

WHO SPEAKS FOR THE JEWISH COMMUNITY? REPRESENTATIVE AND RELIGIOUS CONFLICT OVER THE MARRIAGE BILL OF 1960

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In June 1960, the Commonwealth Attorney General, Sir Garfield Barwick, wrote to Maurice Ashkanasy, the President of the Executive Council of Australian Jewry (ECAJ).¹ The subject of the letter was the newly introduced Marriage Bill, which brought marriage under Commonwealth jurisdiction for the first time. Barwick sought Ashkanasy's assistance in determining how Jewish marriage celebrants would be authorised by the Commonwealth government. This was to trigger a divisive dispute within the Australian Jewish community. The ECAJ wanted to be named in the legislation — this would cement its claim to be the official organisation of Australian Jewry. Orthodox and Progressive leaders viewed marriage as a purely religious issue, and were of the opinion that they, not the ECAJ, would be the appropriate authorities to nominate celebrants.

The ECAJ had been established in 1944 as the roof body of Australian Jewry, a federal counterpart to the newly established state Jewish Boards of Deputies. Its headquarters rotated every two years between Melbourne and Sydney. The President was a resident of the headquarters state, the Senior Vice-President came from the other state, and the Vice-Presidents were the Presidents of the other Boards of Deputies, and of the Hobart Hebrew Congregation and the ACT Jewish Community, which was established in 1951. Between 1954 and 1968 the Presidency of the ECAJ alternated between Ashkanasy and Sydney D. Einfeld. The two men often differed in their approach to issues, and this was the case here. Over the history of the ECAJ disagreements between Melbourne and Sydney have been far from infrequent.

True to form, there was disagreement between the two states. Melbourne leaders were determined that the ECAJ should be recognised as the nominating authority, regardless of objections from

other parts of the Jewish community. Sydney feared that the ECAJ would lose authority were it to be rejected by parts of the community. The Orthodox were opposed to the Progressive movement being recognised at all, while the Progressives wished to be recognised in their own right. While disputes within the Jewish community are frequent, this is the only time when the religious and representative bodies of the Australian Jewish community have lobbied against each other before the Commonwealth government.

A few people were central to the dispute. The most important was Sir Garfield Barwick, GCMG, QC, the man who had to decide how Jewish marriage celebrants would be nominated. A brilliant lawyer who became a Liberal parliamentarian and Commonwealth Attorney General, Barwick was later appointed Chief Justice of the High Court. Maurice Ashkanasy, CMG, QC, the President of the ECAJ, was a senior Melbourne barrister. He was a strong critic of the rabbinate.² The Senior Vice-President, Sydney D. Einfeld was a Labor politician, a member of the House of Representatives from 1961–3, and later Deputy Opposition Leader and then a cabinet minister for Consumer Affairs in the New South Wales Parliament. Rabbi Dr. Israel Porush, of the Great Synagogue in Sydney, was president of the Association of Jewish Ministers of Australia and New Zealand and was seen as the leader among the Orthodox community, although Rabbi Dr Izaak Rapaport of the Melbourne Hebrew Congregation was the key figure in Victoria. The most active Progressive leader was Cecil Luber, President of the Australian Union for Progressive Judaism (AUPJ). The small stringently Orthodox community made its representations through Rabbi B. Stern of Adass Yisroel directly to the Attorney General, apparently via W. C. Haworth, a Member of Parliament.³ No letters from these Orthodox leaders were found in the ECAJ archives.

William Rubinstein has previously examined this dispute.⁴ His work is, however, seriously flawed by its limited access to ECAJ documents and, at times, he misrepresents their contents.⁵ Rubinstein is correct when he points to the importance of the dispute as a rare public display of tension within the Jewish community.⁶ However, he characterises the matter as a question of Jewish identity, when the dispute is better described as one of clashing institutional agendas.⁷ The ECAJ leadership, especially in Melbourne, desired to be recognised by the government as the official voice of the Jewish community. Later in the dispute, the Executive Council also opposed any formal division of the Jewish community. No letters from the ECAJ leadership showed any concern about the question of Jewish identity, except as it related to government recognition or a divided Jewish community.

THE MARRIAGE BILL

The issue for the Jewish community was how marriage celebrants were to be appointed. The Marriage Bill offered two possibilities. The first was under section 39(2), where the Attorney General personally authorised each marriage celebrant. The second, under section 29, declared a religious body or organisation to be a recognised religious denomination. The denomination then nominated its marriage celebrants to the Attorney General. The problem was that the Jewish community lacked a single organisation that could function as a 'denomination.' Quite aside from the schism between Orthodox and Progressive Judaism, each synagogue was autonomous, answering to no higher body than its own members through their elected board of management. Barwick wished to avoid the cumbersome device of declaring each Jewish congregation as a separate denomination, as well as the administrative tedium of authorising each celebrant individually.⁸ Another way had to be found, and in this light, he wrote to the ECAJ as the only federal body representative of Australian Jewry, in the hope of finding a way to specify Jews as a single denomination.⁹

THE ECAJ RESPONDS

Ashkanasy saw Barwick's letter as a golden opportunity to have the ECAJ recognised in Commonwealth legislation.¹⁰ From his perspective, the fact that the specific context had to do with marriage was essentially a side issue. As Ashkanasy noted:

Obviously, the subject is one of major importance to the Jewish community not so much in the religious aspect as because it provides a basis for legislative recognition of our Council as the representative body of Australian Jewry.¹¹

Ashkanasy clearly felt that having the ECAJ officially recognised by the Commonwealth government on all matters, would make its task of representing the Jewish community easier.

