

**The Institutional Politics of Religious Freedom:  
Religion and Education in the United States and Australia in Historical Perspective**

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**Abstract**

Religious freedom is nearly universally acknowledged to be a fundamental human right. Yet it is a right that has not been realized the same way everywhere, even among otherwise similar modern Western nations. Why do states adopt the policies and strategies toward religious freedom that they do? In this essay, I use a historical comparison of Australian and American education to argue that states' policies and strategies with respect to religious freedom have been heavily conditioned both by the extended campaigns of religious minorities seeking to realize their own understandings of religious freedom, and by the political institutions in which those campaigns have been waged. Explaining the diverse realizations of religious freedom, therefore, requires a historical analysis of the institutional politics of religious conflict.

## **The Institutional Politics of Religious Freedom: Religion and Education in the United States and Australia in Historical Perspective**

Religious freedom is nearly universally acknowledged to be a fundamental human right. Yet it is a right that has not been realized the same way everywhere. Even among similarly modern Western countries, states vary in the policies they adopt toward religious groups, and in the strategies they take in safeguarding the rights of minority religions. Like other aspects of religion in modern societies, religious freedoms “attain multiple forms and diverse institutionalizations” in different countries.<sup>1</sup> But why do states adopt the policies and strategies that they do?

In this essay, I use a comparison of Australia and the United States to argue that states’ policies and strategies with respect to religious rights and freedoms have been heavily conditioned by two major forces. On the one hand, they reflect campaigns—conducted over long periods of time—by religious minorities seeking to instantiate their own particular understandings of religious freedom. On the other, they have been historically conditioned by the political institutions in which those campaigns were waged. Explaining the diverse realizations of religious freedom, therefore, requires an explanation of the institutional politics of religious conflict from a historical perspective.

### **The Rights of Religious Minorities in Education, Present and Past**

Both Australia and the United States are formally secular: neither has an established church, and both countries’ constitutions contain provisions explicitly prohibiting the establishment of religion.<sup>2</sup> Nevertheless, the two countries have adopted different strategies to respect minority rights in

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<sup>1</sup> Jose Casanova. 2006. “Rethinking Secularization: A Global Comparative Perspective.” *Hedgehog Review* 8: 7-22, p. 13

<sup>2</sup> Compare the United States (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”), and the Australian Constitution, Section 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 test shall be required as a qualification for any office or public trust under the Commonwealth”).

education. In the United States, a system of “strict separation” of church and state has been adopted. Under this system, religious freedoms are protected, in most instances, by excluding the nonconsensual from public support. Thus, religious exercises are barred from the public schools, and religious schools receive no direct public funding. In Australia, by contrast, a system of “relaxed separation” has been instantiated. Under this system, minority rights are obtained by asserting the particular in governmental contexts, whether budgets or classrooms. Thus, religious instruction by ministers of all denominations is permitted in the public schools, while religious schools of nearly every denomination receive copious direct funding from the state and federal governments.

Yet while the differences between these two systems are stark, they have not always been. Only fifty years ago, the two nations shared nearly identical systems. From the mid-nineteenth to the mid-twentieth centuries, both Australia and the United States featured an educational system whose church-state aspects were crafted by an informal Protestant Establishment.<sup>3</sup> Bolstered by numerical and cultural supremacy, the Protestant Establishment assumed that the community was—or *should be*—homogeneous, both culturally and religiously. They understood religious freedom as tolerance for doctrinal diversity within the context of a shared Protestant polity. Accordingly, they devised a system designed to educate children into their supposedly consensual beliefs. The broad strokes of this system were similar in both countries: a set of “nonsectarian” (pan-Protestant) religious exercises in the public schools, and stringent restrictions upon “state aid” to all other religious (mostly Catholic) schools.<sup>4</sup> Minorities’ rights were protected somewhat by opt-out provisions, but Protestant instruction otherwise came standard.

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<sup>3</sup> Robert T. Handy. 1991. *Undermined Establishment: Church-State Relations in America, 1880-1920*. Princeton: Princeton University Press.

<sup>4</sup> For good overviews of the two systems, see A.G. Austin. 1965 [1961]. *Australian Education, 1788-1900: Church, State, and Public Education in Colonial Australia*. 2<sup>nd</sup> ed. Melbourne: Sir Isaac Pitman & Sons; and Lloyd P. Jorgenson. 1987. *The State and the Non-Public School, 1825-1925*. Columbia: University of Missouri Press.

