

UNIVERSITY OF SOUTHERN QUEENSLAND

The Constitutional Context of Secularism, Religious Freedoms, and the State

A critical comparative study of the contemporary secular state reviewed
in the context of the thoughts of George Jacob Holyoake.

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ABSTRACT

Three basic objectives are pursued in this thesis: (a) an analysis of the historical development of secularism and religious freedom across a number of jurisdictions, in the context of the theories regarding secular governance of the English thinker George Jacob Holyoake ; (b) analysis of various constitutional models regarding the relationship between organised religion and the state, through the examination by ultimate courts of issues that have arisen since the drafting of those constitutions; (c) an examination of how modern secular democracies have interpreted secular governance since the times and writing of Holyoake; and (d) recommendations for reform of secular government in light of this research.

This thesis is developed through three parts. Part I relates to the historical and contemporary philosophical development of secular government in England and Wales, in common law countries in the Americas and South Asia, including an examination of George Jacob Holyoake's theories, as well as civil law countries in Europe. Part II deals with the constitutional law in these jurisdictions identifying areas where individual religious freedom rights clash with public policy of the secular state. Part III relates to reform of such states where efforts to keep a "separation of church and state" have resulted in artificial and impractical results, and a constitutional theory is developed offering a solution.

CERTIFICATION OF THESIS

I certify that the ideas, experimental work, results, analyses, software and conclusions reported in this dissertation are entirely my own effort, except where otherwise acknowledged. I also certify that the work is original and has not been previously submitted for any other award, except where otherwise acknowledged.

Signature of Candidate

Anthony Paul Meacham

28 February 2014

ENDORSEMENT

Signature of Supervisor/s

Date

PREFACE

This thesis developed from an interest I developed in constitutionally guaranteed religious freedom rights that originated with my Master degree studies. I found it interesting that, whilst specific issues such as the wearing of headscarves in the public sphere in France were evaluated in that country's context, no real comparison had been made across multiple jurisdictions to consider what issues other countries had in this area, and how they were addressed. I was curious about not only how other secular democracies addressed this issue, but more broadly, how other expressions of religious activity that ran counter to public policy were handled by the state,¹ whether the rights were extinguished, impaired, or accommodated, and what impact this had on other rights i.e. were religious rights advanced or given preference over other rights contained in the various constitutions.

I have always had an interest in the rights of minority viewpoints in a modern secular democracy relative to the collective will of the majority. The issue is often in the media, particularly when these views are made in the public square and for some reason cause conflicts with other individuals or the state. I had noted however that often these views are expressed intra-jurisdictionally, and my literature review determined there is little comparison of the religious freedom provisions of diverse secular states, the exception being perhaps Jacobsohn's *Wheel of Law*,² which examined the USA, India and Israel.

This thesis provides the opportunity to look at the treatment of religious pluralism in modern societies, particularly those where the changes have been gradual over perhaps the last half century, causing those communities to re-examine judicially the basic understanding and assumptions made about what the broad religious freedom provisions with their constitutions mean, and whether that meaning has changed over time in line with the increase in pluralism within those societies.

In doing so I hope to add to the scholarship in this area, particularly that done in Australia, India and the United States. I trust that the results of this thesis will show that the understandings of religious freedom have expanded to include a broader understanding of religion and religion and its role in society, as well as the increasing recognition of those who choose not to participate in religion, but who also have a role in the public sphere.

I have based this thesis on the law available to me at Canberra on 28 February 2014.

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Theodore, Australian Capital Territory
28 February 2014.

¹ By 'state', for the purposes of this thesis, I mean 'sovereign state'.

²Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (Princeton University Press, 2003), which compared three countries (India, the United States and Israel).

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