The scheme for nominating celebrants Ashkanasy proposed was scrupulously fair, and paid no attention to who was nominated.¹² Congregations affiliated with the various State Boards of Deputies would nominate a celebrant or celebrants to the Board, which would in turn pass these nominations to the ECAJ for transmission to the Attorney General.¹³ For congregations not affiliated with the Boards, the Board would list them, provided they were felt to be a *bona fide* Jewish congregation without distinction between Progressive or

Orthodox, and these bodies would independently inform the ECAJ of their choice of celebrants.¹⁴ This was in keeping with Ashkanasy's preoccupation with enhancing the position of the ECAJ rather than the substance of the nominations. He may or may not have been concerned with ensuring the unity of the Jewish community. However, no such concerns were explicitly mentioned in his letters to Barwick or Einfeld. The closest he came was in his comments regarding the reception of this proposal within the Jewish community:

I realise that our Jewish clergymen might claim that this is a field exclusively to themselves. However, in the view that in Melbourne the Minister of the Hebrew Congregation not only does not recognise the Minister of the Temple but will not recognise marriages conducted in the Temple, or even the legitimacy of children of such marriages, I think it would be most deplorable if we did not adopt a firm attitude which I am sure would have the endorsement of the overwhelming majority of members of our community.¹⁵

Responding to Ashkanasy, Einfeld agreed with his course and the reasons behind it, but with noticeably less enthusiasm:

Although I have generally felt reluctant for the Executive to enter this special field...I can see no real alternative. I think the principle which you support, both directly and implied, is undoubted. The Executive Council is the only organisation which could handle this matter and, in any case, I fully agree that from the point of view of the Commonwealth Authorities it should be emphasised again and again that it is representative of all Jews in this Country.¹⁶

The delay in the Jewish community's response led Barwick to ask whether it intended to suggest any amendments, and if so, to be quick.¹⁷ This prodded the ECAJ in Melbourne into discussing whether amendments were required. One of the lawyers consulted, Arnold Bloch, made the first objection to the ECAJ's involving itself in this field at all, on the grounds that it was undesirable and would not be accepted by the Jewish community as a whole.¹⁸ This was hotly opposed by Ashkanasy, who wrote:

I see no reason whatever to say it is undesirable or that it would be not generally acceptable for the Executive Council of Australian Jewry to be accepted vis a vis the Government as the general representative of the Jewish Denomination in

Australia. That it would not be happily received in some quarters I have no doubt but I do not regard the squeals that would arise in this regard as of any real significance.¹⁹

Ashkanasy also opposed technical amendments suggested by Bloch because they weakened the position of the ECAJ:

I think it would be in the highest degree undesirable that we should endeavour to have amendments introduced into the Bill minimising the extremely strong position which we are invited to take up, which is our duty to take up, which history will endorse our taking up and you may rest assured condemn any who endeavoured to fritter away the privilege granted to us.²⁰

Moss J. Davis, who was also from Melbourne and was Acting President of the ECAJ as Ashkanasy had become ill, was also anxious to see the ECAJ recognised in legislation.²¹

Once the Executive Council's leadership had agreed that it was necessary for the ECAJ to be recognised in Commonwealth legislation, the Vice-Presidents were finally informed.²² In the letter, Davis informed them of the ECAJ's decision, but did not emphasise the desire of the ECAJ leadership for legislative recognition. He stressed:

The Committee of Management feels that whilst it is generally reluctant to enter these special fields, there is no acceptable alternative. This decision will establish the E.C.A.J. through the proposed legislation as a proper representative of all Jews in this country.²³

RELIGIOUS OBJECTIONS

The letter to the Vice-Presidents marked the end of internal deliberation. Contacts were made with Orthodox and Progressive figures in Melbourne and Sydney. Then, as now, a very sizeable majority of the Australian Jewish community identified themselves as Orthodox, without necessarily strictly adhering to *halakhah*. However, the Orthodox community lacked a central organisation, though there were periodic conferences of rabbis and a largely inactive Federation of Orthodox Synagogues. By contrast, the Progressive community had a single, far more active, representative body in the Australian Union for Progressive Judaism (AUPJ).

The results were far from positive. The first Orthodox objection to the plan was from Rabbi Dr Izaak Rapaport, and was rooted in his

opposition to the Progressive movement. He complained that the ECAJ's plan would involve the unwitting recognition of Progressive marriage practices 'which are often flagrant breaches of Jewish Law,' and declaimed, 'Shall not Jewish Law enjoy at least the same respect on the part of our lay leaders as does the motive of speaking with a single voice!'²⁴

Most objections were, however, made on the grounds that the ECAJ was improperly interfering in an area that the religious bodies claimed as their own. Both Progressive and Orthodox leaders were so vehement in their objections to the ECAJ and its plan that they refused to state the exact reasons they had taken offence. The Orthodox would only state that the ECAJ did not acknowledge the correct reasons for their opposition.²⁵ The AUPJ, likewise, only said that the reason for their objections was not, as the ECAJ supposed, for fear that the ECAJ would discriminate against them.²⁶ It seems likely that the unstated reason for both the Orthodox and Progressives was on the grounds that the ECAJ was intervening in an exclusively religious area, as this is referred to by Einfeld,²⁷ and later by Rabbi Porush who argued that:

The Executive Council is a body of laymen which both by its constitution and purpose is qualified to deal only with secular matters. Marriage, on the other hand, represents one of the most vital and consequential laws of our Faith. The marriage celebration and the Jewish marriage laws are through and through religious in character and therefore have always been within the province of the Rabbinate.²⁸

In an unusual step, these grievances were not contained within the Jewish community. The Orthodox proposed creating a rival 'Ecclesiastical Marriage Council' to act as the authorised body for Orthodox celebrants.²⁹ In a similar vein, the AUPJ wrote to the Attorney General requesting that they be designated the nominating authority for the 'Australian Liberal Jewish denomination.'³⁰ If granted, this would have formally split the Jewish community, at least in relation to marriage.

These objections reinforced Einfeld's doubts about the wisdom of the Victorian plan, although on instrumental grounds rather than stemming from any concern that the ECAJ may have overstepped its role. As he wrote to his Victorian colleagues:

...I feel that there could be a serious blow to Government recognition of the E.C.A.J. in all other matters if important sections of our community state that they do not recognise our

authority in this particular matter. My view is that we should not proceed on these lines but either should withdraw from the whole situation, or else try to find some agreement with the members of the clergy and leaders of religious organisations before taking any positive action.³¹

The religious objections also led the Victorian leadership to overturn its previous plan, in the hopes of becoming acceptable to the religious groups. The new plan made the congregations themselves the nominating authorities, with the ECAJ certifying the congregations to the Attorney General.³² The ECAJ would still, of course, be mentioned in the Bill.³³ There was considerable optimism on the part of the Victorian leadership that this would solve the problem:

The plan ...should completely remove the objections of both sections of the clergy. In any case the Committee of Management is unanimous that the E.C.A.J. can do no less than make the suggestion to the Government. The amended plan provides that our Council will remain in the picture without entering the field of actually nominating celebrants, which was the main reason for the objection.³⁴

