

State of the Art

In this section we look at two other disciplines -journalism and the law - and their relationship to religion in Australia. John Henningham looks at the religious views of Australian journalists and Michael Eburn dispels many of the myths associated with the protection of religious liberty in the Australian Constitution.

Australian Journalists' Religious Views

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*"I'm bordering on the conclusion that the media themselves are in need of redemption."
Rev. Patricia Reeberg, Council of Churches, New York
(Communique, November 1993:4)*

An important consequence of the fact that only a minority of the population now attend regular worship services is that most people get their knowledge of organised religion and of religious perspectives on contemporary issues from the mass media. Gillman (1995) outlines the kind of impression Australian media consumers would form of religious activities - with a focus on division, dissent and improper conduct; a major United States conference on religion and media has identified similar concerns (Communique, 1993).

A survey in the 1980s of Australian clergy's views of the news media showed that clergy regarded journalists with great suspicion. To quote one minister:

Journalists have a lack of sensitivity ... [O]ften they are not aware of the power they have. They often distort the truth, and that has resulted in pastoral problems. (Oliver, 1988:49)

A former Anglican Dean of Sydney, Lance Shilton, has summed up the views of many of his colleagues: "The Church for the most part is scared of the media. It is frightened of being misrepresented through editing or scandalised by prejudices. (Shilton, 1988:32)

Religious affairs writer for Melbourne's Age, Mark Brolly, commented:

Given the limitations of deadlines, space and human resources in daily newspapers, it may seem near impossible to expect any reason-

able coverage of religious affairs in the secular press. (Brolly, 1991:13).

Much of the commentary by religious leaders about the media is focused on media treatment of organised religion. Yet the specific coverage of religion is far from being a day-to-day concern of the news media. Content analyses show that stories about religion take up only a small proportion of news space over the long term. (See Appendix). Most journalists, most of the time, are not working on a religious news story. Moreover, religion is not a prestige round for reporters. Selway (1992, p.19) points out that it is regarded as a "minor round" in Australian newspapers, with specialists in the area generally expected to cover other rounds as well. Buddenbaum (1986:600) refers to the traditional view of the religious assignment in U.S. newsrooms as a "second-class beat".

The 1993 Freedom Forum conference aired the view that a religious perspective is often lacking from discussion of wider issues, including the environment, abortion and military involvement in Bosnia:

The media's reluctance to include a religious perspective in reporting on public issues that have moral or religious dimensions was the focus of many of the conferences' discussions. ... A culture of skepticism and ignorance about religion in the newsroom are the reasons that religion gets short shrift in the news, argued several speakers. Outright hostility is another, some said. (Communique, 1993:1)

It is therefore relevant to ask how representative journalists are of the general community in terms of their religious convictions and behaviour. Little information is available about journalists' religious views. This may result from the sensitiv-

ity often associated with questions about personal religious belief, or it could simply indicate a decline in academics' perceptions of the importance of religion as an explanatory variable. For whatever reason, surveys of journalists which probe wide-ranging attitudinal and ideological areas have shied clear of religion.

Some research findings are available from the United States about journalists' denominational affiliations. Johnstone, Slawski & Bowman (1976) found that the religious backgrounds of U.S. journalists were almost identical to those of the general population, at least in terms of Christian denominations. This result was confirmed a decade later by Weaver & Wilhoit (1986): about 60 percent were Protestants and 27 percent Catholics. However, Rothman and Lichter's (1985) research of prestige media found that 50 percent of elite journalists had no religious affiliation (while only 7 percent of the U.S. public had no affiliation).

There is a significantly higher proportion of Jewish journalists (6%) than there are Jews in the U.S. population (2%) (Weaver & Wilhoit, 1986). In addition, Johnstone et al (1976) and Lichter & Rothman (1981) reported a much higher Jewish presence in prestige media. In the case of Lichter & Rothman's research on Washington-New York elite news organisations, 14 percent of respondents were Jewish while 23 percent were raised in a Jewish home. Their study found that only 20 percent of elite journalists were now Protestant, and 12 percent Catholic. They also found that 86 percent seldom or never attended religious services. (quoted in Freedom Forum, 1993:6).

Those involved in writing about religion are often likely to have religious beliefs: Selway (1991, 1992) found that most Australian religion writers with met-

ropolitan daily newspapers were believers; Dart and Allen (1993) found that 75 percent of U.S. religion news writers said faith was very important in their lives. This is hardly surprising: reporters who specialise in religion as a topic are likely to have an interest in religion which will most likely be associated with religious conviction. Similarly, Anderson (1993) found that most journalists working for church newspapers and religious broadcast media were overwhelmingly Christian believers (for example, 87 percent believed in the physical resurrection of Christ).

But there is quite a strong faith commitment on the part of U.S. journalists in general. In their national survey of journalists in 1992, Weaver and Wilhoit found that in answer to the question, "How important is religion or religious belief to you?", 37.5 percent said "very important" while 34.3 percent said "somewhat important". An identical total of 72 percent indicating that religion was of at least some importance was found in Dart and Allen's (1993) survey of newspaper editors.

The little Australian evidence indicates a lower commitment to religion. A survey of Australian metropolitan television journalists in the early 1980s found that, although 90 percent had been brought up with at least a nominal affiliation with a religion or religious denomination, only 21 percent said they now practised a religion (Henningham, 1988).

Little is known about whether religion affects journalists' attitudes or behaviour. Two U.S. studies give some information: Weaver & Wilhoit (1986) found that 35 percent of U.S. journalists named religious upbringing as a factor influencing their views on ethics. Religion proved to be more important than secondary educa-

tion as an ethical influence, but much less important than newsroom socialisation, tertiary education and family influence. This finding was replicated by Henningham (1993a, 1994), who also found that religious training was relatively more important an influence on Caucasian rather than Asian journalists.

Of course, concentration on journalists' level of commitment to religious organisations may be too narrow an approach to the issue of journalists' religion. An interesting alternative approach has recently been argued by Broddason (1994), who puts the view that there is a sacred element to journalists' ideal role of service to society.

