ARCHIPELAGO OR LANDMASS?
VOLUNTARY ASSOCIATIONS, CIVIL SOCIETY AND THE HEALTH OF LIBERAL DEMOCRACY

Voluntary associations are key to protecting diversity in a pluralistic society, write **Peter Mulherin** and **Simon P. Kennedy**

> People differ, and tend to hold different moral views. If we find a society in which such variety was not present we would have good reason to suspect that freedom of association was not tolerated and that it was not a free society.
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> —Chandran Kukathas, *The Liberal Archipelago* (2003)

Freedom of association is increasingly coming under threat in Australia. Certain state governments have questioned whether religious organisations ought to have the right to use their faith-based beliefs as a requirement of employment. In 2015, a Roman Catholic archbishop faced legal action following the circulation of a booklet arguing against same-sex marriage. Just last year, a gathering of Christian groups who opposed the legalisation of same-sex marriage was cancelled following an online campaign to prevent the event from occurring. More recently, beer brewers Coopers withdrew support for a civil Bible Society campaign on same-sex marriage after a fierce consumer boycott. And these are only some examples.

This article warns that voluntary associations are easily taken for granted and argues that the risk they face is ultimately a threat to the health of our pluralistic society and basic political and civil freedoms. Intimately connected with the freedoms of conscience and speech, voluntary associations allow otherwise isolated individuals to express themselves by choosing to participate in groups with other like-minded people who may share political or religious beliefs, ideas, or cultural traditions. From sporting clubs, scouts and life-saving organisations to trade unions, political parties and lobby groups to churches, mosques, charities and non-state schools, we exert our democratic rights by voluntarily associating with one or many groups across our diverse society. In this way, voluntary associations protect diversity and act as a buffer against encroachment upon other fundamental freedoms. And yet their place in society is diminishing.

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Back in 2000, Harvard academic Robert Putnam concluded over 25 years of research looking at the fragmentation of American society. He found that US citizens were disconnecting from their communities at alarming rates. Civil society was shrinking as people disengaged from local charities, churches, clubs and NGOs.[1] Putnam's findings gave credence to the views of analysts like Robert Nisbet, who had written half a century earlier that rampant individualism was disconnecting people from civil society.[2] According to Nisbet, the absence of organic associations led people to latch on to the nearest thing to a community that most Western democracies could offer: the state. Increasingly seen as the *source* of ideas, values, and ethics—rather than being representative of them—the modern state willingly accepts citizens' surrendered autonomy in return for the promise of community. The antidote to the slow yet real monopolisation of community by the state is a strong civil society and the voluntary associations that thrive within it.

The historical foundations of associating

The idea of civil society has a long pedigree. While not the source of the idea, 19th century French diplomat Alexis de Tocqueville did much to develop our modern understanding of voluntary civil associations. In his seminal work *Democracy in America* (1835), Tocqueville observed that Americans were in the habit of uniting with like-minded people over any number of causes, whether 'religious, moral, serious ones, [or] useless ones.'[3] Far be it from being an accident of time or place, he believed that Americans formed voluntary associations *to protect their liberty.* Seeking to explain to his countrymen how America's example could be used to inspire a similar system, Tocqueville saw a country in which the government is only begrudgingly granted power over its citizens—and then primarily in matters of industry and public safety, and not control over religion, morality, and ideas. The latter are vitally important for society, he argued, but are best represented through associations:

> Among the laws that govern human societies, there is one that seems more definitive and clearer than all the others. For men to remain civilized or to become so, the art of associating must become developed among them and be perfected in the same proportion as equality of conditions grows.[4]

Tocqueville further asserted that 'moral associations', which are concerned primarily with questions of religion, ethics, ideas and values, are more important since they serve as vessels for what are typically deeper matters of conscience. At the same time, he also foresaw the weakening of civil society as individualism became enshrined in the American psyche, and warned that the loss of associations could see the rise of either the 'tyranny of the majority'[5] or 'democratic despotism'.[6]

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'Compulsive collectivism'—21st century style

Talk of 'tyranny' in most modern liberal democracies may seem unnecessarily alarmist, and is seemingly of little relevance to most Australians' daily existence. However, when one's idea of tyranny shifts from violent authoritarianism to the idea of *dominance* by an elite in society the warning is starker. Take for example a nation in which the mainstream media increasingly serves political interests, or seems to colour its reportage with agendas taken from group mentality within segments of universities. Or a political correctness so strong that any idea of a fair trial—through civil debate in the public square—is out of the question when 'fashionable' issues are discussed to do with minority group grievances, entitlements, race or religion. The tyranny of the majority—usually within cultural elites but not as a percentage of the overall population—may be brought forward to the 21st century, perhaps facetiously, as the 'absolutism of the academy,' 'Manichaeism of the media' or the 'tyranny of Twitter.'