The Victorian leadership decided to stand their — admittedly altered — ground despite Einfeld's concern that the ECAJ might suffer a loss of prestige if its plan was rejected at the behest of Orthodox and Progressive bodies. As the Victorian leader, Davis, wrote:

Whilst I agree that we cannot feel at all certain that we will succeed, and it is true that the Minister may feel influenced by the opposing Congregational points of view and delete us entirely from the legislation, I still feel that it will not discredit the E.C.A.J. in the slightest. Indeed I have come to the conclusion that even if we fail, it will have been all the better for us to have taken the stand as set out in the final memorandum.³⁵

The new plan did not produce the results expected by the Victorian leadership because Orthodox and Progressive leaders continued to oppose the ECAJ having any role at all in what they saw as a religious area. The AUPJ declared the scheme to be completely unacceptable,³⁶ and the Orthodox said as much when they asked Barwick to recognise the Rabbinic Council for the Appointment of Marriage Celebrants.³⁷

In the light of the renewed religious rejection the ECAJ — for the first time — explicitly opposed the division of the Jewish community. Davis put forward the following arguments:

The E.C.A.J. cannot agree to any step which, be it through direct suggestion or by implication, could cause the Government to recognise in legislation, two separate denominations within the Australian Jewish community. I should add that the use of the word denomination in this paragraph denotes a separatism far greater than when used in the Act itself and in effect would divide the community into two distinct groups for the first time in the communal history of Australian Jewry. In the considered opinion of my Council this would comprise a most retrograde step which if brought about, the community would never cease to regret.³⁸

This new call for unity was also linked to a strong desire for statutory recognition. Davis declared that the ECAJ was still duty-bound to seek recognition in the proposed legislation as it was the roof organisation representing all Jews in Australia.³⁹

A CHANGE OF LEADERSHIP

Every two or three years the headquarters of the ECAJ shifts between Sydney and Melbourne. In November 1960 NSW became the headquarters state, so that Einfeld became President, and Ashkanasy Senior Vice-President. The new leadership brought a new desire to reconcile the Orthodox and Progressive sections of the community.⁴⁰ This policy may have been new, but the results were familiar. In little more than a fortnight Einfeld wrote to Ashkanasy saying he had failed to make any headway in discussions with the Sydney Beth Din and Luber.⁴¹ The Sydney leadership decided to return to Melbourne's original stance, overturning the compromise plan that had been offered:

Nothing has occurred which would cause any of us to think that any other organisation in Australia, either already in existence or proposed to be formed, could be a more suitable channel of communication than this Council for the nomination of members of the Clergy as Marriage Celebrants.⁴²

There was no mention of the ECAJ being content to certify congregations to the Attorney General and let them communicate with the Commonwealth government themselves.

In mid-December, Barwick finally stated his preferences. With his usual clarity, he noted that it might be necessary to recognise several denominations:

You will, of course, understand that I may deal with factual situations only when considering the question of recognising particular religious denominations and it may be, having regard to present differences of approach of the several Jewish organisations involved, that recognition may have to be accorded to distinct groups of Jewish congregations as separate denominations for the purposes of the Bill.⁴³

The immediate reaction in Sydney by Einfeld's Acting President, Horace Newman, was to pillory Melbourne. Newman wrote:

It is always futile to say "I told you so", but it would seem that our reactions here in Sydney, after going into the matter for a couple of weeks, that the E.C.A.J. should drop the matter was the logical and correct attitude, which should have been adopted by the E.C.A.J. instead of Melbourne's stubbornness in pursuing the matter according to their ideas, which were of course mostly those of Morrie Ashkanasy, and unfortunately we had to endorse the Committee of Management's decision at the Melbourne Conference [the annual conference of the ECAJ].⁴⁴

A prudent retreat was called for:

...without thinking over the matter too deeply, it would seem that the only course which the E.C.A.J. might now pursue in order to save our dignity and standing, would be to advise the Government that our Constitution requires that purely religious matters are not within our province, and although we don't agree with the attitude, it appears that our Clergy and Congregations feel that anything connected with marriage ceremonies is religious and nothing else.⁴⁵

By January 1961, the ECAJ had changed its mind yet again and resolved to pursue a unified arrangement with the religious groups, dropping its demands for statutory recognition.⁴⁶ This met with some success among the Orthodox, who appeared ready to let the ECAJ be the official liaison with the Commonwealth government provided the ECAJ enter a legally binding agreement to nominate only those Orthodox ministers approved by the Rabbinical Council

for Marriages, as the organisation had become known, and that similar arrangements were made with the AUPJ for Progressive ministers.⁴⁷ Such accommodation was not forthcoming. Luber declared that the ECAJ could not interfere in marriage because it had no jurisdiction over religious matters, and that in the opinion of the Progressive movement, marriage was a religious matter and nothing else.⁴⁸ As the AUPJ did not agree, these moves to compromise were permanently halted.

Following the failed attempt at compromise, Ashkanasy raised a very novel objection to the Rabbinical Council, championing the rights of individual congregations against ecclesiastical bodies:

Whilst we would be happy for an arrangement to be made by the Executive Council of Australian Jewry with the Rabbinical Council for the Celebration of Marriages, we are absolutely opposed to the E.C.A.J. being a party to any arrangement or agreement under which that Council will, with our assistance, be given exclusive control over the appointment of marriage celebrants by Synagogues.⁴⁹

Ashkanasy proposed to agree to accept the Rabbinical Council's verdict only for congregations that recognised its jurisdiction. Given that the AUPJ's rejection of the ECAJ had prevented any chance of an arrangement between the ECAJ and the Rabbinical Council, it is difficult to see what the exact reason for this suggestion was, other than a reflection of his opposition to religious bodies. No one in Sydney responded to this suggestion.

