

"Religious Liberty in Multicultural Australia

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RELIGIOUS LIBERTY IN MULTICULTURAL AUSTRALIA



A CONDENSED OUTLINE OF A SPEECH MADE TO THE INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION (SOUTH PACIFIC DIVISION) PACIFIC CONGRESS, HELD IN SUVA, FIJI ON 9 JUNE, 1993 BY THE HON. JUSTICE MICHAEL KIRBY, AC CMG.

REPRODUCED BY PERMISSION.

Australia remains profoundly affected by the Christian religion which accompanied the British settlers after 1788. The same tradition came to be accepted by the indigenous people of the Australian continent, the Aborigines and the Torres Strait Islanders. When the British colonies moved to Federation under the Crown of the United Kingdom in 1901, they did so "humbly relying on the blessing of Almighty God". This appeal to God was inserted into the Preamble to the constitution at the suggestion of the majority of the colonial legislative chambers. It was adopted as a response to numerous petitions received from people at every colony; but not without resistance in the Federal conventions in Adelaide and Sydney. Petitions to the contrary were received. The idea was more readily accepted because of the specific adoption of a constitutional protection against the establishment of any religion.

To this day the words remain in the Preamble to the Australian Constitution. But like the reference to the Crown, they have lately come under attack - often from the same sources.

The protections for religious liberty in Australia still rest substantially upon the country's inheritance of the English culture of religious tolerance. In this, I can echo the opinion of the past Chief Justice of Ghana (Hon. ENP Sowah) that:

"Perhaps one of the greatest legacies the British bequeathed... was the freedom of religion"

Of course, in Britain itself it was not always so. Fierce sectarian rivalry and religious intolerance marked a great deal of the history of those islands. Reflections of it can still be seen, particularly in

northern Ireland, a place of my forebears. But the last time a British heretic was burnt at the stake by order of a court was in 1612. By the 19th century, Unitarians, Roman Catholics and Jews were relieved from all legal disabilities. Charles Bradlaugh had won emancipation for atheists. The Oaths Act 1888 permitted non-believers, for the first time, to take

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seats in Parliament and to give evidence in courts by way of solemn affirmation.

Justice Douglas, of the United States Supreme Court, once said of the people of his nation that: "We are a religious people". The evidence in Australia suggests a closer reflection of English attitudes to religion than those of North America. Perhaps this is an inheritance of the colonial times where religion was often seen as an element or order, civilisation and autocracy rather than of private spirituality and abiding belief. Perhaps it is an outgrowth of the harsh, rustic circumstances of the early Australian conditions. Perhaps it is simply a reflection of a society quickly converted to consumerism.

Unlike the founders of the American colonies, those who came to Australia came from a society where religion "was in decline and disarray eroded by scepticism and indifference". Despite this,

there was, at first, sharp hostility towards Roman Catholics and Methodists by the Anglican majority.

By 1825 this position was modified, the other Christian denominations receiving some support for their upkeep from the government of the colony of New South Wales. The early role of the churches in education attracted public subventions. In 1861 the Chief Justice of New South Wales delivered a judgment in the Supreme Court of the Colony declaring:

"The Christians of this colony, who were or would be members of the established Church in the United Kingdom, have never in any statute been recognised as being members of the Church established here by law, any more than members of the Roman Catholic, Presbyterian, Independent, Unitarian or Jewish congregations have been... The Colonial legislature... has in no instance given precedence to the Church of England over other collections of Christians".

This declaration accompanied the moves for free and compulsory education in the Australian colonies. A third feature of such education was added, viz that it should be secular. By 1890 no Australian government provided State aid directly to any church school. This position endured for nearly seventy years.

Sectarianism was never wholly absent from the early Australian scene. Indeed, denominationalism disputes contributed significantly to the progress of secular attitudes on the part of governments. But although the formal legal links with government were severed, the ceremonial links remained. Courts administered oaths on the Christian Bible as a matter of course. Parliament opened every sitting day with prayers after the Christian

tradition. Great public occasions involved Christian (and generally Anglican) invocations of the Deity. In business and some professions, religious and lodge memberships advanced Protestant boys. From colonial times boys of the Roman Catholic schools gravitated towards the Public Service. Girls - Protestant or Catholic - had no equal opportunities.

