BEING CHURCH AND FREEDOM OF RELIGION—THE FUNCTION AND AMBIT OF RELIGIOUS FREEDOM

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Introduction

This paper seeks to address the issue of the church and religious freedom, and specifically, the question with regard to the function and ambit of religious freedom in the life of a church. The question about the function of religious freedom relates to the role that freedom of religion can play to help churches fully realize their being as church, while the question about the ambit of religious freedom relates to which sectors of a church’s life are affected by freedom of religion.

As far as could be established, not much has been done in this regard from the side of theology or churches. Rik Torfs touches on the question when he discusses the rights and obligations of Christians within the Roman Catholic Church in his book, *Mensen en Rechten in de Kerk* (Human Rights in the Church). In a joint publication, *Recht op Recht in de Kerk* (*The Right to Rights in the Church*), Rik Torfs, Kurt Martens, Leo Koffeman, and Pieter Coertzen scrutinize the state of procedural rights within Reformed Churches and the Roman Catholic Church. One of the conclusions is that there is a lot of work to be done both in theology and in churches for churches to fully realize the function and ambit of religious freedom. In 1981 Peter Krämer wrote about *Religionsfreiheit in der Kirche, Das Recht auf religiöse Freiheit in der kirchliche Rechtsordnung* (Religious Freedom in the Church: The Right of Religious Freedom in the Church’s Legal System) in which he touches on some of the questions related to the theme of this article.

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In order to address the theme and question of this article, attention will first be given to what we can understand under religion and freedom of religion. It will be done with reference to the Bill of Rights in the Constitution of South Africa.\(^4\)

In the second place, attention will be paid to the church in order to try and determine what it is that constitutes or helps to constitute the uniqueness of the church. Churches need to know their own identity in order to fully utilize the ambit of religious freedom and to be able to also contribute to the rest of society. In 2005 Max Stackhouse wrote that there is a great need for the social embodiment of human rights “particularly in the institution of the church.”\(^5\) This, of course, is also a need with regard to freedom of religion, which is seen as the most basic human right. This paper argues that it is exactly for this reason that churches need to know what their own identity is and what the function and ambit of freedom of religion means for them. If the questions about these two aspects of religious freedom are not answered satisfactorily, churches can be delivered to an embodiment of freedom of religion that is in contrast with the uniqueness of their faith identity.

In the third section, an attempt will be made to more specifically determine the function and ambit of religious freedom with regard to churches as unique institutions within a specific constitutional context. A helpful document in this regard is the report, *Exclusionary policies of voluntary associations*, which was published by the Human Rights Commission of South Africa and provided guidelines and principles that can accommodate associational rights within the legal order of South Africa. The report can help churches and religions in South Africa to determine the function and ambit of their religious freedom within South African society. The report, inter alia, states the following “The value of the document is that it allows voluntary associations to assess existing policies and documents, in order to bring their practices and policies in line with the Bill of Rights.”\(^6\) It is conceded that if