The lack of consensus in the Jewish community forced Barwick to construct a scheme of his own devising. He proposed to use his powers under section 39(2), where he alone appointed marriage celebrants, neatly avoiding declaring Jewry to be a denomination at all.⁵⁰ The conflicting claims of Jewish organisations clearly had an effect. Writing to Ashkanasy, Barwick stressed:

I would like to make it clear that I have no desire to enter upon any differences which may exist in relation to doctrine or practice of Jewry nor have I any desire to force everybody into a pattern. But after looking at the various systems of registering marriage here and abroad and the various devices utilised in relation to Jewry and some other groups, I did conclude that the plan of the Bill would allow administrative arrangements which would accommodate the position of Jewry to that of various denominations for whom I had otherwise to provide.⁵¹

Despite having proposed to appoint celebrants under his own authority, Barwick still required a means of identifying them. The proposal was a compromise and, like all compromises, somewhat unwieldy. He proposed to accept the names of celebrants from individual congregations or from organisations authorised to speak on behalf of congregations. At the same time he was prepared to seek the assistance of the ECAJ in identifying congregations.⁵² This bore more than a passing resemblance to the ECAJ's modified scheme. However, as an administrative arrangement, it did not give the ECAJ statutory recognition. Also, it did not restrict the Attorney General to the advice of the ECAJ, and it gave a role — even if contingent on the agreement of individual congregations — to the Rabbinical Council and AUPJ.

Following Barwick's letter, the ECAJ claimed to at least one congregation that it had agreed to act as the only channel of communication to the government, and would certify that congregations are *bona fide*:

Because of the Commonwealth issues involved and at the early request of the Attorney General the E.C.A.J. has agreed to act as the channel for communicating such appointments to the Commonwealth Government for authorisation, and it also has agreed that it shall be the organisation which shall certify that congregations making such nominations are in fact *bona fide* congregations.⁵³

The grounds on which these claims were made are not clear and are at odds with Barwick's letter. Though the ECAJ may have earnestly desired to be the channel of communication, Barwick's scheme called for no such single channel, and had placed the ECAJ in a secondary role, where it would help determine which congregations were acceptable. The rationale advanced by the ECAJ for its actions was new in the stress placed on maintaining the autonomy of each congregation:

It [the ECAJ] adheres strongly to the complete autonomy of each congregation particularly in this purpose, and we believe that unity of action in this matter as in all other matters affecting the Jewish community, should be with the Executive Council of Australian Jewry as the spokesman.⁵⁴

The reference to the need for a strong and united community under the spokespersonship of the ECAJ is, of course, a more familiar argument.

The ECAJ's apparent optimism about Barwick's plan was not mirrored by the religious bodies. In an unprecedented show of unity, Orthodox leaders supported a Progressive initiative which called for Progressive Judaism to be recognised as a distinct denomination.⁵⁵ Given the normally bitter relations between the two factions, Barwick was reportedly impressed by the agreement. Commenting on these proposals, Ashkanasy wrote:

Nothing could be more undesirable from the community's point of view but, of course, Sir Garfield is impressed with the fact that he finds the Liberals making such a request and the Orthodox Clergy agreeing with them so that the protestations of laymen such as yourself and myself become somewhat discounted.⁵⁶

Concerned by this turn of events, he offered another plan. This time he advocated creating a special committee which would include the chairman of the ECAJ congregational committee, as well as co-opting one nominee each from the Progressives and the Orthodox. The committee would present the minister with a list of synagogues to be recognised as religious bodies.⁵⁷ How this would avoid the Progressive objections to any involvement on the part of the ECAJ was not explained.

BARWICK MAKES HIS PROPOSALS

For reasons that are not apparent Barwick changed his mind about appointing celebrants under section 39(2). Frustrated by the pronounced lack of unity from the Jewish community he opted to let it choose its preferred alternative from a variety of possible courses. He did, however, express a preference for what he designated plan (c), the option offered by the Orthodox and Progressives:

I might declare any substantial number of congregations identified as separate for religious purposes as a denomination within Jewry and treat with a representative and authorised body of each group of congregations for the purpose of authorising celebrants.⁵⁸

In doing so he explicitly rejected the arguments put forward by the ECAJ. As Barwick wrote:

It has been put to me that, if I recognised the Orthodox community, the Independent Orthodox community and the Liberal

community as each constituting a separate denomination of the Jewish faith for the purposes of the Marriage Act, I would not be, in any sense, participating in a division of Jewry, but would have been doing no more than recognising what some of the groups who have seen me have said is a well established denominational division of Jewry, both in Australia and elsewhere.⁵⁹

Barwick offered five other alternatives for Jewish organisations to consider.⁶⁰ Plan (a) involved making each congregation a denomination and identifying them without reference to the Jewish community. Plan (b) was similar, but asked the ECAJ to assist in identifying congregations, and kept open the possibility that other organisations might also assist. Plan (c) has been discussed above. Plan (d) was the ECAJ's original suggestion, with itself as nominating authority. Plan (e) was a weakened form of the ECAJ's second plan, in that each congregation nominated its own celebrants, and the congregations were identified by the ECAJ, but with the proviso that the Attorney General was not limited to the ECAJ's recommendations, but was free to supplement it with his own investigations, including assistance from other Jewish groups. Plan (f) was to use his section 39 powers.

The ECAJ favoured plan (e).⁶¹ In addition, Einfeld wrote directly to the congregations to persuade them to oppose plan (c), arguing that this would threaten Jewish unity. No mention was made of statutory recognition. In his letter he stressed:

I think I should point out that the representations of the Executive Council in this matter have mainly rested with the desirability of retaining Jewry as a single denomination in the eyes of the Government for all official purposes. It is for that reason that this Council has consistently supported clause (e) which, although following this course, nevertheless permits each congregation to nominate members of its own clergy as marriage celebrants and gives to the Attorney-General the right to accept the advice of the Executive Council or any other organisation, whether individual or united, to give such assistance as may be required from it in the identification of the congregations themselves.⁶²

Barwick's preferred option was also the cause of considerable concern to the *B'nai B'rith* organisation which planned to pressure the Progressive and Orthodox unions to accept a form of plan (e) that did not refer directly to the ECAJ. On behalf of *B'nai B'rith*, Bloch wrote:

It is my personal feeling that sufficient pressure can be brought to bear on the liberals to accept this formula, and I think that we can isolate the orthodox Rabbis on this issue by obtaining the support of the orthodox congregations as such. Both Walter [Lippman] and I still remain firmly of the view that the tactics should be for the E.C.A.J. to state its views to the Attorney-General and only then seek to persuade the others to refrain from expressing their separate viewpoint and concur with ours.⁶³

In private, the ECAJ leadership identified the Progressives as the cause of the trouble. Ashkanasy suggested pressuring their membership through *B'nai B'rith*:

