HUMBLY RELYING ON THE BLESSINGS OF ALMIGHTY GOD?

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ABSTRACT

Barnabas Fund has been extremely active in the sphere of religious freedom in Australia. As a leading international aid agency providing practical help for Christians living with pressure, harassment, violence or persecution, it also seeks to raise awareness of their plight, encourage prayer on their behalf, and do what is possible to try to tackle the reasons for the persecution. As part of this, Barnabas Fund has for many years been concerned with the growing pressures on Christians in the Christian-heritage countries in the West; and in 2018 campaigned throughout Australia, drawing attention to the challenges of the current cultural environment. Although Australia has a rich history of religious freedom, this heritage is vulnerable, with the legislative framework to ensure protection of this freedom inadequate, and the cultural context dominated by the impact of the secular humanist agenda. The rise of the ideologically driven identity politics of sex and gender is a significant additional factor. There is a sense in which all nations are always at a crossroads, constantly choosing which path to take. In the case of religious freedom in Australia, this is poignantly the case, in light of the tendency to litigate against Christians and Christian organisations - so that Christians are increasingly prosecuted even if they aren't persecuted. In addition to considering our nation's heritage, the legislative framework for freedoms, the impact of the humanist agenda and of anti-discrimination legislation, this paper concludes that Australian Christians would be well served to become better informed about the reality of persecution in other lands and to develop a theology of suffering. In this way, they can be strengthened in their faith, better prepared to live as aliens in a foreign land.

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I. Introduction

That the Christian population of Australia has for so long enjoyed the absence of persecution, or even disadvantage, because of their faith is remarkable. That this same Christian population is presently needing to confront an increasingly anti-Christian cultural environment is to some alarming and to others merely a reality to be faced as part of their spiritual journey in a sinful world which Jesus Christ came to redeem.

Shortly prior to his arrest and subsequent crucifixion, Jesus told His disciples to expect persecution, even warning that 'the people of the world will hate you because you belong to me, for they don't know God who sent me.' Such hatred, disadvantage and persecution have been lived realities of many Christian communities over the centuries, and continue to be the experience of many more believers across the world today. In some cases, this persecution has been sporadic, and in others systematic; in some cases, the actions of crazed individuals or groups acting apart from the law, and in others government sanctioned; in some cases, the actions of religious authorities, in others of secular processes — or a combination of both. However, regardless of these diverse factors, all who suffer because of their Christian faith follow in the footsteps of our Lord, in whose case both the Jewish religious and Roman secular legal systems 'were both violently wrested into injustice' so that what was ostensibly a legal arrest led to an illegal interrogation and trial, the overturning of a legal not guilty verdict — and, ultimately, to the torture and execution of Jesus of Nazareth.³

Although persecution of Christians has been neither universal nor continuous since the time of Christ, there have been sufficient numbers of repeated and persistent waves of persecution that no analysis of Christianity is complete without considering this, its frequent companion. It is perhaps to the shame of the Christian Church in Western nations such as Australia that, having been spared the personal experience of persecution, there remains a significant degree of ignorance of the *history* of persecution after about 312 AD (when the Roman

¹ John 15:21. Unless otherwise indicated, all English translation Scripture references and quotes are from the New Revised Standard Version Bible, (Division of Christian Education of the National Council of the Churches of Christ in the United States of America, 1989).

² Herbert B. Workman, *Persecution in the Early Church: a chapter in the history of renunciation* (Charles H. Kelly, 1906), 10.

³ For a considered account of the injustice leading to the torture and death of Jesus of Nazareth, see Patrick Sookhdeo, *Hated Without a Reason: The remarkable story of Christian persecution over the centuries* (Isaac Publishing, 2019), 10-14.

Emperor Constantine I embraced Christianity), of the *history* of persecution outside Jewish and Roman contexts even before that time,⁴ or of its extent *geographically* today. As a whole, Australian Christians lack a coherent theology of suffering and are thereby largely inadequately equipped to face the threats posed by an increasingly alien, if not hostile, cultural environment.