An Australian study

The opportunity to consider Australian journalists' religious views comes from a major national survey of journalists conducted in 1992. The study, funded by the Australian Research Council, involved a random sample of 1068 journalists (a response rate of 90.1 percent), who were drawn from all types of mainstream news media (print, radio, television, news magazines and wire services) at national, metropolitan and regional levels. Journalists were interviewed by telephone, with a wide range of questions covering their socio-economic, educational and work-related backgrounds, and their attitudes to professional issues, current media issues and ethical values (Henningham, 1993b). Two questions probing religious background and behaviour were included.

Results

Most Australian journalists are from a conventional, nominally Christian back-

ground. More than 85 percent of journalists indicated they had been "brought up" in one of the Christian denominations.

Just over 2 percent had been reared in another faith. About one in eight journalists had not been brought up in any religion.

In comparison with population figures drawn from contemporary census data, journalists' denominational groupings are almost identical to those of mainstream society (Table 1). Almost all journalists have, like the general population, been brought up to be at least nominally Christian, and the proportions of both groups within the main denominations are very similar.

In relation to smaller denominations and religions, some points are worth noting. Adherents of the Orthodox religions are five times more common in the population than among journalists, while adherents of non-Christian faiths (apart from Judaism) are twice as common among the population than among journalists. As Hughes (1993) points out, ethnicity is closely related to religion. The figures reflect the strongly Anglo-Saxon character of Australian journalism: a total of 85 percent of journalists declared their ethnicity to be derived from the British Isles, while 13 percent had a continental European background, and only 1 percent had an Asian background.

Although minute as a proportion of journalists, the proportion of those who were brought up as Jews is twice the population proportion. This reflects the U.S. findings cited earlier, and may be related to the greater proportion of Jews in intellectual and artistic occupations. On the other hand, the apparent discrepancy may not be as great as it seems. The actual proportion of Jews in the population is estimated to be 50 percent greater than is indicated by responses to the Australian

census question on religion (Rubinstein, 1986).

Table 1: Comparison between journalists' and population's religious denominations

Religion	Journalists %	Population* %
Catholic	31.9	31.4
Anglican	31.2	28.7
Uniting	17.7	14.6
Other Protestant	4.0	4.6
Orthodox	0.6	3.2
Jewish	1.1	0.5
Other faiths	1.2	2.1
No religion	12.3	14.8

* Source: Castles, 1993.

("No answer" excluded from calculation of percentages from census figures: a total of 1.7 million respondents gave no answer, accounting for 10.2% of the total population.)

The comparisons shown in Table 1 are not totally apposite, as they compare the population's current declared denominational affiliation with journalists' childhood denominations. It may be more appropriate to consider census figures from a generation ago. In the 1966 census, for example, of those who answered the religion question (90 percent of the population), 37 percent were Anglicans, 29 percent Catholics, 11 percent Methodists and 10 percent Presbyterians. Only 0.9 percent indicated no religion, while 0.6 percent were Jewish and 0.1 percent of other non-Christian faiths (Commonwealth Bureau of Census & Statistics, 1969). It may be, therefore, that Anglicans in newsrooms are a little underrepresented, although there was probably more

nominalism in people’s responses in the 1960s, as indicated by the minuscule “no religion” response.

Given the substantial recent increase in the proportion of Catholics in the Australian population, largely at the expense of Anglicans and Uniting Church adherents, the figures may indicate a greater than expected incidence of “cradle Catholics” among the journalistic population.

In terms of their denominational backgrounds, there is a fairly even spread of

journalists among different types of media (Table 2). Main points to note are a greater number of Anglicans in regional broadcasting, fewer journalists of Uniting Church (and component church) background in metropolitan print media and in public broadcasting (ABC and SBS), and the low “no religion” percentage among regional broadcasters.

Table 2: Journalists’ religion by type of media organisation

	Metro print (n=458)	Regional print (n=295)	Metro b/cast (n=118)	Regional b/cast (n=54)	Public b/cast (n=120)
Catholic	34.5	27.8	29.7	31.5	30.8
Anglican	32.3	27.8	30.5	40.7	30.8
Uniting	14.8	22.4	21.2	20.4	14.2
Other Christian	3.9	5.8	5.9	1.9	5.0
Other faiths	2.6	2.4	—	—	5.0
No religion	11.8	13.9	12.7	5.6	14.2

Some differences do occur, however, between ownership groups (Table 3). In particular, there is a greater Catholic presence in Murdoch newspapers, compared with other proprietors’ publications. Of Murdoch journalists, 38 percent were Catholics, compared with 28 percent of journalists employed by Fairfax newspapers. There is a correspondingly larger Anglican presence in Fairfax newspapers and in Packer magazines and television. The Uniting Church and other Christian

denominations are represented slightly more strongly in newspapers belonging to Tony O’Reilly’s Australian Provincial Newspapers Group.

Although there are no major media groups which are manifestly “Catholic shops” or “Protestant shops”, the slight differences which do occur may reflect earlier patterns. The Fairfax family, which owned the Sydney Morning Herald for 149 years, was well-known for its observance of Protestant Christianity: edi-

tors in the Nineteenth Century were traditionally clergymen; proprietors until and including the last Fairfax, Warwick Jnr, were known for their Christian commitment. Issues of faith led to celebrated clashes between Warwick Fairfax Snr and liberal editors (Souter, 1981). It may be that some residue of this religious stance remains in the Fairfax newspapers. By contrast, Rupert Murdoch, although the grandson of a Protestant clergyman, has never been a public advocate of religion. Nor have been Consolidated Press and Channel 9 proprietor, Kerry Packer, or his father, Frank Packer (although nominally Protestant). Indeed, Kerry Packer has publicly concluded from his failure to appre-

hend a Creator when his heart stopped beating in 1991 that there is no afterlife ("A Current Affair", 16 Feb 1995; Australian, 17 Feb 1995).

Interestingly, Murdoch has reportedly converted to the Catholic faith of his wife, Anna, while the new proprietor of Fairfax, Conrad Black, converted from Anglicanism to Catholicism. Adding APN's O'Reilly to the formula, it is clear that Australia's print media, traditionally under Protestant proprietorship, is now in Catholic hands (although there is no evidence or suggestion that this has any contemporary effect on hiring policy or news media content).

