

Book Review — State and Religion: The Australian Story

Renaë Barker

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Australia has always had a complex and dynamic relationship with religion. In *State and Religion: The Australian Story*, Renaë Barker offers a compelling new insight into this relationship as she draws upon existing literature, archival records, and other sources to carefully map the interaction between religion and State — from Australia's colonial beginnings through to present day. In doing so, Barker demonstrates that the Australian story of Church and State is unique and endemic to Australian conditions.

While a number of authors have already grappled with the intersection between religion and State, Barker's book makes a valuable contribution to this field of literature in two ways. Firstly, the book marks one of the first attempts to comprehensively document the State-Religion relationship and draw together the fragmented and diffuse scholarship on the topic. Although this ambitious encyclopedic approach has forced Barker to limit her detail and forgo some analytical depth, it has also allowed her to present the relationship from a fresh perspective and open the door for future analysis. Secondly, the book succeeds in addressing two key gaps in existing literature: the role of Christianity in Australia's early colonies and the impact that recent events (including the legalisation of same-sex marriage and the proliferation of anti-terror legislation) have had on the State-Religion relationship. These new insights, in conjunction with Barker's unique holistic approach, make the book not just a fantastic introductory text, but also a useful read for academics already familiar with the subject.

State and Religion does, however, suffer from some notable flaws. Crucially, the book lacks an overarching argument or cohesive thesis. Without this, Barker's analysis can sometimes feel disjointed as she jumps between discrete ideas. In part one, for instance, Barker moves from examining the status of the Church of England in Australia's first colony to assessing the influence of human-rights legislation in contemporary Australia. Although these topics are each essential pieces of her overall picture, the lack of a guiding thesis leaves this part of the book potentially disorientating. This is not to say the book contains no arguments. Barker makes several astute and compelling claims. For example, Barker asserts that Australia's relationship with religion is defined by its absence of human rights instruments¹ and further, that these instruments may not be strictly needed to preserve religious freedom.² However, these arguments are only presented as conclusory remarks and are never used to steer

¹ Renaë Barker, *State and Religion: The Australian Story* (Routledge, 2018) 129–30.

² Ibid.

analysis. This is by no means fatal for the book, but the lack of a guiding thesis does make Barker's discussion more difficult to follow.

State and Religion is also weakened by its shortsighted coverage of s 116 of the *Australian Constitution*. In this chapter, Barker draws upon the history of s 116 and its subsequent judicial interpretation to conclude that the section was never meant to safeguard religious freedoms.³ Accordingly, for Barker, the Constitution remains a symbolic yet legally irrelevant feature in the day to day interaction between Church and State.⁴ Unfortunately, while this assessment is consistent with current High Court authority, Barker seems to treat the meaning of section 116 as fixed and immutable, and proceeds without addressing the possibility of new interpretations emerging. Luke Beck, however, has recently argued quite persuasively that s 116's purpose has been misinterpreted and that changes in the High Court's constitutional approach have created fertile grounds for a broader reinterpretation.⁵ Barker does briefly reference Beck's work, but she does not assess its implications. This is concerning, since even minor changes in s 116's judicial interpretation could radically alter the Church-State relationship which Barker presents. While her book is evidently more focused on what the law *is* rather than what it *could be*, the failure to allude to the consequences of a broader interpretation is an oversight that undermines the quality of any subsequent analysis based upon this section.

There are two other noticeable pieces missing from Barker's otherwise detailed and complete picture. The first of these is Aboriginal spirituality, which Barker intentionally chooses to omit from her book. This is understandable. As Barker rightly concedes, the topic is simply too big and too complex to be given the attention it deserves.⁶ The second gap, however, is less justifiable. The missing piece here is the relationship between religion and the Australian common law, which appears to have been largely ignored by Barker. Alongside the other State organs, Australian courts have also played a small but nonetheless pivotal role in shaping religious practices. The common law has, for instance, determined the way religious workers are remunerated,⁷ constrained the ways in which religious institutions make decisions,⁸ restricted the kind of the power religions can exercise over their disciples,⁹ and even determined the way in which religious disputes are resolved.¹⁰ Despite this, Barker has not

³ Ibid 86–98.

⁴ Ibid 98–9.

⁵ Luke Beck, *Religious Freedom and the Constitution* (Routledge, 2019).

⁶ Barker (n 1) 9.

⁷ See *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95.

⁸ See *Howie v Lawrence* [2013] VSC 616.

⁹ See Pauline Ridge 'The Equitable Doctrine of Undue Influence Considered in the Context of Spiritual Influence and Religious Faith: *Allcard v Skinner* Revisited in Australia' (2003) 26(1) *University of New South Wales Law Journal* 66.

¹⁰ See *Re South Head & District Synagogue (Sydney) (Administrators Appointed)* [2017] NSWSC 823.

directed her full attention to this topic and case law is generally only considered to the extent that it deals with legislation. Furthermore, given that judges are unelected, judicial decision-making is the only part of the Church-State relationship where interactions occur without democratic accountability. It is therefore clear that more attention should be afforded to this topic.

Despite these criticisms, *State and Religion* must ultimately be commended. Barker's painstaking research and meticulous eye for detail have allowed her to craft a comprehensive yet accessible overview of a notoriously complex subject. The book also arrives at an opportune moment — with recent events such as the legalisation of same-sex marriage and the conviction of Cardinal George Pell thrusting the State-Religion relationship into the spotlight. While the book has its flaws and improvements could certainly be made, it nonetheless makes an excellent addition to current literature and a great read for anyone with an interest in the subject.

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