II. HERITAGE OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION IN AUSTRALIA

'[H]umbly relying on the blessings of Almighty God',⁵ the Commonwealth of Australia came into being on 1 January 1901, at a time after many other nations in the Western world had more or less settled their understanding of human rights and freedoms as having a 'natural, universal and an eternal aspect'.⁶ Put briefly, our nation had inherited the common law tradition that regarded rights and freedoms as God-given and inalienable.

As a result, our nation has a proud record as a modern, liberal democracy, 'one of the freest societies in history', in which 'Australians from all backgrounds have long enjoyed liberty to live their lives as they see fit and pursue their goals as they wish.'⁷

One of the pillars of this liberty is the 'right to freedom of religion, thought, conscience or belief'; freedoms secured – or so it has long been thought – by a combination of the common law tradition referred to above, in addition to the restrictions placed on the Commonwealth by Section 116 of *The Constitution* and the Human Rights charters to which Australia is a signatory.

⁴ For a recent publication that, in telling aspects of the history of Christian persecution, shows something of the consuming hatred, tenacity and inventive cruelty of their persecutors, see ibid.

⁵ Preamble to *The Commonwealth of Australia Constitution Act* (hereafter referred to as '*The Constitution*').

⁶ Dipti Patel, *The Religious Foundations of Human Rights: A Perspective from the Judeo-Christian Tradition and Hinduism* (online), 1. https://www.nottingham.ac.uk/hrlc/documents/publications/ hrlcommentary2005/religiousfoundationshumanrights.pdf. [Accessed 9 June 2019].

⁷ Chair's Foreword, *Legal Foundations of Religious Freedom in Australia*, Interim report of the Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, November 2017. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/ Foreign_Affairs_Defence_and_Trade/Freedomofreligion/Interim_Report/section?id=committees%2freportjnt%2f024110%2f25420> [Accessed 8 June 2019].

⁹ United Nations, *Universal Declaration of Human Rights*, 1948 https://www.un.org/en/universal-declaration-human-rights/index.html; and *International Covenant on Civil and Political Rights*, 1976 https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx [Both accessed 9 June 2019].

Before turning to matters impacting on the right to freedom of thought, conscience and belief in Australia, it is therefore appropriate to consider the above *building blocks* to this freedom Australians have enjoyed – within the context of the very nature of this freedom.

The concept of freedom of religion arises from the capacity of humans to order their lives by thought, belief and reason, rather than by instinct. Christians understand the capacity of humans for thought, belief and reason to arise from being made in the image of God. As the *Stanford Encyclopedia of Philosophy* explains:

One of the chief features of the divine image in human beings... is the ability to form beliefs and to acquire knowledge. As Thomas Aquinas puts it, "Since human beings are said to be in the image of God in virtue of their having a nature that includes an intellect, such a nature is most in the image of God in virtue of being able to imitate God." ¹⁰

Further, it is important to note that the freedom of religion cannot be limited to the freedom of worship. Although freedom of worship is commonly an essential ingredient of the freedom of religion, it encompasses so much more than worship. Indeed, 'religion is not an isolated component of life, because religion has broad, holistic implications for the lives of its adherents as a worldview that shapes the way individuals think and act.' 11

Neither can the freedom of religion be restricted to the matter of *belief* independent of *conduct*. Importantly, in this regard, the High Court of Australia has held, in its judgement in the *Scientology Case*, ¹² that the legal definition of religion involves both belief and conduct, with Justices Mason and Brennan holding that 'for the purposes of the law, the criteria of religion are twofold: 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'. ¹³

Having countered some common misconceptions, it is equally important to affirm positively what the right to freedom of religion, conscience and belief encompasses.

¹⁰ Alvin Platinga, 'Religion and Science', 3.1 Concord, in *Stanford Encyclopedia of Philosophy*, 2010 (online), https://stanford.library.sydney.edu.au/archives/spr2010/entries/religion-science. [Accessed 9 June 2019].

¹¹ Augusto Zimmermann, 'The Secular Challenge to Freedom of Belief', *News Weekly* (online), 28 February 2015, http://newsweekly.com.au/article.php?id=56850

¹² Church of the New Faith v. Commissioner of Pay-Roll Tax (Vic) [1983] HCA 40; (1983) 154 CLR 120.