First, as to the Liberals: There is every indication here that if we apply sufficient pressure, C.L. [Cecil Lubet] and Co., will be compelled to retreat. I am sure the Chairman of the Liberal Congregational group here, [Alfred] Ruskin, is becoming most unhappy. The news is getting about and the reactions, I am told, amongst the Liberals have been very strong. The *B'nai B'rith*, as you know, in Victoria is predominantly Liberal in its membership and I have been told they are proposing to issue a strong denunciation of any attempt on the part of the Liberals to form themselves into a separate group. I am stronger than ever in my belief that we should not cede ground but should show what I believe is our real strength by fighting on this matter with all we have and I am sure we will succeed.⁶⁴

Ashkanasy was also confident of success with the Orthodox congregations:

By the same token, I think if we try we will be able to get all the congregations — I mean 'all' — on the Orthodox side to accept Course 5. I think that Felix Friedman's [sic — Freeman] influence in this regard in New South Wales will be overwhelming.⁶⁵

B'nai B'rith acted as expected, with its national chairman, Hilary Pryer, sending a circular to the presidents of all Australian lodges calling for action to prevent future political, social and religious problems as the result of recognising two denominations:

We fear that, if the issues dividing Australian Jewry are not contained within the limits of our community, a fatal break-up

of our religion into a number of denominations will become a statutorily established reality.⁶⁶

Pryer also called upon the lodge presidents to lobby their local congregations to oppose such a move, as it was 'the duty of *B'nai B'rith* to try and influence our religious and congregational leaders to see the wider implications rather than their own sphere of influence.'⁶⁷

Barwick's proposal to recognise several denominations led Einfeld to protest in very strong terms about the division of the Jewish community:

We wish to make clear first, that we would have the gravest objection to any course being adopted by your Government which would amount to an official Governmental declaration that Australian Jewry is fundamentally other than one religious entity adhering to and accepting the Hebrew or Jewish Faith. The fact that there are various groupings and variations in practice and details of doctrines amongst them is something that should not concern your Government in any way. The essential and basic unity of adherence to Judaism is absolutely fundamental. It is world wide and as ancient as the Bible itself.

We do not ask you to involve yourself in any way in the internal affairs of Australian Jewry including their internal differences but we do ask you as a Government not to take a step to which we could not fail to take the gravest objection and any step dividing Australian Jewry officially into two, three or four categories would come within this description.⁶⁸

Einfeld also proposed that Barwick consider the modified course (e) presented by *B'nai B'rith*, which made Jewry a single denomination, and identified congregations either on the Attorney General's own authority, or by using such co-ordinating or representative organisations as he desired.⁶⁹ In a major break with previous suggestions, Einfeld even explored the possibility of a unified denomination without ECAJ involvement:

We would remain ready and willing to give such assistance as you may require of us or if you preferred you could as a matter of administrative procedure deal with those bodies whom you now contemplate recognising under Course (c) [such as the AUPJ and Rabbinical Council]. No doubt time would show whether in fact you would not find it expedient and satisfac-

tory in the long run to call upon my Council and be guided by its recommendations.⁷⁰

However, this letter was overtaken by events as Jewish bodies responded to Barwick's letter. Of the responses one was in favour of plan (a) which made each congregation a denomination in its own right and identified them without reference to the Jewish community, 14 were in favour of the religious bodies' preferred plan (c), and 15 were in favour of plan (e) which was supported by the ECAJ.⁷¹ The community had spoken, but without the unanimity Barwick had hoped for.

While the congregations and other bodies did not show overwhelming support for any of the alternatives, the religious bodies driving the opposition to the ECAJ's position appeared to have undergone a change of heart. The Union for Progressive Judaism and the Rabbinical Council made a joint submission proposing a variant of plan (e).⁷² It called for the creation of a single denomination, conceding the ECAJ's point, but permitted each congregation or group of congregations to nominate its own celebrants, identifying the congregations with the assistance of the religious organisations mentioned in plan (c) rather than the ECAJ. A similar submission, also predicated on a unified denomination, came from the Federation of Orthodox Synagogues in Victoria.⁷³ It is impossible to say why this dramatic change took place, but it is at least possible that the intervention of *B'nai B'rith* was decisive. The reasons cited by Bloch and Ashkanasy about *B'nai B'rith*'s ability to exert pressure may have been true. Equally, the very fact that an organisation which was neither Orthodox nor Progressive, and did not seek greater recognition for itself, had spoken out against dividing the Jewish community may have tipped the balance.

The change of heart of the religious bodies and the divided response from the congregations still left Barwick without a clear solution:

Failing unanimity among the congregations, I have had to work out a form of compromise. The compromise I propose seems to me not to depart from any of the points of principle regarded as vital by anyone who has written to me but virtually to meet the wishes of every congregation that expressed its view on the action that should be taken.⁷⁴

What Barwick proposed was to include all Jewish congregations presently in existence — for none were disputed — as coming within a single denomination of Jewry.⁷⁵ Congregations which wished to

be recognised at a later date either had to be certified by an organisation that was a channel of nomination or be considered by the Attorney General on the facts of their case.⁷⁶ Channels of nomination were any organisations that represented at least four congregations. Congregations could either nominate their celebrants through their own board of management or through an accepted channel of nomination. This placed the onus entirely on the congregations to decide. If they wished, they could nominate the ECAJ, the Rabbinical Council, the now Union for Progressive Judaism, or some other body with a minimum of four congregations affiliated with it. Barwick felt he could have come to no other conclusion, given the divisions within the Jewish community:

What are involved here are matters of organisation that are the domestic concern of the Jewish community. I certainly have no desire to interfere in those matters. My task, under the Act, was to inform myself of the form of the organisation of the religious denominations seeking recognition. In the case of the Jewish community, putting the matter as objectively as I can, the position that arose was that I received more than one answer to the question, and the answers did not seem to me to be reconcilable.⁷⁷

He rejected the ECAJ's contention that it was the proper authority to handle matters:

...I think I should refer to the offer of your Council to act for Australian Jewry as a whole. In the face of several quite firm representations on behalf of groups of Jewish congregations that, in this matter, your Council did not represent them and had no authority to speak for them, it was impossible for me to accept your offer.⁷⁸

At this point the Sydney leadership decided that nothing further would be gained by making representations to the Attorney General.⁷⁹ Victoria, however, still seemed to believe that the original ECAJ plan could somehow be salvaged. The Victorian Jewish Board of Deputies, under the Presidency of Maurice Ashkanasy, passed a resolution calling on Victorian congregations to support the ECAJ proposal that it should act as the transmitting medium without a veto power.⁸⁰

Barwick's plan was now fixed, and came into full operation on 1 September 1963.⁸¹ The delay was due to the slow pace of implementing the necessary administrative mechanisms.

