



THE HON. DYSON HEYDON AC QC

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CATHOLIC  
RESISTANCE TO  
GERMAN STATE  
PERSECUTION:  
LESSONS FOR  
MODERN  
AUSTRALIA

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# **Catholic Resistance to German State Persecution: Lessons for Modern Australia**

**The Hon. Dyson Heydon AC QC**

The 2014 Annual Acton Lecture  
delivered on 10 April 2014 at  
Banco Court, Supreme Court of NSW

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# Introduction

Peter Kurti

Good evening, ladies and gentlemen—it's a pleasure for me to welcome you to the Banco Court in the Supreme Court of NSW and to the 2014 Acton Lecture presented by The Centre for Independent Studies. We are most grateful to His Honour the Chief Justice for granting us permission to use the court this evening.

I'm Peter Kurti, a Research Fellow at the CIS, and I coordinate the Religion and Free Society program at the Centre, the program within which the annual Acton Lecture takes place.

The Religion and the Free Society program at the CIS reflects upon questions of religious freedom in Australia and overseas.

It is, I think, quite a remarkable thing for a secular think tank such as the CIS to include within its scope a program such as Religion and the Free Society.

However, a core feature of the Centre's work has been to examine the role of voluntary institutions in a free and open society, and the CIS recognises the important contribution that religious groups make to civil society.

Each year, the Acton Lecture offers a platform for prominent individuals to offer their own reflections on issues arising from the place of faith in the modern world, and on the ways in which faith interacts with a free society.

It does not, however, concern itself with matters of discipline, dogma or organisation—internal issues with which all religious communities wrestle from time to time.

The issue, then, with which this year's Acton Lecturer wishes to engage is the resurgence, as he sees it, of anti-Catholic sectarianism in Australian society—and this in the face of the extraordinary

contribution Australian Catholicism has made to education, to charitable relief, to the running of hospitals, and to the alleviation of social disadvantage.

What has given rise to this new—or rather, old—sectarianism? And what is its likely impact on Australian Catholics?

The toxin of repression and vilification of religious groups by the state or its citizens can only be dissolved by the free and open expression of religious belief—even at the risk of causing offence.

But what, precisely, is the scope of religious freedom in contemporary Australia? And should we seek to broaden it or to constrict it?

These are demanding issues and our lecturer intends to draw lessons for contemporary Australia by examining the experience of Catholics in Germany in the 1930s who faced vigorous persecution from the Nazi state.

And so to our lecturer himself. The Hon. Dyson Heydon is one of Australia's most distinguished jurists.

A thorough profile published in last Tuesday's edition of the *Australian Financial Review* covered all the principle areas of his life as an academic lawyer, in practice at the Bar, and as a judge of the NSW Court of Appeal and then the High Court of Australia, where he sat for a decade.

Some years ago, the former NSW Bar Association president Bret Walker SC recalled attending Mr Heydon's lectures at Sydney University.

Conversation was not encouraged, and there was no pretence on [his] part that there was any intellectual, cognitive, academic, scholarly or legal equality of interchange between lecturer and lectured.

According to Walker, that approach had two advantages:

First, it was entirely accurate, and second, it permitted those of us on the unfavourable side of the comparison to try and do something about bridging the unbridgeable gap.

In his post-judicial career, Mr Heydon has remained very active. He has just returned from a term teaching at the University of Oxford, and was appointed in February this year by the Abbott government as the sole commissioner of the Royal Commission into Trade Union Governance and Corruption, work upon which he has recently embarked.

His intellect, his dry sense of humour, and his prodigious capacity for hard work are the three traits regularly identified by those who know Mr Heydon when asked to describe him. He is also a very generous man who, if I may add a personal note, showed great kindness to me in the years when I was rector of a parish church just a stone's throw from here.

I am delighted Dyson Heydon has accepted the invitation to deliver The Centre for Independent Studies' Acton Lecture for 2014.

Standing, as I do, on what Bret Walker dubbed 'the unfavourable side of the comparison,' I remain enthusiastic, nonetheless, about doing something to bridge that unbridgeable gap.

I trust that you share that enthusiasm this evening, and I invite you to welcome Dyson Heydon now.

# Catholic Resistance to German State Persecution: Lessons for Modern Australia

The Hon. Dyson Heydon AC QC

In January last year, Lord Sumption delivered a remarkable dissenting judgment in the UK Supreme Court. The case was *R (Prudential) v. Special Commissioner of Taxation*. Its present interest is that in it Lord Sumption referred to ‘the complexity of the modern law and its progressive invasion of the interstices of daily life.’<sup>\*</sup> The more complex and numerous the laws, the greater their invasion of the interstices of daily life, and the greater the power of the state. And with that growth in state power comes a capacity and a temptation to abuse it.

No one is more memorably linked with thought about the dangers of state power than the man after whom this series of lectures is named—John Emerich Edward Dalberg Acton. He was the beneficiary of many gifts. He spoke several languages. He was the son of an English baronet. He was related to nobility in France, South Germany and Italy. He inherited great possessions. He assembled a library of 60,000 volumes—a remarkable number: for Lord Sumption himself, in writing his lapidary multivolume history of the *Hundred Years War*, is said to have assembled only about 8,000. Acton had the advantage of being educated, from the ages of 16 to 22, in Munich, in the household of the great liberal Catholic historian Ignaz von Döllinger. Von Döllinger inculcated in Acton Burkean liberalism. He also inculcated a hatred of all forms of absolutism, whether in church or state. Finally, Acton had the great gift of being a master of English prose. But he is often

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<sup>\*</sup> [2013] 2 All ER 247 at 279 [120].

seen as a failure. He failed in democratic politics. Gladstone placed him in the House of Lords, but he failed there. His marriage failed. As a custodian of his wealth he was a failure: He had to sell his library to Andrew Carnegie. His literary output was profound but skimpy. His *History of Liberty* was described as the 'greatest book that never was written.' The source of his downfall in this respect lay in a refusal to write until he had read all the sources. This, as one biographer observes, was 'a rule which was fatal in the era of the opening of archives.' Yet he is remembered as a man of deep integrity, devoted to conscience, truth and liberty. Indeed, his name survives that of many successful contemporaries.

If for nothing else, he is remembered for one idea and a couple of phrases. The Actonian idea was that however much social conditions changed, moral standards remained absolute: 'The moral law is written on the tablets of eternity.' He applied to states the same code of morals as applied to individuals.

What of the Actonian phrases? Many common English phrases, derived from the Book of Common Prayer, the King James version of the Bible, the works of Shakespeare, or the works of later writers, once started life as fresh and vivid but became clichés. That is not true of the phrases with which Acton's name will always be associated. In 1887, Mandell Creighton, an Anglican bishop, published a *History of the Popes*, which achieved fame in its day. Acton attacked it for not condemning the failings of the medieval papacy more vigorously. On 3 April 1887, he wrote a letter to Creighton in which he said:

Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men.