More worrying than talk of 'tyranny' is Tocqueville's theory of 'democratic despotism'.

While more discreet than tyranny, under this system the state carefully takes citizens and moulds them as it pleases.[7] Tocqueville's picture of government-enforced social uniformity bears an increasing resemblance to Australian society as it sinks deeper into the stifling atmosphere of bureaucratised morality and belief. In this increasingly suffocating climate, voluntary associations have an important role to play as the real enablers of individuality—not individual*ism*. As Nisbet put it, 'intermediate powers,' by protecting pluralism are, 'the greatest single barrier to the conversion of democracy from its liberal form to its totalitarian form.'[8]

This sentiment has been expressed more forcefully by Russell Kirk in *The Conservative Mind* where he insisted that the 'compulsive collectivism' of many liberal democracies can lead to the state forcing homogeneity upon society.[9] Echoing Edmund Burke on the importance of protecting the 'little platoon',[10] Kirk argued that intellectuals should champion the 'concerns of genuine community, local and voluntary, rather than clearing the way for an egalitarian collectivism.'[11] He further argued that rather than seeking the 'standardisation of life,' or the imposition of a 'universal mediocrity,' diversity in society must be encouraged through associations if a democratic system is to prevail.[12] By protecting against state interference and the collectivisation of thought or belief, it follows that voluntary associations are key enablers of social diversity.

Associations often subsume not only the views of members, but also many of their social liberties by becoming co-holders of rights alongside the individuals.

This particular role, that of enabling social diversity, is often overlooked by critics who, on the one hand, call for ever greater diversity in matters of race, culture, religion, worldview and gender, yet, on the other hand, seek to silence opinions with which they disagree. According to US political analyst Yuval Levin, the countless 'vision[s] of the good life'[13] that exist in our societies alone ought to see the associations which encapsulate these visions protected from the interference of the state and individuals who hold a different vision. If the marketplace of ideas is to endure, different religious beliefs, values and visions must be allowed to be expressed.

That said, freedom of association, like freedom of expression, cannot be absolute in a diverse society. If a voluntary association disagrees with the ideas or morals of others, that is an expression of pluralistic democracy. But if the association crosses the line to incite or perpetrate violence against those others, the law should restrain that incitement and action. For example, if an anti-Semitic organisation calls for violence against Jews, or a soccer club demands its members commit acts of hooliganism against their rivals, those calls and demands should not be permitted. But apart from restraining violence and the advocacy of violence, the freedom of association of members must be protected and, by extension, the liberties of members to express their ideas, beliefs and morals.

By choosing to participate in a particular association individuals must, self-evidently, adhere to its membership rules and agree with its governing ethos. In so doing, members must be willing to renounce certain freedoms if they wish to remain a part of the association. One assumes, for example, that a candidate for the Greens is not free to be a climate change denier; nor that the president of a football club is free to barrack for its rivals; nor that a member of an Islamic council is free not to be a Muslim. Clearly, though, individuals are free to do or be such things if unassociated with the group.

Furthermore, associations often subsume not only the views of members, but also many of their social liberties by becoming co-holders of rights alongside the individuals. For example, anti-whaling activists have an individual conscientious objection to whaling. However, when they join a group like Sea Shepherd they can be seen to possess a collective conscience with regards to whaling, since they have chosen to associate with fellow-travellers. In this way, voluntary associations are more than the sum of their parts—or members' consciences—since by forming an association a new rights' holder has essentially been created. In the case of Sea Shepherd, if the Australian government were to insist that they could not discriminate against professional whalers (who valued and advocated for whaling) joining the group, it could mean that they would be forced to

take on a person who fundamentally contradicts the ethos of the association. This would threaten the rights of the association which, by extension, would also threaten the freedoms of conscience, expression and association of its members.

Associations: to target or tolerate?

Putting hypotheticals to one side, actual examples in Australia where associations are being threatened are becoming increasingly common.

