The Australian book of atheism

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THE AUSTRALIAN BOOK OF ATHEISM

Edited by Warren Bonett
FELONS, RATBAGS, COMMIES, AND LEFT-WING LOONIES: ATHEISM IN AUSTRALIA, 1788–2010

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HISTORY IS POLITICAL. THE PORTRAYAL OF MINORITY GROUPS IN mainstream histories, or their omission from the national chronicle, resonates through our sense of national identity, political policies, and contemporary attitudes. There is a saying that history is written by the victors, and it has long been recognised that, if the status quo is to be changed, such histories must be challenged. It is no surprise that a key strategy of any social or nationalist movement is to reclaim the past — to seek out actors, events, and influences which have been omitted or downplayed in mainstream histories, and to stake a claim in the nation's future through reference to the contributions of the past.

An early advocate for African American civil rights, Dr Carter G. Woodson, founded the Association for the Study of African American Life and History, arguing forcefully that African American contributions to America's history 'were overlooked, ignored, and even suppressed by the writers of history textbooks and the teachers who use them'. Racial prejudice, Woodson argued, was 'the inevitable outcome of thorough instruction to the effect that the Negro has never contributed anything to the progress of mankind'. (As atheists, our historical contribution has been similarly dismissed.) In an Australian context, Anne Summers' Damned Whores and God's Police (1975) added fuel to the feminist movement by exposing the exclusion of women from Australian histories. Likewise, Sally Morgan's My Place (1987) tells of her quest for identity through
connection with her family's Indigenous history. Morgan, too, has spoken of the importance of providing an alternative voice to mainstream history in order to promote understanding and counter negative stereotypes.

The contemporary domestic political climate adds urgency to the need to reclaim the history of Australian atheism. Marion Maddox's *God Under Howard* (2005) chronicled the increasing intrusion of religion into Australian politics, but it seems John Howard's political demise did nothing to stem the tide. Instead, under the Labor government of Kevin Rudd and now, the re-elected government of his successor, Julia Gillard, the last remnants of the wall between church and state crumble unabated as both sides of politics work assiduously to establish their Christian credentials. Any protest against this trend is typically countered with rejoinders that 'Australia is a Christian nation, the majority of Australians are Christians', that those who object are simply 'a strident minority', and the familiar taunt, 'What have atheists ever done for Australia?' Aborigines, feminists, ethnic groups, socialists, and other minorities have all been similarly dismissed, and all have utilised historical research in their quest for equality and respect. Now, Australia's non-religious — secularists and atheists — must do the same. The secular future of our nation depends on it.

When I first set out to investigate the history of Australian atheism, I wasn't sure if I would find enough information to fill a chapter. As I pursued my research, I was shocked to find my files rapidly expanding with hundreds of pages of data. This information — readily available, but scattered among a host of historical documents, texts, biographies, and online resources — has never been collated into a single, cohesive, and scholarly account of atheism's role in shaping Australian history and culture. That must be rectified, and soon.

Of course, it is impossible to fill this gaping hole in Australia's historical record in the space of a chapter. Nor can I provide a seamless narrative of interconnected events — the development of Australian atheism has been largely unplanned, scattered, and lacking any semblance of national cohesion. My goal here is modest. I wish simply to introduce some of the felons, ratbags, rebels, commies, and left-wing loonies who contributed so much to our Australian sense of 'self' but whose influence as non-theists has been absent or underplayed in Australia's mainstream histories.
The history of Australian atheism begins with the First Fleet. There was no religious agenda underwriting the settlement of Australia. The colony was founded, primarily, to provide a dumping ground for Britain's convicts, and most of the felons transported to Australia between 1788 and 1831 had little interest in religion. In the late eighteenth century, the attitude of Britain's lower classes towards the clergy ranged from apathy to open hostility. Preachers were seen as the corrupt supporters of the status quo, and the evangelists who serviced Britain's jails and prison hulks only entrenched this fervent anti-clericalism: the distribution of religious tracts on transport ships proved pointless: female prisoners tore out the pages and used them to curl their hair; the men used the leaves of their Bibles to make playing cards; Bibles that escaped intact were sold off in Sydney to buy rum.

Despite the presence of a chaplain, there was no divine blessing at the foundation ceremonies of the new colony on 26 January 1788. Indeed, First Fleet chaplain Richard Johnson complained bitterly that he was 'left to stand under the shade of a tree, and was made to feel that neither God nor I was wanted at the foundation of the new nation'. Administering a penal settlement at the furthest end of the earth meant that religion was often at the bottom of the early governors' priorities. When, after six years, the colony still lacked a church, Reverend Johnson begrudgingly paid for the construction of a building out of his own pocket. Built to accommodate 500 people, the church attracted less than 40 to its inaugural Christmas service in 1793. Four years later, in protest at a government crackdown on compulsory church attendance, the convicts burned the building down.

Female convicts resisted religious instruction as avidly as their male counterparts. In Tasmania, female prisoners raised their skirts and slapped their bare bottoms in unison at a chaplain they called 'Holy Willie'. In Brisbane, a group of female prisoners hooted with derision at a sermon on the value of virtue. Shouting bawdy remarks about the sexual prowess of the officers, the women lifted their skirts and invited the chaplain to demonstrate his own abilities.

By the 1830s, an influx of middle-class free settlers saw Sydney’s convict population diluted and church attendance rise. But, even two decades later, the Reverend James Mackenzie observed that Sundays in Sydney were mostly spent 'boating, driving, riding, drinking, visiting, etc.', and that 'most of
the churches were more than half empty'. Conversely, Melbourne's churches were reported to be 'packed out', but it is notable that those churches were few and small, and it was said that Sunday observance did not extend any distance out of Melbourne, and not at all into the distant bush.\footnote{Melbourne's churches were reported to be 'packed out', but it is notable that those churches were few and small, and it was said that Sunday observance did not extend any distance out of Melbourne, and not at all into the distant bush.}

Indeed, as the convict era drew to a close and freed convicts increasingly sought work in the back blocks of the Australian bush, their atheism was widely disseminated across the western pastoral communities. In The Australian Legend (1958), Russel Ward describes the western settlements of the mid-nineteenth century as places where men were born, and lived, without ever entering a church or hearing a sermon or prayer.\footnote{Ward describes the western settlements of the mid-nineteenth century as places where men were born, and lived, without ever entering a church or hearing a sermon or prayer.}

The stark realism of bush life only served to increase the workers' scepticism about all things supernatural. Anti-clericalism was rife, and travelling parsons were often met with disdain or outright hostility. In his memoirs, the Reverend Charles Matthews recalls a typical rebuke from a cynical outback publican:

'I don't know what you parsons want, comin' round this back country. You only come about once in seven years, and for all the good yer do when yer do come, yer might just as well stop at 'ome ... I know you all; you're all alike, all on the make, the whole [damn] lot of you. You wouldn't be round 'ere now if there wasn't money in it.'\footnote{Matthews also describes how the residents of a western Queensland town headed off an unwanted clergyman 'at the pass':}

Matthias also describes how the residents of a western Queensland town headed off an unwanted clergyman 'at the pass':

'At the meetin' one of the boys got up and said he reckoned this bloke was comin' for a collection, so we said he could have his collection if he'd stop away. We'd done without religion so long, we could do without it now. So we took up a collection, and it came to ten quid. Then we sent one of the boys to meet the bloke on the track we heard he was comin', and tell him he could take his collection and "clear", or we'd keep the collection and we'd clear ... He took the collection and cleared. And that's all the religion we've had at our township!'\footnote{Out of this spiritual void, says Ward, another kind of 'religion' emerged — the religion of mateship. Contrary to the myth that all morality is}

Out of this spiritual void, says Ward, another kind of 'religion' emerged — the religion of mateship. Contrary to the myth that all morality is
derived from God, mateship, as a grassroots moral philosophy, sprang from a godless people in a godless environment. Importantly, Ward does not claim that these atheistic pastoral workers were typical of the average Australian of the period. Of course, by the mid-nineteenth century, many Australians lived in cities and many were religious. Rather, Ward argues that the pastoral workers' self-image and, later, the idealisation of that image in the popular press and in journals such as The Bulletin, came to define the archetypal Australian. In turn, the promotion of mateship and practical atheism as laudable characteristics of Australian manhood made the Australian working class particularly amenable to socially progressive, largely secular movements such as Chartism, unionism, feminism, women's suffrage, nationalism, socialism, and communism. In time, mateship became the defining value of Australian national identity.

In the cities, and at the other end of the social scale, an emerging educated middle class and intelligentsia was influenced by Enlightenment values and nineteenth-century modernism. Geographically, Australia was far removed from social movements in Britain, Europe, and the United States, but a regular influx of immigrants and visitors kept colonial society up to date with contemporary ideas. The colonials' thirst for knowledge meant that speakers, writers, and pamphleteers of many kinds found large and enthusiastic audiences. As empiricism and science gained popularity among the Western intelligentsia, freethought, rationalism, scepticism, and atheism were increasingly acknowledged as the mark of the modern thinker.

On the Victorian goldfields, Chartism, an early form of unionism, brought members of the freethinking intelligentsia into alliance with the working class. Many of the leaders of the British Chartists were atheists, and expatriate Chartists, such as journalists Henry Nicholls (an atheist) and George Black (a Methodist), negotiated with the government on behalf of Victorian miners in a dispute which culminated in the bloody, but iconic, Eureka Rebellion of 1853. The influence of the Chartists' secular principles is evident in the Eureka oath, in which the miners swore not by God, but on the Southern Cross depicted on the Eureka flag.

The philosophies of the Enlightenment, bolstered by Darwin's 1859 theory of evolution, spawned a plethora of freethought societies, particularly in Melbourne. The Eclectic Society and the Sunday Free Discussion Society were founded, in 1866 and 1870 respectively, by Henry Keylock Rusden,
a central figure in the mid-nineteenth-century rationalist movement. These organisations were dedicated to promoting a more scientific approach towards religion, spirituality, and the social and political issues of the time. Key topics of discussion for these groups included political economy, freethought, divorce, family planning, and eugenics.

Rusden's views were strongly atheistic. He believed that Christianity was the root of man's intolerance. Rusden argued in favour of a morality based on science, the decriminalisation of suicide, the benefits of cremation, divorce reform, and the emancipation of women — all causes that atheists would support today. But, if we are to write the history of atheism in Australia, it must not be a sanitised version. We cannot resile from the fact that our heroes, like all heroes, were fallible human beings. Atheists have no need of saints and, indeed, the errors of the past can guide us as surely as the triumphs. Sadly, Rusden's record as an advocate for rationalism and science is tarnished by his belief in Social Darwinism.

Writing in 1876, Rusden said:

"Survival of the fittest means that might — wisely used — is right. And we thus invoke and remorselessly fulfill the inexorable law of natural selection (or of demand and supply), when exterminating the inferior Australian and Maori races ... The world is better for it; and would be incalculably better still, were we loyally to ... apply the same principle to our conventional practice; by preserving the varieties most perfect in every way, instead of actually promoting the non-survival of the fittest by protecting the propagation of the imprudent, the diseased, the defective, and the criminal."

It is no excuse to say that Rusden's views were shared by many of his contemporaries, but it is important to note that Social Darwinism has long since been discredited as a bigoted bastardisation of Darwin's theory, and was explicitly rejected by Darwin himself.

Rusden's freethought societies were the product of a maelstrom of progressive social thought which swept through Australian society in the latter half of the nineteenth century. Some sought utopias, others campaigned for an Australian republic. Socialism, anarchism, and atheism were all in vogue, while science and textual criticism of the Bible fostered a climate of scepticism and attacks on every aspect of orthodox belief, including biblical authority, church attendance, and the social and political issues of the time. Key topics of discussion for these groups included political economy, freethought, divorce, family planning, and eugenics.