In some respects, the system in American schools was more stridently Protestant than that of Australian schools. American religious instruction centered around the reading of the Bible—typically the Protestant King James Version—“without note or comment.”<sup>5</sup> In Australia, by contrast, a “dual system” of religious instruction paired Bible reading with a system of “special religious instruction” (SRI). Under this system, clergy from a wide range of denominations were given a “right of entry” into public schools to give denominational instruction to children of their denomination. Accordingly, there was somewhat more room for religious diversity in Australian schools from the beginning, even as most states paired SRI with official, teacher-led Scripture reading.

### **Catholic and Jewish Visions of Religious Freedom**

Both Catholics and Jews viewed the established system as an imposition on their religious freedom, though in slightly different ways, as I discuss below. Accordingly, both minorities waged concerted campaigns to undercut the established system, and to attempt to realize a more pluralistic model that would fit their particular understandings of religious freedom. These different understandings of religious freedom would profoundly shape the new systems that emerged in the late twentieth century in each country.

Catholics tended to understand religious freedom as the freedom to educate one’s children in a particular denominational faith. Catholics opposed the pan-Protestant religion taught in the schools, arguing that it was at once unacceptably Protestant and insufficiently religious. “The Catholic Church tells her children that they must be taught their religion by AUTHORITY,” wrote John Power, a Catholic Vicar-General in New York City, in 1840, and a system that let students read the Bible and “judge for

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<sup>5</sup> This common formulation was adopted, *inter alia*, by the New York State schools in 1844. See Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America’s Public Schools*. New Haven: Yale University Press, p. 31.

themselves” created, in effect, Protestant schools.<sup>6</sup> If Catholics found “nonsectarian” religion to be unacceptably Protestant, so too did they find it to be spiritually insipid. The very premise of “nonsectarian” religion offended Catholics’ understanding of what religion was. “It is the indifferentism with regard to all religious belief we most of all fear,” stated American Bishop Bernard McQuaid in criticizing the “mongrel morality” he saw being taught in the public schools.<sup>7</sup> Australia’s Bishop Roger Vaughan sparked an uproar when he made much the same argument in decrying Australian public schools as “seed plots of future immorality.”<sup>8</sup> Accordingly, they saw the only workable solution in denominational schooling, where the religious belief of the teacher and the atmosphere of the school could be mustered on behalf of a truly “religious” education. Catholics in Australia and the United States thus constructed extensive parochial school systems. But Catholics saw a system whereby Protestant religion was taught in the (free) public schools, while Catholics had to pay for their own private religious schools, as inherently unjust. They therefore demanded public subsidy as a matter of right throughout the late nineteenth and early twentieth centuries.<sup>9</sup>

Jews, by contrast—especially in the United States, where they made up a proportionally much larger part of the population—tended to understand religious freedom in much starker terms: as the creation of religiously neutral spaces in which education could take place free from religious imposition. Jews, as non-Christians, felt particularly threatened by the muscular Protestantism of the nineteenth century, even more so than Catholics. To safeguard their rights, American Jews adopted the position that government institutions—including schools—should be kept free from all religious influence. “We are opposed to Bible reading in the schools,” said Rabbi Isaac Wise in the early 1870s. “We want secular

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<sup>6</sup> Quoted in Diane Ravitch. 1988 [1974]. *The Great School Wars: A History of the New York City Public Schools*. New York: Basic Books, p. 45.

<sup>7</sup> Quoted in David O’Brien. 1989. *Public Catholicism*. New York: MacMillan, pp. 107, 110.

<sup>8</sup> Quoted in Michael Hogan. 1987. *The Sectarian Strand: Religion in Australian History*. Ringwood, Vic.: Penguin Australia, p. 94.

<sup>9</sup> Michael Hogan. 1978. *The Catholic Campaign for State Aid*. Sydney: Catholic Theological Faculty; Frank J. Munger and Richard F. Fenno. 1962. *National Politics and Federal Aid to Education*. Syracuse, N.Y.: Syracuse University Press.

schools, and nothing else...Having no religion, [the state] cannot impose any religious instruction on the citizen.”<sup>10</sup> In the twentieth century, Jews became leading opponents of religion in the American public school, as well as ardent advocates of secularized public institutions more generally. In Australia, however, the Jewish community was much more ambivalent, more concerned about stirring up trouble in a community where they made up less than one-half of one percent of the population. Australian Jews consistently spoke out against mandatory Scripture classes in the schools, although they did take a more favorable stance toward Australia’s “right-of-entry” SRI system, in which they could participate; but they remained divided and ultimately silent on the question of state aid.<sup>11</sup>