At least the first of those two propositions is unquestionably true.

In 1843 Heinrich Heine wrote:

A drama will be enacted in Germany compared to which the French Revolution will seem like a harmless idyll. Christianity restrained the martial ardour of the



Germans for a time but it did not destroy it; once the  
restraining talisman is shattered, savagery will rise again  
... the mad fury of the berserk.

This lecture concerns two episodes in the history of German Catholicism that involve the abuse of state power. They reflect the German drama predicted by Heine. The first of them indirectly involved Acton. And they do have some contemporary significance. The first relates to the authoritarian figure of Bismarck, Prussian and imperial chancellor in the later nineteenth century, who deliberately attacked one denominational community. He was opposed by Ludwig Windthorst, who might be described as, if not a liberal Catholic, at least as a type of tolerant Catholic. The other relates to Bismarck's incomparably more evil successor in the twentieth century, Hitler, who encountered some resistance from that denominational community, particularly from Bishop von Galen—unlike Acton, not a liberal Catholic, but, I think, contrary to some who dislike his failure to bow to modernity, a very brave man.

The first episode concerns what is known as the *Kulturkampf*. The immediate story begins in 1866 with the Austro-Prussian war. The war broke out on the issue of the appropriate path to German unification. Should there be a *Grossdeutschland* solution? Or should there be a *Kleindeutschland* solution? The *Grossdeutschland* solution involved a loose federation led by Austria, the feeble ruler of a large multinational empire that was rapidly becoming fragile as nationalism spread amongst its component parts. The *Kleindeutschland* solution involved the large state of Prussia becoming ruler of a more unitary federal state, with Austria excluded. The latter was Bismarck's vision of German unification: Protestant Prussia would lead the German states at the expense of Catholic Austria. In 1866, Bismarck instructed his generals to order their soldiers to march to the limits of the Protestant confession, and as far further as they could carry their fence posts. Some of the north German states backed the wrong horse by supporting Austria and resisting Prussian troops. They, unlike similar south German states, had to be dealt with after the war.

They included Hesse-Kassel, Nassau, Frankfurt and Hanover. Kaiser Wilhelm I opposed the termination of these legitimate princely dynasties. But Bismarck insisted. Hanover was ruled by a blind man, King George V. Bismarck deposed George V. He went further. He abolished his ancient Guelph dynasty, the oldest in Germany, from which the British royal family is descended. He incorporated that German state into the North German Confederation of 1867—the precursor to the larger German empire of 1871. He drove the king into exile. And he confiscated the king's fortune. The fortune was supposed to be used as a fund for countering Hanoverian subversion and separatism. In fact, it was used as a means of spending money without the need for parliamentary sanction or oversight to bribe editors and journalists—and others whose assistance was needed in securing German unification.

This upset Ludwig Windthorst. Who was he? He was a Catholic Hanoverian lawyer. He had been one of King George V's ministers. He never accepted the subjugation of his country. And he had been entrusted with the task of looking after the king's interests. Among the chief of those interests were the financial interests damaged by the seizure of the royal fortune. The king was not only his deposed ruler but also his client.

In some ways Windthorst had not been blessed by nature. He was very short and appeared to be hunchbacked. As he grew older he came to verge on blindness. He wore extremely unusual spectacles—thick and coloured green. But he was a very shrewd political tactician. He was a brilliant debater. Bismarck admired his skill but loathed him as a man. He described Windthorst's remarkable oratory as not oil but vitriol on an open wound. Windthorst is generally thought to be the greatest parliamentarian of nineteenth century Germany—and perhaps of anywhere in the nineteenth century. This is a large claim, since in his lifetime Peel, Disraeli, Bright, Gladstone, Cobden and Chamberlain flourished at Westminster.

In 1870, Windthorst helped organise a new political party called the *Zentrumspartei*—the Catholic Centre Party. It was founded in response to perceptions of a rising anti-Catholic mood.

In November 1870, the party obtained 57 seats in the elections to the Prussian Parliament. It obtained 53 seats in the March 1871 election to the new Imperial Reichstag—out of 382. It was the third largest party, and although it was not dominant it was significant. At each election thereafter its position tended to improve. It survived until 1933, when it committed a terrible error of judgment in March of that year. It was one of the ‘Weimar parties,’ as distinct from the anti-Weimar parties—the communists on the left and the nationalists and Nazis on the right. From time to time, it ruled in coalition with other relatively moderate Weimar parties. This irritated the most conservative members, and leading prelates like Cardinal Bertram, Cardinal Faulhaber and Bishop von Galen disliked the republic. But the Centre Party provided several chancellors, including the last two civilian chancellors of the Weimar republic—the courageous Heinrich Brüning and the rather frivolous Franz von Papen. Like all other parties but the Nazi Party, it disappeared from 1933 to 1945. It was reorganised after 1945 by Konrad Adenauer—a man whose integrity and independence is attested to by his having been jailed before 1945 by Hitler twice and after 1945 by the British Army once. Adenauer had been jailed on the orders of Field Marshal Templer, whom he treated with perfect courtesy when they lunched together in 10 Downing Street years later. That aged but remarkable Catholic statesman—‘der Alte’—served as chancellor of West Germany from 1949 to 1963. By skilfully nursing the electorate in general and the very large ex-service vote in particular, Adenauer never lost office. He led his country from utter ruin to prosperity. When he began his post-war career, his country was completely without friends. Well before he ended his career, his country was a central partner in the Western alliance whose members had done so much damage to his country. The successor to the old Catholic Centre Party has held office for most of the post-1949 period under the title ‘Christian Democrats.’ Chancellor Merkel, daughter of a Lutheran Pastor, is its current leader.

From 1870, the new party was highly unusual because of its social basis. The nascent Social Democrats represented the working class. The National Liberals represented the middle class. Various Conservative parties represented aristocratic and rural interests. But the Centre Party included every class from Catholic princes, ecclesiastical hierarchs of all levels, peasants, and members of the industrial proletariat in Catholic centres of industry. In due course, the interests of the last group were aided by the creation of Catholic trade unions, which had an effective life, even if they did not surpass the trade unions associated with the Marxist parties. The Centre Party subordinated all the competing interests of its members to broader aims. One of these was the practical independence of the Catholic Church from state control. The party was formed after a long period in which the German-speaking lands had been split equally between Protestants and Catholics in the religious settlement of the mid-sixteenth century. After 1866 and 1870, the exclusion of Austria from the new German empire left Catholics as one-third of the population—a minority, though a large one, in the new Bismarckian creations.

