute an unfair privileging of religion—one that is not typically extended to non-religious conscience claims and all too often promotes the exclusion of vulnerable minorities. Engaging with prominent recent court cases, Corvino draws convincing parallels between SOGI and racial discrimination, proposing a path forward that would fashion anti-discrimination laws to exclude custom services provided by private businesses (while requiring those businesses to provide non-custom services to everyone).

This is a promising suggestion, albeit one that is overshadowed by the author's disregard for religious exemptions in general. In a section exploring whether religious exemptions to law are ever justified, Corvino excludes all but the most extreme, life-or-death instances of conscientious objection. Unfortunately, this high standard intended to make Christian photographers work same-sex weddings would also force Muslim women to remove their head coverings in driver license photos and Sikh military officers to shave their beards. Such low regard for religious accommodation is exacerbated by the author's occasional jabs at religion (equating burkas with the subjugation of women on page 67 and making light of belief in transubstantiation on page 86, to cite two examples). These unfortunate detours from an otherwise charitable discussion only serve to distance the very people of faith Corvino aims to persuade. Interestingly, the section on religious exemptions is not mentioned at all in the essay's concluding summary—a passive acknowledgement, perhaps, of the overreach.

On the religious liberty side of the debate, Anderson and Girgis warn of a progressive Puritanism that would force religious objectors into conformity with socially liberal policies. The authors defend freedom of conscience as the backbone of a free society and advocate for a pragmatic pluralism that promotes win-win scenarios, honoring the rights of individuals to opt out of dealings that violate their convictions

without doing harm to SOGI minorities. Their defense of religious freedom is strong, albeit overly abstract. The argument excels when the ethical framework articulated by the authors is applied to concrete examples (e.g., financial penalties imposed on businesses that have taken traditional moral stances and parallels between objections to participating in same-sex wedding ceremonies and other legal conscience accommodations, like those allowing doctors to refuse to perform abortions). The weak point of the essay is the attempt to differentiate SOGI discrimination from other forms, like racism and sexism. While the authors do a convincing job distinguishing religious objections from the systemic injustices of the Jim Crow South, their argument is hampered by an inadequate acknowledgement of discrimination's impact on SOGI minorities and the naïve assumption that the free market will sort everything out. Certainly, if given enough time, economic realities might have brought American slavery to an end—that hardly negates the movement for abolition. Anderson and Girgis close by presenting religious objectors as the true victims, a brave resistance marginalized by liberal authoritarians. It is an unconvincing end to an otherwise persuasive essay.

As is so often the case with point-counterpoint texts, one comes away yearning for a third option. What of a perspective that defends religious liberty *and* SOGI equality? Few clues as to what such an argument might look like are found here. The authors do share much in common, agreeing that religious exemptions should extend to secular conscience claims and calling for legal protection for SOGI minorities against employment discrimination and other forms of institutional marginalization. However, the real value of this text lies in the tone of its authors' disagreements. The back and forth exchange reveals a civility, thoughtfulness, and willingness to grapple with the opposing perspective that is so often lacking in our society today. For this reason alone, the book deserves to be read widely. Readers searching for a theological treatment of the topic should look elsewhere, as the text is not a work of theology. However, for those craving an in depth exploration of the legal and philosophical underpinnings of this divide, *Debating Religious Liberty and Discrimination* will not disappoint.