Religious Freedom

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Context is always essential for understanding and so it is with religious freedom. Therefore, before discussing religious freedom in Australia it might be helpful to look briefly outside our own patch, outside our own English-speaking tribes, outside the Anglosphere.

Religious freedom as a matter of life or death

In large parts of the world beyond the West religious freedom is a life or death issue. Last week, in response to the military crackdown in Egypt which has killed hundreds of people and injured many more, supporters of the Muslim Brotherhood targeted Coptic Christians in a 12 hour rampage, destroying at least 47 churches and attacking Coptic schools, hospitals, monasteries and businesses across the country. Coptic families have been attacked in their homes, and the Coptic leader, His Holiness Pope Tawadros II has been unable to leave his home or to celebrate Mass in his Cathedral because of death threats. The violence has continued this week, and it is now estimated that one thousand people have been killed.

This is just the latest episode in the persecution of Christians in Egypt that predated the fall of the Mubarak regime. This persecution has escalated dramatically since then, and has pursued Coptic communities even outside Egypt. In January 2011, sixty Coptic churches around the world received threats of terror attacks, including four Coptic churches in Sydney. While the Coptic community in Sydney was not attacked, the increased security required in response to these threats cut short the community's celebration of the Orthodox Christmas, which is of course one of the holiest times of the year.

There is also continuing violent persecution of Christians in Syria, Iraq, Nigeria (where about 900 Christians have been killed since 2012), and Sudan. Men, women and children are targeted regularly for violence because they are Christian in Pakistan and India. Todd Johnson, an expert on Christian demography with the World Christian Database, has estimated that there were 100,000 new Christian martyrs each year between 2000 and 2010, many from the Sudan and Congo[1]. Citing Johnson's research, Italian sociologist Massimo Introvigne has claimed that a

1. Todd Johnson, "Christian Martyrdom: A Global Demographic Assessment". Presentation to the University of Notre Dame, Indiana, November 2012 (http://icl.nd.edu/assets/84231/the_demographics_ of_christian_martyrdom_todd_johnson.pdf).

Christian is killed every five minutes[2]. Aid to the Church in Need, a German-based Catholic relief organisation, recently estimated the martyrs at 150,000 a year.

Johnson also estimates that forty-five million Christians perished in the twentieth century, most of them under the Nazis and the Soviet Communists. Obviously a lot depends on how you define a martyr. Is a martyr only someone who is "actively proclaiming" their faith when they are targeted and killed? Are people martyrs if they are killed simply because their persecutors identify them as Christian believers, irrespective of the strength or otherwise of their commitment to their faith?[3] Attending Mass is a form of proclaiming your faith and I think there is a strong case for counting as martyrs those killed at St Rita's parish in North Kaduna in Nigeria in October 2012, when a suicide bomber attacked the church during Mass. They too witnessed to the truth of the faith "even unto death"[4].

A special commission established as part of the Church's preparations for the Great Jubilee of 2000 arrived at a lower estimate than Johnson. It concluded that were perhaps twenty-seven million Christian martyrs in the twentieth century, making up "two thirds of the entire martyrology of the first two millennia". However the estimates might be drawn up, it seems clear that more Christians were killed for their faith in the twentieth century "than in the previous nineteen centuries combined" [5].

Of course it is not just Christians who suffer religious persecution. The US State Department's International Religious Freedom Report for 2012 named eight nations as "Countries of Particular Concern" because of their record of "particularly severe violations of religious freedom": Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan and Uzbekistan. In several countries on this list Muslim communities (including minority Muslim groups within Muslim majority countries) are among those being persecuted. In Nigeria, which is not on the US State Department's list, Muslims as well as Christians are being killed by the Muslim extremist group Boko Haram. Laws in some countries against criticising a particular religion ("blasphemy"), changing one's religion ("apostasy"), or preaching another religion ("proselytising") are a source of violence and human rights violations for minority Muslim groups as well as Christians and others[6].

2. Massimo Introvigne, "Christian Martyrs, One Every Five Minutes: 'A Reliable Estimate'" (http://www.cesnur.org/2011/mi-cri-en.html). For a recent summary of Christian persecution around the world, see Rupert Shortt, *Christianophobia: A Faith under Attack* (Rider Books: London, 2012).

3. Cf. Ibid.

4. Catechism of the Catholic Church, §2473.

5. George Weigel, *The End and the Beginning: Pope John Paul II – The Victory of Freedom, the Last Years, the Legacy* (Doubleday, New York: 2010), 230-33.

6. United States Department of State, Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report for 2012*, Executive Summary (http://www.state.gov/j/drl/rls/irf/religious freedom/#wrapper)."The term 'particularly severe violations of religious freedom' means systematic, ongoing, egregious violations of religious freedom, including violations such as: (a) torture or cruel, inhuman, or degrading treatment or punishment; (b) prolonged detention without charges; (c) causing the disappearance of persons by the abduction or clandestine detention of those persons; or (d) other flagrant denial of the right to life, liberty, or the security of persons".

While many instances of religious persecution and violence arise in the Muslim world, attacks against religious minorities have also arisen from Hindu groups in India and from Buddhist groups in Sri Lanka. Predictably, explicitly atheist regimes are significant persecutors of religious people. It is no surprise that China and North Korea are on the US State Department's list of "Countries of Particular Concern". All religious groups, including Christians, are restricted, harassed and subject to arrest in China, with groups such as Tibetan Buddhists, Uighur Muslims and practitioners of Falun Gong being subject to particularly serious human rights violations[7].

