



Rediscovering Humility:

Religious Freedom in a 21st Century Pluralist Society

The Hon Tim Wilson MP

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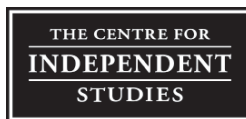
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The Hon Tim Wilson MP

Introduction by
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Introduction

The Religion and Civil Society program examines issues of religious freedom in Australia and overseas. It also examines broader questions of religious value as they are confronted by the demands of cultural and religious diversity in contemporary Australian society. The role of voluntary institutions in a free and open society has long been of interest to the CIS and the Religion & Civil Society program recognises the important contribution that religious groups make to civil society.

Each year the Religion & Civil Society program presents the Acton Lecture – an occasion that offers a platform for prominent individuals to offer their own reflections both on issues arising from the place of faith in the modern world, and also on the issues that arise when religious belief and practice interact with a free society.

The issue with which this year's Acton Lecturer wishes to engage is that of the rights and limits of religion and conscience in contemporary Australia, and the recovery of a form of civic virtue.

Recent public debate has been quite heated – whether about a proposed plebiscite to amend the Marriage Act or about reform of s18C of the Racial Discrimination Act 1975. Positions quickly become entrenched making it difficult for those with opposing views to engage intelligently – or even be heard - above the din of the traffic.

One of the concerns raised by this tone of debate is whether the fundamental rights to freedom of religion, freedom of conscience, freedom of speech, and freedom of association will be upheld, or whether they will be trumped by secular values.

These are important questions for a modern, liberal society. Does the principle of religious liberty even matter in modern statecraft? And if it does matter, how are the competing claims of conscience and law to be resolved? These are demanding issues and our lecturer intends to defend the continuing importance of conscience, civility, and liberty in contemporary democracy.

And so to our lecturer himself. Tim Wilson has an Arts degree and a Masters degree in Diplomacy and Trade. At the 2016 Federal election he was elected the Liberal member for Goldstein in Victoria.

Before that, he had served as Australia's first so-called 'Freedom Commissioner' at the AHRC where he was a vigorous, passionate and scrupulously fair and constructive advocate for liberty. Before going to the AHRC, Tim worked at the Institute of Public Affairs in Melbourne.

Tim is, in my view, one of the outstanding Australians of his generation who will continue to contribute much to public life for many years to come. It has been a pleasure to get to know him during the course of my own work here, and to have turned over ideas and issues with him.

I am delighted that Tim Wilson has accepted the invitation to deliver the Centre for Independent Studies' Acton Lecture for 2016 – Rediscovering Humility: Religious Freedom in a 21st Century Pluralist Society - and I invite you to welcome him now.

The Reverend Peter Kurti
Research Fellow – Religion & Civil Society Program

Rediscovering Humility: Religious Freedom in a 21st Century Pluralist Society

Tim Wilson

I should commence by apologising to Peter Kurti. I was first booked in to deliver this address in February, and had to reschedule a number of times due to the fact that I was invited as Australia's Human Rights Commissioner and have since changed roles. My title might have changed, but the issues haven't. That is why I appreciate your tolerance and the opportunity to deliver this 16th Acton Lecture.

The opportunity to deliver this lecture followed my interest in religious liberty in my former role. That interest came after a concern that religious liberty was increasingly being deprioritised or completely ignored by the human rights community. The Vice Chancellor of the Australian Catholic University, Professor Greg Craven, even went so far as to say it is being treated as a 'sub right' and that 'legal psychology' these days tends to see religion as a restriction of rights rather than a freedom. I share his concerns. But equally my interest came from concern that religious leaders and communities were responding poorly to the issues that were arising and doing harm to themselves and their cause, particularly around the tensions of religious freedom and sexual morality.

At the time I concluded: who better to try and resolve these issues than someone who is gay and agnostic. That might seem like a joke; but in all seriousness getting the conclusion of these debates right has as much impact on people like me as those of faith. These debates set precedents for how freedom is treated generally, and also decide whether debates are handled smoothly or finish with a bang.