Table 3: Journalists' religion by ownership group

	Murdoch	Packer	Fairfax	O'Reilly	ABC
N =	250	45	164	56	112
	%	%	%	%	%
Catholic	38.4	31.1	28.0	26.8	33.0
Anglican	26.4	42.2	37.2	33.9	31.3
Uniting	16.4	13.3	15.2	19.6	14.3
Other Christian	3.2	2.2	4.3	5.4	2.7
Other faiths	2.0	2.2	3.0	1.8	4.5
No religion	13.6	8.9	12.2	12.5	14.3

For the most part, the type of work in which journalists were engaged was not related to their religious denomination. There were, however, some interesting exceptions. The vast majority of print journalists work as reporters - gathering and writing news stories - or as sub-editors - editing stories into shape and writing headlines. Of these, there was no appre-

ciable difference from the mainstream profile of religious denominations. There were, however, fewer Catholics among the influential groups of (1) newspaper feature writers and leader writers, and (2) radio/television producers.

On the other hand, two key command positions were occupied by a disproportionately higher number of Catholics:

these were the positions of chief-of-staff (responsible for assigning stories to reporters) and chief-sub-editor/back bench (responsible for assigning stories to sub-editors while making key decisions on the overall design of a newspaper and the way stories will be handled). But the most senior position, that of editor (or its broadcast equivalent of executive producer), was occupied by a disproportionate number of Protestant journalists.

A number of indicators of professional values in journalism have been developed, chiefly in the United States (Johnstone et al, 1976; Weaver and Wilhoit, 1986). Application of these to the Australian sample revealed few significant differences between journalists of different denominational backgrounds.

Religious background was also unimportant in consideration of ethical attitudes.

Of greater importance than denominational links in the consideration of journalists' religious values is the question of practising religious faith. Journalists were asked the rather broad question, "Do you practise a religion now in any way (for example attending church, reading bible, praying?)."

The great majority of journalists - almost three out of four - claim not to practise religion in any way. Non-practice is rather higher among journalists than among the population. Table 4 shows the responses to the same question put to a sample of Australians living in Sydney, Melbourne, Brisbane, Adelaide and Perth in a 1994 telephone survey.

Table 4: Practice of religion: journalists and the public

	Journalists (n=1066)	Population (n=288)
Practise a religion	26.4	36.8
Don't practise a religion	73.6	63.2

Chi square 11.8, p001

Clear differences were found between denominations in religious observance. While of those brought up as Anglicans, only 20 percent now practised a religion, the figures were 24 percent for Uniting Church people, 37 percent for Catholics, and 47 percent for other Christian denominations. The highest religious practice figures were for those brought up in the Jewish religion (58%) or in other non-Christian faiths (54%). The figures indicate that, as would be expected from general population data (Kaldor, 1987), journalists' identification with major

Christian denominations (especially main-line Protestant denominations) is often nominal. Interestingly, of those brought up in no religion at all, 7 percent now practised a religious faith, suggesting some degree of conversion.

Differences emerged between different types of media in the proportions of journalists who practised religion (Table 5). The smallest proportions of religiously practising journalists were employed by metropolitan/national daily and Sunday newspapers, and by public broadcast media, at around 20 percent. By contrast,

about a third of journalists employed by regional newspapers or by metropolitan broadcast media practise religion, with the highest proportion, more than four out of ten, being those employed by regional broadcast media.

Table 5: Practice of religion, by broad media type

Media type	Percentage who practise religion
Metropolitan print media	20.1
Regional print media	33.3
Metropolitan broadcast media	32.5
Regional broadcast media	44.4
Public broadcast media	23.3

Further breakdowns of these figures found even sharper differences (Table 6). When regional newspapers were divided into regional dailies and the smaller, but more widely spread country weekly or bi-weekly newspapers, it was found that journalists at the smaller country newspapers were particularly inclined to practise religion. Within broadcast media, television was found to have the lowest proportion of the religiously-inclined. Regional radio had the highest proportion. Journalists with television current affairs programs, both ABC and commercial, were most unlikely to practise a religion.

Apart from the TV versus radio comparison, it is clear that there is a significant city versus country difference in religious observance (reflecting differences in the general population). Analysis of journalists in terms of location indicated that of metropolitan journalists, 22 percent practised a religion, compared with 35 percent of regionally based journalists.

Table 6: Practice of religion, by specific media type

Media type	Percentage who practise religion
Metropolitan commercial TV current affairs	4.3
ABC television current affairs	9.5
ABC television news	15.8
National daily newspapers	18.9
Metropolitan dailies	19.8
Metropolitan Sundays	19.6
Regional dailies	28.8
ABC radio	30.6
Metropolitan commercial TV news	32.1
Metropolitan commercial radio	33.3
Regional commercial television	40.0
Regional non-dailies	41.7
Regional commercial radio	52.6

Of the major media groups, there was no difference in the proportions of religiously oriented journalists - about four out of five journalists employed by Murdoch, Packer and Fairfax do not practise a religion. About three out of four journalists employed by O'Reilly's group and by public broadcast media do not practise religion. The greatest proportion of journalists who practise religion are employed by "other organisations".

Examination of religious practice by type of work showed no great differences among journalists. Similar proportions of reporters, producers and editors (about 28 percent) practise religion, compared with a slightly smaller proportion of sub-editors and feature writers (about 21 percent).

Of particular interest in the examination of religious behaviour is the relation-

ship between religious practice and professional attitudes.

A slight (but statistically significant) difference was found between religiously practising and non-practising journalists in the area of job satisfaction: those who practised a religion were more likely to be satisfied with their jobs (85%) than were those who did not practise a religion (79%). A related question, which may have a bearing on how journalists function in their reporting and editing work, was to do with levels of perceived cynicism. Religious views did not divide journalists on the question of whether Australian journalists were cynical: almost 70 percent believed a high level of cynicism prevailed. But when asked about their own levels of cynicism, those who practised a religion were less likely to report a cynical outlook (45%) than were those who did not practise religion (52%).

