

Mr Max Wallace
Speech
Politics, religion and Other Impolite Topics Forum
November 2005

Tonight, in the time allowed, I would like to speak briefly to the constitutional position of religion and politics in Australia, a perspective that is absent in Marion Maddox's *God Under Howard*.

We were at the last day summing up speeches of a conference in Paris this year when the word came through that there had been bombings in London. A speech was interrupted and British conference attendees were advised to leave and phone their families to see if they were safe.

In the aftermath Polly Toynbee wrote angrily in *The Guardian* on 22 July that 'never was it more important to separate the state from all faiths and relegate all religion to the private – but well regulated sphere.' Not much later the British Fabians released a paper arguing for the dis-establishment of the Church of England.

I think this is likely to happen and it is possible that Tony Blair, instead of appointing Anglican bishops to the House of Lords in the future, may well appoint Muslim clerics and others in a belated but flawed attempt to characterise the British Government as neutral on the question of religion.

The realisation is emerging that in a nation of many faiths, some with proven extremism and where the Reverend Ian Paisley long preceded the vitriol of the Muslim jihadists, Government needs to be seen to be neutral; they need to be able to criticise and act upon extremism without the problem of being seen to be enmeshed with the symbolism and practices one religion. In other words, a British democratic government needs to be seen to be representing everyone, not favouring the privileged Anglican Christianity which was a result of the fusion of church and state under the reign of Henry VIII in the sixteenth century.

If the British government were to dis-establish the Church of England, it would leave Australia and New Zealand in a curious position. Technically, the British would have separated church and state while the lack of a constitutional separation of church and state in our two countries would continue.

Most Australians do not realise that the High Court eliminated the Federal constitutional separation of church and state in the 1981 Defence of Government Schools or State Aid case. Justice Wilson said that s.116 of our Constitution, the only section dealing with religion, 'cannot answer the description of a law which guarantees within Australia the separation of church and state.' Justice Stephen said s.116 'cannot readily be viewed as the repository of some broad statement of principle concerning the separation of church and state, from which may be distilled the detailed consequences of such separation.'

This unity of church and state is expressed symbolically in three ways: on our *flag* which contains the crosses of three Christian saints: St George, St Andrew and St Patrick; on our *currency*: the fusion of church and state is expressed with the image of the head of the Church of England, the matriarch of our Constitutional Monarchy; in Christian *prayers* in Parliament.

Furthermore, if there was a separation of church and state in Australia the time to sing its praises would surely have been at the Centenary of Federation celebration in Melbourne in 2001. It didn't get a mention. 'God' was mentioned twice.

But this is at a Federal level of government. As Professor Blackshield has reiterated this year 'so far as the federal Constitution is concerned, the Australian states are free to establish or impair whatever religion they choose.'

This is a very unsatisfactory state of affairs to say the least. How are we going to talk about 'the role religion should play in Australian politics' when government is already entangled in what I would argue is a political-religious complex at the Federal level yet has a sword of Damocles potentially hanging over the churches at a state level.

After the State Aid case was handed down, there was no newspaper reporting of what the judges had said. I have been unable to find any reference to separation of church and state in any political textbook. The concept is missing in the works of nearly all our historians including Manning Clark. Richard Ely's *Unto God and Caesar* is an honourable exception as is the work of constitutional lawyer, Helen Irving. None of our political parties, to my knowledge, have an opinion about separation of church and state. None of them saw the High Court's decision as abrogating the right of a representative democracy to make such a profound interpretation of section 116. This was a fork in the road for Australian democracy, quietly decided and a decision taken over our heads.

It follows that if there is no constitutional separation of church and state in Australia what we have is a kind of multiple establishment, mostly Christian, soft theocracy. A writer in the *Harvard Law Journal*, speaking of the New Zealand case, described this state of affairs as 'establishmentarianism.' That is, we don't have an established church as in the case of Britain, but we have an increasing number of religions that are part of the political-religious complex.

Now, it seems, if the cases are proven against the young Muslim men that are charged with attempting to cause terrorist catastrophes in Sydney and Melbourne, we are in the same situation as the British: a symbolically Christian government is bringing all its resources to bear upon allegedly extremist Muslims.

Instead of even handed neutrality, it has the appearance of one religion over another however subtle and unintended that might be.

This is wrong. Australia should be a neutral republic that treats everyone equally and government should not even symbolically be seen as a Christian government. We are supposed to live by the rule of law, but the law, through the High Court, with silent acquiescence from parliament, favours some over others.

But it is not a question of a future republican secular government regulating religion from a position of secular superiority. The point is governments have to be seen to govern for everyone and citizens need to be protected against any form of extremism be it religious or secular: let us not forget political extremism in the 1970s with the Baader-Meinhoff in Germany to take one example. As far as terrorism is concerned, religion is not the problem, extremism is.

What do political parties believe about separation of church and state in Australia? If they believe in separation of church and state, what are they going to *do* about the fact that we don't have it?

A move to introduce separation by one means or another would be to the cheers I might add, in these highly charged religious times, when fundamentalism is making its move on government, of a quarter of the population who would resoundingly vote for such a move;

also, another significant proportion of Australians, the majority of whom rarely attend church, would see the sense in such a move and vote accordingly.

If political parties are *not* willing to put separation of church and state in Australia on the table, what are their *reasons*?

And, of course, where do Australia's churches stand on this question? Are they for equality of thought and belief or the continuation of unqualified privilege?

The responses of the churches to the Government's 2000 inquiry, the Charities Definitions Inquiry, might offer a clue. The Inquiry recommended a Charities Commission to bring a degree of accountability and transparency into the charity sector, of which religion is one part.

The Anglicans are for it.

The Uniting Church is ambivalent.

The Catholic Church is against it.

The government refuses to respond to its own Inquiry's recommendation.