The Centre Party infuriated Bismarck for several reasons. It denied the validity of the treaties on which the German empire was based. It demanded a more truly federal state. It wanted the units of the federation to be freed from domination by Prussia. It wanted the units of the federation to enjoy greater independence from the national state. It also contended that the Catholic church should enjoy complete freedom and independence within the empire. It wanted to harmonise the interests of capital, labour and landowners. It stressed the need to protect the interests of the new industrial working class. In this it aligned itself with the bishop of Mainz, Wilhelm von Ketteler, who died in 1877 but whose ideas were transmitted to Bishop von Galen by his [von Galen's] father. He established unions and worker cooperatives. He promoted legislation to control child labour and to ensure proper factory inspections. Strictly speaking, the Centre Party was not a confessional

party. At least some of its leaders, including Windthorst, advocated tolerance of Protestants and Jews. The Centre Party was not supported only by Catholics, and many Catholics did not support it.

Bismarck feared that this new party would gain votes from those who had lost earlier wars with Prussia—the wars fought to defeat Napoleon I, the war of 1866 to defeat Austria, and the war of 1870 to defeat Napoleon III. One big loser in 1866 were the Hanoverians. But there were other small states who were losers. A big group of losers in 1815 comprised the Polish nationalists who lived within the boundaries of the Reich but had no national state of their own, though they had hoped Napoleon I would create it. Another big group of losers in 1870 were those who lived in the two provinces acquired from France, Alsace-Lorraine. Bismarck feared that the Centre Party would prove to be a destructive source of division within the German empire after 1871. The Catholic Centre Party and the pope got onto a long Bismarckian list of *Reichsfeinde*—enemies of the Reich. Later, they were joined by Poles, socialists and minorities of all kinds.

The seven years before the *Kulturkampf* began had been unhappy ones for the Papacy. In 1864, Pope Pius IX had published a ‘Syllabus of Errors.’ It diverged sharply from the outlook of the time. It attracted the dislike of the progressive element in politics. For the Pope, 1870 was a bad year, and July 1870 was a particularly bad month. On 18 July 1870, at the Pope’s urging, the First Vatican Council issued a ‘Declaration of Papal Infallibility.’ This divided Catholics across Europe and aroused the deepest suspicions. The next day, 19 July, France declared war on Prussia. The French soldiers who had been upholding papal rule left to fight the Prussians. That left the papal states unprotected against the soldiers of Victor Emmanuel I. Thus they became part of United Italy. For the first time since the fall of the Roman empire, the papacy lost temporal power in the papal states.

Of that event, it need be said only that its long-term effects were wholly beneficial to the former subjects of the papacy, for the genius of the papacy did not lie in secular rule. It was also wholly beneficial to the papacy itself: It reversed the great error of the Emperor Constantine in uniting church and state too closely.

What of the Declaration of Papal Infallibility (the declaration)? It recognised rigid papal authority over Catholics wherever they were. This was known as an ‘Ultramontanist,’ as distinct from ‘Gallican,’ doctrine. It was controversial within Catholic circles. There were German Catholics who did not accept the position of the council and the pope. They were called the ‘Old Catholics.’ They favoured the church coming to terms with the new liberal age. They viewed ultramontanist notions as too unrealistic to adopt. The Old Catholics were small in number, but they were intellectually powerful. Initially, they attracted significant support. Their greatest representative was Professor Ignaz von Döllinger of Munich, a friend of Gladstone, and, as I said earlier, the teacher of Lord Acton. Indeed, Lord Acton himself was an ‘Old Catholic.’ Von Döllinger refused to accept the declaration. He saw the doctrine as ‘simple, concise and luminous.’ He summarised it, probably much more widely than the modern church would, thus:

The Pope is the supreme, the infallible, and consequently the sole authority on all that concerns religion, the Church and morality; and each of his utterances on these topics demands unconditional submission, internal no less than external.

Von Döllinger was excommunicated for his opposition, and dismissed from his academic post. Excommunication was a fate only narrowly avoided by Acton.

There had been restiveness about papal power for centuries. In England, before the reign of Henry VIII, there had been many medieval statutes of *praemunire*. Then there was the reign of Henry VIII itself. Then there were the so-called enlightened despots in Austria in the late eighteenth century—Joseph II and Leopold II. Then there were the French revolutionary leaders, and, in milder form, Napoleon I.

In similar vein, Bismarck took a stand against the papacy. He came to believe that the declaration was fundamentally inconsistent with the supremacy of the German state. He thought it challenged the newly established unity of Germany. He saw the

Vatican as being part of an international conspiracy with French priests and Catholic Poles. These were rather fantastic ideas. But there was at the time a fear, even among more sober observers, that the declaration would lead to excessive interference in secular politics. This proved to be unfounded.

However, initially there was a genuine but narrow collision between the declaration and the German state. It can be illustrated thus. In the face of Old Catholic opposition to the new doctrines, the Vatican felt a need to enforce its authority within its own communion. For example, when four Old Catholic professors at the State University of Bonn refused to subscribe to the declaration, the archbishop of Cologne excommunicated them on that ground. But they were public servants of the Prussian state. The Prussian Constitution guaranteed the enjoyment of civil and political rights independently of religious belief. The archbishop's conduct was seen as inconsistent with the rights recognised by the Prussian state. From this point of view, the Vatican had got itself into a difficult position. The scene was set for a struggle. Sometimes it was presented as a struggle between the modern age as reflected in the National Liberals and the Progressives and an earlier age. Sometimes it was seen as a struggle between large Protestant Prussia and small Catholic states. Sometimes it was seen as a struggle between German nationalism and Catholic ultramontanism. It ended up as a struggle between the all-encompassing power of the modern secular state and the competing claim of the individual conscience.

The Second Reich created by Bismarck was unusual in its time in resting on universal suffrage. This inevitably led to the creation of large and organised political parties. The Reich did not, however, practise responsible government as we understand it. Our Constitution requires ministers to sit in Parliament. By convention, they are answerable to Parliament and must leave office when they lose the confidence of Parliament. But in the Second Reich, ministers were not necessarily members of the Reichstag and were not answerable to it. Bismarck did not lead any political party. Bismarck's tenure of office depended on the favour of the emperor—first Kaiser Wilhelm I, then the dying Kaiser Friedrich

III, then Kaiser Wilhelm II. Bismarck's tenure did not depend on the results of no-confidence motions in the Reichstag. There was a federal council of the individual states, dominated by Prussia, which had veto powers over the Reichstag. But legislation had to be enacted by the Reichstag. Since Bismarck was not the leader of any party, he had to obtain support from changing blocs of parties to secure majorities in the Reichstag for any legislation he wished to have passed.

It would be wrong to see the *Kulturkampf* as simply arising from the whim of a masterful and overbearing, but febrile and ageing, politician. It was in fact very much favoured by some parties and by many of the people. Bismarck, it seems, planned the *Kulturkampf* as a popular national crusade partly because he saw the Catholic church as a principal enemy of the Reich, and partly because he sought to secure Reichstag support from the anti-clerical deputies, the left-leaning National Liberals, Progressives and Radicals. He succeeded in getting that support for his programs generally. So the Catholic church had strong opponents even apart from Bismarck. Indeed, it was one of the Progressive deputies, a celebrated pathologist, Rudolf Virchow, who christened the battle the *Kulturkampf*. He saw it as a conflict between two worlds or two cultures or two visions of civilisation or two rival ways of life—one obscurantist, one progressive; one reactionary, one enlightened. It is a truism that the persecuted, once they gain power, tend to become persecutors. The tolerance on which the heirs of the Enlightenment warmly congratulated themselves did not, as usual, extend to the views of others they did not share.