Responses to a scale of work-related attitudes developed by Johnstone et al (1976) to test professional values showed that in most areas, religiously practising and non-practising journalists had similar values. Those who practised a religion were, however, more likely to attach importance to job security (a non-professional item), and helping people (a professional item), while less likely to attach importance to the editorial policies of their newsrooms (a professional item).

Johnstone et al (1976) also devised a measure, subsequently developed by Weaver and Wilhoit (1986), to examine journalists' role conceptions, or perceptions of the functions of the media. Journalists are asked how much importance they attach to such areas as speedy news transmission and meeting the needs of the widest possible public on the one hand, and analysis and investigation on the

other. Analysis of responses shows whether they see their primary role as one of neutrality or participation (Janowitz 1975, Henningham 1982).

While the responses of religiously practising and non-practising journalists to these questions are broadly similar, with no statistically significant differences for half of them, there is a tendency for journalists who practise a religion to be neutral rather than participant in their orientations. Thus, they are less likely than other journalists to value the discussion of national policy and the development of the public's intellectual and cultural interests. They are also less likely to value an adversarial role for the media.

Attitudes to ethical issues were found to divide journalists on the basis of their religious practice. A set of questions was used which ask journalists whether they would approve such practices as paying for information, using confidential material without permission, and using an assumed identity. Non-approval of such practices is seen as indicating more ethical attitudes (Weaver and Wilhoit 1986, 1992; Layton 1993, McMane 1994, Henningham 1988, Henningham 1994).

Table 7 shows the percentages of journalists who disapprove the behaviours in the ethics scale. Regardless of their religious views, journalists strongly disapproved breaking confidences. They also tended to disapprove paying for confidential information. On the question of "badgering unwilling informants", just over half of all journalists considered this an acceptable behaviour.

Although most journalists approved the use of confidential business or government documents without permission, a greater minority of journalists who practise a religion disapproved of this practice. In addition, journalists who practised

religion were significantly less likely to approve behaviours which involved deceit of some kind. Thus, they were more opposed than were their non-practising colleagues to such behaviours as claiming

to be somebody else, using personal documents without permission, and getting employed in a firm to gain inside information.

Table 7: Attitude to ethical questions, by practice of religion

	Don't practise a religion (n=277)	Do practise a religion (n=776)
	% would not approve situation	
Agreeing to protect confidentiality and not doing so	95.0	95.9
Claiming to be somebody else	91.0	86.2 *
Paying for confidential information	72.8	67.6
Making use of personal documents such as letters & photos without permission	67.0	58.2 *
Getting employed in a firm or organisation to gain inside information	59.3	51.4 *
Badgering unwilling informants to get a story	45.7	44.9
Using confidential business or govt documents without authorisation	30.7	16.5 **

** Difference significantly different. Chi square 25.5 p001

* Difference significantly different Chi square test. p05

There was also evidence that practice of religion is related to political conservatism. In general, journalists are more inclined to lean to the left than to the right: about four in ten describe their political leanings as middle-of-the-road, while a similar proportion put themselves to the left of centre. Of journalists who practise

a religion, only about one in four classified themselves as to the left (Table 8). Similarly, journalists who practised a religion were more likely to vote for the coalition Liberal and National Parties than for the Labor Party. In both cases, differences are statistically significant.

Table 8: Political views, by practice of religion

	Practise a a religion (n=281)	Not practise a religion (n=785)
A. General political leaning *		
Left	26.3	43.4
Middle of the road	45.2	39.5
Right	23.1	13.5
Other/refused	5.3	3.7
B. Federal vote **		
Labor	28.8	39.5
Liberal	37.0	26.7
National	3.9	1.5
Australian Democrats	3.2	3.4
Other	10.3	11.0
Don't know	12.1	13.6
Refused	4.6	4.2

* Difference significant. Chi square 29.1 p001 2 d.f.

** Difference (Labor vs coalition) significant. Chi square 16.8 p001 1 d.f.

Summary and discussion

Several findings about journalists' religious views have emerged from this study. First, in terms of background, journalists seem to have much the same sort of religious profile as does the general population. Most have been brought up with at least a nominal attachment to a Christian denomination or to another faith. Less than one in eight indicated that they had not been brought up in any religion, about the same as the proportion of the population who state "no religion" on

the census form. In addition, denominational breakdowns indicate that journalists come from the same diversity of religious backgrounds as does society in general: about three in ten have a Catholic background, a similar proportion to those with an Anglican background, while other Christian denominations account for almost one in four. About 2 percent of journalists are from non-Christian faith background. Jews are somewhat overrepresented among journalists, and other non-Christian faiths underrepresented, in comparison with the population.

Second, denominational background seems to be of little importance in terms of a range of occupational characteristics of journalists. The same diversity of religions is found within different types of media and also in general within different ownership groups. An exception to the latter point is a greater proportion of Catholics employed by Murdoch media, and more Anglicans with Fairfax and Packer publications. Denominational grouping is unimportant in the examination of journalists' professional and ethical values.

Third, the actual practice of religion is a minority activity among journalists, and journalists as a group are less likely to practise a religion than do the general population. Just over one in four journalists practise a religion in any sense. Religious practice is higher among those brought up Catholics than among those brought up as Anglicans or in the Uniting Church, and highest among those with other Protestant or other faith backgrounds. In relation to types of media, religious practice is lowest among the most prominent and influential media organisations - especially metropolitan and national newspapers, and public broadcasting corporations. It is particularly low among commercial and ABC television current affairs journalists. Highest observance of religion is found among non-metropolitan journalists, and within radio news organisations.

Fourth, the practice of religion is related to several attitudinal measures, especially those concerned with professionalism and ethics. Those who practise religion are on some measures more professional than other journalists: they are less cynical and more job-satisfied, and are more committed to helping

people. On the other hand, they are less concerned with their organisations' editorial policies, and more interested in job security. On a "participant-neutral" scale they are more inclined to be neutral - that is, less committed to an involved or active model of journalism, and more committed to the traditional observational role. In ethical areas, journalists who practise religion are less inclined than other journalists to support news-gathering methods which involve deceit. Religious practice is also related to political conservatism.