Like freedom of speech, the different sides of these debates go to the heart of people's sense of security in society. While a technical choice, religion is closely intertwined with culture and often ethnicity. So simply dismissing it as a 'lifestyle choice' diminishes its contribution to people's identity. It is why it must be taken seriously.

The importance of religious freedom to liberalism is considerable. It is closely associated with freedom of conscience and the exercise of other rights - speech, association and property rights.

In his fourth 'Forgotten People' speech the founder of my Party, Sir Robert Menzies, said "We are a diversity of creatures, with a diversity of minds and emotions and imaginations and faiths. When we claim freedom of worship we claim room and respect for all".¹ It is that respect for all that must always be the foundation of religious liberty.

Acton's brilliant insights into the dangers of absolutism are as relevant to a pluralist society as they are to centralised political power.

Religious freedom doesn't trump the rights and freedoms of others, but it is something to be accommodated in the rights and freedoms of all. Put concisely by Acton: "Liberty is the harmony between the will and the law."²

A free society does not seek to homogenise belief or conscience but instead, affirms diversity and advocates for tolerance and mutual respect. If we are to preserve religious liberty in Australia in an increasingly pluralist society it must be built on an understanding of the importance of humility. I am encouraged by St. Augustine's meditation on the three paths that lead one to faith "the first is humility, the second is humility, and the third is humility" and "If humility does not precede all that we do, our efforts are meaningless".³

Being humble is a quality that transcends individual faiths. Humility is as virtuous as its antithesis, pride, is a vice in Judaism. In the Quran, several Arabic words are used to convey the meaning of "humility" including *tada'a* and *khasha'a*. Verse 23:1 assigns success to "those who humble themselves in their prayers".⁴

Acton also declared that "there is not a more perilous or immoral habit of mind than the sanctifying of success."² Lifting up the virtue of humility offers us a channel for reconciliation between secular and religious individuals. The capacity of modern Australia to unite depends

on the coexistence and mutual compatibility between those with faith and those without. Instead of seeking differences and division, humility offers a pathway to understanding and acceptance.

More than anything, advancing religious liberty requires asserting it back into a discussion around justice. As Acton said “The object of civil society is justice, not truth, virtue, wealth, knowledge, glory or power. Justice is followed by equality and liberty.”²

Religious freedom today

The state of religious freedom in Australia today is, frankly, unsettled and perpetually evolving. It is one of the few Rights that is explicitly protected in our Constitution prohibiting the Commonwealth “from making laws for establishing any religion, imposing any religious observance, or prohibiting the free exercise of any religion” under section 116. Yet many people of faith feel that changes to government laws increasingly dismiss or deprioritise religious liberty.

For example, State governments have been reviewing anti-discrimination laws and look likely to water down some provisions around respecting the freedom of religious service providers to employ staff and adopt practices consistent with their faith traditions. I don’t plan to enter into those specific debates, but to highlight that they reflect a growing tension within Australian society about the place of religion.

Not that it is new. In his speech to the 1897 Constitutional Convention, future Prime Minister, Edmund Barton, encapsulated the view of the role of government over religion at the time:

*The whole mode of government, the whole province of the State, is secular ... The whole duty is to render unto Caesar the things that are Caesar’s, and unto God the things that are God’s ... secular expressions should be left to secular matters while prayer should be left to its proper place.*⁵

Barton’s words are apt because they highlight the binary lens through which most people look at the relationship between religion and the state. In the 21st Century there are many more shades of grey. The Constitution makes it clear: the Australian government is secular. The grey is where government ends and society begins, and whether

we are a secular or pluralist society. A secular society is one which respects religious liberty, but recognises its place as a primarily private practice. Faith ends at the temple door. It has a limited place in the public square. There is no room for religion in public institutions, such as schools and hospitals. Equally unless they want to accept secular strings, religious institutions can't accept public monies to deliver services to the community.

A pluralist one respects that, like other individual characteristics, faith informs all aspects of people's lives. Public institutions reasonably accommodate faith and religious institutions are not discriminated against simply because of wanting to act consistent with their traditions. Instead they are embraced as a way of delivering a diversity of services.