¹³ See ibid [17]. Note, however, that their judgement was qualified by also holding that "canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion".

Of the various elements incorporated within a proper understanding of the right to freedom of thought, conscience and belief, three fundamental aspects in particular are:

- 1. The freedom to form, hold and change opinions and beliefs without government interference;
- 2. The freedom to manifest those beliefs in public or private through speech and actions; and
- 3. The freedom of parents to raise their children in accordance with their opinions, beliefs and practices.

The first of these aspects is reflected in Section 116 of *The Constitution*, as a consequence of which the Commonwealth cannot:

- a) establish a State church; 14
- b) enforce religious observance; 15
- c) prohibit religious observance; 16 or
- *d)* impose a religious test for public office. ¹⁷

All three elements are reflected in international covenants of which Australia is a signatory; covenants that affirm the fundamental human right to freedom of thought, conscience and religion – including the rights to choose and change religion, to manifest one's religion in public, and of parents to raise their children in conformity with their beliefs. Significantly, whilst the ICCPR places no restrictions on the freedoms to choose and change religion freely and the right of parents to raise their children in conformity with their beliefs, the ICCPR does recognise that the right to manifest one's religion *can* be restricted – but only in extremely limited circumstances, as is clear from clause 3, Article 18 of the ICCPR:

¹⁴ In this respect, the Commonwealth of Australia can be distinguished from countries that have established a State church, including the United Kingdom of Great Britain and Northern Ireland (the Church of England), Denmark (the Lutheran Church), Greece (Eastern Orthodox Church) and Argentina (Roman Catholic Church).

¹⁵ Unlike Australia, religious observance is enforced in places such as Saudi Arabia, the West Bank and even in parts of Indonesia: see Jane Perlez, 'Spread of Islamic Law in Indonesia Takes Toll on Women', *The New York Times*, 27 June 2006, https://www.nytimes.com/2006/06/27/world/asia/27indo.html

¹⁶ In the People's Republic of China, significant instances of prohibition of religious observance are reported. See, for example, Barnabas Fund, 'China – Son of Christian Leader Beaten Unconscious', *Barnabas Fund Prayer Focus*, Update, No 145 (November 2008).

¹⁷ A religious test for public office was imposed on Pakistan-born Daniel Scot, who had to pass an exam on Islam before gaining a position as lecturer in mathematics at the University of Punjab. See Roslyn Phillips, 'Religious Vilification: The Daniel Scot Decision', *Festival of Light*, May 2005, 8-11.

¹⁸ See, eg, ICCPR, Art. 18.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others¹⁹.

Despite these building blocks, however, these freedoms are under attack in Australia today.

III. A VULNERABLE FREEDOM

It is beyond the scope of this paper to analyse each of the elements – sometimes disparate; sometimes homogenous – that have taken hold of our nation so that freedoms long thought to have been *secured* are now vulnerable, or even tenuous. Nonetheless, it is critical to outline to some degree at least two of these elements, such as:

- a) The increasing dominance of atheistic secular humanism as a worldview in a religiously pluralistic landscape; and
- b) The rise of identity politics, specifically the politics of sex and gender.

In each of these areas, Australia is not in any manner peculiar. Indeed, these elements appear across the Western world.

A third factor, which cannot be left unstated, but on which this paper will not dwell concerns the local aspect of global events: the scandal of the church's abuse of children, as revealed through the Royal Commission into Institutional Responses to Child Sexual Abuse. ²⁰ Without in any way detracting from the tremendous wrongs on which the Royal Commission shed light nor the horror that such wrongs were perpetrated by individuals and institutions who owned the name of Christ, suffice to state for present purposes that the revelations of this Royal Commission have contributed to the rise of anti-religious (or, at least, anti-Christian) sentiment in Australia.

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¹⁹ ICCPR, Cl. 3, Art. 18.