From these findings we can conclude that although denominational background is of little importance in differentiating between journalists, there are important links between the practice of religion and various occupational variables. In particular, journalists who are in some sense religious are both more altruistic and also more concerned with the personal satisfactions of their jobs; they are less interested in the adversarial form of journalism, and they are more likely to reject dishonest news gathering practices. They are also more conservative politically. The fact that they are in a minority, especially among leading media organisations, may indicate that their influence is slight. On the other hand, the fact that they are found at all levels of news media organisations, including in important managerial and news policy decision-making positions, suggests that religion continues to be a significant element in the making of news in Australia.

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media	4910	8.1
doctor	4812	8.0
football	4703	7.8
economy	4641	7.7
cricket	4586	7.6
technology	4586	7.6
murder	4435	7.4
sex	4272	7.1
environment	4237	7.0
farm	4226	7.0
computer	3888	6.5
horse	3877	6.4
criminal	3539	5.9
teacher	3056	5.1
church	2941	4.9
dog	2873	4.8
marriage	2786	4.6
jail	2563	4.3
farmer	2365	3.9
prison	2336	3.9
politics	2271	3.8
conservation	2198	3.7
God, god	2171	3.6
beer	2141	3.6
welfare	1848	3.1
unemployment	1809	3.0
disaster	1808	3.0
Catholic	1763	2.9
Christian	1450	2.4
unemployed	1420	2.4
belief	1414	2.3
faith	1239	2.1
industrial relations	1210	2.0
medicine	1209	2.0
Muslim	1189	2.0
religion	1181	2.0
religious	1060	1.8
saint	951	1.6
heaven	886	1.5
Anglican	831	1.4
pension	828	1.4
priest	681	1.1
Jewish	609	1.0
Christ	608	1.0
poverty	575	1.0

Appendix

Number of mentions of selected terms in all news stories, feature stories, letters, editorials and headlines published in Brisbane's Courier-Mail and Sunday Mail newspapers between 6th April 1993 and 1st December 1994 (accessed through QNIS computer search).

Word	Number of mentions	Average no. mentions per day
Queensland	38909	64.5
Australia	37722	62.6
government	26287	43.6
company	18657	30.9
women	17639	29.3
family	16035	26.6
business	14843	24.6
crime	14686	24.4
industry	12512	20.8
law	12026	19.9
school	10959	18.2
sport	9826	16.3
rugby	8780	14.6
university	7656	12.7
union	7372	12.2
parliament	7109	11.8
education	6852	11.4
accident	5403	9.0
election	5049	8.4

Jesus	496	.8	Buddhist	158	.3
Jew	442	.7	Islam	98	.2
nun	271	.5	sacrament	31	.05
worship	238	.4			

Religion and the Constitution - an Illusory Freedom

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In Australia, there are very few civil freedoms that are enshrined in the Constitution. One 'freedom' that at first glance appears to be protected by the Constitution is a freedom of religious choice. That freedom is protected, if it is protected, by s. 116 of the Constitution. This paper will consider that section and the limited role that it has been given by the High Court of Australia. It will be discovered that any guarantee that the section may appear to give has been seriously limited, with the result that like so many civil liberties in Australia, the freedom of religion is protected by the political process and the 'goodwill' of government, rather than by being enshrined in the foundation documents of the nation.

The Constitution

Section 116 of the Constitution says:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

This section of the Constitution is a 'constitutional provision of high impor-

tance' that ensures that 'Parliament will observe that "true distinction between what properly belongs to the Church and what to the State"¹. However, notwithstanding its apparent broad terms this section is not a guarantee of freedom of religion in Australia.

It is not, in form, a constitutional guarantee of the rights of individuals ... instead takes the form of express restriction upon the exercise of Commonwealth legislative power.²

Under the Commonwealth structure in Australia, the Constitution sets out those matters upon which the Federal Parliament may make laws. If a law is outside the scope of these listed powers it is beyond the power of the Commonwealth to make the law (the law is *ultra vires*) and any such law is invalid. Section 116 however is unlike other sections of the Constitution in that it does not identify a subject area about which the Commonwealth can make law, rather it identifies an area upon which the Commonwealth cannot make a law. As such it is a limit on Commonwealth power. To put it another way, s. 51 sets out 39 areas upon which the Commonwealth may make law. It is however up to the Parliament to decide what the necessary law should be, for example under the Immigration power (s. 51(xxvii))

the Commonwealth could make a law that either liberalised or restricted Australia's position on immigration. Under the Constitution the power to make the law is given to the Commonwealth but the decision of what law to make is left to the Parliament.

If s. 116 was in similar terms to the other powers in s. 51, for example if it said that the Commonwealth shall have the power to make law regarding religion, then the Parliament of the Commonwealth could either restrict or encourage religious freedom. Section 116 is not, however, like s. 51. Rather than give the Commonwealth freedom and power to make a law, it restricts that power. It says that no matter what the Commonwealth may otherwise be able to do it is not able to make laws about religion that would establish any religion, impose any religious observance, prohibit the free exercise of any religion, or impose a religious test as a qualification for any office or public trust under the Commonwealth.

That limit on Commonwealth power does not however guarantee that the citizens of Australia have the right to exercise religion free from Government interference.

*The fact is that s. 116 is a denial of legislative power to the Commonwealth, and no more. No similar constraint is imposed upon the legislatures of the States. The provision therefore cannot answer the description of a law which guarantees within Australia the separation of church and state.*³

The section must have some effect however. It does impose some limits on the Commonwealth if not on the States. The question that needs to be considered is what is the limit that the section imposes? Before attempting to answer that

question, it is helpful to consider what, at law, is a 'religion'?

The task of setting out a definition of religion for the purposes of the law had to be addressed in *The Church of New Faith v The Commissioner of Pay-Roll Tax (Vic)*⁴. The issue was whether the 'Church of New Faith' (Scientology) was a religion within the meaning of the Victorian Pay-Roll Tax Act - if it were then it could claim exemption from pay-roll tax in that State.