A significant aspect of the *Kulturkampf* was a body of anti-Catholic laws. Most of these were drafted by one of Bismarck's ministers, Adalbert Falk. He was an ardent anti-clerical rationalist. He wanted a complete separation of church and state. Under those Falk laws, the Jesuits were expelled. Priests were forbidden to participate in political life. Catholic associations were disbanded. Most religious orders were dissolved or exiled. Civil marriage was made compulsory and religious marriages ceased to be recognised. The Catholic Bureau in the Ministry of Education, which, it was



thought, had been exercising a powerful pro-Catholic influence on the government, was suppressed. Catholic priests lost the right to inspect schools. Instead, schools were placed under the control of state inspectors. For Polish citizens of the Reich this was hurtful: it threatened the survival of their language. Certain ecclesiastical sanctions were forbidden, or limited to German authorities. All ecclesiastical appointments were placed under state control—hardly a regime that separated church and state. The exercise of spiritual office by unauthorised persons was punishable by loss of civic rights and criminal sanctions. The state was given power to withhold from recalcitrant bishops the payment of state endowment. No priest could exercise office in Germany without meeting German educational qualifications.

The governments of the Reich and of Prussia did not foresee the effects of these measures. But they were disastrous. In 1875, Pope Pius IX issued an encyclical declaring some of the laws null and void, and threatening any priest who complied with them with excommunication. He encouraged passive resistance. Earlier, Windthorst had organised a campaign of passive resistance against the laws. Many priests refused to comply with the laws. Many priests, nuns, bishops and archbishops—perhaps as many as 1800—and thousands of other Catholics, were jailed. Or they were fined, and then jailed because the fines were not paid. Government refusal of consent to the appointment of priests led to more than a thousand parishes being without a priest. Punitive measures against hardworking priests in villages and small towns were very unpopular. There were riots when the state sold the property of bishops to pay the fines imposed on them. Catholics often bought the property at auction and restored it to the owners. Monasteries were closed. As bishops died or fled into exile and were not replaced, only a handful remained. Some sees were administered by bishops in exile. Social divisiveness increased. Catholics as a class refused to recognise the validity of the legislation and openly rebelled against it. There was a revival in Catholic practice. But even some Protestant conservatives turned against the government. The Catholic Centre Party doubled its vote in the 1874 election.

Windthorst shrewdly pointed out the impotence of the modern state to deal with the problem it had created—even states with the executive strength of Prussia and of imperial Germany. The defiance of the law by prelates who went to jail with the applause of their populations in their ears led him to remark that the only path by which the state could succeed was to bring in the guillotine—if it dared. That was a path down which the German state ventured in the terrible times to come 60 years later.

Matters worsened in 1874 after a Catholic working man, Heinz Kullman, fired at and wounded Bismarck. Bismarck encouraged a wave of anti-Catholic feeling by alleging that this was part of a Catholic conspiracy. In the Reichstag he shouted at the Centre Party:

You may try to disown this assassin, but he is clinging to  
your coat-tails all the same.

The tumults of the *Kulturkampf* became notorious outside Germany. One particularly striking event took place in the early hours of 7 December 1875. At that time a ship which had sailed from Bremen en route to America with 200 persons on board, including five nuns exiled by the Falk laws, sank when it struck rocks on the English coast. Many people were drowned, including the five nuns. This caused a sensation. More importantly, a completely unknown 31-year-old Jesuit priest was deeply moved by the event. He had been a poet, but had destroyed his work on becoming a priest, and had vowed not to write again until his superior advised him to do so. This the superior now did. The priest wrote a long poem in the form of an ode. It was not published in his own short lifetime—indeed not until 1918. The ship was the *Deutschland*. The poem was ‘The Wreck of the *Deutschland*.’ The poet was Gerard Manley Hopkins. The poem was an extraordinary work. On the strength of it and some other poems, after 1918 Hopkins soon came to be viewed as the greatest English religious poet since the seventeenth century, and possibly the greatest English poet since the death of Pope. So the *Kulturkampf* at least had the result of generating a literary masterpiece.

Windthorst and the Centre Party vigorously opposed Bismarck's policies. Windthorst described anti-Catholicism as the anti-Semitism of the intellectuals. By that he meant that just as the masses were viciously and unthinkingly anti-Semitic, the intellectuals—the likes of Virchow and others—were viciously and unthinkingly anti-Catholic. It is an aphorism that is growing truer today. Windthorst's success was reflected in a large rise in the Centre Party's Reichstag representation after the 1874 elections to 91 members. In 1887, it had 99 Reichstag members. The success of Windthorst's tactics drove Bismarck to remark:

Hatred is as much an incentive to life as love. Two things  
maintain and order my life, my wife and Windthorst;  
the one for love, the other for hate.

In 1878 the irreconcilable Pope Pius IX died. It was more than a piece of news. It was an event. By then, Bismarck had had enough of the unrest the *Kulturkampf* was causing. He had other battles to fight. He feared the rise of Marxist parties like the Social Democrats. He ceased to need the National Liberals as he forged other Reichstag alliances. The new pope was Pope Leo XIII. He sighed unrepentantly for the lost temporal power of the papacy. But in 1891, he was the author of the famous liberal encyclical *Rerum Novarum*, which recognised the sufferings of the industrial working classes. He was much more conciliatory and modern-minded than his predecessor. In a fashion not entirely to Windthorst's liking, Bismarck came to terms with Pope Leo XIII. Most of the offending legislation was either not applied or repealed. The hapless Falk was dismissed.

But it was not particularly easy for Bismarck to terminate the *Kulturkampf*. The anti-Catholic laws he had passed with enthusiastic National Liberal support proved hard to reverse over enthusiastic National Liberal opposition. At this time there was an English visitor to Berlin, seeking to improve his German—the young Austen Chamberlain, son of Joe, half-brother of Neville. On 22 April 1887, Austen wrote a letter to the

17-year-old Neville containing a vivid picture of a parliamentary scene in which Richter, the National Liberals leader, fiercely attacked some repeal legislation—and which Bismarck only secured the passage of by threatening to resign.

The *Kulturkampf* had two paradoxical consequences.

The first paradox lay in this. It was designed to weaken the Catholic church. But instead it strengthened it. The unworldliness of Pope Pius IX had split the Church into two factions. But the *Kulturkampf* reunited them against Bismarck. The *Kulturkampf* also attracted some non-Catholic support for the Catholic cause. Windthorst himself saw the campaign as defending the interests of all religions and all kinds of free thought.