These different approaches fundamentally inform how different political parties approach issues of religious liberty. The Greens are in the secularist camp. The Liberals and Nationals are in the pluralist camp. Labor used to be in the pluralist camp. Today they are drifting in the direction of secularism with a diminishing understanding of the importance of religious liberty.

Humility in an authentically individualistic age

The consequence of these two defining approaches essentially informs whether the space for religious liberty in Australia is large or small. The future of religious freedom is up to religious communities.

In his recent Menzies lecture The Australian's Editor-at-large, Paul Kelly, rightly pointed out the broader cultural picture the Western world now lives in:

The near universal set of cultural values that united Western democracies for much of the twentieth century – in war and peace – is disintegrating. The axioms of life once unchallenged are falling apart. We don't agree any more on the meaning of marriage, on how we should die, on how children should be raised, on the structure of family life, on freedom of speech, on whether religion should be retained in the public square, on the meaning of multiculturalism and, ultimately, on what is virtue. Pivotal to this fragmentation is the decline of a shared religion and broad form of Christian faith – it once rated at more than 90 per cent. If there is a replacement

*credo it could be called authentic individualism. This is a new faith of sorts, inspired by the idea the moral course is to be true to oneself and stand up for the values that define your identity.*⁶

We can debate the consequences of this change in cultural norms extensively. The trend towards it started long ago. Though the pace of its adoption does appear to have sped up recently. I have my own very deep concerns about the rise of authentic individualism; one of which is that people define themselves by their difference over their points of unity. And in the context of religion many of the identities that people define themselves by hold traditional grievances or feel they have been unjustly treated by some religious faiths and often have been.

More broadly it creates problems in the design of law including how to treat everyone equally when tensions arise. This is why humility matters. If faith communities and leaders approach the tension between pluralism and secularism based on religious liberty trumping the freedom of others then the space will be small, and shrink.

If faith communities and leaders recognise their freedom as akin to needing to respect the freedom of others then the space can be large and stable. More importantly, religious people can be part of correcting the drift toward authentic individualism back to a shared culture. That will not be achieved when lobby groups and communities are only talking to themselves. Engagement brings mutual respect.

The virus of identity politics

There is still a lot of analysis to be done about Donald Trump's victory in the United States.

Outside of capital cities, the Republicans dominated. There is a clear disconnect between well-paid service sector workers who live on the East and West Coasts and in major cities and the people who work in the primary, extractive and manufacturing industries that created that wealth. Economic problems are manifest in States that have fared poorly in the adjustment resulting from globalisation and suffer the consequences of over-regulation and moratoriums. But I will leave that topic to others and another day.

The other disconnect is around values and culture. History shows that when people don't feel economically secure they look to question

the circumstances that surround them. And that is where the role of culture comes in. The need for a cultural confidence is greatest when people feel insecure. Underpinning cultural confidence is a broader confidence in which people see their pathway and opportunity in life, as well as their place in society.

In Western liberal democracy the perception by many is that the space for cultural confidence has been under assault for decades, both internally and externally. The external factor has come from migration from people of traditionally non-aligned cultural and religious backgrounds without sufficient attention or expectation of economic and cultural integration. For many years we've had an official policy of confused multiculturalism. Confused because we haven't settled whether new Australians are being expected to integrate into our culture, or we are supposed to respect the preservation of theirs.

That has been coupled with the internal rise of cultural relativism and identity politics. Cultural relativism ascribes an equivalence to other cultures even when incomparable with the Western liberal tradition. The relationship between culture and religion - and particularly a culture of religious tolerance - is anchored in the Western liberal tradition.

It is a disconnect of values. Freedom sits within a context. We have the institutions and culture to preserve that freedom. It comes uniquely from Western civilisation. But for it to be preserved and allowed to breed tolerance, it requires a commitment from people to support those institutions and their cultural accompaniment.

That's why, despite passionately describing myself as a liberal, I am also a proud cultural and institutional conservative. It is because I appreciate that my socially liberal position on believing in the freedom of others depends on the preservation of our culture and institutions.