Mason ACJ⁵ and Brennan J delivered a joint judgement wherein they considered what was meant by a 'religion'. They said that a definition of religion could not be based on a definition acceptable to the 'majority' nor could religion be defined by reference to the majority, mainstream or accepted religions. On the other hand the label 'religion' could not be given to every group that claimed for itself the title of 'religion'. 'A more objective criterion [was] required.'⁶ They said:

*We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, the belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.*⁷

Murphy J said that it would be impossible to give a conclusive definition of what is a religion. Rather, it was possible to state what was sufficient, though not necessary, to decide whether or not a group was a religion.

On this approach, any body which claims to be religious, whose beliefs or practices are a revival of, or resemble, earlier cults, is relig-

*ious. Any body which claims to be religious and to believe in a supernatural Being or Beings, whether physical and visible, such as the sun or the stars, or a physical invisible God or spirit, or an abstract God or entity, is religious. For example, if a few followers of astrology were to found an institution based on the belief that their destinies were influenced or controlled by the stars, and that astrologers can, by reading the stars, divine these destinies, and if it claimed to be religious, it would be a religious institution. Any body which claims to be religious, and offers a way to find meaning and purpose in life, is religious. The Aboriginal religion of Australia and of other countries must be included. The list is not exhaustive; the categories of religion are not closed.*⁸

Murphy J was prepared to give a very wide view to the meaning of religion and placed a large amount of emphasis on the fact that the group claims to itself the title of religion or of being religious.

The final judgement was a joint judgement of Wilson and Deane JJ⁹. As to religion generally, their honours said that there can be no:

*... definition which will enable the question whether a particular system of beliefs and practices is a religion to be determined by use of the syllogism of formal logic. ... [Rather] the question will ordinarily fall to be determined by reference to a number of indicia of varying importance.*¹⁰

Their honours went on to identify their indicia of a religion. They are:

1. belief in the supernatural i.e a reality which extends 'beyond that which is capable of perception by the senses';
2. the ideas relate to man's (sic) nature and place in the universe and his relation to things supernatural;
3. the ideas require or encourage the adherents to observe particular standards

or codes of conduct or to participated in specific practices having supernatural (or 'extra-mundane'¹¹) significance;

4. the adherents must constitute an identifiable group or groups (however 'loosely knit'); and

5. the adherents themselves must see the collection of ideas and/or practices as constituting a religion.¹²

The test of whether an organisation or a set of beliefs constituted a religion is determined by reference to the beliefs of the followers of that religion. The fact that, for example, the charismatic leader of a religion is not sincere cannot take from the group the status of religion nor deny the Constitutional protection to the followers of that religion. The protection (whatever its force) is designed to ensure that the Commonwealth does not prohibit the 'free exercise of religion'. That protection would be worthless if a person who held sincere beliefs could be disregarded on the basis that another professed the beliefs but was not genuine in that statement.

*... charlatanism is a necessary price of religious freedom, and if a self-proclaimed teacher persuades others to believe in a religion which he propounds, lack of sincerity or integrity on his part is not incompatible with the religious character of the beliefs, practices and observances accepted by his followers.*¹³

Wilson and Deane JJ, in response to a suggestion that the leaders of the Scientology church had developed 'church' like structures for the sake only of tax advantages, said:

... the question whether Scientology is a religion ... falls to be answered by reference to the content and nature of those writings and practices and to the part Scientology plays in the lives of its adherents in Victoria rather than by reference to matters such as the gullibility

*of those adherents or the motives of those responsible for the content of current writings and the form of current practices.*¹⁴

One of the tests implied in this judgement is that the size of the 'church' and the distance of the members from the founders may be crucial in deciding whether or not there is a 'religion'. For example, two people may decide that there is a benefit to be obtained in describing themselves as a 'religion'. They may see that they will be exempt certain tax obligations and that they will be allowed to profess certain views which they believe to be false, but also believe that many people will accept them and they will be able to make money from the 'church'. Once a number of converts are found, provided those converts genuinely believe in the teaching and follow its teachings, then it may be a 'religion' notwithstanding the lack of good faith by the founders. This is consistent with a constitutional freedom of religion that is designed to allow people to believe what they chose to believe. To rule that there was no religion because the founders were fraudulent, would take the protection found in the Constitution from the genuine believers. As the freedom enshrined in the Constitution is aimed at individuals it would be defeated by a requirement that a religion only exists if all its proponents are genuine.

The relevant criteria is whether the 'general group of adherents'¹⁵ believe in the 'supernatural Being, Thing or Principle' advanced by the 'religion'.

The decision in *The Church of New Faith v The Commissioner of Pay-Roll Tax (Vic)* does not give a definition of what constitutes a religion. The court, in this case and the earlier case of *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth*¹⁶ expressed

the difficulty in providing a complete definition that will be applicable in all circumstances. As such the judges have set out some criteria that may be used to guide subsequent Courts and others to determine if, in particular circumstances, the group in question is in fact a religion. As Murphy J said however, the list is not closed and there will always be the opportunity for new 'religions' to argue that (whether or not they fall within the listed indicia) they are entitled to the status of religion.

Having considered what is a religion, the next issue to consider is what is the extent of the freedom guaranteed by s. 116.

The Effect of s. 116

The Commonwealth shall not make any law ... for prohibiting the free exercise of any religion ...

A law will not contravene the section if it is not a law 'for' the prohibition of the 'free' exercise of religion. The word 'for' implies that the prohibition must be the purpose or intent of the law.

When considering a law that was said to be a law for the establishment of a religion, Barwick CJ said that it must be a law for it, i.e. intended and designed ... for that purpose.¹⁷

Later he said:

*I have already, though perhaps only incidentally, indicated that the text of s. 116 refers to legislation which is designed to ... [prohibit the free exercise of any religion] ..., which intends and seeks that end, which is in that sense purposive in nature.*¹⁸

In another case it was asked:

... whether a particular law can fairly be regarded as a law to protect the existence of the

*community, or whether, on the other hand, it is a law "for prohibiting the free exercise of any religion." The word "for" shows that the purpose of the legislation in question may properly be taken into account in determining whether or not it is a law of the prohibited character.*¹⁹

A law that only incidentally, rather than purposefully limits a person's free exercise of religion is not, *prima facie*, prohibited by the section²⁰. A law that is a 'law to protect the existence of the community' is not a law *for* the prohibited purpose, even though it has, as a side effect, the consequence of imposing some restriction on the free exercise of religion.