But the state was still repressive, with laws for blasphemy or atheism, and Marcus Clarke was accused of writing that the advancement of miracles and abortion laws were distrusted. Call to tries,

Clarke dismissed the really force. The article in the Australian Church of England was under threat of prison, and proscribed as "atheists". It was therefore no mistake that according to Indigenous people, the 1830s saw a mandate of Indigenous people's rights; the events can never be considered.

Between 1828 and 1838, Saxe Bannister was the only non-Christian to testify, and the right of their rights to proceed through, but it was widely accepted
a climate of spiritual doubt. Following Darwin, there were secularist attacks on every aspect of Christian orthodoxy, and issues once accepted as biblical authority became popular subjects for public debate. Church attendance declined as religious indifference increased among the working class and intellectuals. Freethought became a highly fashionable topic during this period, with debates sometimes drawing audiences of over 3000 in Sydney and Melbourne.

But the status quo fought back, and the records show that many were harassed, fined, jailed, and had their careers ruined following charges of blasphemy or atheism. In 1879, for example, the iconic Australian novelist Marcus Clarke wrote a controversial article in the *Victorian Review* arguing that the advance of science compelled men to put aside their belief in miracles and abandon any creed which taught that the intellect should be distrusted. Calling for the march of popular enlightenment to continue, Clarke dismissed Christianity as moribund as an intellectual and moral force. The article provoked a heated public debate between Clarke and Church of England bishop James Moorhouse; during which Clarke was accused of atheism. The public row aroused enormous public interest in Melbourne and, while Clarke emerged the intellectual victor, his career prospects were destroyed by the scandal and he died in poverty soon after.

Aborigines also suffered discrimination as a result of being branded as ‘atheists’. Indeed, the perception that Aborigines had no gods, and therefore no moral sense, may partly account for the lack of respect accorded to Indigenous people throughout the nation’s white history. Prior to the 1830s, it was taken for granted that the ‘atheism’ of Australia’s Indigenous people made them ineligible to provide testimony in criminal trials. ‘The evidence of Persons not bound by any moral or religious tie can never be considered or construed as legal evidence,’ intoned New South Wales judge advocate Richard Atkins.17

Between 1824 and 1838, former New South Wales attorney-general Saxe Bannister argued forcefully that the requirement to testify under a Christian oath unjustly disadvantaged non-Christians. If such people could not testify, said Bannister, they could not seek redress: a clear violation of their rights as British subjects.18 Bannister’s argument ultimately won through, but it was not until the 1840s before Aboriginal testimony was widely accepted in the colonies.
Even though reluctantly conceded, granting judicial equity to Aborigines provides a glimpse of the inexorable development of an uniquely Australian set of ideals and values in which equity and mateship were increasingly held above tradition and the status quo. That is not to say these ideals were perfectly realised. It was, for example, a long time before women, Aborigines, Chinese, and even the Irish were included in the antipodean vision of a ‘classless’ society. The developing national ethos, however, was pervasively influenced by the anti-clericalism of the early convicts; the practical atheism of the pastoral workers; the secularism of the Chartists, socialists, and early unionists; and the increasing rationalism of a freethinking intelligentsia. Of course, many — perhaps even most — Australians were pious, church-going, city-dwelling Christians, but this was not the image adopted by the growing nationalist movement, which sought to create and promote a unique Australian national identity.

Gleefully feeding the growing undercurrent of Australian anti-clericalism was the wildly popular *Bulletin* magazine. Founded in 1880 by two Sydney journalists, J. F. Archibald and John Haynes, *The Bulletin* commented irreverently on politics, business, and religion, campaigned passionately for an Australian republic, and nurtured some of the country’s finest literary talent. Brazenly anti-clerical, if not outright atheistic, Archibald once remarked to the poet Banjo Patterson that ‘the ideal man to reform the world would be a bastard atheist born at sea’.

Concurrent with the popular success of *The Bulletin*, the depression of the 1890s bit hard, and the Australian labour movement gained strength. Building on a social history in which mateship often displaced religion, trade unionism emerged as the new hope for the working man. Church leaders were alarmed by socialism’s growing popularity among workers and the intelligentsia. Invoking the ‘slippery slope’ argument much beloved of theists, they feared that socialism would inevitably lead to communism and, worse, atheism. Their fears were well founded. In 1890, Sydney poet, writer, and atheist Henry Lawson wrote:

> Trades unionism is a new and grand religion; it recognises no creed, sect, language or nationality; it is a universal religion — it spreads from the centres of European civilisation to the youngest settlements on the most remote portions of the earth; it is open to all and will include all...
— the Atheist, the Christian, the Agnostic, the Unitarian, the Socialist, the Conservative, the Royalist, the Republican, the black, and the white, and a time will come when all the ‘ists’, ‘isms’, etc., will be merged and lost in one great ‘ism’ — the unionism of labor.20

In keeping with the popular taste for modern ideas, freethought societies continued to flourish in both Sydney and Melbourne in the 1880s and 1890s. In 1882, the Australian Secular Association (ASA) was established in Sydney. The following year, celebrated British freethinker and former lay preacher Joseph Symes was seconded to Australia to lead the organisation at the behest of British MP Charles Bradlaugh, an outspoken atheist and president of the London Secular Society. In Australia, Symes became a controversial figure. In words that will resonate with today’s freethinkers, Symes complained that organised religion was in the grip of ‘narrow, forceful men’ who used their political influence ‘to carry into legislation the social tenets of their churches’.21 Under Symes’ leadership, the ASA lobbied for free speech, an uncensored press, and public access to art galleries and libraries on Sundays. Court challenges followed and, although Symes’ reason and intellect triumphed, his health and temperament suffered. His increasingly irascible, dictatorial, and strident approach ultimately led to the ASA’s dissolution in 1888.

This was a colourful era for freethought and atheism. One of Symes’ associates, pioneer unionist and anarchist John William ‘Chummy’ Fleming, gained notoriety for spruiking alongside other freethought advocates at Sunday meetings on the banks of Melbourne’s Yarra River. Fleming’s biographer, Bob James, explains that the Yarra meetings were ‘constantly under threat from police, bigots and toughs’. During his years of freethought advocacy, Fleming reported many instances of abuse, intimidation, and threats of physical harm, while in Ballarat, his friend, freethought activist William Lee, was punched, kicked, stoned, and chased by a 2000-strong rabble of Bible supporters.22 Despite years of opposition, during which he was arrested and jailed, Fleming never gave up on the cause. James recalls:

Every Sunday until his death [in 1950]... [Chummy] took his stand under a tree at the Yarra Bank and summoned a few cronies with a tattered
cow-bell. Draped on the branches of the tree above were two faded red flags: with 'Anarchy' and 'Freedom' worked on white. The little man with his trousers rolled at the cuffs would preach in a quavering voice at the inequities of government and religion. With his milky eyes fixed beyond his listeners he would tell of the coming reign of earthly happiness and brotherly love.49

Monty Miller was another colourful and highly influential atheist of the period. Miller fought as a pikeman at the Eureka Stockade at just 15 years old and, later, headed the Rational Association in Victoria. A committed unionist and anarchist, Miller was twice convicted for his membership of the illegal organisation Industrial Workers of the World; in his heyday, Miller was an exceedingly popular public speaker, and regularly filled some of Victoria’s largest halls and theatres. But, like his compatriot Chummy Fleming, he is most fondly remembered for his regular Sunday engagement on the banks of the Yarra, expounding his freethinking views to anyone who would stop to listen.

Freethought, of course, was not confined to the working class — atheist academics have had a huge influence on successive generations of Australians. For example, Australian composer, writer, and painter George William Louis Marshall-Hall, head of the University of Melbourne’s conservatory of music, was a towering figure in the cultural life of Melbourne at the end of the nineteenth century. Hall caused a scandal in 1893 with the publication of his book Hymns, Ancient and Modern. Far from a religious text, Hall’s work mocked religion with deliciously irreverent doggerel such as:

0 David was a worthy king  
Merrily could he harp and sing.  
He became the father of his nation  
By dint of prayer and fornication.48

An outspoken atheist, Hall became infamous for his public attacks on Christianity. Hall’s enemies at the University of Melbourne used the scandal created by his book to force his dismissal. But, as a testament to Hall’s popularity and influence, the majority of the conservatorium’s staff and students led the independent Melbourne Suffrage League present day.

Occurring alongside the freethought movement were women, both in Australia and elsewhere, influenced by the slogan: ‘No gods, no masters’. The Eclectic Society and the Equitable Society in 1884. Digging at the subjugation of women designed by men to dominate women, Brettena Smith, another suffrage leader, staged public talks on women’s rights. Originally deftly sold diaphysis.

Outspoken atheist and ‘mother of womanhood’ Henry and Louisa for their articles, The Republican, a radical, iconoclastic feminist newspaper. Subscribers. Also active was the Suffrage League of other half? Lawson.

As a result of the transition to the status quo, Australians were passed in 1901. The push for Australian female suffrage, with the other half? Lawson.

The push for Australia developed slowly during the century approached. Inglis Clark prepared by the delegates a constitution was the
Felons, Ratbags, Commies, and Left-wing Loonies

staff and students left with him, reconvening to become the nucleus of the independent Melba Conservatorium of Music, which survives to the present day.

Occurring alongside, and often in cooperation with, the Australian freethought movement was the emerging women's rights movement. Many women, both in Australia and abroad, blamed their discrimination on the influence of the Church. This mindset was embodied in an early feminist slogan: 'No gods, no masters'. Henrietta Dugdale, a member of both Rusden's Eclectic Society and Symes' ASA, founded the Victorian Women's Suffrage Society in 1884. Dugdale blamed the misogyny of the Christian Church for the subjugation of women, describing Christianity as a form of despotism designed by men to humiliate women. Similarly defying the Church, Brettena Smith, another member of the Australian Secular Association, staged public talks on contraception to large, female-only audiences, and defiantly sold diaphragms from her Melbourne druggist and drapery store.

Outspoken atheist Louisa Lawson became known as the Australian 'mother of womanhood suffrage'. Louisa, mother of the poet Henry Lawson, was a formidable woman. She rejected religion early in her life, and was a member of the Secular Society of Sydney — at that time closely aligned with freethinkers, rationalists, and atheists. In the late 1880s, Henry and Louisa founded the Association of Women. Later, after editing The Republican, a radical monthly journal, Louisa founded Australia's first iconoclastic feminist journal, Dawn, which, by 1890, had accrued 2000 subscribers. Also around this time, Louisa helped launch the Womanhood Suffrage League of NSW. 'Why should one half of the world govern the other half?' Lawson railed.

As a result of these women's brave stance against the churches and the status quo, Australia was one of the first nations in the world to grant female suffrage, with universal suffrage for (white) men and women finally being passed in 1908.

The push for Australia to become a commonwealth of federated states developed slowly during the 1890s, and gained momentum as the turn of the century approached. In 1891, Tasmanian Unitarian Attorney-General Andrew Inglis Clark prepared a draft constitution, which was substantially approved by the delegates at Australia's first constitutional convention. Clark's constitution was the first official document to consider what relationship,
if any, the Church should have with the new Commonwealth, and Clark favoured a secular government and proposed a strict separation of church and state. Notably, Clark’s original preamble made no mention of God.

As Federation drew nearer, religious institutions increasingly campaigned for the insertion of God into the Constitution, and sought to secure a public role for religion. Edmund Barton, who would later become Australia’s first prime minister, argued forcefully for a strictly secular constitution, but was opposed at successive constitutional conventions by those who refused to adopt a document that lacked an invocation to God. The compromise position was to include in the preamble the words: ‘humbly relying on the blessing of Almighty God’ and to include, as Section 116, a clause reading:

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

The Australian states federated in 1901, with a constitution that included an invocation to God, and a clause, Section 116, which was clearly intended by those who drafted it to guarantee a separation of church and state.