The second paradox was a change in the perceived role of the papacy. It had originally been seen as choosing to punish freedom of thought on the part of the Old Catholics. But it came to be seen as an advocate of freedom of thought against the repression of the government. It showed the impotence of governments in trying to crush churches, or other groups, on the ground of what they believed. What began as a reaction to Vatican repression ended up as a controversy raising fundamental issues. What was the purpose of civil government? What was its relation to ecclesiastical authority? What was its relation to dissident schools of thought of all kinds? Bismarck's policy threatened to divide united Germany into two parts, Protestant and Catholic, to return to the religious wars of the Reformation, to resume the medieval conflicts between Guelph and Gibelline, and to recreate the long struggle between empire and papacy in a new form. It also led to ill feeling among Catholics even after the *Kulturkampf* had ended—a sense that, numerous though they were, there was no true place for them in a united Germany.

Windthorst had shown considerable skill. He moved the debate away from the Vatican's role in restricting the freedom of conscience of the Old Catholics and the independence of state officials from religious sanctions. He moved the debate towards grand issues about freedom of conscience for those who were not happy with the Falk laws, about the independence of religion, about the liberty of individual Germans to worship as conscience led them, and about an empire based on justice.

Sometimes history is presented as a series of great symbolic tableaux. One example is the signing of the 1919 peace treaty in the Palace of Versailles. Another is the declaration of the German empire in the same place 48 years earlier. There is a good example in the Musée d'Orsay in Paris. It is not a good painting, but it is a startling one. It shows Louis XIV welcoming Condé—the Great Condé—on his return from some victory. The autocratic Sun King stands arrogantly at the top of a flight of steps being slowly ascended by the general—once an aristocratic rebel, now reduced to total dependence on royal favour. Another tableaux is the retirement of the ill and weak Emperor Charles V in 1555, supported by his son Phillip II on one side and William the Silent on the other—gentlemen who then spent the next three decades leading opposite sides of the revolt of the Netherlands against Spanish rule. Another is the broken King John, submitting to the demands of the Barons at Runnymede in 1215. One of those scenes took place a generation earlier. Bismarck recalled it on 14 May 1872 in a speech to the Reichstag. Bismarck proclaimed to the deputies:

Do not fear, we will not go to Canossa, either in body  
or spirit. (*Nach Kanossa gehen wir nicht.*)

This was an allusion to one of the most dramatic events in the Middle Ages—and for German patriots, one of the most distressing. It was an event all educated Germans in the nineteenth century would have been familiar with, as they pondered the glories of the First Reich, in which the Hohenstaufen dynasty had fitfully ruled all the lands between the north of Germany and Sicily.

This dramatic event took place during the 'Investiture Controversy' about the rights of German rulers to consent to and control ecclesiastical appointments. That was an issue, of course, which arose in another form in the *Kulturkampf*.

In the course of the Investiture Controversy, Pope Gregory VII—the author of 'Hildebrandine reform'—fell into hostilities with the German king, Heinrich IV, and later holy roman emperor. In 1076, Heinrich IV purported to depose the pope. The pope

excommunicated him for his pains, and absolved his subjects from their oaths of allegiance. This was in effect to dethrone Heinrich IV. In order to get the ban lifted, the king had to go to a castle at Canossa where the pope was residing. Its ruins lie near Modena and Bologna, in the mountains. It was winter. The tall and handsome young king—he was 27 years old—had to kneel in the open air in a white shroud and do penance for three days, shivering in the snow. It was a scene of humiliation for ardent patriots. Bismarck's promise to the Reichstag that he would not go to Canossa was greeted by prolonged cheering.

But in the end Bismarck did have to go to Canossa, at least in spirit. He made sufficient concessions to Pope Leo XIII to ensure his cooperation, even if Windthorst found them insufficient. In 1887, Pope Leo XIII declared that the *Kulturkampf* was over, and that the Catholic church had secured, if not all that it had fought for, at least the substance of it. The pope was a highly civilised and cultivated man. He sent emollient presents to Bismarck, including a copy of the Latin poems he had composed. Bismarck did not send in reply a copy of the speech in which he had said he would not go to Canossa.

The strangest irony is that in 1890, two further tableaux took place closing Bismarck's career. They both took place at his chancellery.

In the first, he met his old foe Windthorst and conceded all or most of Windthorst's remaining demands in relation to ending the *Kulturkampf*. He did so to obtain the support of the Centre Party in an attempt to retain office as chancellor. But as Windthorst left Bismarck's house, he uttered some perceptive and famous words: 'I am coming from the political death bed of a great man.'

A second tableaux took place two days later. The young Kaiser Wilhelm II contacted Bismarck's staff early in the morning and demanded a meeting in half an hour at the chancellery. The aged chancellor had time to get dressed, but not to have breakfast. He met the Kaiser. After a great quarrel, the Kaiser dismissed Bismarck from office for negotiating with Windthorst behind the emperor's back. So ended Bismarck's 28 years as Prussian chancellor and 19 years as imperial chancellor. This second tableaux

was immortalised by the famous *Punch* cartoon titled ‘Dropping the Pilot.’

Windthorst died in the following year. Bismarck lived another eight years, which he devoted to composing his readable but mendacious memoirs.

Bismarck, then, was one great victim of the *Kulturkampf*. He had underestimated the power of conscience, and the difficulty of defeating it—even if it was the conscience only of a minority. The National Liberal Party was another great victim. The failure of its loathing for Catholicism caused a steady weakening in its electoral position. But there was a third regrettable victim of the *Kulturkampf*. It caused the Catholic church in Germany to feel persecuted, isolated and unwanted. Before 1870, German Catholics seemed to have felt secure in their small- or medium-sized independent states. After the *Kulturkampf*, they did not seem to feel so secure in a union dominated by a large Protestant state, Prussia. Like von Galen’s parents, many German Catholics were shocked when in 1885 Pope Leo XIII bestowed a decoration on Bismarck—the instigator of the *Kulturkampf*. Von Galen himself said in January 1941: ‘It was a dark time, when sorrow and danger existed for all German Catholics.’ German Catholics felt that there was no real place for their community in a united Germany. This may have influenced the behaviour of their leaders under the Nazis.

I turn more briefly to the second German Catholic episode.