EPILOGUE

The defining motivation for both the ECAJ and the religious leadership was the reinforcement of their institutional positions. The Marriage Bill served as a way for the ECAJ to be recognised by the Commonwealth government, enhancing its claims to be the Official Organisation of Australian Jewry. For the religious leadership, this seemed to be an incursion by secular, representative bodies on a traditionally religious issue. From the 1930s lay organisations tended to supplant synagogues as the representatives of the Australian Jewish community.⁸² Although there is no direct evidence on this point, one can speculate that the vehemence of religious opposition may have been based on the concern of losing still more of their functions to lay bodies, and a further decline in their institutional position. The co-operation of otherwise antagonistic Orthodox and Progressive leaders in opposing the ECAJ is powerful evidence of shared interests; the legitimacy of Progressive Judaism was only ever a tangential issue. As the ECAJ never intended to usurp the role of synagogues in deciding who their celebrants were to be, this was not a dispute over a core function of religious bodies. Legitimacy and power within the Jewish community was the reason behind their actions.

It is impossible to point to a single cause for the differences between Melbourne and Sydney. Einfeld and the Sydney leaders were more prone to accommodation with the religious leadership than Ashkanasy and the others in Melbourne whose letters exhibit a 'damn the torpedoes' style. The differences between NSW and Victoria seem to go beyond just Ashkanasy and Einfeld, as their Acting Presidents struck similar notes to their principals. Whether this was because these attitudes were endemic to the leadership or a reflection of the strong personalities of the two Presidents is impossible to say.

The dispute with the ECAJ forced the religious leadership into unprecedented action. By its nature as a communal roof body, the ECAJ responded to a great many issues, often involving representations to the Commonwealth government. In contrast, there were few issues that required a co-ordinated response from either Orthodox or Progressive leaders, especially against another section of the Jewish community. The Marriage Bill called forth energetic action, and led to co-operation when there had been little or none.

In September 1962, Ashkanasy wrote a draft press release that he sent to Einfeld. More than any other document, it serves as a fitting conclusion:

Although the communal danger of Jewry being treated as consisting of more than one denomination has been eliminated

and the right of Congregations to nominate their own marriage celebrants has been preserved so that the position of the E.C.A.J. as the sole representative body of the whole of Jewry is not now materially affected, we express the firm opinion that it would be in the interests of all Congregations whilst maintaining the names of their Congregations on the Attorney General's list and their right to send their nominations direct, in fact to transmit their nominations through the E.C.A.J. thereby adding to the prestige and standing of Australian Jewry.⁸³

The hour was late, the decision had been made, and advocacy could do no more. Ashkanasy must have known how unlikely it was that a significant number of congregations would use the ECAJ as a channel of nomination, after many of their own ministers and lay leaders had fought against this very concept. He cannot have felt at ease writing such a passage, virtually begging those whose complaints he had dismissed as insignificant squeals two years earlier to take advantage of the ECAJ's offer. Nevertheless, he did so, not for personal gain, but for the institution that he served. Einfeld had similar motivations, as did the religious protagonists, as they sought to enhance the positions of the institutions they served. What was lacking throughout the entire episode — with the sole exception of *B'nai B'rith* — was any consideration of the welfare of the Jewish community as a whole.

After the heat of battle died down, nominations of celebrants on behalf of the Jewish community were made in different ways in different states, but in all cases by Synagogues or Synagogue groupings. In Victoria several groups of Synagogues submit nominations; in NSW, The Great Synagogue nominates Orthodox Jewish celebrants and the Liberal nominations are made by the Progressive Movement. The system as it has developed has never been subject to any further challenge from the E.C.A.J.⁸⁴

NOTES

1. Letter from Sir Garfield Barwick to Maurice Ashkanasy, 15 June 1960, in Box E38, Archive of Australian Judaica (AAJ).
2. Peter Medding, quoted in Rubinstein, W.D. *The Jews in Australia, 1945 to the present*. Melbourne: William Heinemann Australia, 1991, p. 11.
3. See letter from Barwick to interested parties, 7 September 1962, in Box E38, AAJ.
4. Rubinstein, *ibid.*, p. 36-8.

5. The original sources cited by Rubinstein are limited to those held at the Archive of Australian Judaica. The collection there has a comprehensive collection of documents from 1960, but very limited materials from 1961 and 1962. This study has the benefit of using the collections of the Australian Jewish Historical Society and the Victorian Jewish Board of Deputies collection at the State Library of Victoria, which has an extremely important selection of ECAJ documents.
6. Rubinstein, *op. cit.*, p. 36.
7. *Ibid.* This is examined in greater depth in note 12, below.
8. Rubinstein, *ibid.*, p. 36, misrepresents Barwick's rationale for making decisions when he claims that the Attorney General chose a single Jewish denomination 'for no apparent reason.' Barwick was far less certain of the facts than Rubinstein insinuates, as is made obvious in his letter of 15 June 1960 to Ashkanasy when he said that, 'I understand that each Jewish congregation is autonomous, and I assume that each would want to be recognised as a religious denomination.' This is hardly the statement of a person sure of their knowledge. Rubinstein is further in error when he claims that Barwick had already made a decision. In the same letter Barwick stated that 'I am hopeful, however, that it *may be possible* to specify Jews generally' (italics added) for the purpose of nominating marriage celebrants. Barwick was only expressing a preference. The most likely reason for Barwick's initial opposition to recognising each synagogue as a denomination was the complexity of administrative arrangements this would have entailed.

Rubinstein's suggestion, *ibid.*, p. 36, that Barwick dismissed the possibility of groups of congregations being registered as a denomination at this stage is an out-and-out misstatement. Rubinstein cites as evidence a letter of May 1960 that does not exist in the AAJ. The letter of 15 June 1960 was the first notification about the Marriage Bill. It did not mention the possibility of recognising groups of congregations as denominations. There was no suggestion by Barwick that he was even aware of different groups within Jewry at this stage, and it is unlikely that he would have been until after he had been in contact with the Jewish community. Contrary to Rubinstein's assertion, when Barwick became aware of the existence of groups of congregations, he advocated recognising them instead of a single Jewish denomination. (See letters from Barwick to Einfeld of 23 June 1961, AB110, Australian Jewish Historical Society Archive (AJHSA) and from Barwick to interested parties of 24 July 1961, AB110, AJHSA.)