Australian nationalism was still in its infancy when war broke out in 1914, and the newly federated Australian states committed troops to defend the Empire. The horror of the First World War presented a devastating challenge to religious faith but also strengthened Australians’ sense of national identity. For many, the war highlighted the finality of death, making the white-washed condolences of the clergy appear superficial and banal. Insightfully, in his 1915 poem ‘Church Parade’, Leon Gellert imagines the parenthetical thoughts of a Gallipoli soldier confronted with the platitudinous prattling of the padre:

He giveth mercy for the taking
And the blessed Day is due
With a brighter morning breaking,
Lovelier than ye ever knew.
(‘Nobby Clarke’ll take some wakin’,
So will Toby Mason, too!’)"
The ANZAC legend was integral to establishing a unique sense of Australian national identity. But, as we have seen, the ANZAC’s ethos of mateship, irreverence, and contempt for authority did not arise spontaneously on the beaches and in the trenches of Gallipoli, but was already well established through the idealisation of the nineteenth-century atheistic pastoral workers. Just as the harsh conditions of life in outback Australia led to the naturalistic ethos of the bush, the brutal reality of the diggers’ environment beggared the belief that a benevolent, interventionist God would come to their aid. Primarily, it was their faith in each other, not in God, that sustained the ANZACS and, as their legend emerged as the defining moment in the young nation’s history, mateship was elevated to almost-religious status in the national psyche.

Following the war, Australia’s labour movement began to gain strength, and many of the early socialists were freethinkers and atheists. Atheism and anti-clericalism abounded in the socialist, unionist, and labour movements, because religious institutions were widely believed to be complicit in maintaining the status quo. In fact, the links between atheism, anti-clericalism, and the labour movement are clearly expressed by Ernest H. Barker, once general secretary of the Australian Labor Party. In a paper entitled ‘The Church is Weighed and Found Wanting’, Barker wrote:

- The attitude of the Labor movement in Australia to the church is one of supreme indifference. There is little or no point of contact between the two ... ‘What did the Church do when we sought a living wage, shorter hours of work, safe working conditions, abolition of Sunday work, abolition of child labor?’ The answer is an almost entirely negative one. ... In how many of the advanced ideas of our time has the Church taken the lead? Is it not renowned for being a long way in the rear rather than in the vanguard of progressive thought and action? It resents any challenges to its ideas, doctrines, or authority.”

During the late 1930s, as communism gained strength worldwide, Pope Pius XI called for the establishment of Catholic action groups to resist the communist threat. In Australia, Archbishop Daniel Mannix and B. A. (Bob) Santamaria, then editor of The Catholic Worker, responded to the call.
Since its formation in 1920, membership of the Australian Communist Party had risen to 20,000, and it held control of a number of important trade unions. In 1941, Santamaria founded the Catholic Social Studies Movement, and began setting up Catholic power bases within trade unions to wrest control from the Communist Party and prevent further infiltration by atheistic communists.

Ironically, in the 1940s, the Labor Party was led by atheist and revolutionary socialist John Curtin — a former Catholic. As prime minister, Curtin was prepared to work with communist union leaders to achieve industrial peace — an approach antithetical to the views of Mannix and Santamaria. As the decade progressed, tensions between those who favoured closer ties with the communists and the (mainly Catholic) anti-communist zealots increased, ultimately splitting the Labor party along sectarian lines.

After losing the 1954 federal election, Labor leader Dr H. V. Evatt, another committed atheist, bitterly accused Catholics of trying to take over the party and turn it into a European-style Christian Democratic party. This schism led to the formation of the (mainly Catholic) Democratic Labor Party (DLP). The impact on Australian left-wing politics was devastating and long-lasting. With the Labor vote split and the DLP directing its preferences to the Liberal Party, Labor was effectively consigned to opposition for the next two decades.

The Communist Party’s heyday in Australia was brief, and it quickly declined in popularity after the war. It maintained some union influence through the sixties and seventies, but was disbanded in the early nineties due to lack of support.

But, even as communism declined, atheism maintained its foothold in the nation’s institutes of higher learning. Atheism was pervasive in Australia’s universities in the 1950s, especially in Sydney. At Sydney University, Scottish-born freethinker Professor John Anderson exercised ‘a potent’ influence upon his students, who, in turn, became some of Australia’s most influential people. Anderson had lectured in philosophy since the 1930s, and was a leading figure in Sydney’s intellectual life for more than two decades. In 1931, he founded the Sydney University Freethought Society but, like many freethought leaders before him, Anderson became increasingly authoritarian in his latter years, leading, in 1951, to a major rift with his followers. As a result, the Freethought Society folded and was succeeded by which became known as the Australia’s Freethought Society.

Anderson took a different path, breaking off all contact with the teachers’ colleges, of which he was a key member of the University’s central council, and the teachers’ colleges, of which he was a key member of the University’s central council, instead becoming a freethought leader and moving to set up the teachers’ colleges as the Australia’s Freethought Society.

But atheists did not have all the fun. Evangelist Billy Graham was able to attract large crowds to Australia’s major cities and towns, and Australia’s humanist movement also sought to encourage a rational approach to social problems, as well as to the fullest possible use of reason and to the rejection of dogmatic creeds.

The 1960s saw the emergence of a new generation of humanists, led by Robert Menzies. He objected to law reform which had been clear and resisted by success. Robert Menzies had discharged the menace, but Menzies preferred Catholic preferences. He announced his intentions...
Society folded and was superseded by the breakaway Libertarian Society, which became known, colloquially, as the Sydney Push.

Anderson took a dim view of this group of prodigal disciples and broke off all contact with them. But the members of the Push continued to hold him in great esteem: Clive James, one of Anderson's former students and a key member of the Push, reminds us that Anderson:

influenced whole generations of students, who in turn, because of Sydney University's central place in the tertiary education system, influenced the teachers' colleges, the schools, the broadcasting networks, the emergent media elite, and eventually the entire culture.\[19\]

But atheists did not have it all their own way. In 1959, American evangelist Billy Graham visited Australia on a four-month crusade, attracting large crowds and triggering mass conversions in the tens of thousands. Ironically, Graham's visit also prompted the foundation of Australia's humanist movement, its objectives being:

- to encourage a rational approach to human problems, to promote the fullest possible use of science for human welfare, to defend freedom of expression and to provide a constructive alternative to theological and dogmatic creeds.\[30\]

The 1960s saw the rise of right-wing religious lobby groups, reacting against the juggernaut of that decade's cultural revolution. The Festival of Light and the Right to Life are typical of the religious wowsers who objected to law reform on issues like abortion and censorship, and frowned upon the new social mores of sexual freedom and gender equality.

During the 1960s, Archbishop Mannix exploited the power of the Catholic vote to lobby for taxpayers' support for Catholic schools — something which had been clearly rejected by the Commonwealth's founding fathers and resisted by successive governments. Years before, Liberal prime minister Robert Menzies had dismissed Mannix as 'cunning, sinister and a national menace', but Menzies knew that his party's election prospects depended on Catholic preferences.\[21\] Pragmatically, just before Mannix died in 1963, Menzies announced his intention to approve limited aid for independent schools.
When Menzies retired in 1966, he was succeeded by Harold Holt. Holt’s administration was cut short when he drowned while surfing, and the prime ministership fell to John Gorton, an agnostic. At this time, Arthur Calwell led the Labor Party in opposition. A Catholic, Calwell remained faithful to the Church, but struggled with papal authority — he once said that the early Christians exchanged a good religion with Constantine and accepted a set of imperial garments. A Catholic by birth but a humanist by nature, one of Calwell’s associates described him as a devotee of ‘the great religion of humanity’. Despite his Catholicism, Calwell was a fierce advocate for the separation of church and state, and opposed Menzies’ plan to provide state aid for religious schools.

Perversely, when avowed atheist Gough Whitlam assumed leadership of the Labor Party in 1967, it was with the proviso that the party would agree not only to continue but also to expand state aid for religious schools. In 1972, the Australian Labor Party won office for the first time in 23 years, and the Whitlam government tripled federal funds for all schools, government and non-government.

The election of the Whitlam Labor government was greeted with much jubilation in Australia. It was a time of great social change, and Whitlam’s forceful and charismatic leadership fostered hopes for a new, more modern, liberal society. It was during this period of enormous social and political upheaval that the Atheist Foundation of Australia (AFA) was established as a breakaway group from the Rationalist Association. John Campbell guided the foundation through its early years, and was succeeded by Keith Cornish, who held the presidency from 1976 until 2005 — committing a lifetime of service to the atheist cause.

During its three years in power, Whitlam’s government introduced no-fault divorce, ended conscription, launched a national health scheme, drafted an Aboriginal Land Rights Bill, returned land to the Gurindji people, amended Australia’s racist immigration laws, banned racially selected sporting teams, supported equal pay for women, put contraceptives on the medical-benefits list, and made all university education free.

Making tertiary education free led to an explosion in university attendance and a rapid expansion of the educated middle class. This was pivotal in propagating more liberal, secular values, and hastened a decline in religious affiliation. Indeed, under Whitlam, irreligion became trendy, and Whitlam’s cabinet included Hayden, Lionel Murphy and McClelland, to name a few.

Whitlam’s administration was cut short when he returned to dissolve parliament. His government lost the confidence vote and was replaced by his former Opposition blocked. While in opposition, Whitlam roared, ‘We will save the government, and government will save the country for another nine years.’

While most Australians supported government funding of religious schools, the Australian Labor Party, which was launched in 1966, was the first major political party to provide powerful opposition to this funding. In 1980, the Whitlam government lost its majority of six to one in the House of Representatives, and the case for religious school funding was finally put out, a ‘demonstrably unworkable proposition’ considered to be a ‘large disappointment’.

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In 1983, former prime minister Bob Hawke encouraged the Council of Australians for the Humanities to work with the federal government to provide funding for the humanities. This was a significant breakthrough for the humanities in Australia, and paved the way for increased funding in subsequent years.

Despite being an agnostic, Whitlam was a fierce advocate for the separation of church and state, and opposed Menzies’ plan to provide state aid for religious schools. In 1972, the Australian Labor Party won office for the first time in 23 years, and the Whitlam government tripled federal funds for all schools, government and non-government.

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and Whitlam's cabinet was heavily staffed with atheists — Jim Cairns, Bill Hayden, Lionel Murphy, Doug Everingham, 'Moss' Cass, Tom Uren, and Jim McClelland, to name just a few.

Whitlam's administration was, controversially, cut short after the Opposition blocked supply and the governor-general, Sir John Kerr, agreed to dissolve parliament. Standing on the steps of the Old Parliament House, Whitlam roared, 'Well may we say "God Save the Queen", because nothing will save the governor general!' Following the dismissal, the Whitlam government lost the federal election, returning Australia to conservative rule for another nine years.

While most Australians welcomed Whitlam's many liberal reforms, the funding of religious schools remains a contentious issue to the present day. The Australian Council for the Defence of Government Schools (DOGS) was launched in 1964 in order to mount a legal challenge to Menzies' proposal to provide limited state aid to private schools. Faced with powerful opposition from religious institutions and from both state and federal governments, it took until 1980 for DOGS to finally gain fiat and have their case heard in the High Court of Australia.

Early in 1981, the High Court handed down its decision, ruling, by a majority of six to one, that the provision of funding to religious schools did not, in any way, breach Section 116 of the Australian Constitution. The only dissenting judge was Justice Lionel Murphy, a state-school-educated atheist. As well as opening the floodgates for public funding of private schools, the case established that Section 116 of the Constitution did not guarantee a separation of church and state. This was, as DOGS points out, a 'demonstrably perverse interpretation of what the founding fathers considered to be prohibited by the establishment clause'.