On assuming office, Hitler made it plain that he wanted to convert Germany into a totalitarian state. To do that, if he were not to depart from his not very convincing guise as ‘Adolphe legalité,’ he had to amend the Constitution. That required the enactment of what became the ‘Enabling Act.’ It required a majority of two-thirds in the Reichstag. To get that two-thirds majority, Hitler needed the support of, among other parties, the Catholic Centre Party. The Weimar Republic had its problems and flaws, but it was a plural society. It had many diverse political parties, churches, trade unions, trade associations, social and cultural clubs, newspapers, charities and other bodies interested in public affairs but independent of government. The state would not be totalitarian unless all those

groups were either abolished or moved under the state's wing. It would not be enough to abolish the Centre Party along with the Social Democrats and all parties but the Nazi party. The silence of potential political dissenters had to be secured. Hitler offered the Centre Party a concordat with the papacy. In return for abstinence by the church from political activity, its independent existence would be guaranteed. For Hitler, the concordat was a method of avoiding something he genuinely seemed to fear, a second *Kulturkampf*. For the church, the concordat was seen as an instrument of survival, a safeguard against persecution even worse than the *Kulturkampf*. But Hitler breached many of the terms of the concordat in the next eight years. Many priests were arrested and imprisoned. Catholic lay organisations were closed down—youth clubs, workers associations, friendly societies, schools. Church buildings were seized. Catholic education was interfered with. This kept the Catholic bishops in a constant state of anger and apprehension. Then in 1940 it became known that the Nazis were conducting an organised program of compulsory euthanasia for those who had incurable mental or physical incapacities. They called it a campaign against 'life unworthy of life.' They justified it as purifying the race and as saving the costs of hospitals.

On 14 July 1933, the Nazis had introduced compulsory sterilisation for people suffering hereditary weaknesses. They agreed that if the concordat were signed, they would reconsider the sterilisation legislation—one of the earliest of their concordat-related promises they broke. The success of the eugenics movement in the 1920s and 1930s made this a fashionable idea at the time. Many American states and European countries had similar laws. But from 1929, Hitler had advocated not just the sterilisation but also the killing of what he called 'degenerates,' or, to use the contemporary euphemism, compulsory euthanasia. He had considered making provision for this in the sterilisation law of 14 July 1933, but dropped the idea because of the controversy it would arouse. In 1935, he made it plain he would introduce compulsory euthanasia in war time, when the value of human life 'weighs less in the balance.' Nazi papers began advocating the program. Officials



began to prepare it. The killings began in 1939, in substitution for the sterilisation program. A decree in October 1939 purported retrospectively to legalise this. Some of the killing was effected by starvation, some by lethal injection, and eventually, carbon monoxide gas chambers were developed. The victims were removed from their hospitals and asylums, and sometimes from their homes. False explanations of their sudden deaths were given to their families. The campaign became known—to patients, then to relatives, and then to various sections of the public. Judge Kreyssig protested to Nazi officials. So did charity workers. So did doctors, including the famous surgeon Ferdinand Sauerbruch. And so did Pastor Friedrich von Bodelschwingh, who ran a children's hospital. That hospital was bombed in 1940, causing heavy loss of life. German propaganda blamed the Royal Air Force (RAF). But it is probable that the culprit was a German pilot attempting to kill or deter von Bodelschwingh on the government's orders. There were occasional public and private protests by Lutheran and Catholic preachers. Pope Pius XII attacked the program in express terms in late 1940. But in 1941, at the height of Hitler's apparent success and popularity, the program of compulsory euthanasia continued and grew.

At that time, the Catholic Bishop of Münster was an aristocrat. His name was Clemens August Graf von Galen. He was then aged 63. He was the eleventh of 13 children. He had been brought up in a castle, but in spartan conditions—no running water, little heating, no indoor bathrooms. He continued to live in spartan fashion all his life. He had personally been affected by the *Kulturkampf*, since all the Jesuit schools to which his parents wished to send him had been closed down by the government, and he had to leave Westphalia to get a Jesuit education. He had been appointed a bishop in 1933, and had collected the sort of enemies that bring one honour. In 1935, Rosenberg and Frick (both to be hanged at Nuremberg) organised a vast anti-Catholic rally outside the bishop's palace in Münster in which they attacked him. In 1941, Heydrich (shortly to be assassinated by the Czech underground) was enraged that von Galen had compared Nazi policy towards the Catholic church with the *Kulturkampf*. In 1942, Göring (who committed suicide at Nuremberg) wrote to von Galen and accused him of violating his

oath of loyalty. Several times in the 1930s, there had been mass demonstrations in Münster in favour of von Galen after he had been attacked by leading Nazis.

By 1941, von Galen had gained a considerable reputation. He was a man of massive physical presence—two metres tall. Shortly after the end of the war, a British diplomat described him as ‘the most outstanding personality among the clergy in the British zone.’

Statuesque in appearance and uncompromising in discussion, this oak-bottomed old aristocrat, who acquired renown for his forthright denunciation of the Nazis, is by no means effusive of the Allies. He is a German nationalist ... and sticks up for German rights against all comers.

The ‘forthright denunciation of the Nazis’ to which the diplomat referred took place in July and August 1941. Von Galen preached a series of sermons attacking the government. The trigger for the first of them was the news on 12 July 1941 that Gestapo agents were seizing certain Jesuit institutions in Münster. He actually caught the Gestapo in the act of driving priests out, and called them thieves and robbers. He then stormed back to his palace. His staff could hear him typing a sermon with one finger all that night. The next day he walked to St Lambert’s Church and delivered the sermon. It began with expressions of sympathy for the suffering citizens of Münster—an ancient medieval city of about 200,000 people on the edge of the Ruhr and which had been heavily bombed in the preceding week. His principal theme was the excesses of the Gestapo. But he also criticised the occupation of church properties, and the expulsion of monks, nuns and lay brothers and sisters. He made a favourable reference to Pastor Martin Niemöller, who had been in a concentration camp since 1937. Von Galen expected immediate arrest by the Gestapo after the sermon, but it did not happen. A considerable demand developed for copies of the sermon, but it did not terminate the seizure of church property. Before the last sermon, the police attempted to intimidate the Bishop by imprisoning his cousin, Helene von Galen, who was a nun. But this only angered him even more.

In his final sermon in the series, on 3 August 1941, he concentrated a very intensive attack on the Nazi euthanasia program. The immediate cause was that a Roman Catholic chaplain at a mental hospital had told him that patients were about to be taken away for killing—and asked him to do something.

Early in the sermon, he read out the Biblical record of Christ weeping over Jerusalem. He attacked the euthanasia program as ‘plain murder.’ He gave very graphic details of the techniques used to kill the patients. He read out relevant parts of the German Criminal Code, reminded the congregation that Cain was treated by the Bible as a murderer long before the Ten Commandments, and read out the Fifth Commandment. He demanded that those responsible be prosecuted on murder charges. He said that human beings should not be treated as if they were broken machinery or lame horses or old cows. He also pointed out that the program would in due course involve all invalids, cripples and badly wounded soldiers—and there were at that time many badly wounded soldiers returning to Germany from the East and from North Africa. He said it would pave the way to death for those disabled at work and all ill people, even if their mental health was satisfactory. It would destroy all trust between doctor and patient. He linked these attacks with a general attack on the amorality of the Nazi regime, as exemplified by Rudolf Hess, who had mysteriously disappeared from the Reich and flown to Scotland only a few weeks earlier. It is not possible to summarise, and not possible adequately to quote, the sermon. All that can be said is that in its burning emotion, it was an extremely powerful piece of oratory.