²⁰ The Final Report of the *Royal Commission into Institutional Responses to Child Sexual Abuse*, 2017 (online), https://www.childabuseroyalcommission.gov.au/final-report [Accessed 9 June 2019].

IV. ATHEISTIC SECULAR HUMANISM

Western societies have been undergoing transformation for several decades. As Sookhdeo observes:

From societies founded on Biblical principles and resting on a Christian foundation they are changing to societies resting on humanism and a civic religion with its own theology, ideology and morality. This has resulted in the gradual erosion not just of faith but also of a Christian moral basis.²¹

Whilst the concepts and philosophy of humanism have existed for centuries, the term *humanism* is relatively new, and the more recent influence of humanism more deeply profound. Indeed, it has been observed that the "'collapse of Christian morality has been partly the result of deliberate, orchestrated and intentional humanist efforts, subtle yet aggressively effective.'²² The first humanist manifesto was written in 1933, setting the tone for all future versions.²³

In response to criticism from some Christians that secular humanism should be regarded as a religious movement, humanist proponents argued that, although expressing a set of moral values and nontheistic philosophical and scientific viewpoints, it could not be regarded as a religious faith. Nonetheless, there have been a number of American court rulings that have classified humanism a religion.²⁴ The humanist agenda has perhaps had its most effective influence in the arena of education, stemming from the belief that *everything* 'should be explained through reason, logic and science,'²⁵ excluding the possibility of God as creator – and even His very existence.

In the pursuit of this agenda in education, public school teachers were enlisted as 'the proselytizers of a new faith,' with the classroom becoming 'an arena of conflict between the old and the new – the rotting corpse of Christianity... and the new faith of humanism.' From the classrooms of the 1980s have come many of the influencers of today, including in

²¹ Patrick Sookhdeo, *The New Civic Religion: Humanism and the future of Christianity* (2nd ed., Isaac Publishing, 2016), 3.

²² Ibid 7.

²³ Ibid 41. What humanists believe, and a summary of the various manifestos is covered in Chapter 4, pages 39-46.

²⁴ Ibid 45.

²⁵ Ibid 51.

²⁶ John Dunphy, 'A Religion for a New Age', *The Humanist*, January–February 1983, 26.

the arenas of the academy, media and popular culture – not to mention the legislators, policymakers and judicial officers.

An implication for legal theory was the questioning of Natural Law and the rise of Social Dominion perspectives, according to which it could be said that might makes right and that the nature and extent of rights and freedoms depends on who wins the political game.

So far as foundations for human rights are concerned, questions emerged as to whether such rights, as perceived in international law, simply reflect western thought, or even whether existing human rights should be discarded in favour of new formulations on the basis that existing rights arose from the Judeo-Christian tradition and are thus inadequate in a religiously plural cultural context. Even though it can be shown that these criticisms are unwarranted,²⁷ there has been an increasing tendency in countries like Australia to depart from the traditional understanding of the basis for rights and freedoms, to expand the category of human rights into areas of sexuality and gender, and to regard the right to freedom of religion as something of an inferior right in the event of the - predictable conflict of rights.

V. THE RISE OF IDEOLOGICALLY DRIVEN IDENTITY POLITICS OF SEX AND GENDER

The manner in which ideologically driven identity politics of sex and gender have radically altered the legal, religious and societal landscapes in Australia has been well documented elsewhere. For the purposes of this paper, the issues are raised owing to their impact on the right to freedom of religion through the mechanisms of anti-discrimination legislation, noting again that the human right to freedom of religion is increasingly trumped by competing rights where an actual or perceived conflict arises.

An even more foundational concern, however, is the language of *exemptions* where religious freedoms are concerned, and the formulation that these exceptions are to protect 'religious susceptibilities,'28 which together convey the message that special cases are being made for religious people or institutions, who because of some defect (religious susceptibilities) need to be handled with special care.

²⁷ See, eg, Patel (n 6).

²⁸ See, eg, Sex Discrimination Act 1984 (Cth), ss 37-38.