In 1983, former union leader Bob Hawke led the Labor Party to victory in the federal election. Hawke, a minister's son, had been religious in his youth but found the hypocrisy of the church increasingly distasteful. Despite being an outspoken atheist during his union days, he became more circumspect about his views upon entering parliament. Bill Hayden, who was dethroned as leader of the party in favour of Hawke, raised an eyebrow at Hawke's latter-day claims to agnosticism. In an address to the Council of Australian Humanists in 1986, Hayden said:
I recall that a former colleague of mine — Bob Hawke — used to forthrightly declare he was an atheist when he led the ACTU [Australian Council of Trade Unions]. On his way to Parliament I noted that there had been a delicate but undeclared shift. He would murmur, when asked on the topic, that he was an agnostic.34

Whether atheist or agnostic, Hawke was never tolerant of religious wowsers. He once boasted: ‘Do you know why I have credibility? Because I don’t exude morality.’35

In 1989, in a move that was widely considered to be compensation for his deference to Hawke’s political ambitions, Bill Hayden was appointed as governor-general. Controversially, Hayden became the first governor-general to be sworn in by affirmation, insisting that, as an atheist, he could not in good conscience swear an oath. Hayden’s atheism also prevented him from taking up the position of chief scout, a role traditionally held by the governor-general. In his history of Australia’s governors-general, Brian Carroll writes:

Only one [governor-general] was enough of an atheist to assume office by affirmation rather than oath, but there were those who were not as church-going as some people might have expected.36

Labor survived the 1991 federal election, but Hawke did not. He was toppled from leadership by the brash and ambitious Roman Catholic Paul Keating. While Keating exploited his Irish-Catholic roots for political purposes, he was scathingly critical of the traditional churches, which he viewed as instruments of ‘entrenched privilege and moral conservatism’.37

The 1990s saw a remarkable increase in the number of Catholics and evangelicals in senior positions in the Liberal/National coalition. In 1992, Christian conservatives within the coalition united to create the Lyons Forum, a faction which sought to influence policy in areas such as censorship, family, marriage, and sexuality. Indeed, the forum’s theological agenda became transparently obvious when Kevin Andrews, one of its leading figures, initiated a private member’s bill that brought an end to the Northern Territory’s 1995 euthanasia legislation. Liberal leader John Howard was not a member of the Lyons Forum, but was sympathetic to
its cause. Howard’s shameless exploitation of the right-wing Christian vote during his 12 years as prime minister is documented in Marion Maddox’s *God Under Howard* (2005).

Labor was well aware of the tactics of the Lyons Forum. MP Anthony Albanese observed:

The Lyons Forum ... is an organised right-wing religious cell in the Liberal Party — it’s old fashioned vanguard politics.38

Oddly, as the congregations of the nation’s traditional churches dwindled to almost nothing, the increasingly noisy distraction of Australia’s Christian Right grabbed the attention of politicians of all stripes. Like childrenentranced with a bright and shiny bauble, they became distracted by the dazzling potential of blocs of votes from megachurches like Hillsong, in return for conservative, ‘family friendly’ policies. In 2000, alarmed by this move towards religious pork-barrelling, a group of Labor politicians, led by atheist Dr Carmen Lawrence, formed a cross-factional Humanist Group to counter the growing influence of religion in parliamentary debates and decisions.

Significantly, irreligion continues to grow in Australia. Between 2001 and 2006, the country’s non-religious sector rose by more than 27 per cent.39 In fact, the number of Australians with no religious affiliation is growing faster than any of the country’s religious denominations, and twice as fast as the high-profile Pentecostal churches. Meanwhile, the mainstream parties move inexorably towards the Christian right, leaving only the left-wing Greens to defend the tatters of secular Australia.

Indeed, when Julia Gillard assumed the leadership of the Australian Labor Party in June 2010, it soon became clear that her atheism would change nothing. Despite publicly confessing her disbelief, she quickly reassured the Christian constituency that her ‘values’ derived from her Baptist upbringing,40 pledged $220 million to extend the National Schools Chaplaincy Program, refused to overturn a massively unpopular plan for compulsory internet censorship, and asserted her opposition to same-sex marriage. After the 2010 federal election, Gillard’s government retains only a tenuous hold on power — maintaining government only through the support of the Greens. It remains to be seen whether Labor’s near
defeat and the greater influence of the Greens in the Parliament and in the Senate will help to reverse the trend against secularism.

Consolingly, there have been some rare, shining moments of non-partisan secular solidarity. In 2006, a private member's bill proposing the legalisation of the 'morning after' abortion pill, RU486, was initiated by a cross-party coalition of female politicians. In response to strident opposition from health minister Tony Abbott (a Catholic and former seminarian), Greens senator Kerry Nettle famously wore a T-shirt emblazoned with the slogan, 'Keep your rosaries off my ovaries'.

Since the terrorist attacks of 11 September 2001, there has been a worldwide resurgence of interest in atheism. The influence of the 'new atheists', particularly Richard Dawkins and Sam Harris, breathed new life into Australia's existing atheist and freethinking communities, and motivated many more to join atheist, humanist, rationalist, and sceptics organisations. Many used the networking power of the internet to form atheist or freethought Meetup groups in their local communities. In fact, the internet has been integral to bringing Australian freethinkers together and in disseminating atheist arguments, humanist ideals, scepticism, and rationalism.

In March 2010, the Atheist Foundation of Australia and the American-based Atheist Alliance International combined to present the Global Atheist Convention in Melbourne — a major gathering of more than 2000 people. Also in 2010, the AFA launched advertising campaigns in Hobart and Melbourne, in which council buses were emblazoned with the message: 'Atheism — Celebrate Reason'. Australian atheism's new high profile, in concert with social and political issues such as the National Schools Chaplaincy Program, the debate over compulsory internet censorship, and the election of conservative Catholic Tony Abbott to the Liberal leadership, have made the increasing intrusion of religion into national politics a dominant and contentious issue in the contemporary national discourse.

History is political. As Australian secularism is increasingly threatened, we must not allow the claim that Australia is a Christian country built on Judeo-Christian values to go unchallenged. It is time for us to bring our atheist heroes — too often dismissed as felons, ratbags, rebels, commies, and left-wing loonies — into the spotlight. As we have seen, Australian national identity, with its ethos of mateship, equality, and justice, derived substantially from churches. Atheism is a valid voice, but for atheists to be heard, voices heard in

NOTES
3. See S. Morgan, ibid., p. 131.
4. See M. Maddox, ibid., p. 98.
5. Two exceptions: Australian Legal History, Grocott's Convicts and Churches and Chantry, 1980. I have drawn on these.
8. The Australian Legal History, ibid., pp. 185–190.
10. ibid., p. 131.
11. ibid., p. 98.
12. ibid., p. 93.
13. Convicts, Clergymen and Church, ibid., p. 190.
14. ibid., pp. 185–190.
17. D. E. Kirkby, ibid., p. 98.
18. R. Smith, ibid., p. 93.
20. G. Partington, ibid., p. 98.
21. B. James, ibid., p. 98.
22. B. James, ibid., p. 98.
23. ibid., p. 98.
substantially from these Australian atheists — often fighting against the churches. Atheism has a long and proud history in Australia, and it is time for atheists to claim our place in the national chronicle, and to have our voices heard in the halls of Australian political power.

NOTES
5. Two exceptions (although they cover only a limited time period) are Russel Ward’s The Australian Legend, Oxford University Press, Melbourne, Victoria, 1958, and Allan M. Grocott’s Convicts, Clergymen and Churches: attitudes of convicts and ex-convicts towards the churches and clergy in New South Wales from 1788-1851, Sydney University Press, Sydney, 1980. I have drawn heavily upon both these texts in this chapter.
8. The Australian Legend, p. 91.
10. Ibid., p. 131.
11. Ibid., p. 98.
12. Ibid., p. 93.
23. ibid.
34. B. Hayden, Speech by the Hon. Bill Hayden AC on Receiving the Australian Humanist of the Year Award at the Council of Australian Humanists Societies Convention in Brisbane on 30 March 1996, text at http://home.vicnet.net.au/~humanist/resources/cahs.html
35. 'Australian Prime Ministers', Convict Creations (History) at www.convictcreations.com/history/prime.ministers.htm
38. God Under Howard, p. 68.
42. Initially, the AFA's advertisements were rejected by the company responsible for bus advertising, requiring the matter to be mediated by the Anti-Discrimination Commission. See Laura Parker, 'Atheist message misses local bus', Sydney Morning Herald, 9 January 2009, at www.smh.com.au/news/national/atheist-message-misses-local-bus/2009/01/09/1231004199169.html

THE AUSTRALIAN BOOK OF ATHEISM

Max Wallace
Author of Australia's National Philosopher, John Anderson

AUSTRALIA'S NATIONAL PHILOSOPHER

John Anderson

The cornerstone of a democratic society is not, whether it be religious or secular, but a 'separate state' as adequate for the unity to

Benea...
THE CONSTITUTION, BELIEF, AND THE STATE

Max Wallace
Author of The Purple Economy, director of the
Australia New Zealand Secular Association

AUSTRALIA AND NEW ZEALAND ARE CONSTITUTIONAL MONARCHIES: democracies that have as their head of state a royal person whose antecedents’ rule was once absolute. Briefly, where kings and queens once ruled, they now are content to reign. Typically, they claimed a divine right to rule, sanctified by a religious authority happy to comply in an arrangement that saw religion share the reaping of taxes from the population, while both monarchy and church remained tax-exempt.

The tax-exempt status of the monarchy and the churches is the foundation of all subsequent political structures. Whether we know it or not, whether we like it or not, a portion of our taxes, possibly as high as 10 per cent, in keeping with the ancient tithes scale, go to enrich the monarch and churches. This approximate figure is calculated by taking religious enterprise subsidies and tax exemptions as a proportion of total government revenue.¹ There are variations according to nation.

Our constitutional monarchies employ the British smokescreen, shared by similar European and other governments, that having a figurehead who is ‘above’ politics is good for everyone, an enduring symbol of national unity that represents a history of some value.

Beneath the patriotic rhetoric, what this arrangement is really about is maintaining church power and monarchical influence in a democracy through the lubricant of tax-exemption and government grants.

¹ 'Separation of belief and state' will be used here interchangeably with ‘separation of church and state’ as the latter phrase, long accepted in legal, historical, and political literature, does not adequately express the secular idea that government should disassociate itself from all forms of private belief, religious or otherwise.
In such an arrangement, there is no true constitutional separation of belief and state, as occurs in a republic. Since Australia and New Zealand are not yet republics, but have a common queen as head of state who also happens to be the supreme governor of the Church of England in Britain, it follows there could hardly be such a separation when the head of state is a leader of an enduring religious tradition.

Most Australians and New Zealanders do not know much about constitutional and tax issues. The meaning of the Constitution is not taught in schools. If they go to university, most do not do law degrees. Even if they do, they may not give much thought to whether having a queen who is simultaneously a leader of a long-standing religious tradition as well as head of state is at odds with the idea of constitutional separation of church, other forms of belief, and state. Accountants and other would-be tax-avoidance legal specialists are not encouraged to turn their minds to these matters. Even if they did, the privileged status of the exemption for churches and monarchs is not required reading in tax-law textbooks.

Importantly, there is no separation of religion or belief in England. The Church of England is the national religion of England, thanks to an act of parliament. It achieved this status in 1533, after Henry VIII split with the Vatican, setting up the Church of England so he could divorce his wife and marry another. He controlled both church and state. The Church of England is so entrenched in England that the prime minister appoints its bishops to the House of Lords, where they participate in government.

This was the constitutional arrangement that Australia and New Zealand inherited while they were being colonised in the eighteenth and nineteenth centuries. This was not long after the 4 July 1776 American Declaration of Independence from Britain, following its successful revolution. America would eventually become the Republic of the United States, with a constitutional separation of church and state.

New Zealand remained part of the colony of New South Wales until 1840, when it became a separate dominion of Britain. At that time, the Treaty of Waitangi was established between the Maori people and the British government, setting out the rights of the Maori people in this new nation.

