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Review of Paul Babie and Neville Rochow, Eds., Freedom of Religion Under Bills of Rights

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Abstract

Review of an interesting collection of comparative articles on the state of religious freedom in various Western countries, with critique of the church's resistance to a bill of rights for Australia.

Keywords: Australia; bill of rights; religious freedom; church and state; constitutional freedom; Paul Babie; Neville Rochow

Freedom of Religion Under Bills of Rights

EDITED BY PAUL BABIE AND NEVILLE ROCHOW

University of Adelaide Press, Adelaide, 2012, 464 pp (paperback A \$55.00900 ISBN 978-0-9871718-0 (Ebook (PDF) Free) ISBN 978-0-9871718-1-8 A

At the heart of this judiciously-edited collection of essays is the contentious debate in Australia about whether to adopt a national bill of rights. Seven of the eighteen essays are focused on Australia, with the issues nicely joined in a strong Foreword by Sir Anthony Mason and an equally strong opening chapter by the editors. The remaining chapters offer comparative analysis of religious freedom provisions and hot-button issues (defamation, headscarves, conscience clauses, religious education, apostasy and change of religion, and more) in Austria, Germany, France, the UK, the US, and Canada as well in the international human rights documents. These latter chapters are well done, but they are familiar terrain for scholars and students of religion, human rights, and religious freedom.

The chapters on Australia are the more novel contribution, at least for international readers. Many readers will be surprised to learn that Australia lacks a national bill of rights; it's the only modern Western nation without one. Many readers will be even more surprised to learn that many of the churches of Australia, along with selected politicians and judges, have been leading the charge against the adoption of a bill of rights, especially in recent years. This is counterintuitive. Christians, after all, have long been in the vanguard of creating human rights – beginning already in Christianized Rome, more fully in the medieval canon law, and more fully still during the early modern Reformation and Counterreformation. Indeed, every one of the rights that

would appear, say, in the United States Bill of Rights in 1791, was already defined, defended, and died for in the Christian world of 1650. And the modern international and constitutional laws of human rights forged in the aftermath of World Wars I and II bear indelible Christian influences, as several of the chapters show. So what's going on in Australia?

Paul Babie, Neville Rochow, and their colleagues in the new Research Unit for the Study of Law, Religion and Society at the University of Adelaide have brought together a strong cast of Australian and international scholars to put the Australian issues in sharp comparative relief. Patrick Parkinson's lengthy chapter sets out the Australian churches' main concerns. Even if the modern human rights regime may have been Christian in origin, many Australian Christians argue, this regime has now become overtly secular in orientation, betraying a fundamentalism about equality, non-discrimination, and personal liberty and a corresponding indifference, even hostility, to religious freedom and the distinct needs of discrete religious and cultural minorities. To adopt a bill of rights would thus be to jeopardize religious freedom. For it would give secularist litigants and judges the power to undo the accommodations of religion that have been culturally and politically negotiated over a century and more. It's better to leave religious freedom as a soft or sub-constitutional ideal and rely on politically accountable legislatures for occasional help.

That might be a short term solution for majority Christians, but it is not a long term solution for religious freedom, other chapters show. First, religious freedom needs both judicial and legislative protections, and a constitutional bill of rights governing both branches of government is the better course. Some Australian human rights critics have pointed to the growing deprecation of religious freedom under the 1982 Canadian Charter of Rights, the 1998 UK Human Rights Act, and recent interpretations of the American First Amendment. But the chapters by Barbara Billingsley, Ian Leigh, Brett Scharffs and Charles Russo all show that, even when the courts in these countries do occasionally betray religious indifference or bias, legislatures are on hand to provide statutory fixes (as has happened repeatedly in the United States over the past two decades).

Second, as the chapters on Austria, Germany, and France further show, religious minorities need constitutional religious freedom protections to protect them against hostile or indifferent legislatures. A human rights regime gives them standing in courts to claim protection from general laws that run contrary to their core claims of conscience or central commandments of their faith. Christians will soon be minorities, in many Western lands, too, and they will welcome these constitutional refuges when they can no longer bend the culture or state to their will.

Finally, as the editors show, it seems at best anomalous that a Christian church, called to abide by the Golden Rule, would wish to deny everyone formal human rights protection over so many aspects of life just so that they can retain the religious freedom to discriminate against women and religious dissidents in their mix. Wouldn't it be better

to build into a bill of rights regime a method of balancing or prioritizing religious and other rights norms, rather than deny fundamental rights protections to all? Yes, indeed!