Instead, as other cultural values are being given equivalence many people no longer see where they fit in their country. Many who used to be part of the majority simply can't see their place. Worse, they feel demonised for their place in society. In an article in the *New York Post* last week columnist Saleno Zito wrote:

While Trump supporters here are overwhelmingly white, their support has little to do with race (yes, you'll always find one or two

who make race the issue), but has a lot to do with a perceived loss of power. Not power in the way that Washington or Wall Street boardrooms view power, but power in the sense that these people see a diminishing respect for them and their ways of life, their work ethic, their tendency to not be mobile. (Many live in the same eight square miles that their father's father's father lived in.)

Thirty years ago, such people determined the country's standards in entertainment, music, food, clothing, politics, personal values. Today, they are the people who are accused of creating every social injustice imaginable; when anything in society fails, they get blamed.⁷

Similar sentiments have been reflected in an article by Professor Joan Williams in the *Harvard Business Review* arguing:

What's driving it [Trump] is the class culture gap ... Trump promises a world free of political correctness and a return to an earlier era ... for many blue-collar men, all they're asking for is basic human dignity'.⁸

This response should not be surprising. Cultural progressives have sought to advance the interests of traditionally marginalised people by indiscriminately demonising others. In response culturally conservative communities are hearing that everyone can be proud of themselves except themselves.

Meanwhile cultural progressives have undermined the foundational freedoms of our society for decades in pursuit of a ubiquitous 'equality'. In pursuit of formal equality - such as equality before the law and equal opportunity - it is consistent with preserving our way of life. But more often than not it is in pursuit of informal equality - equity before the law and equality of outcomes - which can only be achieved by undermining our institutions and culture.

The most obvious example is free speech. A cultural expectation of political correctness that goes beyond respectfulness has seeped into our society. People are now being infantilised through the operation of safe spaces, a culture of stigmatisation questioning the legitimacy of others' rights to have opinions as well as the opinions themselves. Locally we have people being vilified by section 18C of the Racial Discrimination Act.

This election year cultural conservatives have mobilised and responded in-kind. And religion is a part of this story. Data from the Pew Research Centre showed that there was a noticeable rise in the number of people who identified as different religious denominations that were more likely to vote for Trump than in the 2012 election.

There was a limited increase of 1% amongst Protestant and White Catholics, but a 5% increase amongst Hispanic Catholics, and 3% amongst white evangelicals. The two groups where there was a drop of support for Republicans was amongst Jews by 6% and Mormons 17% — the latter being unsurprising since the pre-Trump candidate was Mitt Romney.

Of course we should be careful about drawing too many conclusions from the US experience for Australia. We are a very different country. Cultural concerns are always amplified when people feel economically insecure. Our economic circumstances are currently very different.

My concern is that the US has seen the germination of a cultural conservative victimhood virus in response to cultural progressive victimhood. If embraced it simply leads cultural conservatives to embrace the same tactics and approach that they have long railed against. The objective of cultural conservatives would cease to be about unifying society around common bonds, and toward points of difference. The focus of debates would also shift from preserving the best of our inherited legacy toward the constant struggle for social and cultural power based on your perception of marginalisation.

I am equally concerned that if Australia doesn't take religious freedom seriously we risk seeing the same trend here. Avoiding a Trump-esque backlash in Australia requires taking religious liberty seriously in upcoming social and cultural debates. Worse, some want it to happen because they think it will be a way of mobilising a political support base.

Frankly, that would be unwise. The number of Australians who identify with faith year-on-year is in decline. There is a rising intolerance of those without faith toward those who rigidly adhere to it. And the number of Australians who attend a weekly church service is half that of the United States.

A polarised debate about religion also makes honest discussion

difficult. The values base that the conversation starts from differs between parties. The centre ground is hollowed out. We are no longer left with spaces to have constructive conversations.

I was acutely aware of these risks in my former role. That's why I was disappointed that the Australian Human Rights Commission chose to discontinue the religious freedom Roundtable program I commenced once I resigned my former role. It is important work. It is exactly what they should be focusing on. The power of the Commission and its Commissioners is to prompt conversations between parties that would not otherwise occur.

The religious freedom Roundtable work was focused on how to play a constructive role in improving the rights and freedoms of every Australian and to bring people together to drive a discussion to foster understanding of the importance of respectful pluralism. All it will do is amplify division between secularism and pluralism with religious liberty losing as a consequence.