No New Zealand constitution was ever written — as is the case in Britain today, where there is also no written constitution.

In 1901, the colonisation with a federal Constitution for the new nation began. During the nineteenth century Britain was not yet a republic, so it had its own constitution. The Australian and New Zealand constitutions were written in 1855; South Australia, 1856. These constitutions are much focused on separating church and state.

The relationship between New Zealand and the Australian empire and the debate was who could ensure the education of what children needed to be educated. The alternative was compulsory.

Access to the minds of children was at the heart of the debate. There were convent schools operated by the Catholic church, where the religion of the Catholic Church was imposed. Access to the minds of children was also at the heart of the debate.

There were convent schools. In 1976, the Constitution was amended to allow access to the minds of children. The words 'humbly relying on the Constitution' were added to the Constitution.

In short, best supporters of the Constitution should be emphasised to ensure the education of what children needed. The Commonwealth should be a secular body, free from religion, or for imp...
In 1901, the colonies of Australia decided to federate, to become one nation with a federal government, while retaining state parliaments. During the nineteenth century, each of the Australian colonies wrote their own constitutions, setting out the rules for government. The dates of these constitutions were: New South Wales, 1840; Tasmania, 1854; Victoria, 1855; South Australia, 1856; Queensland, 1859; Western Australia, 1859. These constitutions are still in force today: None of them has a clause separating church and state.

The relationship between religion and the state was a hot issue in New Zealand and the Australian colonies in the nineteenth century. Central to the debate was who was going to run schools. Churches believed that what children needed most was religious instruction. They fought tooth and nail the alternative idea that education should be free, secular, and compulsory.

The fight over access to children's minds, via what they were taught through the curriculum, was one of the routes to political power, for, if you could educate the future nation's leaders in the one true belief, you could ensure your religion's prominence in government, and thus promote your particular Christian cause.

Access to the minds of the Indigenous, who were considered 'pagan', was granted to missionaries as a matter of course. The will to proselytise and impose the Christian truth, as they saw it, on the unwilling or unconverted is at the heart of the Christian project, if you take it at face value.

There were conventions in the 1890s to discuss what would be in the Constitution for the new federal Australia. The churches believed religion should be emphasised to make it plain that Australia was a Christian nation.

In short — best summarised in Richard Ely's *Unto God and Caesar* (1976) — the founding fathers were earnest in their collective belief that Australia should be a secular nation with a separation of church and state.

Partly to placate the religious lobbying, they agreed to include the words 'humbly relying on the blessing of Almighty God' in the preamble to the Constitution. That is the only mention of religion in the Constitution, except for Section 116, which reads:

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

[Note: this section does not say there is a separation of church and state in Australia.]

Meanwhile in New Zealand, in 1877, the Education Act made education free, secular, and compulsory. The state did not fund religious schools — that is, those schools where parents insisted their children be taught with Christian emphasis.

Almost immediately after secular schools were set up in Australia and New Zealand, the churches began lobbying to have religious education or instruction (pick your word) for at least one hour a week in the state schools, in addition to running their own schools. They succeeded.

Christian lobbying also succeeded in having referenda asking Her Majesty’s Subjects (as we were then) the question of whether the word ‘secular’ should be dropped from the education acts of Queensland and Victoria. They failed in Victoria, but succeeded in Queensland on 13 April 1910. To this day, officially, Queensland education is not secular, at least in principle — and, to a significant extent, in practice. A campaign is being spearheaded by the Humanist Society of Queensland to have ‘secular’ put back into the act, timed to coincide with the centenary of its removal.

So, given the Constitution did not say that there was separation of church and state in Australia, and there was not even a Constitution in New Zealand to consider the matter, this all-important question slipped off the radar and completely out of the consciousness of both nations, where it had barely registered, in any case.

Matters stirred in the 1950s when Australian prime minister Robert Menzies decided he would break with the long-standing principle of no state aid to religious schools by introducing federal payment of interest on loans by church schools in the ACT, tax deductibility for school fees up to 50 pounds as a tax deduction, and tax deductibility for school building donations.5

Immediately, there was alarm. To understand the nature of that alarm, it is important to know about the very significant constitutional law case, the Everson case, in the United States in 1947. That case decided there was a separation of church and state minimisation of funding.

This is still the case in Australia. The state did not fund religious schools that offered a religious test for any public trust under the Commonwealth.

In Australia now, 75 per cent of all state primary and secondary schools were ‘integrating’ in the early 1970s, with the remaining 25 per cent in religious schools in the systemic schools. In New Zealand, all Catholic schools, and 85 per cent of private schools were ‘integrating’ school system in 1975. What happened to the state funding for religious schools in Australia?

And so it was for a while, dramatically increasing. He sacrificed public-school teachers, became, was it unconstitutional to fund religious schools? As the plaintiffs, the state did not have legal standing. Eventually, the Victorian courts explicitly denied separation of church and state. Barwick, endorsed Justice Everson’s view: ‘cannot be viewed as a separation of church and state. The consequences of such a provision ... cannot be viewed as a separation of church and state. The consequences of such a provision ... cannot be viewed as a separation of church and state.'
was a separation of church and state in the US and, as a consequence, the minimisation of funding of religious schools was confirmed.

This is still the case. In the United States, 90 per cent of all students go to state schools. The remaining 10 per cent go to mainly private religious schools that are largely church-funded. In 1961, the first Catholic president, John Kennedy, said: 'I believe in an America where the separation of church and state is absolute ... where no church or school is granted any public funds or political preference.'

In Australia now, about 65 per cent of students go to state schools, 20 per cent to less-endowed but still adequately resourced Catholic systemic schools, and about 15 per cent to the wealthy religious and non-denominational private schools. Forty-three per cent of Catholic children attend state schools, as their parents cannot afford the minimum fees for the systemic schools.

In New Zealand, about 86 per cent go to state schools, 10 per cent to Catholic schools, and about 4 per cent to private schools. The Catholic schools were 'integrated' by law and stealth into the state educational system in 1975. What this means is that the government decided to pay for religious schools in order to lock in the religious vote.

And so it was for Australia. When Whitlam was elected in 1972, he dramatically increased funding for religious, mainly Catholic, schools. He sacrificed public-school funding to get elected. So, the question became; was it unconstitutional, as in the United States, for the state to fund religious schools in this way? It took 25 years for a case to test the constitutionality of religious schools funding to reach the High Court as the plaintiffs, the Defence of Government Schools organisation, did not have legal standing. Logs were thrown in their way at every turn. Eventually, the Victorian attorney-general agreed to support the case.

In rejecting the Defence of Government Schools case, the High Court explicitly denied separation in Australia. The chief justice, Sir Garfield Barwick, endorsed Justice Wilson's view, which was that Section 116 'cannot be viewed as the repository of some broad principle concerning separation of church and state, from which may be distilled the detailed consequences of such separation'. Justice Stephen said of Section 116: 'the provision ... cannot answer the description of a law which guarantees within Australia the separation of church and state.'
The High Court also distinguished Australia from England with its established church, as described above. Certainly, the lack of an established church is an element of separation of church and state but, while it is a necessary condition, it is not a sufficient one. For Australia and New Zealand to have a separation of belief and the state, both nations would need to become republics. Separation would need to be written into that new arrangement. That is what should be put to our peoples in future referenda for republics. But in the 1999 referendum for a republic in Australia, there was no mention of separation. Why?

Partly because of the possibility that separation could open the question of religious-school funding again, and also possibly lead to questions about the tax-exempt status of religion in our two countries, as described above. Church figures were actively involved in the republican movement, and they keep separation of belief and the state off the agenda. That does not apply to the small Republican Party of Australia. At its 2009 convention, it came out in total support of separation. The New Zealand Republican movement has openly addressed the question of secularism.

Nevertheless, the problem with all this is that billions are flowing to churches, mainly through tax exemptions and government grants. While it can be argued that their relief-of-poverty charities have a role to play, it is absurd that Australia and New Zealand fund the already-very-wealthy religious to be religious — because they are themselves legally charities — while science needs all the dollars it can get to help us preserve the planet.

That is, taxation is foregone to ‘advance religion’, which is a private matter, while science, which has public application, finds it a struggle to get all the funding it needs — even in the face of global warming.

Unfortunately, little of the above finds its way into university politics, education, history, and sociology textbooks, or constitutional law courses. This is partly because of straight-out academic indifference and incompetence, and partly because of religionist influence across many departments in our universities, where religion is endlessly privileged.

It is a truism of sociology that an informal reality usually proceeds behind the public face of social action. In this case, the informal reality is one of power, money, and status. This, of course, is what religion is all about. But occasionally, some Christians have reflected on their lot.

On 11 November, the minister, there was no mention of separation. Why?

In a truly democratic society as a right ... the church of Australia is — and always has been — not a Christian society; it is the church, from which it will not backfire as it backfires on society.

Amen to that.

NOTES
3. R. Ely, Unto God and Country
5. ‘Howard Re-writes the Schools’, 10 February 2002
6. ‘Should You Pay Taxes Church and State’, Wiseguys, 10 February 2002
7. S. Price, ‘Catholic Schools’, Humanists, Auckland
8. J. Dakin, The Secular
9. Attorney-General (Vic)
10. See ‘About Us’, at www.newzealandhumanists.org.nz
12. Legally, to ‘advance Religion’ (sic).Melbourne, 2007, and
13. M. Baker, ‘Church Ill
On 11 November 1975, the very day Gough Whitlam was sacked as prime minister, there was an item in *The Age* detailing an Anglican Church report entitled ‘The Politics of Living’. The report seems to have disappeared without trace, but *The Age* cited its main findings. It concluded:

In a truly democratic society no group may claim exclusive privileges as a right ... the church is yet to come to terms with the fact that Australia is — and has been for a long time — a pluralist society, and not a Christian society ... An attempt to argue that the church, because it is the church, has some inherent, superior right to privilege is bound to backfire as it becomes clearer that Australia is and must be a secular society.13

Amen to that.

NOTES

4. I am indebted to Hugh Wilson for this point. See information at www.thefourthr.info
5. ‘Howard Re-writes the State Aid Blackmail Story’, Media Release, Defence of Government Schools, 10 February 2009, at www.adogs.info
WHEN CONSIDERING THE ‘LAW’, COMMENTATORS AND LAY PEOPLE sometimes tend to treat it as a concrete ‘thing’. Oliver Wendell Holmes described this tendency as ascribing the law the characteristic of a ‘brooding omnipotence in the sky’. In an article about religion and the law, it is apt to note that jurisprudential scholars have moved away from the notion of the law being an omnipotent (and occasionally malevolent) entity within our world. However, we ought to be mindful that at the time of Australian colonisation by white settlers, European jurisprudence had few tools to deal with novel disputes in the law other than to appeal to the ‘natural law’ described by Thomas Aquinas. This natural law was to be interpreted or ‘found’ from the eternal law, described in Aquinas’ Summa Theologica in the following manner:

It is clear, however, supposing the world to be governed by divine providence ... that the whole community of the Universe is governed by the divine reason. Thus the rational guidance of created things on the part of God, as Prince of the universe, has the quality of law ... This we can call the eternal law.²

Accordingly, the natural law was immutable and thus ‘if a human law [a law made by man] is at variance in any particular with the natural law, it is no longer legal, but rather a corruption of law’.³
This religious and unsophisticated ideal of just law resulting solely from ‘God’s’ direction, through his Holy Text, the Bible, no longer forms a significant influence on jurisprudence. Commentators, such as Jack Balkin, now recognise that it is a misdescription of the law to ignore its human connections and that human subjectivity requires treatment of ‘the sociology of knowledge as a full partner in the jurisprudential exercise’. In this way, the study of the history of law provides us with documentation of social morays of the time; or, as Oliver Wendell Holmes writes: it is ‘perfectly proper to regard and study the law simply as a great anthropological document’. I intend here to examine the record of legal development in Australia to better understand how religion has influenced our society.