9. Letter from Barwick to Ashkanasy, 15 June 1960, in Box E38, AAJ. Again Rubinstein, *ibid.*, p. 36, is in error when he claims, 'Under this preferred option [of a single Jewish denomination], the ECAJ would be legally recognised as "the Representative Body of Australian Jewry," Barwick probably having in mind the legal position of the Board of Deputies of British Jews.' Barwick never asked the ECAJ to be the denomination. It was the ECAJ that attempted to seize the opportunity to become the official representative. The let-

ter of 15 June 1960, was exploratory in nature. The statement that is presumably evidence for Rubinstein's case, '...I will need to know the actual authority of your body, or authorities in the congregation, who will nominate celebrants for registration,' is weakened by the preceding sentence. This states that 'I shall be glad if you will let me know the title of the body, or the titles of the bodies, to be so specified in relation to Jews.' This makes it plain that Barwick did not know the Jewish community, did not ask the ECAJ to be the denomination and had no preconceived idea what organisation should nominate celebrants for a unified Jewish community. The effect of Rubinstein's misrepresentations is to paint Barwick as a capricious minister who rode roughshod over the divisions of the Jewish community. In fact, Barwick knew little of the Jewish community and was expressing opinions aimed at minimising administrative hassle, not issuing dictates.

10. Ashkanasy suggested that the ECAJ be recognised as the nominating authority within a week of receiving Barwick's letter. Letter from Ashkanasy to Barwick, 22 June 1960, in Box E38, AAJ. Rubinstein claims, *op. cit.*, p. 36, that Ashkanasy was 'acting on his own behalf,' implying that Ashkanasy was in some way promoting his own beliefs over the greater good of the ECAJ. This is untrue. Ashkanasy acted in his capacity as President of the ECAJ for the purpose of enhancing the organisation's capacity to act as the representative of the Australian Jewish community, and other members of the ECAJ leadership supported his actions. (See letter from Einfeld to Ashkanasy, 29 June 1960, in Box E38, AAJ and letter from Davis to Ashkanasy, 12 July 1960.) When the NSW leadership temporarily changed its mind, this was because of concern over the effects of religious opposition, not a clash of principles (see letter from Einfeld to Davis, 12 July 1960, in Box E38, AAJ). Ashkanasy's policies continued even when Einfeld was President (see letter from Einfeld to Barwick, 1 December 1960, in Box E40, AAJ). Support for Ashkanasy's stand was seen throughout the ECAJ establishment. Were Rubinstein correct, this would not be the case.
11. Letter from Ashkanasy to Sydney Einfeld, 22 June 1960, in Box E38, AAJ.
12. This is contrary to Rubinstein, *op. cit.*, p. 38, who claims that Ashkanasy attempted 'to give the ECAJ the power, in effect, to define Jewish identity in religious matters,' and also to Rubinstein's unfounded claim that the ECAJ "would, under the proposed Bill, have in effect the power of life and death over one of the central religious functions of Jewry," *ibid.*, p. 37. The ECAJ never proposed to do anything more than act as a channel of communication between the individual congregations and the Commonwealth government for the appointment of marriage celebrants, and certify which congregations were properly constituted and, in both cases, planned safeguards to ensure its powers would not be abused. This last point carries some weight because the letters in which it was discussed

were internal documents not intended for public consumption. (See letters from Ashkanasy to Einfeld, 22 June 1960, in Box E38, AAJ, Ashkanasy to Davis, 11 July 1960, in Box E38, AAJ, Davis to Ashkanasy, 12 July 1960, in Box E38 and Davis to Vice-Presidents, 14 July 1960, in Box E38, AAJ). Given that the ECAJ did not plan to influence the selection of celebrants, nor the form of marriage ceremonies or their associated laws, it is very difficult to see the grounds on which Rubinstein bases his assertion.

13. Letter from Ashkanasy to Einfeld, 22 June 1960, in Box E38, AAJ.
14. *Ibid.*
15. *Ibid.*
16. Letter from Einfeld to Ashkanasy, 29 June 1960, Box E38, AAJ.
17. Letter from Barwick to Ashkanasy, 8 July 1960, Box E38, AAJ.
18. The memo from Arnold Bloch regarding Marriage Bill was appended to letter the from Moss Davis, Acting President, ECAJ, to Ashkanasy, 11 July 1960, Box E38, AAJ.
19. Letter from Ashkanasy to Davis, 11 July 1960, Box E38, AAJ.
20. *Ibid.*
21. Letter from Davis to Ashkanasy, 12 July 1960, Box E38, AAJ.
22. The ECAJ Vice-Presidents were *ex officio* the Presidents of the Queensland, South Australian and Western Australian Boards of Deputies, the Hobart Hebrew Congregation and the ACT Jewish Community. The post of Senior Vice-President was an elective position held by a resident of either NSW or Victoria when that state did not hold the Presidency.
23. Letter from Davis to ECAJ Vice-Presidents, 14 July 1960, Box E38, AAJ.
24. Letter from Rabbi Isaak Rapaport, Chief Minister, Melbourne Hebrew Congregation, to Davis, 15 July 1960, Box E38, AAJ.
25. Letter from Rabbi Israel Porush, Chief Minister, the Great Synagogue, to Davis, 24 July 1960, Box E38, AAJ.
26. Letter from Cecil Luber, President, Australian Union for Progressive Judaism, to Davis, 25 July 1960, Box E38, AAJ. Both this and the following letter were in response to a letter from Davis to Orthodox and Progressive leaders of 21 July 1960, Box E38, AAJ, in which Davis attempted to allay their fears.
27. Letter from Einfeld to Davis, 20 July 1960, Box E38, AAJ. Einfeld was reporting the objections of Rabbis Porush, Freedman and Abramson of the Sydney Beth Din.
28. Letter from Porush to Barwick, 25 September 1960, Box E38, AAJ.
29. Letter from Porush to Davis, 24 July 1960, Box E38, AAJ. The official request for recognition was not made until September: letter from Porush to Barwick, 25 September 1960, Box E38, AAJ. The nascent organisation was named the Rabbinic Council for the Appointment of Marriage Celebrants, not the 'Draft Constitution for the Appointment of Marriage Celebrants' *per* Rubinstein, *op. cit.*, p. 38.
30. Letter from Luber to Barwick, 25 July 1960, AB110, AJHSA.