It was against this background that those who drew the Australian constitution in the 1890's were moved to include in it the guarantee for freedom of religion expressed in s 116:

"116 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 tests shall be required as a qualification for any office or public trust under the Commonwealth."

Proposals for a guarantee of this character appeared in the final constitution Bill drafted in 1891. In part, it was a response to growing pressure to add the invocation of the Almighty in the preambular statements. One of the Founding Fathers, Mr WB Higgins said that the guarantee was necessary to prevent any implication, arising out of the recognition of Almighty God in the Preamble, that the Federal Parliament would have power to legislate upon religious matters. A proposal to add the words:

"Nor appropriate any portion of its revenues or property for the propagation or support of any religion".

was put forward by a Tasmanian participant. It was not accepted in those terms. Tasmania is the only State of Australia which has a constitutional provision concerning religious liberty (Tasmanian Constitution Act 1934, s 46). However, unlike the Federal counterpart, this can be amended by the State Parliament. To amend s 116 of the Australian Constitution it is necessary under s 128 to secure, at referendum, a majority vote of the people of Australia in a majority of the States.

Editorial note: The June issue of NCV Quarterly The Hon. Justice Kirby sets out how he envisages the future of religion in Multicultural Australia.

The Hon. Justice Michael Kirby AC CMG is President of the Court of Appeal, Supreme Court of New South Wales. Chairman, Executive Committee, International Commission of Jurists. ▼

Bringing the Church Back Home

IN HIS LOCAL SOLUTIONS SERIES, RICHARD BEGBIE LOOKS AT A CANBERRA ORIGINAL: A HOME-CHURCH WITHOUT BUILDINGS OR BUDGETS OR BISHOPS, WHERE ANYONE CAN TAKE THE LEAD.

Churches, it seems, are on the wane. A few exceptions merely emphasise the nose-dive in church attendance throughout the mainstream Christian West since the 1950s. Millions still attend one church or another each week, but millions more have forsaken church for sport or the garden or breakfast in bed.

The analysts, both pro and anti-Christian, offer many reasons: the surrender of the spirit to mindless consumption, the rise of the scientific world view, a world-weary cynicism about the gap between preaching and practice. Disillusionment with antiquated forms and structures has been suggested. For whatever reasons, Australians seem to have opted in droves for what Manning Clark liked to call the kingdom of nothingness.

What few seem to have realised and even fewer examined, is that a small but growing number of defaulters have moved, not into sabbatical oblivion, but into another kind of church altogether. The low, almost invisible profile of the new brand of church and its members is not surprising. It has no buildings, no bishops, no central organisation and, perhaps as significant, pays no salaries and owns no property.

For this church meets in an ordinary

suburban home. It is independent of both the major denominations and other groups of its kind, though it welcomes links with both. Typically it's made up of 10 to 20 people from across the social spectrum - young and old, family groupings of all kinds, professional and unemployed. They will meet once a week at the time that best suits them, and will almost always share a meal as part of their "churching".

They "church" in each other's homes, and use the word as a verb rather than a noun. This is not surprising, since it isn't a building or vestry meeting that brings them together: just the sense of being on a shared journey. No-one collects money - there is no need - and any who find the group too much or too little for them leave with no hard feelings. There is no hierarchy and no priest. Usually the day's host will take a leading or initiatory role, as he or she might do at a dinner party.

Its members are unremarkable people with ordinary hopes and frustrations, working together at understanding what God might be like and what they themselves can become. These are not reclusive people, members of some furtive sect. They are open about their struggles and speak freely about them, although the aggression of some Christian groups is not their style. They call their church the Home Church.

The Home or House Church (the two are used interchangeably) has an honourable lineage, dating back to the beginnings of Christianity. No-one