THE FIRST LAWS OF AUSTRALIA

The first laws of Australia were developed by the first Australians, who arrived on this continent more than 40,000 years ago (some 34,000 years before ‘God’ created the universe). It is unknown whether the first Australians had a legal system on their arrival; however, as Fred Wolf discusses in The Dreaming Universe (1994), a legal system was present in Aboriginal society prior to white settlement and strongly connected with the religious or spiritual belief of the Dreamtime, ‘[A]n infinite spiritual cycle ... more real than reality itself. Whatever happens in the Dreamtime establishes the values, symbols, and laws of Aboriginal society.’ These laws governed much of Aboriginal life, including trade, as documented with foreign peoples such as the moccasins, exclusive partnership between a woman and a man (though not always between a man and a woman), coming-of-age ceremonies, and uses of land and treaties such as those made between John Batman and various Aboriginal elders.

The possession of Australia by Captain Cook on 22 August 1770, and subsequent arrival of the First Fleet and establishment of a settlement at Sydney Cove on 26 January 1788, would lead to a direct clash between the laws of Aboriginal Australians and the laws of the British Empire. The British had developed various laws to deal with colonisation of other people in the process of building their empire. Blackstone’s Commentaries on the Laws of England refer to the cases of Blankard v Galdy and Case No 15 — Anonymous, in which it is established that colonisers would carry their laws into a ‘new and uncivilised land would carry on until it was ‘obviously based. In the Christian mind, it was constructed justifying Christianity and civil law-breaching natural law.

Even though the religious element is often treated as Gospel. It was established. Bourke, through the Crown colony was ‘terra nullius’ or one owned the land in the name of the Crown. This fiction repeated various times for 153 years. In the case of Queensland (No 2),

RELIGION AND THE

Through the nineteenth century, an identity that was often debated, it was separation of church and state. Nonetheless, the legal system incorporated a raft of religious motivations.

In developing a new country, the British did not intend to ‘struggle to shake’. In this light that the country of Australia. In this new framework for this look across the Pacific.

As pointed out by 35 years, the country of America ‘does not contain at the time of its complete religious motivations, but was often debated, it was separation of church and state. This could be considered ze
laws into a 'new and uninhabited land' but that the laws of a conquered land would carry on until the king imposed new laws. It is argued that this was 'obviously based, though without acknowledgement, upon principles' in the Christian mindset. Further, that 'Church and court scholars had constructed justification for this; the Europeans were, after all, bringing Christianity and civilization and if the native peoples resisted they were breaching natural law'.

Even though the religiosity of the early white settlers is sometimes doubtful, the legal precedents resulting from the Christian mindset were treated as Gospel. It was on the basis of these legal principles that Governor Bourke, through the Colonial Office of New South Wales, declared that the colony was 'terra nullius' on 10 October 1835; that is, a declaration that no one owned the land in the colony of New South Wales prior to the British Crown. This fiction remained the law of Australia and was confirmed at various times for 153 years, until High Court's decision in Mabo v the State of Queensland (No 2), when native title was recognised.

RELIGION AND THE CONSTITUTION

Through the nineteenth century, the various colonies began to develop an identity that was separate from the many homelands of its people. Nonetheless, the legal model imposed on the people of Australia was a slight variant on the eighteenth-century British models, which incorporated a raft of values in English law at the time of possession. In developing a new identity, the nineteenth-century colonists sought to 'struggle to shake off Imperial supervision and interference'. It was in this light that the colonies would choose to federate into the single country of Australia. However, rather than strike towards an imaginative new framework for this country, the founding fathers in Australia would look across the Pacific to their brothers in America for inspiration.

As pointed out by Sam Harris, the Constitution of the United States of America 'does not contain a single mention of God, and was widely decried at the time of its composition as an irreligious document'. Although the religious motivations, if any, of the writers of the US Constitution are often debated, it was clear that on the issue of religion, they held to a separation of church and state. Thomas Jefferson's views on the subject could be considered zealous from his writings, such as:
History, I believe, furnishes no example of a priest-ridden people maintaining a free civil government. This marks the lowest grade of ignorance, of which their political as well as religious leaders will always avail themselves for their own purpose.

It was from the fire of reason above religiosity that the US founding fathers ensured that the government of the United States would never be able to insist on certain religious belief on persons entering the government in Article VI, Section 3 of the US Constitution, which states: 'no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States'. The First Amendment to the Constitution went further to prohibit imposition of religion on its people, stating: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' These clauses were taken almost word for word by the Australian founding fathers when they drafted Section 116 of the Constitution Act:

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 wording was first produced at the Constitutional Convention of 1891. There was some concern raised by the founding father Henry Higgins at the Constitutional Convention of 1898 that this clause did not go far enough and should have also restricted the legislative powers of the states. Hanks points out that this was in part pragmatic politics, as such a clause could persuade 'free thinkers', concerned at the preamble's recognition of 'Almighty God' to support the Constitution at the forthcoming referenda. Despite Higgins' concerns, both Section 116 and the preamble remained.

Any concerns about a conflict between the preamble and Section 116 would be thoroughly quashed by the comments of High Court Chief Justice Latham in Adelaide Company of Jehovah's Witnesses v Commonwealth, wherein His Honour decided that 'no law can escape the application of s. 116 simply because it is a law which can be justified under ss. 51 or 52, or under some other part of s. 52, or under some other paragraph three, to such religious purpose in the judgment of the legislature'.

The prohibition is not only against religion, but also religious prejudice. Federal law can impose religious tests.

As a legal and an ethical matter, it shows the recognition of the non-religious society at the time, and the preference in holding those beliefs.

There are, however, exceptions to this line of thought. Jehovah's Witnesses were concerned with the protection of their freedom. The case concerned the assets of the Jehovah's Witnesses as prejudicial to the Control of Security (Subversive) Activities Act. He held that: 'The Constitution of the US under a Constitution which assumes the continuance of the United States as a Federal Nation, and the protection under the Constitution of private rights, objects, or omission (such as the freedom of religion), is in accordance with the Constitution and the community at large.'

Protecting the right not to believe is not, however, mean that we also have to protect the belief. This has been raised at both before the courts and the United States with regard to Everson v Board of Education. The Court has never taken the prohibitions on the states passing "laws which would..."
The prohibition in s. 116 operates not only to protect the freedom of
religion, but also to protect the right of a man to have no religion. No
Federal law can impose any religious observance. [my emphasis]

As a legal and anthropological document, it is arguable this decision
shows the recognition of atheism and agnosticism within Australian
society at the time, together with the will to accept and protect people
holding those beliefs.

There are, however, boundaries on this equal protection, as shown in the
Jehovah's Witnesses case, which reveals that the High Court was more
concerned with the protection of the Australian State than religious
freedom. The case concerned attempts by the Commonwealth to seize the
assets of the Jehovah's Witnesses on the basis that the organisation was
prejudicial to the Commonwealth's wartime efforts, pursuant to National
Security (Subversive Associations) regulations. Chief Justice Latham held
that: 'The Constitution protects religion within a community organised
under a Constitution so that the continuance of such protection necessarily
assumes the continuance of the community so organised'. Thus, although
Atheists, Christians, Muslims, Jews, and Jehovah's Witnesses receive equal
protection under the law to believe, there is little protection
of an act or omission (such as avoidance of military conscription) carried out in
accordance with that belief which contradicts the needs of the state and
community at large.

Protecting the rights to religious (and non-religious) observance does
not, however, mean that religion does not impact on our society and,
consequently, our legal system. Legal issues surrounding religious belief
have been raised at various times since the Jehovah's Witnesses Case,
both before the courts and in the legislative process. However, the High
Court has never taken the sweeping approach of the Supreme Court in the
United States with respect to their similar constitutional clauses, such as in
\textit{Everson} v \textit{Board of Education}. In that case, Justice Black provided a raft of
prohibitions on the state and federal governments, including, among others:
passing laws which aid one religion, aid all religions or prefer one religion

52, or under some other legislative power'. His Honour went further, at
paragraph three, to state:

The prohibition in s. 116 operates not only to protect the freedom of
religion, but also \textit{to protect the right of a man to have no religion}. No
Federal law can impose any religious observance. [my emphasis]
over another; 'No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance'; and 'No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion'.

The Everson case was concerned with the use of public monies to fund transport to schools, which mainly benefited religious schools. It was claimed unsuccessfully that this was indirect support for such religious schools and, accordingly, unconstitutional. In Australia, the High Court examined similar claims with respect to funding religious schools in *Attorney-General (Vic) (ex rel Black) v Commonwealth*, otherwise known as the DOGS case, in which a claim was made that financial assistance to private religious schools would amount to contravention of Section 116 of the Constitution. The Court generally found that an Act of Parliament for appropriation of funds to be provided to a religious school would not in itself be a law establishing a religion. As Chief Justice Barwick pointed out: '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.'

Justice Stephen decided that the provision of funding to religious schools in equal proportions to the funding given to government schools or the schools of other religious groups would not offend Section 116:

> It follows that even if the framers of our Constitution had seen fit to adopt verbatim the terms of the First Amendment, they would have been doing no more than writing into our Constitution what was then believed to be a prohibition against two things, the setting up of a national church and the favouring of one church over another. They would not have been denying power to grant non-discriminatory financial aid to churches or church schools. [my emphasis]

Thus, the Commonwealth continues to provide funding to the states, which eventually migrates to the religious education of children throughout Australia. Though this may seem counterintuitive, the application of Section 116 of the Constitution provides that all faith schools and schools with no religious orientation are eligible for funding.

As a side note, the *Religious Organizations* of Australia has also lent its support to *Everson* and *DOGS*. The *Everson* case, Chief Justice Barwick noted, was decided in 1947 and concerned a claim that religious schools benefited from state funding. The Court's decision was significant as it established a principle that state funding for religious schools was constitutional. 

Thus, on a personal level, I have considered a religious orientation that follows any conditions of discriminatory nature. This is, however, a matter for the focus now to relate to religious organizations.

**RELIGIOUS ORGANIZATIONS**

While we could argue that Australians enjoy a wide range of religious beliefs, it is clear that the role of justice is not to adjudicate on such matters. Porter QC states: 'The role of the law is to create a fair and balanced system where lawyers will have to work with legal issues.'

Anyone who feels that lawyers will be underwritten in excellent, timely representations to respondents with legal issues should describe the work of Religious organizations as the good of the Church in Australia.
with no religious ties are treated equally and without discrimination.

As a side note on religion in Australian law generally, the High Court has also lent itself to defining what is a 'religion' in Church of the New Faith v Commissioner of Payroll Tax (Victoria), wherein Acting Chief Justice Mason and Justice Brennan formulated a two-step test for religion, requiring that 'first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief'.

Thus, on a legal and anthropological basis, atheism could not be considered a religion, as it openly discards the supernatural and does not follow any conduct accordingly. This would be fine, except for the arguably discriminatory relief from taxes which religious organisations enjoy. That is, however, a matter best dealt with another time. I would prefer to turn the focus now to areas of remaining inequity in our legal system that relate to religious organisations.

**RELIGIOUS ORGANISATIONS COMING BEFORE THE COURTS**

While we could surmise that the courts of Australia have sought to treat Australians equally without discriminating on the basis of a litigant's religious beliefs, there remain wider issues involved in the administration of justice than the decision-making processes of judges. In the common law adversarial system, which was inherited from the English colonisers, the role of the advocate in shaping the issues which a judge considers cannot be underestimated. It is a well-known source of injustice within the legal system that powerful organisations can obtain superior legal representation and thereby influence the course of justice, or as Chester Porter QC states in *The Conviction of the Innocent*, 'The adversarial seesaw may well tilt the wrong way because the Crown or the defence cases have been over-weighted, or underweighted'.