In August 2016, the Daniel Andrews Labor government in Victoria tried to amend the *Equal Opportunity Act* and establish a state-run test to determine whether religious organisations had the right to use their faith-based beliefs as a term of reference for employment. In this situation, religious voluntary associations including churches, schools and charities would have had their guiding ethos undermined and *raison d'être* questioned by a government wielding the authority to decide which views were appropriate and which were not.[14] This kind of legislative manoeuvre not only damages the freedoms of the organisations' members, but also harms civil society as a whole by adopting illiberal and undemocratic methods in a thinly-veiled attempt to compel social uniformity.

A Tasmanian case that similarly threatened civil society involved the Catholic Archbishop of Hobart, Julian Porteous. In 2015, Porteous circulated a booklet to Catholic schools entitled *Don't Mess with Marriage* which sought to explain the Church's position on marriage. The booklet aimed to 'engage with [the same-sex marriage] debate, present the Church's teaching to the faithful, and explain the position of the Catholic faithful to the wider community.'[15] Despite being sent exclusively to parents of students at Catholic schools—voluntary members of an association—Porteous found himself facing legal action for a possible breach of Tasmania's *Anti-Discrimination Act* based on 'conduct that is offensive, intimidating, insulting or ridiculing' of same-sex attracted people. Inciting no violence or hatred, Porteous' 'crime' was articulating an opinion based on his religious convictions—in short, expressing his conscience.[16]

A related incident in Sydney in 2016 saw a planned gathering at the Mercure Sydney Airport Hotel targeted for their beliefs. The function, consisting of various Australian Christian groups and organisations, was aiming to form a strategy in the event of a same-sex marriage plebiscite being held. An online campaign to have the function banned was so heated that the hotel cancelled the event. According to a hotel spokeswoman, the decision to cancel was based on fears for the 'safety and security of our hotel guests and staff.'[17]

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More recently, activists have called on IBM to review its board membership after it was found that managing partner Mark Allaby was involved with an organisation that did not publicly support same-sex marriage.[18] Finally, beer brewers Coopers withdrew support for a recent Bible Society campaign related to civil discourse on same-sex marriage after a fierce consumer boycott threatened the company's reputation.[19]

Ironically, all these cases were framed by their opponents as 'attacks on diversity', which raises important questions about the role of associations in modern pluralistic societies.

True diversity is not about replacing 'old' ideas with 'new,' and then silencing the 'old'. A truly diverse society allows competing perspectives to stand side-by-side and allows individuals to choose between them. Brookings Institute scholar William Galston writes that liberal societies must accept and manage 'diversity through mutual toleration within a framework of civic unity.'[20] Liberalism, he argues, 'is about the protection of legitimate diversity.' Australian political theorist Chandran Kukathas expands on this in *The Liberal Archipelago*. An evocative title, it points to a society in which diversity is the norm and where individuals are free to 'inhabit' different ideational islands.[21] Diversity, protected by the freedom of conscience and speech, is intimately connected to associations.

Indeed, associations can *protect* diversity by allowing likeminded individuals to come together. Kukathas writes that 'liberty of conscience requires freedom of association.'[22] Therefore, just as individuals may hold diverse views, the associations

to which they are party must be allowed to represent them fully. When associations are seen as a *vehicle* of individual rights, it becomes apparent that curtailing an association's freedoms curtails, by extension, the liberties of its individual members. Seen in this way, the health of a liberal democracy may be measured by observing the state's treatment of voluntary associations. Kukathas makes this argument, but cautions that freedom of association 'does not mean that other liberties—of speech, for example—are unimportant; but they are less important because they either derive from or are subordinate to this more fundamental freedom.'[23]

The health of a liberal democracy may be measured by observing the state's treatment of voluntary associations.

Conclusion

In a free society, individuals who have chosen to join an association should not have their rights of conscience and moral speech taken away, no matter how they choose to express them—whether directly or through an intermediary or group—provided they do no violence to others who disagree. Co-bearer of the members' individual freedoms, voluntary associations are integral elements of a free and just society. It is fundamentally intolerant to require them to conform their moral views and legally permissible actions in support of those views to those prescribed by the state. That is a warning sign of an overweening state, intent on enforcing an approved uniformity on civil society that undermines voluntary associations and a healthy democracy. Peaceful pluralism is only possible where social uniformity is not the goal—an archipelago, not landmass. Co-existence, not complete congruence, is the only way of protecting individual freedoms. 'Live-and-let-live' is far from a banal platitude; it is in all our interests.

Endnotes

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