### **The Institutional Politics of Religious Freedom**

To an extent, the Australian solution to religious freedom reflects a more traditionally Catholic understanding of the relationship between state, religion, and education; while the American solution reflects a largely Jewish-American understanding of that same relationship. Understanding the motivations and visions of religious freedom of particular minorities is not enough, however, to explain why “relaxed separation” emerged in Australia and “strict separation” triumphed in the United States. For that, we must look at the institutional terrain that religious minorities faced in the course of their campaigns. In the United States, Catholics and Jews leveraged local control over educational administration and a more open legal system to eliminate religion from the public schools; while America’s electoral institutions stymied Catholics’ campaign for public aid. In Australia, by contrast, Catholics took advantage of that country’s electoral institutions and legal system to successfully reinstate state aid, even as that country’s centralized educational administration and legal system frustrated minorities’ efforts to remove religion from the public schools.

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<sup>10</sup> Quoted in Naomi W. Cohen. 1992. *Jews in Christian America: The Pursuit of Religious Equality*. New York: Oxford University Press, p. 83.

<sup>11</sup> Suzanne D. Rutland and Sophie Caplan. 1998. *With One Voice: A History of the New South Wales Jewish Board of Deputies*. Darlinghurst, N.S.W.: Australian Jewish Historical Society, pp. 109, 115

Religious education declined in the United States even before the Supreme Court ruled prayer and Bible reading unconstitutional in the early 1960s.<sup>12</sup> In the late nineteenth century, Catholics and Jews took advantage of America's decentralized system of education to chip away at the religious exercises in American schools. American education is composed of thousands of local school districts, each with authority to set school policies. The broad dispersal of control meant that religious minorities had literally thousands of venues where they could lobby officials to alter their policies. Especially in the cities, where Catholic and Jewish immigrants arrived in large numbers in the late nineteenth century, religious minorities could wield the power of numbers to influence local school boards. Beginning with the Cincinnati "Bible War" in 1869, religious minorities in a number of religiously diverse cities, including Chicago, Buffalo, and Rochester, convinced local school boards to alter their policies to exclude Bible reading or other religious devotionals.<sup>13</sup> Local control thus enabled a slow erosion of religious practices in religiously diverse school districts.

These local campaigns were supplemented, beginning in the late nineteenth century, by a campaign of litigation through the courts. In so doing, minorities took advantage of the relatively accessible nature of the American legal system. In the United States, state constitutions contained a variety of parallel religious freedom provisions, some of which were stricter than those found in the First Amendment. Moreover, American courts also featured an open tradition of public law, which granted taxpayers standing to challenge expenditures on religious schools. These features made it relatively easy for plaintiffs to gain standing for legal challenges on church-state issues. It was a taxpayers' suit, for instance, appealed to the Supreme Court, that sparked federal jurisprudence on church-state issues.<sup>14</sup>

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<sup>12</sup> At the turn of the century, surveys showed that approximately 75% of American schools featured Bible reading; by 1962, that number had declined to 42%. Cf. United States Office of Education. 1904. *Report of the Commissioner of Education, made to the Secretary of the Interior for the Year 1903*. Washington, DC: Government Printer, p. 2445; and Richard B. Dierenfield. 1962. *Religion in American Public Schools*. Washington, DC: Public Affairs Press, p. 51.

<sup>13</sup> Steven K. Green. 1992. "The Blaine Amendment Reconsidered." *Journal of Legal History* 36: 38-69.

<sup>14</sup> *Everson v. Board of Education*, 330 US 1 (1947).

Catholics sponsored many early challenges to religious instruction, and Protestants initially took the lead on challenging state expenditures on Catholic schools. But from the 1940s onwards, Jewish organizations were at the forefront of the legal campaigns pushing the Supreme Court in a direction of stricter secularism on both issues of financial support for religious schools, and religious exercises in public schools. Three of the four most active interveners on church-state matters between 1947 and 1969 were Jewish organizations, and the key strategist on many of the most important church-state cases was the American Jewish Congress' Leo Pfeffer.<sup>15</sup> Through their legal briefs and court cases, American Jews swayed the Court to their vision of religious freedom.