Anyone who has had serious dealings in the law will be cognisant that lawyers will only ever have two of the three characteristics of being excellent, timely, or cheap. Thus it is that in litigation, the financial resources to retain high-quality legal representation that quickly deals with legal issues are highly preferable, if not necessary, for success.

Religious organisations have significant resources, and have been described as the 'hidden giant of the Australian economy'. The Catholic Church in Australia alone had revenue of 16.2 billion dollars in 2005, which
would make it one of the five largest organisations in Australia by order of income. This degree of wealth and power of religious organisations is often applied for the purpose of retaining top legal teams to appear in courts on matters which are important to their faith. I will examine two such examples (from a very long list) that show a contrast in how courts react to such powerful influences.

**Peter & Elspeth**

In the case of Peter & Elspeth, the Family Court of Australia re-examined a child-custody dispute in which the role of the Exclusive Brethren was a significant factor. The Exclusive Brethren are a closed evangelical religious movement that has been active since 1848 in Australia, New Zealand, the UK, and North America. Exclusive Brethren adhere to a strict avoidance of persons outside their church, with whom they do not socialise or even share a meal. Their connection is supported by biblical authority such as Matthew 23:8, ‘but be not ye called Rabbi: for one is your Master, even Christ; and all ye are brethren’. The Exclusive Brethren have actively sought to influence legal affairs, including obtaining an exemption from voting and workplace laws, together with meeting and allegedly donating funds to political parties.

The litigation was between Elspeth, who was a devout member of the Exclusive Brethren, and her ex-husband, Peter, who had left that organisation. It was acknowledged that, ‘the father’s decision to leave the faith precipitated the parties’ separation in 2003 and ultimate divorce’. In December 2006, Justice Benjamin ordered both parents to have custody rights of the three remaining children under the age of majority, with Peter to have limited custody over weekends. When Peter attended Elspeth’s house to collect the children, they were not made available. It is reported that the children indicated that they would not go with their father. On the basis of this, Peter made an application that Elspeth and two associates had contravened the court’s orders. Justice Benjamin granted orders on the basis of that application, which included imprisonment of Elspeth and her two associates.

Elspeth did not go to prison; rather, she was admitted to a psychiatrist with acute stress, which would eventually also lead to a diagnosis of breast cancer (the Full Court would later quash those convictions).
Australia re-examined... Breast cancer was a constituent and a common problem in Australia. New laws were required to ensure that they did not socialise with non-evangelical members. The biblical authority stated, "You shall be a light to the nations." One is your Master, the others are your brothers." The children have actively sought exemption from contact with their father, who they allegedly donating his earnings for the exclusive benefit of the church and often received his support, which he needed during these traumatic years. These needs must take priority over any needs they may have for a long-term relationship with the father and any questions about the Exclusive Brethren's compliance with court orders for contact.  

While we should be careful not to be critical of an unrepresented father's efforts against a seasoned and experienced legal team, it must be noted that much of the evidence presented would have been more rigorously dealt with had Peter been financially able to retain such counsel himself, including concessions made by Peter in cross-examination that he did not have a relationship with the children, or that the practices of the Exclusive Brethren were not damaging to those children. However, it is significant that the narrative of the case was allowed to drift away from the original litigation before Justice Benjamin, where evidence was accepted that:

the behaviour of family members and other members of the Exclusive Brethren in discouraging the children from spending time with their father and counselling them to 'put up with' such time, amounted to...
psychologically cruel, unacceptable and abusive behaviour towards these children.33 [my emphasis]

There is no reason to suspect that that behaviour changed, even in light of the illness of the mother. As a result of the orders made by Justice Brown, Peter shall have no contact with the children. His communication with them will be by collecting their school reports from his children's school, so long as the children are not present at the school at the time.

While it would be tempting to criticise Justice Brown's decision, that decision is a correct application of the relevant law. Rather, criticism should be targeted towards the inequity of the adversarial process in adducing evidence before the court.

Re: McBain

We ought to be aware that a religious organisation's access to financial and legal resources will not always result in success before the law, as was shown in the case of Re McBain; Ex parte Australian Catholic Bishops Conference.34 The Re: McBain litigation related to reproductive technology of In-Vitro Fertilisation (IVF). Such technology represents a threat to traditional morality as devised by religious groups — in particular, where such technology is used outside of the traditional arrangement of heterosexual marriage.

In the case of Re: McBain, the Australian Catholic Bishops Conference sought to intervene against what was considered to be a fairly simple legal question. The facts of the case were that Lisa Meldrum approached Dr McBain with a request for IVF treatment. Dr McBain found that as Ms Meldrum was not married, in accordance with Section 8 of the Infertility Treatment Act, he could not treat her. Dr McBain then commenced proceedings against the State of Victoria in the Federal Court for orders that the law was invalid. Justice Sundberg of the Federal Court found that provisions in the Victorian Infertility Treatment Act which restricted provision of IVF services to married couples were inconsistent with the Commonwealth Sex Discrimination Act, and thus invalid pursuant to Section 109 of the Commonwealth Constitution.

This legal point was uncontroversial in itself, and the State of Victoria declined to appeal the decision any further. However, such a ruling represents a transition in the traditions of the Court and its submissions to the Commonwealth Court of Appeals to amend the infertilitiy treatment provision in a case regarding this position.

My fundamental position (where there is no painting of miracles and women are free to engage in sex with a fertile man from same-sex couples in law a pattern that is not itself.

Dempsey would have the family based on the traditional arrangements of heterosexual nuclear family history when this simply is not so. Personally, I find that the infertilitiy of women unable to procreate.

Despite the high court finding, and the religious organisation's inability to intervene, the High Court held that a party, even on a point of law a pattern that is not itself.

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his children's school at the time. Rather, criticism of the adversarial process in

reproduced technology presents a threat to law. Rather, criticism of the adversarial process in

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reproduced technology presents a threat to law. Rather, criticism of the adversarial process in

maintains that as Ms Martin found that as Ms Dempsey discusses various submissions re

represents a transition from sole acceptance of a nuclear family, and the traditions of the Church. These attitudes were made clear in the later submissions to the Victorian Law Reform Commission when seeking to amend the infertility legislation. Dempsey discusses various submissions regarding this position, including the following:

My fundamental argument comes from natural law. In the natural world (where there is no advanced medical technology and where healthy men and women are fertile) a baby is produced only when a fertile man has sex with a fertile woman. Nature discriminates. It produces no babies from same-sex couplings. It is not discriminatory for society to replicate in law a pattern that occurs naturally by the discrimination of nature itself.

Dempsey would disagree, in that '[b]iological explanations for the family based on God-given decree would seem to demand that the heterosexual nuclear family has existed in unchanging form throughout history when this simply cannot be substantiated in the historical record'. Personally, I find the argument made by the religious for natural law to discriminate against non-heterosexual couples from using IVF technology internally inconsistent, as that same natural law would also rule out use of the technology between heterosexual couples that had been, otherwise, unable to procreate.

Despite the high-powered legal team assembled by the Bishops Conference, and numerous submissions that the Bishops ought be allowed to intervene, the High Court was not prepared to accept the submissions of a party, even one as eminent as the Bishop's Conference, simply to adjudicate on a point of law. As Chief Justice Gleeson puts it:

But for one citizen to say that a judge wrongly decided a case in favour of another citizen does not give rise to a matter. Nor does a complaint by the Attorney-General of the Commonwealth that a law of the State of Victoria has been held invalid, by a decision which is accepted by, and binds, the State of Victoria, in circumstances such as the present, give rise to a matter.
On this basis, the appeal made by the Bishop's conference was dismissed. Thus, the role of social conscience of a nation as it relates to an individual's dispute does not fall upon the Church.

CONCLUSION
There have been significant advances in the sophistication of legal analysis since the proclamation of *Summa Theologica* by Thomas Aquinas. The law, as practiced in this country, has revealed itself to be open to the religious (and non-religious) views of its people, rather than imposing axioms of religious belief as a foundation for giving justice. Thus, it would not be realistic for an atheist or agnostic to fear the law as though it were some "brooding omnipotence in the sky". Rather, the development of the law of Australia documents a society that is increasingly prepared to tolerate and protect not just those of faith but those who lack faith.

Nonetheless, we should be aware that the mere existence of active atheists and agnostics in our society represents a threat to religious organisations, whose financial and legal resources leave those organisations in a position to use the law as a tool. We should be prepared to criticise religious groups exercising the law in this manner, whether that is democratically — through our electoral rights and contact with elected representatives — or through public support or criticism of judgments made through our courts. If we, as atheists, are prepared to exert such pressure, then we shall reap the benefits of a society and legal system that continues to evolve towards greater equality for all.

NOTES
3. *natural law immutable*: *Quotient* 94, Article 5; *if human law ....*: *Quotient* 95, Article 2.
5. O. W. Holmes Jr, 'Law in Science and Science in Law', *Harvard Law Review* 12, 1889, p. 443. (Note: While I am not a realist in Holmes's fashion, I consider his reasoning remains a foundational underpinning for the move away from traditional positivism, and thus is relevant to the modern lawyer.)
8. The treaty made by John Batman and eight Aboriginal elders for the land around Botany Bay is available from the National Archives of Australia at www.foundingdocs.gov.au
9. Blankard v Galdy (1693) 90 ER 1089; Anonymous (1722) 2 P Wms 75; 24 ER 646.
15. T. Jefferson in a letter to Baron von Humboldt, 1813.
16. The preamble text: 'Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established, in Constitutional Law in Australia, p. 537.
18. Ibid at paragraphs 131-2.
22. Ibid at paragraph 583.
23. Ibid at paragraph 610.
29. Peter & Elspeth, paragraph 4.
30. Ibid at paragraph 45.
31. Ibid at page 50.
32. Ibid at paragraph 155.
33. Ibid at paragraph 93.
* PERSONAL
ON BEING A PART-TIME ATHEIST

Robyn Williams
Broadcast, science journalist, author.

THIS MAY BE DIFFICULT. HOW DO I DESCRIBE NOT THINKING ABOUT something? I don't think about golf. Or ballroom dancing. Or shopping for laxatives.

And I hardly ever think about God.

This is not meant to be a smug assertion. I am, sometimes, forced to give God a thought, like today, writing this piece. But not normally, preparing for work, riding on the bus, making radio programs, reporting science. God doesn’t arise. Not with me.

Why do I labour this point? For two reasons. Firstly, atheists such as I am don’t organise their lives to harass believers, or to plot their downfall or the global elimination of their faith. We are largely tolerant — and realistic. Could we ever hope to wipe out the Catholic Church, turn St Peter’s Square into a rock arena, and convert every basilica into an art gallery? Not really. Do we respect the right of others to believe what they want? If it’s harmless, yes indeed. Note: harmless!

Secondly, I could be wrong. I don’t imagine this to be likely, given the range of mostly weird beliefs to which the conventionally religious subscribe. However, I’m not omniscient, and most vaguely God-bothering folk I know personally (not many, come to think of it) are benign and unevangelical. So the topic hardly comes up. But absolute proof is unobtainable, so I’d be as arrogant as the Inquisition if I were to demand that believers must recant. Yet, these days, newspapers are full of casual references to ‘militant
atheism' and 'fundamentalist' unbelievers campaigning for ascendance. Yes, some of the Brit godless did find a few quid to put signs on buses saying that God may have left the building. So what? I saw it as a bit of a giggle: two fingers to the sky, making a change from all the pious posturing of the other side(s).

When you examine other 'stories' in newspapers, about Richard Dawkins, for instance, establishing summer camps for atheistic youths, a bit like madrassars for the Anti-Christ, it turns out (and I asked him) that the newspapers simply made it up. Richard had given a bit of money to the scheme — it wasn't his at all.

What has actually happened in the last few years is that atheists have become thoroughly browned off with all that's done 'in the name of God' — from the annoying, such as the banning of stem-cell research, a field of science which could alleviate untold suffering, to the utterly unspeakable, such as the wanton rampage in Mumbai in early 2009, when young Muslim thugs killed people for God as casually as Martin Bryant killed the picnickers at Port Arthur.