As the Constitutional guarantee exists only while a society governed by the Constitution exists, then the Commonwealth has the right to enact laws designed to protect that society and ensure its continued orderly existence. A law prohibiting teachings that prejudice the conduct of a war²¹; a law requiring a person to submit to compulsory military service²²; a law that requires an employer to comply with industrial law even though they object on religious grounds to trade unions²³ are not invalid as they do not infringe s. 116—they are not laws *for* the prohibition of the free exercise of religion. They are valid civil laws that all persons may be required to obey.

If a law does, in an ancillary way, impose a restriction that is excessive, that is goes further than is reasonably required to meet the legitimate purpose of the Commonwealth, then it may be implied that the purpose was to impose the restriction and, therefore, that the law is a law *for* the prohibited purpose. In a case dealing with the implied guarantee of free speech found in the Constitution, the High Court said:

*If the restriction imposes a burden on free communication that is disproportionate to the attainment of the competing public interest, then the existence of the disproportionate burden indicates that the purpose and effect of the restriction is in fact to impair freedom of communication.*²⁴

By analogy, it can be argued that:

If the restriction imposes a burden on [the free exercise of religion] that is disproportionate to the attainment of the competing public interest, then the existence of the disproportionate burden indicates that the purpose and effect of the restriction is in fact to impair the [free exercise of religion].

Therefore a law will be a law *for* the purpose of restricting the free exercise of religion if that is the stated or implied purpose of the law. It will be the stated purpose if that is the intention or design behind the law. It will be implied if, although the law appears to be designed to achieve a legitimate purpose, it imposes an undue restriction, that is it restricts the free exercise of religion and the restriction is greater than is reasonably required to meet the legitimate purpose of the law.

The other requirement in s. 116 is that it prohibit the *free* exercise of religion. Any right or freedom that is enjoyed by members of a community must be tempered by consideration of the rights of others. The rights to freedom of speech and association are not unlimited or unrestricted. Free speech, free love, a free dinner and free trade are never absolutely free²⁵:

Free speech does not mean free speech; it means speech hedged in by all the laws against defamation, blasphemy, sedition and so forth; it means freedom governed by law ... there is no dictionary meaning of the word "free" which can be applied in all cases.

So too, the 'freedom of religion' is not unrestricted. A law may impose limits on the free exercise of religion so as to better guarantee the rights of others. Although such a law may be 'for' that purpose, it will not contravene the section if the restriction imposed is not inconsistent with the concept of 'freedom' or the free exercise of a right in a democratic society.

A law that required members of the 'Brethren' to comply with industrial law and negotiate with members of a Trade Union²⁶ was not a law that restricted the free exercise of their religion even though they objected on religious grounds. To uphold the religious, conscientious objection of the employers, would seriously affect the rights of Union members and the Union itself. As the members of the Brethren could not be allowed to impose such consequences upon members of the Union (or employees who may have wished to join the Union) then the law was valid. The obligation that the law imposed on the Brethren was not a law that imposed an obligation that was inconsistent with the 'free' exercise of their religion even though it did in fact impose some limit upon them. The limit was consistent with freedom.

²⁷ In *Kiorgarrd v Kiorgarrd and Lange* the Queensland Supreme Court found that it could make an order restricting the rights of the non-custodial father to take his daughter to church and instruct her according to his religion. The Court based its decision on the effect that would have on the child and her relationship with her mother, who objected to the religion. The order was based on 'the best interests of the child' and the court said that such an order would not restrict the fathers right to practice the religion of his choice. His obligation to respect the wishes of the custodial parent, and therefore preserve that

relationship, was not a restriction that was inconsistent with the notion of the 'free' exercise of religion. This decision has been affirmed by the Family Court in *In the Marriage of Firth*²⁸.

In the cases cited, the argument on 'freedom' was obiter (ie an aside, not essential to the decision) as each case was decided on the basis that the law in question, namely the *Industrial Relations Act* and the *Family Law Act* were not laws for the purpose of restricting the free exercise of religion and any such consequence was incidental to achieving a valid Commonwealth purpose. Notwithstanding the status of the discussion, it appears that the courts recognise that there are two elements to the prohibition in s. 116 so that a law could be passed, even if it was for the express purpose of restricting a religious practice (eg a law prohibiting female circumcision), if the restriction is not inconsistent with the limited notion of 'freedom'.

In summary, notwithstanding s. 116 of the Constitution, the Commonwealth may make laws that restrict a person's right to practice their religion provided that:

- * the law is a law to meet a valid Commonwealth purpose;
- * any restriction is ancillary or secondary, that is the purpose of the law is not to restrict religious freedom per se;
- * any restriction is not 'undue'; or
- * the law limits the practice of religion only to the extent necessary to protect the rights of others, ie in a way that is not inconsistent with the concept of 'freedom' which is necessarily limited in a co-operative society.

The Effect of s. 116

The Commonwealth shall not make any law for establishing any religion ...

In *The Attorney General for the State of Victoria (at the relation of Black) and Ors v The Commonwealth of Australia*²⁹ the issue was not whether a law of the Commonwealth was limiting religious freedom but whether the Commonwealth was 'establishing' a religion contrary to s. 116. Here the Commonwealth was providing financial assistance to religious, private schools.

According to Barwick CJ the words of the section impose all the limitations that are binding on the Commonwealth, with the result that the section is to be read narrowly. As s. 116 does not say the Commonwealth cannot give aid or encouragement to any religion then any law of the Commonwealth for the purpose of giving such aid is not prohibited by the section. Accordingly the provision of funds to a non-government school does not represent the establishment of a religion even when it may be assumed that the school will spend some time on religious instruction or use the buildings that may be built with the funds for that purpose.

*A law which in operation may indirectly enable a church to further the practice of religion is a long way away from a law to establish religion as that language properly understood would require it to be if the law were to be in breach of s. 116. ... The law must be a law for it, i.e. intended and designed to set up the religion as an institution of the Commonwealth.*³⁰

Gibbs J said that:

*The natural meaning of the phrase "establish any religion" is, as it was in 1900, to constitute a particular religion or religious body as a state religion or state church. If that sense is applied to the word [sic] in s. 116, there is no inconsistency with, or repugnancy to, the other provisions of the section.*³¹

A law is a law for the purpose of establishing a religion if and only if the purpose of the law is to create a 'State' or 'Official' church.