Utilising the *Sex Discrimination Act 1984* (Cth) as an example, it can be seen that some of the grounds on which discrimination is prohibited directly contradict the moral values of the Christian faith and other faiths. For instance:

- (i) The ground of *sexual orientation* raises the question of homosexual behaviour, which the Roman Catholic Church regards as immorality, and which many Protestant leaders regard as undermining God's created order. Indeed, one courageous Christian apologist has gone so far as to state that, 'believe it or not, it is also dangerous to society.'²⁹
- (ii) The ground of *gender identity* not only raises questions about gender identity disorders, but also theological questions, so that Regius Professor of Moral and Pastoral Theology at the University of Oxford has argued:

If I claim to have a 'real sex,' which may be at war with the sex of my body and is at least in a rather uncertain relationship to it, I am shrinking from the glad acceptance of myself as a physical as well as spiritual being, and seeking self-knowledge in a kind of *Gnostic withdrawal from material creation*.³⁰

Furthermore, the religious exemptions in the *Sex Discrimination Act 1984* (Cth) are completely inadequate. Sections 37 and 38 apply only to religious bodies and educational institutions established for religious purpose – rather than to every individual – notwithstanding that the right to freedom of thought, conscience and religion is specifically said to apply to 'everyone.' Furthermore, these exemptions only cover a limited number of matters, such as the selection, training or appointment of priests, ministers or members of religious orders (s. 37) or the employment of teachers or the provision of educational services (s. 38).

It should also be noted that the right of faith-based schools to appoint staff who adhere to the school's statement of faith, and live by the school's ethos, is presently under serious threat.

As significant as the aforementioned matters are, this additional point should not be overlooked: the exemptions generally apply only in relation to "an act or practice that conforms to the doctrines, tenets or beliefs of that religion." ³² Consequently, anti-

²⁹ Matt Slick, 'What Does the Bible Say About Homosexuality?', *Christian Apologetics and Research Ministry* (online), https://carm.org/bible-homosexuality [Accessed 9 June 2019].

³⁰ Oliver O'Donovan, 'Transsexualism and Christian Marriage', in *Grove Booklet on Ethics* (1982), 11.

³¹ ICCPR, Cl. 1, Art. 18.

³² Sex Discrimination Act 1984 (Cth), ss 37(1)(d) and 38(1)(2)(3).

discrimination tribunals and courts are required to determine the religion in question and its doctrines, tenets or beliefs, which may be understood by adherents but not carefully defined in writing. It should also be observed that courts and tribunals are ill-equipped to determine such matters, as Justice Nettle observed in his *Catch the Fire* judgement: 'In my view it was calculated to lead to error for a secular tribunal to attempt to assess the theological propriety of what was asserted'³³ at the seminar which led to the court's consideration.

Anti-discrimination tribunals have an appalling record of determining such things as *religion* and *doctrines, tenets or beliefs*. In the *Catch the Fire* case in the Victorian Court of Appeal, Justice Nettle determined that the Victorian Civil and Administrative Tribunal had erred in nineteen findings.³⁴ In the *OV & OW v. Wesley Mission* case,³⁵ the NSW Supreme Court found that the NSW Anti-discrimination Tribunal had wrongly identified the 'religion,'³⁶ wrongly determined the question of 'doctrinal conformity'³⁷ and was wrong about 'religious susceptibilities.'³⁸

Not only should courts and tribunals not be asked to determine such matters, but:

- (i) The considerable costs incurred by respondents in seeking to defend their religious freedoms are grossly unjust; and
- (ii) It is arguable that the Sex Discrimination Act 1984 (Cth) is in breach of that part of section 116 of The Constitution that prevents the Commonwealth from prohibiting the free exercise of religion.

It seems irrefutable that Australia is at the crossroads where religious freedoms are concerned, and more needs to be done to preserve these freedoms Australians have taken for granted since Federation. That this is the case was highlighted by the following words of Senator David Fawcett, then the Chair of the Commonwealth Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade:

³³ Catch the Fire Ministries Inc & Ors v. Islamic Council of Victoria Inc [2006] VSCA 284 (14 December 2006), [36]. http://www.austlii.edu.au/au/cases/vic/VSCA/2006/284.html [Accessed 9 June 2019]. http://www.austlii.edu.au/au/cases/vic/VSCA/2006/284.html [Accessed 9 June 2019].