Copies of that sermon were read out in all the parish churches of Münster. They were distributed throughout Germany, and circulated among the soldiers at the front. Anxious soldiers questioned their officers about it. The British Broadcasting Corporation (BBC) broadcast parts of the sermon to German audiences. The RAF dropped translated copies of the sermon over Occupied Europe. Other bishops followed von Galen’s lead. The bishop, who expected martyrdom, became an admired hero. Although the seed of the public reaction had been prepared by others, he brought in the harvest.

What was the government reaction to the ‘Lion of Münster’? Himmler wanted him to be arrested. The local gauleiter, Meyer, wanted him to be hanged. So did Walter Tiessler, one of Goebbels’ staff. So did Bormann. Goebbels, however, was an unlikely advocate of mercy. He had an appalling record during his public career. It culminated when his own suicide was preceded by the cold-blooded murder of his six helpless children. But he was the minister for culture and propaganda. He did understand public opinion. He advised Hitler not to proceed against the bishop because it would alienate the whole of Westphalia for the rest of the war. Goebbels’s advice led Hitler, reluctantly, not to take vengeance on the bishop. Hitler did say he would be ‘taken care of’ after the war. And later he said to his dinner companions:

I am quite sure that a man like Bishop von Galen knows full well that after the war I shall exact retribution to the last farthing. And, if he does not succeed in getting himself transferred in the meanwhile to the Collegium Germanicum in Rome, he may rest assured that in the balancing of our accounts, no ‘T’ will remain uncrossed, no ‘I’ undotted!

Bishop von Galen was sent to a concentration camp after the bomb plot on 20 July 1944. The euthanasia program was terminated in 1941, save in relation to children, and did not resume. But its techniques were transplanted to the East, for use on a much larger scale.

What lessons can be learned from the *Kulturkampf* and the Nazi persecution of Christianity? What lessons can be learned from the lives of Windthorst and von Galen?

One lesson taught by the careers of Ludwig Windthorst and Bishop von Galen is that minority interests and views, if effectively ventilated by capable and courageous people before a public opinion in which there are some decent elements, have to be tolerated by modern states—even states as authoritarian as Bismarck’s and as tyrannical as Hitler’s. That is so not only as a matter of morality. It is also so as a matter of practical power.

Another lesson may be this. Until about the 1960s, Australian society was marked by sectarianism. It took several forms. For example, particularly in country towns, Catholics were derisively referred to in non-Catholic circles; perhaps the opposite position also prevailed. Professional firms were to some extent organised along sectarian lines: Catholic firms employed Catholics and no one else, Presbyterian firms employed Presbyterians and no one else, and Catholics were not easily employable in other non-Catholic firms. In due course, all that changed. The federation began with a great judge who was a Catholic, Mr Justice O'Connor. But there had been very few Catholic judges in NSW before the McGirr government came into office in 1941; since then, there have been many, including the great Sir Cyril Walsh.

Now there may be a new anti-Catholic movement, particularly among the intellectuals. To adapt Windthorst's aphorism, anti-Catholicism in Australia now might be called the racism of the intellectuals.

This new anti-Catholicism may backfire as much as Bismarck's *Kulturkampf*. It is intolerant. It is hypocritical. It fails to recognise the extraordinary contribution of Australian Catholicism to education, to charitable relief, to the running of hospitals, to social progress of all kinds, to political life, and indeed to the life of the nation as a whole. Without that contribution, Australia would not be the Australia we know. The new anti-Catholicism may cause suffering, but it is suffering that may unify Catholics. It may bring other elements of society in behind Catholics, for its program is more than anti-Catholic. Whether these desirable results flow depends on new Windthorsts and new von Galens. The hard question is: Where are they to be found?

But it may be said that Australia does not face the problems faced by Windthorst and von Galen. In Australia, we do not see attempts by the state to seize church property, control church appointments, prevent the provision of Christian teaching, or prevent the existence of church schools. Nor do we have involuntary euthanasia or the imprisonment of offending clergy without trial. Some of those assertions are open to possible challenge, or soon may

be. But on the whole life seems to drift along peacefully enough. For Australian churches, there are no enemies in sight to match either the Nazis or Bismarck. The problem for Australian churches, it may be, is that, like others in the past, they can stand any test except that of prosperity. However, there are many characteristics of Christ's earthly life which, though they have been found attractive in the past even by non-Christians, are out of line with the spirit of our age. He showed a concern for the poor, a concern for the ill, a concern for those who were on the margins of society or had been cast out by it, a care for other people—not only friends but also enemies—an opposition to self-righteous hypocrisy, an encouragement of the idea that if one criticises others one should pay attention to one's own deficiencies, and a lack of concern with wealth or material power. We avoid the poor, shun the ill and the outcast, hate our enemies, practise hypocrisy, pay little attention to our deficiencies while criticising those of others, and above all we grovel before wealth and power.

However that may be, our life does have one trait reminiscent of the *Kulturkampf* and Hitler's campaign. Those events tried to stimulate hatred for a particular group, and revealed a desire to isolate it by being offensive towards it. Bismarck called Catholics *Reichsfeinde*; the Nazis sometimes called them *Staatsfeinde*—enemies of the state. In Australia now there are campaigns against at least the Christian religion which are relatively novel.

There is a current debate about whether speech intended to be offensive should be rendered controllable by court orders. Whatever the merits of that debate, it sometimes overlooks the distinction between permitting offensive speech and encouraging it. There is a shift from the question: 'Should offensive speech be permitted?' to the view that offensive speech is, if not actually compulsory, a universally desirable and virtuous part of public discourse. Yet there is a moral question about offensiveness. Was it Balfour who said that the definition of a gentleman was that he was never intentionally offensive?

There is also a failure to appreciate that the constant employment of offensiveness becomes self-defeating, if only because most modern

practitioners of offensiveness are mediocre, repetitive and boring. Just before World War I, there was a genre of offensive satire produced by those very different writers Chesterton, Belloc and Kipling. Chesterton wrote a famous poem attacking F.E. Smith. Belloc wrote a poem strongly attacking the Jewish financiers and mining magnates, who, as he saw it, were behind the Boer War. Kipling attacked Rufus Isaacs on his appointment to be chief justice of England shortly after the Marconi scandal. That poem, 'Gehazi,' was so savage that it could not be published for some years. Now each of those poems was offensive, and the second and third of them were anti-Semitic. But they were not mediocre or repetitive or boring. If offensiveness is a legitimate weapon, it is one not to be overused.

There is one value that competes with offensiveness. That value is civility. It is a value that has been in steep decline for many years. It ought to start rising. But civility on religious issues has special importance. Offensiveness about a person's religion can be needlessly cruel. Religion does, after all, seek to give to humanity an explanation of its nature and its destiny. People can be hurt by offensive challenges to the explanations they accept.