In Australia, by contrast, religious minorities seeking to remove offensive practices from the public schools were stymied by Australian political institutions. Australian education is highly centralized, with state departments in control of all curricular matters. To effect change, therefore, Australian minorities had to lobby state Ministers of Education and other high-level bureaucratic officials. These officials, however, were beholden to the politics of the broader polity, rather than to any local community where religious minorities might have lived in higher concentrations. Because religious minorities were never able to mobilize enough of an electoral threat to challenge the state governments which ran the system, education officials tended to dismiss their petitions as "ridiculous" or of "little consequence."<sup>16</sup> Likewise, the courts proved inhospitable to challenges to religious exercises. Because most Australian state constitutions lacked any parallel religious freedom provisions, a 1976 challenge to religious exercises in the New South Wales schools had to be waged on statutory, rather than on constitutional grounds, in order to gain standing. These weaker grounds proved unconvincing to the court, which upheld religious education.<sup>17</sup>

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<sup>15</sup> Gregg Ivers. 1995. *To Build a Wall: American Jews and the Separation of Church and State*. Charlottesville: University Press of Virginia.

<sup>16</sup> Memorandum, K.R. Cramp and J.H. Smairl to P. Board, 1 March 1921. State Records New South Wales, Kingswood, NSW, 20/13220.

<sup>17</sup> *Benjamin v. Downs and Another* [1976] 2 NSWLR 199.

If Australian political institutions helped to sustain religion in the public schools, they also helped Catholics realize their goal of regaining state aid. Here, electoral institutions and courts were key. Australia's system of preference-voting and multi-party system created opportunities for Australian Catholics to successfully press their claims for state aid through the legislature that were not available to American Catholics. In Australia, the politics of the Cold War fractured the Labor Party alliance between Catholics and socialists, leading to the creation of a third party dominated by conservative Catholics.<sup>18</sup> Australia's preference-voting system provided incentives for politicians to pursue Catholic votes through promises of support for Catholic schools, and both major parties did so in the run-up to the 1963 election.<sup>19</sup> On state aid, the courts worked in Catholics' favor, too. Australia's closed tradition of public law granted standing in matters of public interest, not to individual taxpayers, but to elected attorneys-general alone. Accordingly, a 1964 Protestant legal challenge to state aid was bogged down by the need to obtain the approval of a state attorney-general to proceed.<sup>20</sup> Delays in gaining standing meant that a challenge to state aid did not reach the High Court until 1981, by which point it had become highly entrenched politically, and the High Court declined to overturn it.

In the United States, by contrast, Catholics were stymied by America's rigid two-party system and accessible court system. The anticommunist fervor of the Cold War locked Catholics into an alliance in the Democratic Party with conservative Southerners, who were opposed to public aid. These Southern Democrats took advantage of Congressional procedures and the committee system to hold up legislation that would have granted public aid to Catholic schools between 1945 and 1962.<sup>21</sup> Meanwhile, the legal campaign in the Supreme Court, led by American Jews, eventually pushed the Supreme Court

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<sup>18</sup> John Warhurst. 2005. "Was the DLP a 'Church' Party?" Pp. 301-10 in *The Great Labor Schism: A Retrospective*, edited by Brian Costar, Peter Love, and Paul Strangio. Melbourne: Scribe.

<sup>19</sup> Don Smart. 1978. *Federal Aid to Australian Schools*. St. Lucia: University of Queensland Press.

<sup>20</sup> M.J. Ely. 1981. *Erosion of the Judicial Process: An Aspect of Church-State Entanglement in Australia*. Greenacre, NSW: Defence of Government Schools, Victoria.

<sup>21</sup> Hugh Douglas Price. 1962. "Race, Religion, and the Rules Committee: The Kennedy Aid-to-Education Bills." Pp. 1-71 in *The Uses of Power*, edited by Alan F. Westin. New York: Harcourt, Brace, & World.

into ever-stronger stances against support for religious schools, creating an insurmountable obstacle for Catholics after 1963.

### **Conclusion**

The divergent “secular settlements” in the United States and Australia reflect not only different ways of juxtaposing religion and the state, but also the historical sediments of centuries’ worth of conflict among religious groups for symbolic representation in public institutions. Today’s settlements are attempts to reimagine the polity following the collapse of the Protestant Establishment in each country, and reflect the campaigns waged by religious minorities against that Establishment. Today, each country has realized an institutional approach to religion that acknowledges and embraces pluralism, albeit in different ways. These contemporary settlements differ, however, in large part because they reflect the institutional obstacles faced and opportunities available to those who challenged the Protestant order.