Murphy J dissented. In his view s. 116 should be given the widest possible meaning, that this section was a major guarantee of freedom and that '... the essential condition of religious liberty is that religion be unaided by the Commonwealth'. As the effect of the grants under challenge was to increase the wealth of the churches involved and allowed them to build various church buildings then the effect of the legislation was to support the religion and was, on Murphy's view, contrary to the section.

*A reading of s. 116 that the prohibition against "any law for establishing any religion" does not prohibit a law which sponsors or supports religions, but prohibits only laws for the setting up of a national church or religion, or alternatively prohibits only preferential sponsorship or support of one or more religions, makes a mockery of s. 116.*³²

Murphy J was however the dissenting judge, and the majority view was clearly that where the section prohibits the 'establishment' of a religion it does not mean that the Commonwealth cannot support a religious organisation or religion generally. It is interpreted narrowly and is limited to a prohibition on the creation of an 'official' or State church. In Australia, under the present Constitution, no church can have the place, status and role that the Church of England has in that country.

The Effect of s. 116

The Commonwealth shall not make any law... for imposing any religious observance ... and no religious test shall be required as a qualifi-

ation for any office or public trust under the Commonwealth.

There are no reported cases dealing with the last two prohibitions contained in the section. It follows however that they will be subject to a narrow interpretation and that a law will not be a law 'for imposing any religious observance' unless that is at least its dominant purpose.

Where it is for a legitimate purpose with the incidental effect of 'imposing any religious observance' it is unlikely to infringe the section unless the requirement is 'undue'. Hence a law that allows a person to give evidence on oath, or a juror to be sworn on the bible, or for Christmas day to be a public holiday, is unlikely to infringe the section.

The States

Although the States came into existence at the time of Federation in 1901, they are not bound by the prohibition contained in s. 116 which is directed solely at the Commonwealth, i.e the Federal Government.

In *Grace Bible Church v Redman*³³ the court rejected an argument that there was a common law prohibition that was similar to s. 116 and applied to the government of South Australia. They found that there was no fundamental guarantee of an inalienable right of freedom of religion and that there are no constitutional fetters on the parliament of South Australia (or any other State) that would limit the State's power to legislate on matters of religion as it saw fit. A State is not bound by s. 116 and can impose a State Church, or prohibit the exercise of certain religious practices, as it sees fit.

Under s. 51(xxix) of the Constitution, the Commonwealth has the power to

make laws regarding the external affairs of Australia. Australia is a signatory to the International Covenant on Civil and Political Rights. Section 18 of that Covenant says:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No-one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals of fundamental rights and freedoms of others.

Giving effect to this obligation represents a valid exercise of the Commonwealth's external affairs power³⁴ and a Commonwealth law to give effect to the International Covenant would be a valid law of the Commonwealth. Any State law that was inconsistent to the Commonwealth law would then be invalid to the extent of any such inconsistency³⁵. This may have the effect of limiting the power of the States to make laws affecting the free exercise of religion, though such a restriction depends upon the will of the Commonwealth to pass such a law and does not represent a fundamental constitutional guarantee.

Conclusion

Despite its promise of a guaranteed Constitutional freedom, s. 116 represents

no more than a limit on Commonwealth power. It does not guarantee religious freedom for Australian citizens, rather it guarantees that any imposition or restriction of religion by the Commonwealth shall not take any of the four specifically prohibited forms, but a restriction may come in other forms, such as a law that outlaws conduct required by a religion, provided that such prohibition is part of a law that is 'for' the achievement of some valid Commonwealth aim. The States, on the other hand, are free to impose religion or restrict the free exercise of religion, subject only to inconsistent Commonwealth laws, if any.

As far as the present Constitution stands, the concept of a guarantee of religious freedom is just that, more a 'concept' than a reality.

Notes

1. *The Attorney General for the State of Victoria (at the relation of Black) and Ors v The Commonwealth of Australia* (1981) 146 CLR 559 per Stephen J p.610
2. *ibid* p.605
3. *ibid* per Wilson J p.652
4. *The Church of New Faith v The Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120
5. read as 'Acting Chief Justice Mason'
6. *The Church of New Faith v The Commissioner of Pay-Roll Tax (Vic)* *op.cit.* p.132
7. *ibid* p.136
8. *ibid* p.151
9. read as Justice Wilson and Deane
10. *The Church of New Faith v The Commissioner of Pay-Roll Tax (Vic)* *op.cit.* p.171
11. *ibid* p.176
12. *ibid* p.174
13. *ibid* p.141
14. *ibid* p.171
15. *ibid* p.141
16. *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116
17. *The Attorney General for the State of Victoria (at the relation of Black) and Ors v The Commonwealth of Australia* *op.cit.* p.583
18. *ibid* p.584
19. *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* *op.cit.* p.132
20. see also *Krygger v Williams* (1912) 15 CLR 366
21. *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* *op.cit.*
22. *Krygger v Williams* *op.cit.*
23. *Concept Products v Forest Products, Furnishing and Allied Industries Industrial Union of Workers* (1993) 49 IR 122
24. *Australian Capital Television Pty Ltd v The Commonwealth* (1991-1992) 177 CLR 106 per Mason CJ at pp.143-144
25. *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* *op.cit.* per Latham CJ p.127
26. *Re CPH Sales and Contracting; Re Furnishing Trades Award*, 1981 (1992) 46 IR 109 and *Concept Products v Forest Products, Furnishing and Allied Industries Industrial Union of Workers* *op.cit.*
27. [1967] QR 162
28. *In the Marriage of Firth* (1988) 12 Fam LR 547
29. (1981) 146 CLR 559
30. *ibid* p.583
31. *ibid* p.597-598
32. *ibid* p.633
33. (1984) 36 SASR 376
34. *The Commonwealth of Australia v Tasmania. The Tasmania Dam Case* (1983) 158 CLR 1
35. s. 109 of the Constitution.