The German events present another parallel with the modern world. The religion of a people is integrally connected with its past. To wipe out a religion is to wipe out the past of the nation which adhered to that religion. A religion is integrally connected with the language of a people, and with its history. Western literature, art and music are inescapably linked with Christianity. Really ruthless regimes like the Khmer Rouge in Cambodia aimed to wipe out not only many of their people but also the historical identity of the survivors, which was largely based on religion. Bismarck, no doubt, never considered anything similar, but Hitler would have if he had survived long enough. To mock religious faith offensively may have unintended consequences.

There may be another modern parallel. The Nazis showed that it is very easy to slide from sterilising the congenitally defective to killing the congenitally defective, and indeed, then to killing

children who may not have been defective at all, since they suffered from nothing more than developmental difficulties they would gradually have overcome. From one point of view, it is easy to distinguish sterilisation from murder. But Hitler saw no distinction. His 1933 law on sterilisation, he originally hoped, would include laws permitting involuntary euthanasia—because the two measures had the same goal, the purity of the race. In *Buck v. Bell*, the Supreme Court of the United States upheld the validity of legislation permitting the sterilisation of inmates in institutions for the mentally defective. Mr Justice Holmes, one of the most admired judges in the history of common law, and a man viewed as the acme of civilisation, delivered a judgment, the language of which has damaged his reputation:<sup>†</sup>

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerative offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.

The brilliant cruelty of that prose tends to repel sympathy with the argument. And the reasoning is, like the Nazi justifications for sterilisation and involuntary euthanasia, purely utilitarian.

In modern eyes, the vice in the Nazi euthanasia program was its involuntary character—or, to use von Galen-like bluntness, its murderous character. But ‘voluntary’ euthanasia is very popular

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<sup>†</sup> 274 US 200 at 207 (1927).



now. How voluntary is 'voluntary' euthanasia? How voluntary is it when people, who are dying in great pain or whose lives seem to have no worthwhile future and who are using up their estates on the heavy costs that modern high quality health care entails, are constantly in the company of seemingly sympathetic but greedy descendants concerned that their inheritances are being gobbled up?

I offer no answers to these questions. I say only that these questions, and perhaps many others, arise from considering the persecution of religion under Bismarck and Hitler.

## Vote of Thanks

Robert Forsyth

Ladies and gentlemen, it is my great pleasure to move the vote of thanks to Dyson Heydon for his learned, illuminating address of such high standard and scholarship. I found myself thinking how did this man get all this knowledge. It was particularly helpful to me, and I suspect to many of us, in that we are not really all that literate in the areas of German church-state relations in history, and therefore, found almost everything he spoke about new and extremely interesting. Thank you very much, indeed, for the work and for the clarity with which you spoke to us.

It seems to me, having listened to your address, that Lord Acton's dictum about absolute power corrupting is true for everybody, both the church and the secular state. By that I mean it's clear when the church had such power, it acted in a way that was critical to freedom and, particularly, it had in a sense to be dragged kicking and screaming by the product of history to a better way of understanding its relationship to society—a way, if I may say so, more like that of its founder, the Lord Jesus Christ. Certainly it seems to me that the more religious bodies are linked with political power, the more dangerous they become to themselves, and the more liable also to become involved in the political clashes of which we heard. I know in my own church, the Anglican, as well as the Roman Catholic Church, which was the subject of today's lecture, is a good example of churches that have had to learn by circumstance a new way and a better way of existing in society after almost centuries of wielding oppressive power. The same also could well be the case with the liberal state, or in Germany's instance, the not-so-liberal state.

I do think that, and I speak on behalf of the churches and other religious bodies, we have responsibility in the society to contribute to free society in the way we ourselves behave as well as provide something of the strength and contribution—something that we heard about in the lecture—from the Catholic Church in Germany by our own standards of behaviour.

The big issue is how to act in a pluralist world when you have absolute claims. I think it's the fear that that cannot happen is what drives many of the problems in this area, that you cannot have a pluralist society if there are groups in it that have absolute claims. And this, of course, is the nature of religious claims—whether you believe them to be false or true. It's something I think that can be learned and is possible. In fact, the churches need to find from other bodies—and from within their own resources—ways of making this possible. And therefore there needs to be concern by society to show that a liberal, secular ideology also allows itself not simply to become another tyranny.

Is there an increasing anti-Catholic tone in Australian society at the moment? I suspect there is, although it's not serious, and I don't think, like the times in the German context. One thing that is different from the past is that since the old sectarianism has gone, I think all Christian bodies feel much more in this together, and therefore, the attacks on Catholics in the sneering press are felt very much as attacks upon all of us. All Christians feel it. I have a recent example of the kind of thing I am talking about. I was watching on ABC *Morning Breakfast* an interview with a state school principal, I think from Victoria. He announced that he was very disturbed because he had just found that a Christian minister was teaching in the religious education classes that Jesus Christ was God and that sex outside of marriage was not right. The outstanding thing was that other members of the ABC panel showed due concern and shock at this revelation, but no one thought of actually pointing out to the man that the minister was simply a man teaching his adherents the tenets of the Christian religion. I suppose the school principal can be excused not knowing this but I doubt whether the ABC commentators can. It was the take-it-for-granted

thought—that these are somehow outrageous claims—and the implication that somehow or other because they weren't 'scientific' they really shouldn't be allowed public space in the important institutions of our society that most alarmed me.

As well as thanking our honoured speaker this evening, I would also like to say how thankful I am to the CIS for its Religion and Free Society program. It's remarkable that a secular body like the CIS actively engages with the role of religion and religious institutions in our society without picking winners, if I might say. The relationship between pluralist liberalism on the one hand and religious bodies, and I don't here mean Christian bodies alone, on the other is a fruitful area of research and interest, and I am delighted that the CIS is continuing this interest. I look forward to seeing more very fruitful results, as for example, we have had in tonight's lecture.



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# CATHOLIC RESISTANCE TO GERMAN STATE PERSECUTION: LESSONS FOR MODERN AUSTRALIA

Anti-Catholic sectarianism is on the rise in Australian society even though Australian Catholicism has made an extraordinary contribution to education, charitable relief, the running of hospitals, and the alleviation of social disadvantage. In the CIS' annual Acton Lecture on Religion and Freedom, the Hon. Dyson Heydon AC QC looks back to Germany and Catholic resistance to state persecution, and considers whether we can draw any lessons for contemporary Australian society.

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**The Hon. Dyson Heydon AC QC** was educated at the universities of Sydney and Oxford, where he was Rhodes Scholar in 1964 and Vinerian Scholar in 1967. He was Professor of Law at the University of Sydney from 1973 and practised at the Bar from 1979, taking silk in 1987. He was appointed to the NSW Court of Appeal in 2000, and from 2003–13 was a Justice of the High Court of Australia. He is currently leading the Royal Commission into Trade Union Governance and Corruption.

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