Do they want to assassinate all vicars and raze the mosques? Hardly. We spend many a day conversing with people of the cloth, accepting invitations from archbishops and, in my case, having as much pleasant discourse with my friends in the ABC (Australian Broadcasting Commission) Religious Department as we do with anyone else. We enjoy the company of well-meaning human beings whose views differ from our own, without feverishly seeking to 'convert' them. And we all loathe assassins.

It is a convenient smear to dismiss most of us (and we are not a job lot, not even much of a 'movement') as if we're after world domination. We are, however, sick of the hypocrisy. We watch the faithful in office in Downing Street, the Oval Office, or the governor's mansion in Texas, declare war or unhesitatingly impose the death sentence, and we are appalled. What does their God of love and forgiveness mean to them if an electric chair or a Trident missile is part of the deal?

What about the science of God? That has been worked over quite a lot in recent times. Oxford anthropologist Robin Dunbar has found that our brains are organized in layers of awareness, apparently, and that we use in giving us our tribe. Not just the individuals forming a tribe, but the tribe itself. We leap to the godly leap.

Consolations is the ultimate forgiving story, in an evolutionary population has in the form villages, to a church. Control.

What puzzles is how many oaths are transubstantiated; walking on water, principal, but I can't how do you tush? How can he, Dawkins says the years, to be ob accept adult adv off the cliff. Be the same evolutionary.

Some scientific the mechanism recover from the family and tribe in the modern way. Control. Obedience civilisation. So, the Qu'ran, the hypocrisy — ultimately, o
On Being a Part-time Atheist

brains are organised to conjure (I use the word without blush) several layers of awareness, including the highest: the spiritual. It is of benefit, apparently, and I would concur: such a mental versatility is of tremendous use in giving us a lofty commitment to our natural surroundings and our tribe. Not just a bunch of trees, lakes, and hillsides — but a land to which we are bound at a higher level. Not just a collection of families and individuals forming a mob — but a 'chosen' people with a greater purpose than mere survival. It is easy to see this mental agility taking the extra leap to the godly.

Consolations of religion are obvious. Hope, triumph over death, ultimate forgiveness, and atonement are all on offer. The utility of gods in an evolutionary sense is also obvious. God is good politics once the population has risen in numbers and, especially, once they have settled to form villages, towns, and cities. You can unify the rabble with a totem or a church. Control!

What puzzles the atheist, even about full-square mainstream religions, is how many odd, or even mad, shibboleths they insist upon. Virgin birth, transubstantiation, healing with hands, past-lives therapy, celibacy (!), walking on water, astral travel ... I don't mind turning water into wine, in principle, but I can never get the hang of it.

How do you manage to get sensible grown-ups to sign up to such tosh? How can half (or even a third) of America be so credulous? Richard Dawkins says that it comes from our willingness, wired until the teenage years, to be obedient to parents' or elders' instructions. If we did not accept adult advice in a hostile world, we'd soon be eaten by tigers or fall off the cliff. Being malleable to the cult leader, or bishop, is part of the same evolutionary psychology.

Some scientists see a tendency to depression as but a manifestation of the mechanism to yield to the strong leader. Maybe we were allowed to recover from this mental genuflection when in the wild, surrounded by family and tribe. Maybe it wilts into depression only when we are isolated in the modern world with its crowded distances.

Control. Obedience. A built-in mechanism for the rise of human civilisation. So, what about moral codes? Much has been made of the Bible, the Qur'an, the holy books of instruction, as sources for our better conduct — ultimately, our kindnesses and better values. There is no doubt this
may have codified them, with Egyptian ideas of altruism being transferred and reinterpreted as Christian expressions of love and self-sacrifice.

Is this directly inspired by God? Hardly! Or, as Richard Dawkins has repeated so often, which bit? The stoning of unbelievers, the crushing of women, or the emancipation of the poor? You can select an almost-infinite and endlessly contradictory range of options. Maybe that’s the idea. Consistent it is not; more a running record of what any gang of bearded despots happened to hand down to the masses at any one time.

Is the secular source any better? It depends on which one you have in mind. Lots of cultures have produced dystopias even without the help of priests. You know the list. Christopher Hitchens has a good one, and points out the ex-seminarians (Stalin) or god-like emperors (Mao) — but I won’t bother to recite it again. It is significant, however, to see how well tyrants who present themselves as deities have emulated those theocracies.

I prefer to look at societies in general. Some allow people to decide via the democratic mechanisms that have flourished since the Enlightenment; some crush any variety of voices. The point is that you can do either ‘in the name of God’ as well as without Him. It is unhelpful simply to divide cultures according to how well they are churched and to try to discern any strength of an effective moral code accordingly.

France and Italy are supposed to be Catholic. It’s hard to tell these days. Their public ethics seem laudable. Cambodia and Iran are inescapably pious. Look at them!

We have a moral code because we must. Sarah Hrdy has written about our ‘cooperative parenting’, necessitated because our children are so vulnerable for so long, and looking after them is beyond one mother. From the beginning, we must be altruistic — or die. We are also capable of the most horrendous acts. Just glance at this excerpt from a 2009 interview with a woman named Kamate, who survived an attack by rapists in a now-defunct militia in Congo:

Their main purpose was to kill my husband. They took everything. They cut up his body like you would cut up meat, with knives. He was alive. They began cutting off his fingers. They cut off his sex. They opened his stomach and took out his intestines. When they poked his heart, he died. They were holding a gun to my head ... They ordered me to collect all his body parts, from his testicles to his fingers, and to bring them to the next page.

I could count on one finger how many times I have seen a difference between the benevolence of God and any other capriciousness.

There is no evidence for a benevolent God. No evidence for a God, (who was in the beginning). No god could have had the best of the good conscience.

We are creatures of our time, as is shown in Golding’s novel. Our society is the product of the coming of man, and in Golding’s words, the coming of man is the coming of the Congo.

It is not preserved in the way we have been; many should be more likely preserved in the way we have been. I am interested in different cultures, especially that of a blind and a blind person, the same name.

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all his body parts and lie on top of them and there they raped me—
twelve soldiers. I lost consciousness. Then I heard someone cry out in
the next room and I realised they were raping my daughters.*

I could offer unlimited examples of such ghastliness. So could you.
There is no end to our cruelty, our willingness to extend its agonising
capriciousness or sheer abundance. As I’ve said before, quoting Sartre
(who was in turn quoting Stendahl), ‘God’s only excuse is he doesn’t exist’.
No god could oversee such horror. No sensible believer in God could, in
good conscience, sign off on such a deity.

We are cruel in defined circumstances. It is predictable. In the end, as
in Golding’s fable Lord of the Flies (1954), the community will break down.
Our survival depends on cooperative assent to rules for the greater good.
The coming environmental turbulence will be the ultimate test of this.
Cormac McCarthy’s novel The Road (2006) is a possible apotheosis.

It is not surprising to see various manifestations of ethical codes
preserved in everything from holy books to songlines, nor to note that
many should have similarities. We could not live without them. It is
more likely that they, like us, have gradually evolved and been refined
in different circumstances. Saying that they are in the name of God is an
interesting metaphor, but not much more. A more apt metaphor might be
that of a blind watchmaker, as used by Richard Dawkins in the book of the
same name (The Blind Watchmaker, 1986): It’s a concept he uses to
describe the blind processes of natural selection.

It is indeed stunning to confront complexity, whether it be a brain cell, an
eye, a slime mould, a galaxy, or a baby, let alone a watch. We can account for the
evolution of each of these, and don’t need God as an engineer of the
cosmos, of bodies, or of watches. But we could agree that evolution
through natural selection was God’s chosen mechanism. We can also agree
that he was in no hurry to set up his chosen sons and daughters — us
—in our Earthly parish, and was inclined to wait eight billion years, for
some reason, before even getting around to the solar system. He could be
incredibly lazy — or distracted! We can also fudge around his profligacy
in creating a galaxy 100 million light years across, let alone the rest of
the universe, when he needed only a speck of planet — but that’s His
eccentricity, perhaps.
The argument can recede forever. He wanted nearly seven billion souls; he needed four billion earthly years to make them; he chose classical physics, quantum mechanics, and Darwinian techniques to 'create' what's here. If you insist on this, I can only shrug and leave you to it. It seems, at least, incredibly messy. God, surely, could have managed something more elegant.

Believers will tell you only that this is 'His' way. It passes all understanding. Sure does. Some frolic. The elegance comes when you subtract God from all this natural confusion. You can then see millions of different experiments in being, some yielding towering grace and intricacy, some tragic failure. Broken watches everywhere, and such brilliant timekeeping as well. Each of my cells has a 24-hour cycle. So do yours. Without our thinking about it. In 2009, we celebrated both the bicentenary of Darwin's birth and the sesquicentenary of his explosive work On the Origin of Species (1859). Darwin knew little of circadian rhythms, or of genes or DNA. Yet, he saw how biological complexity could arise over massive amounts of time.

Again and again, modern science has added further proof to this original great idea. I shall offer only one example. Apes have one more chromosome than humans; yet, we are supposed to be related. This is a highly significant difference that would crush our kinship unless an explanation could be found. Molecular biologists looked closer. Then they found the answer. Our chromosome number two is a double, fused in the middle. There is the missing element, after all. The story holds.

Multiply this coherence millions of times and you get consistent and wonderfully convincing proof. Say God did it, and you add nothing. You diminish the wonder by adding fairy dust. What about the abiding mysteries, some of which may defeat us forever? The purpose of evolution, the contradictions in physics, the fate of the universe — the meaning of life?

The first lot, the mysteries, will gradually fade. But not entirely. Modern science has been around for, say, 400 years, since Galileo opened up the heavens with that first adapted telescope — maybe for less than 200 years, since Coleridge asked at the BA meeting in Cambridge in 1833 what natural philosophers should be called now that they got their hands dirty. Dr Whewell, Master of Trinity, offered 'scientist'. Someone objected that it sounded too much like science as a tool of Aristotle; it is stunting. I much prefer this to The Meaning of a Monty Python reference...

What about the second straight? an ever-observing day full of meaning that counts. Not necessary, rarely a route to nirvana. Their prosaic place is...

Is this absurd? The contortions of the eternal existence in we have hormones, senses? If not, how have access to score virgins (in heaven?!) functions? Is it God? I much prefer this during a cardiac arrest.

Instructive. Nothing. Give me The Mean...
sounded too much like ‘atheist’, but the name stuck. Given the brevity of science as a tool of investigation (rather than as a ‘pure’ conjecture a la Aristotle) it is stunning that we have discovered so much, not that there remain a few unanswered questions.

What about the meaning of life? Douglas Adams was fond of twisting this to ‘The Meaning of Liff’. The question does rather sound like the title of a Monty Python movie. The meaning is what we make it. I do not need an ever-observing deity or the promise of an after-existence to make every day full of meaning and relish. Nor do millions of others. Every second counts. Not necessarily in a transcendent way (breakfast is merely fun — rarely a route to nirvana), but in ways that we enjoy and value beyond their prosaic place in the immensity of time and space.

Is this absurd? Insufficient? Not to most of us. No more than the contortions of theologians about how old we shall be when enjoying eternal existence in some afterlife. Will I be 65 forever? Or 15 again? Will we have hormones still, appetites, any of the rewards of our physical senses? If not, how can we still be ourselves? Why should Muslim males have access to scores of virgins but not us, and what happens to those virgins (in heaven?!) when they have been used? Is eternity without bodily functions? Is it an endless church service and obeisance to a demanding God?

I much prefer this Earthly limit. My own experience of near extinction, during a cardiac arrest in 1988 when I flatlined for nearly a minute, was instructive. Nothing. Blank. Extinction. So I awoke once more, here on Earth.

Give me The Meaning of Liff any day.

NOTES