The test ahead

The future of religious liberty now hinges on engagement... on how religious leaders and communities engage in the next, and I expect, final, round debate on the civil definition of marriage. Now that the Senate voted down the plebiscite I feel freer than I have previously to broaden my commentary on it as a method of resolving this debate.

A plebiscite was never my first preference and I have consistently said so. I agree with Senator Dean Smith that a plebiscite established an unnerving precedent and is inconsistent with the principles of representative democracy.

Being an institutional conservative I believe that our Constitution has served us well. It rightly empowers representative democracy. Plebiscites are not a good method for outsourcing democracy unless it has to be. Politically that was the situation we faced. Despite that, I argued for it and voted for it and I have now discharged my responsibility to my community and Party.

The plebiscite was popular. Yet the public turned against it, harshly. I believe they saw what I did when it was originally announced - the pain of a prolonged public debate about the legal standing of their

fellow citizens' relationships. And many opponents of change did themselves no favours; both in their manner and argument, as well as in saying they wouldn't honour the result.

The other reason it was never my first preference is because it sets up a zero sum outcome. Someone wins. Someone loses. The group who should fear the loss isn't the winner, it is the loser. No one can say with total confidence what the result would have been. My very strong view was that a 'yes' vote for change would have been successful. Put simply: most people don't care about the issue, and amongst those who do strong supporters basically double opponents.

The other reason I was confident it would succeed is because of the harshness of the arguments the 'no' case needed to run to win. In short, to win they had to convince my parents, friends and colleagues to vote against me. They can send their messages through the airwaves, but we were always going to have the advantage of human stories and personal contact.

That was supported from data and analysis I've seen from the United States when they had State-based votes on the issue. Data was compared between geographic areas depending on where there was and wasn't a vote, ground campaigns and advertising campaigns. I am not aware of the data being public so I can't quote it. What it basically showed was that where there was only a media campaign the 'no' campaign narrowly won. But where it was matched against a ground campaign the 'yes' case comfortably won.

Doubt can be sewn by advertising. It can't match human contact and stories. That was also true in Ireland where advertising is banned, and it was solely dependent on human contact outside of ordinary public debate and news programs.

I strongly believe the permanent damage to religious freedom from a plebiscite — win or lose — would have been dire. In the end, the advocates for the plebiscite were predominantly from faith backgrounds. Had they lost, they set up the legitimate tool for secularists to say the Australian people had the debate about these issues and they won. As with most issues they would then use that to justify a broader secularist agenda. Every time there was a debate about issues of sexual morality and religion, secularists would have had the ammunition to simply

say that the country had the debate and faith communities lost. The question now is how we move forward on the issue. As the Prime Minister said last week: “we’ve got to let the dust settle”. There is now no opportunity to change the law this year; and I won’t be pushing for it this year. Yet even if you are opposed to a change in the law, it is hard to see how the debate goes away. We know that Labor and the Greens will keep pushing it. They know there is a diversity of views within the Coalition on the issue; though what is ignored is that there is still a hidden diversity of views within Labor.

It will continue to hover until it is resolved. At some point the government will have to decide whether it wants to continue to carry the distraction it causes, or deal with it so we can move on. Religious communities also face a choice. There will be a change in the law at some point in the future. The question is what change, and who delivers it. The first option is to wait until Labor and the Greens are in government. My hope is that is a long time in the future. But we live in unpredictable times. We know what they will do. They will change the legal definition of marriage to a union between two people. Ministers of religion won’t be compelled to marry same-sex couples because that would breach the Constitution. There will be no further recognition of religious liberty. It will be the hard landing of a secularist solution.

The second option is that those opposed push for the plebiscite again. Personally I think that is pointless, and as I have outlined I think it poses serious permanent risks to religious liberty. The third option is that those opposed seek a hard landing by proposing a law that won’t be accepted by the Parliament, and even if it does - keeps the debate going. The classic example is the pursuit of allowing the law to change and exempting bakers and florists from supplying goods and services to same-sex marriages. This is a hard landing solution because it simply creates targets that Labor and the Greens will pursue when they are in government in the future. Nothing will be settled. The debate will rage. In the end the secularists will win.