³⁵ OV & OW v. Members of the Board of the Wesley Mission Council [2010] NSWCA 155 (6 July 2010). ³⁶ Ibid [41].

³⁷ Ibid [45].

³⁸ Ibid [46].

[L]egal protection of religious freedom in Australia is limited... While a culture of religious freedom has thrived, and the common law has respected religious freedom to a large extent, the legislative framework to ensure this continues is vulnerable.

Most significantly, there is almost no explicit protection for religious freedom at the Commonwealth level. The Constitution does place 'fetters' on the Commonwealth government, preventing it from restricting religious practice to some extent. But this is a fairly narrow protection, and it does not provide a positive protection of the right, nor does it prevent the States and Territories from restricting religion.³⁹

VI. Persecution in Australia?

The question is increasingly posed: is there religious persecution in Australia? For some the answer is a definite yes; for others a definite no — whilst, in addition to the third category (those who are not sure), there is a fourth category: those who object to the question even being raised compared to what some Christians experience in other parts of the world.

On the question itself, consider the following, which make for sober reflection:

- a) If what Australian Christians are experiencing, and on the brink of experiencing, was happening in other countries, would we consider it to be persecution?
- b) If the way Christians are being regarded by atheistic secular humanists was reversed, would secular humanists regard themselves as being persecuted?

If *persecution* means systematic mistreatment, then it could reasonably be said that Australian Christians are not being persecuted. However, if persecution were to be considered more generally as hostility, harassment or disadvantage, then it could be argued that our nation is heading in that direction. However, regardless of whether Australian Christians are subject to *persecution*, it seems clear over recent years that they are increasingly subject to *prosecution*, whereby the mechanisms of law are used (query whether *mis*-used) against individual Christians and Christian organisations to the end that many others will (at best) comply, or (at least) fall silent. In light of these developments:

The Church must not yield to pressure to incorporate other beliefs into the Christian Gospel. It is essential that the Church stands firm against any attempt to impose a government-approved, politically correct version of Christianity.⁴⁰

³⁹ Chair's Foreword, 'Legal Foundations of Religious Freedom in Australia: Interim Report', *Joint Standing Committee on Foreign Affairs, Defence and Trade* (online), 15 November 2015, https://apo.org.au/node/174641

⁴⁰ Barnabas Fund, Turn the Tide: Reclaiming Religious Freedom in Australia (Isaac Publishing, 2018), 10.

VII. CONCLUSION

Our nation's constitutional forebears recognised that, in order for the newly-created Commonwealth of Australia to prosper, its people – and its constitutional and related structures and institutions – needed to humbly rely on the blessings of Almighty God. Developments in recent decades, and particularly over recent years, represent the antithesis of this humble prayer. In its place has come an atheistic triumphalism that despises faith – with an attitude not unlike the foolish farmer who believes he can remove the roots of a tree without impacting its ability to bear fruit.

Finally, Australian Christians would be well served to develop a theology of suffering in order to be better equipped for whatever political and cultural developments arise. Recommended approaches include being better informed about the reality of persecution faced in many countries around the world, studying biblical examples of, and exhortations to godly living in ungodly cultures (for example, Daniel in Babylon & Persia; New Testament letters such as 1 Peter) and taking to heart our Lord's words:

If the world hates you, be aware that it hated me before it hated you. If you belonged to the world, the world would love you as its own. Because you do not belong to the world, but I have chosen you out of the world – therefore the world hates you. Remember the word that I said to you, "Servants are not greater than their master." If they persecuted me, they will persecute you; if they kept my word, they will keep yours also. But they will do all these things to you on account of my name, because they do not know him who sent me. If I had not come and spoken to them, they would not have sin; but now they have no excuse for their sin. Whoever hates me hates my Father also. If I had not done among them the works that no one else did, they would not have sin. But now they have seen and hated both me and my Father. It was to fulfil the word that is written in their law, "They hated me without a cause." 41

⁴¹ John 15:18-25 (NET).