31. Letter from Einfeld to Davis, 20 July 1960, Box E38, AAJ.
32. Letter from Davis to Vice-Presidents, 21 July 1960, Box E38, AAJ. Letter from Davis to Barwick, 27 July 1960, Box E38, AAJ. This statement is further evidence against Rubinstein's contention, *op. cit.*, p. 38, that Ashkanasy wanted to have, in effect, the power to decide religious identity.
33. Letter from Davis to Barwick, 27 July 1960, Box E38, AAJ.
34. Letter from Davis to Einfeld, 21 July 1960, Box E38, AAJ.
35. Letter from Davis to Einfeld, 1 August 1960, Box E38, AAJ.
36. Letter from Lubor to Davis, 3 August 1960, Box E38, AAJ.
37. Letter from Porush to Barwick, 25 September 1960, Box E38, AAJ.
38. Letters from Davis to Porush and Lubor, 29 July 1960, Box E38, AAJ.
39. *Ibid.*
40. Minutes, Committee of Management, 14 November 1960.
41. Letter from Einfeld to Ashkanasy, 1 December 1960, Box E40, AAJ. Rubinstein's claim that 'the dispute was centrally kept alive by the obstinacy of Ashkanasy in wishing to establish ECAJ supremacy and legal recognition,' *op. cit.*, p. 38, is false. Leadership passed to Sydney Einfeld in New South Wales, a strong President in his own right and the new and apparently moderate Committee of Management attempted to find a compromise — as had Victoria — and failed because of the refusal of the religious organisations to give ground. The dispute was to drag on for nearly another year. The central factor in delaying settlement was the sheer administrative drudgery the Attorney General's department had to go through in waiting for replies from the various stakeholders to each letter from Barwick. As soon as the Attorney General realised there was disagreement within the Jewish community, it was impossible for the dispute to be resolved quickly as he had to ascertain, first, what the possible schemes for recognition were and, second, which was preferred by the majority of congregations. The culprit was bureaucracy, not Ashkanasy.
42. Letter from Einfeld to Barwick, 1 December 1960, Box E40, AAJ.
43. Letter from Barwick to Einfeld, 14 December 1960, AB110, AJHSA.
44. Letter from H.B. Newman to Einfeld, 16 December 1960, Box E40, AAJ.
45. *Ibid.* This is also found in the Minutes of the Committee of Management, 20 December, 1960.
46. Minutes, Committee of Management, 17 January 1961.
47. Letter from Rabbi Lionel Singer, Chief Minister, North Shore Synagogue, to Newman, 7 February 1961, AB110, AJHSA. Minutes, Committee of Management, 7 February 1961. Letter from Ashkanasy to Newman, 9 February 1961, AB110, AJHSA. Letter from Newman to Ashkanasy, 3 March 1961, AB110, AJHSA.
48. These views are reported by Newman following meetings with Lubor. Letter from Newman to Ashkanasy, 3 March 1961, AB110, AJHSA.
49. Letter from Ashkanasy to Einfeld, 16 March 1961, AB110, AJHSA.

50. Letter from Barwick to Ashkanasy, 4 April 1961, Box 25, VJBD Collection, State Library of Victoria (SLV). Letter from Barwick to Ashkanasy, 19 April 1961, Box 25, SLV. Again this is contrary to Rubinstein's view, *op. cit.*, p. 36, that Barwick wanted the ECAJ to be the authority.
51. Letter from Barwick to Ashkanasy, 4 April 1961, Box 25, SLV.
52. Letter from Barwick to Ashkanasy, 19 April 1961, Box 25, SLV.
53. Letter from Einfeld to Gus Hines, President, Adelaide Hebrew Congregation, 5 June 1961, AB110, AJHSA.
54. Letter from Einfeld to Hines, 5 June 1961, AB110, AJHSA.
55. Cited by Ashkanasy following a meeting with Barwick. Letter from Ashkanasy to Einfeld, 22 June 1961, AB110, AJHSA.
56. *Ibid.*
57. *Ibid.*
58. Letter from Barwick to Jewish organisations, 24 July 1961, AB110, AJHSA. A similar scheme is canvassed in earlier correspondence with Einfeld. Letter from Barwick to Einfeld, 23 June 1961, AB110, AJHSA.
59. Letter from Barwick to Jewish organisations, 24 July 1961, AB110, AJHSA.
60. *Ibid.* A similar series of options were placed before Einfeld earlier. Letter from Barwick to Einfeld, 23 June 1961, AB110, AJHSA.
61. Minutes, Committee of Management, 4 July 1961.
62. Letter from Einfeld to the Presidents of Congregations, 7 August 1961, AB110, AJHSA.
63. Letter from Arnold Bloch to Einfeld, 20 July 1961, AB110, AJHSA.
64. Letter from Ashkanasy to Einfeld, 7 August 1961, AB110, AJHSA.
65. *Ibid.*
66. Letter from H.H. Pryer, Chairman, Australian *B'nai B'rith* Council to Presidents, Australian *B'nai B'rith* Lodges, 12 August 1961, AB110, AJHSA.
67. *Ibid.*
68. Letter from Einfeld to Barwick, 30 August 1961, AB110, AJHSA.
69. *Ibid.*
70. *Ibid.*
71. Letter from Barwick to Jewish congregations and other parties, 7 September 1961, Box E38, AAJ.
72. *Ibid.*
73. *Ibid.*
74. *Ibid.*
75. *Ibid.*
76. *Ibid.*
77. Letter from Barwick to Einfeld, 14 September 1961, AB110, AJHSA.
78. *Ibid.*
79. Letter from Einfeld to Ashkanasy, 21 March 1962, AB110, AJHSA.
80. Letter from Nathan Beller, Honorary Secretary, VJBD, to Ilse Robey, General Secretary, ECAJ, 13 April 1962, AB110, AJHSA.
81. Letter from Secretary, Department of the Attorney General, to Jewish

organisations, 1 July 1963, Box 79, SLV.

82. Rutland, S. D. *Edge of the Diaspora*. Sydney: Brandl & Schlesinger, 1997, pp. 214–9.
83. Letter from Ashkanasy to Einfeld, 21 September 1962, AB110, AJHSA.
84. Information supplied by Rabbi Raymond Apple.