The fourth and my preferred option is that the dust settles for the Coalition to implement a soft landing through a change in the law that takes account of the concerns of both same-sex couples and religious communities. In my last role I started that conversation working with

people from both sides of the debate. It started when I reached out to Patrick Parkinson from the University of Sydney. Together we discussed a proposal for a sensible soft landing conclusion to the debate.

Over a period of weeks and months we developed amendments to the law that started from an understanding that the law was going to change and the objective was not to have one side get one hundred percent of what they wanted, and the other zero. Instead it was focused on how we can get both sides around 80 per cent of what they want. We worked through every section of the Act. Importantly, when requests for amendments were made we asked what it was the amendment was designed to achieve and if it was unsatisfactory how it could be achieved in another way. There were aspects to the proposal I disagreed with. But it provided a pathway then. It provides the foundations of a pathway now.

I wish we could say we were trail blazers. But unknown to me similar work has been pursued by Douglas Laycock from the University of Virginia. He tried to reach a settlement to enlarge the debate around marriage to secure religious liberty in the United States, but was rebuffed. In the meantime the US Supreme Court handed down *Obergefell v Hodges* and framed the terms of the next stage of this debate, principally a lengthy legal battle through the courts.

It isn't just religious communities that face a choice. The LGBTI community faces choices too. Their choice is whether they want the debate to end, or whether some have sufficiently absorbed the victim mentality that pervaded the plebiscite debate that they want to use this debate as a proxy for historical grievances against religious institutions. That isn't a sensible way forward. To stop that a soft landing settlement is needed.

So what does a soft landing look like? It starts with humbly accepting the legitimacy of each other's concerns. There is a civil tradition of marriage. Laws can be made about it with the permission of the Australian Constitution. Whether same-sex couples can enter it is based on a decision of the Parliament.

Same-sex couples want to enter it because of both the legal and cultural power it holds. Legal because it grants certain rights that are not extended to unmarried couples, though they are few in Australia. Cultural because we place a cultural significance on marriage in our

society. Marriage has lots of dimensions, but it's cultural power far exceeds its legal power. We don't look at de facto couples as akin to marriage; nor couples with civil partnerships or civil unions.

Marriage means something, and that is a good thing. We should encourage it. But there is also a tradition of marriage that comes from different religious traditions. All government can do is respect it and treat it equally to the civil tradition. In many traditions it can't include same-sex couples, though views on that are evolving. A law that respects and recognises that divergence is important. It provides the security that the law reflects the values base of both secular and faith traditions, and ensures that religious institutions can teach their faith tradition of marriage and be utterly consistent with the law.

If religious communities also engage in negotiating a passage of the law they can also negotiate any necessary protections to allay their fears about being legally pursued for expressing their views.

From where I stand I can only guarantee one more chance to pursue a soft landing during this term of Parliament. The burden of its passage comes down to the way religious leaders and communities engage. If it is with humility, then religious freedom can win. Without it, a hard landing will likely be imposed in the not-too-distant future.

As offered in the past, I am happy to be a partner to deliver a soft landing solution under a Coalition government. Done properly it can provide the opportunity to build new foundations for a pluralist approach, pushing back against the tide of secularism that risks undermining religious freedom in twenty-first century Australia, and taking society forward together.

Endnotes

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Religious liberty is central to the Australian way of life. It is enshrined in the Australian Constitution. But it is not the only freedom that matters. There is a rising tension between accommodating differing freedoms in twenty-first century Australia. The changing face of Australia continues to raise challenges about the limits of secularism while creating a society that celebrates diversity. It also creates challenges for the place of religion in the public square. The challenge facing people of faith is how they should react and respond to the increasing diversification of society and the place of faith in contemporary Australia.



Tim Wilson is the Federal Liberal Member for Goldstein in Victoria. He is well known as Australia's former 'Freedom Commissioner' and is a proud defender of universal, individual human rights. He has worked with government to reform

laws to stop and prevent terrorism, improve economic opportunities for Indigenous Australians, and support marginalised communities. He is a passionate advocate for protecting free speech and religious freedom.



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