In North Korea the small Christian community seems to have been almost completely wiped out soon after the communist party consolidated its hold in the country in the late 1940s. The bishop of Pyongyang, Bishop Francis Hong Yong-ho, appointed by Pope Pius XII in 1944, was among those who disappeared at this time. However, right up until this year he continued to be listed in the *Annuario Pontificio* (the Vatican's directory of bishops) as the bishop of Pyongyang, with the simple and poignant notation "missing". This small and beautiful act of remembrance has now been brought to an end as preparations are made to open the cause for his canonisation, along with the other martyrs of North Korea[8].

As the Second Vatican Council declared, the Catholic Church rejects every form of persecution. Mindful of the great patrimony we share with the Jewish people, we also condemn hatred, persecution and displays of anti-Semitism directed against them at any time[9]. In the Middle East and Iran there are sometimes anti-Semitic statements from government leaders, including Holocaust denial and calling for the destruction of Israel. Anti-Semitism also continues to be a problem in some European countries, where there have been some isolated but nonetheless shocking anti-Semitic crimes, including murder. This problem does not always seem to receive the attention it deserves. I am not sure whether this is simply a specific instance of a more general lack of interest in religious freedom issues on the part of politicians, opinion leaders and human rights groups, or an indication of something more worrying at the bottom of the garden of political and religious life.

Two American researchers, Brian Grim and Roger Finke, have attempted to gauge the scale of religious persecution for adherents of all faiths across the globe. They carefully analysed the data for the period between 1 July 2000 and 30 June 2007, focussing on the 143 countries in the world with a population of two million people or more. In 123 of these countries, people were physically abused or displaced from their homes because of their religion. In 36 countries in this period more than 1,000 people were abused or displaced because of their religion, and in 25 of these countries the number reached 10,000 people or more.

7. Ibid. Country Report for China.
8. Sandro Magister, "The First Saint of North Korea" (http://chiesa.espresso.repubblica.it/articolo/1350571?eng=y), 5 August 2013
9. Cf. Second Vatican Council, "Declaration on the Relation of the Church to Non-Christian Religions *Nostra Aetate*" (1965) §4.

The researchers emphasise that these figures "are almost certainly low" and underestimate the level of persecution, because they mainly capture well documented incidents[10]. Whatever we might make of the estimates of the number of Christian martyrs referred to earlier, Grim and Finke provide a baseline figure of at least 250,000 people of all faiths physically abused or displaced because of their religion during the seven years from mid-2000 to mid-2007. Although this is a minimal figure, it is more than sufficient to demonstrate that the violation of religious freedom is a major problem, not just for those who are killed, hurt and exiled, but also for peace and stability in many regions throughout the world.

Religious freedom in the West

Thankfully, in Australia and most Western countries religious freedom is not a matter of life or death. The challenges we face are of a different order altogether, but nonetheless serious. It is no longer unusual in places such as the UK, the US and Canada for people to be penalised or dismissed from their jobs, excluded from providing services to children and counselling, and dragged through human rights, employment and anti-discrimination tribunals simply for holding to, or merely expressing, their religious and conscientious convictions about issues such as abortion, marriage and sexuality[11]. In this situation religious freedom issues arise not from violent persecution but from the determination of government authorities, courts and tribunals to enforce a particular world view, especially in two closely related areas: relationships, family and sexuality, on the one hand; and abortion and reproductive technology on the other.

Diversity and tolerance are obviously valuable and indispensable features of a free society. As words, they have become part of the mantra of an officially sanctioned view of democracy. However religious freedom issues tend to highlight just how limited the appetite for genuine diversity and tolerance is in some quarters. For example, it is interesting and significant just how little tolerance there is for diversity if this means (as it should) making room for people whose convictions lead them to oppose abortion or contraception or the promotion of homosexual activity.

An Oxford academic has argued that "Doctors who compromise the delivery of medical services to patients on conscience grounds must be punished through removal of license to practise and other legal mechanisms", and medical students who are not prepared to undertake a commitment to provide "the full range of

10. Brian J. Grim & Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century* (Cambridge University Press, Cambridge: 2011), 18-21.

11. There are many institutions which regularly monitor and report on these sorts of cases including (in the US) the Becket Fund for Religious Liberty (www.becketfund.org), the Heritage Foundation (www.heritage.org/issues/religion-and-civil-society/religious-liberty), and the Ethics and Public Policy Center (http://religiousfreedom.org); (in the UK) the Christian Institute (www.christian.org.uk), the Christian Legal Centre (www.christianconcern.com/christian-legal-centre), and the Thomas More Legal Centre (www.thomasmorelegal.org.uk); (in Canada) the Evangelical Fellowship of Canada (www.evangelicalfellowship.ca) and the Catholic Civil Rights League (www.ccrl.ca); and (in Europe) the Observatory on Intolerance and Discrimination against Christians in Europe (www.intoleranceagainstchristians.eu). In Australia there is also the indispensable Ambrose Centre for Religious Liberty (http://ambrosecentre.org.au).

services" should not become doctors[12]. The law and practice seems to be already well advanced in this direction. The Victorian Abortion Law Reform Act (2008) requires doctors with conscientious objections to abortion to facilitate access to it by referring patients to other doctors who will perform the procedure. In cases where there is a threat to the life of the woman, both doctors and nurses are compelled to assist in abortion, regardless of their religious or conscientious objections. For medical students it is increasingly expected that they will not go into certain areas of medicine, or even go into the profession at all, unless they are prepared to accept the practice of abortion and other life-destroying procedures.

In societies which purport to value diversity, the way Catholic teaching on contraception provokes some people to fury is very interesting. It is primarily a teaching for Catholics, and as you know no one is forced to be a Catholic or to remain one. Like all Catholic teachings, this teaching is not imposed on anyone. It is proposed for consideration and free acceptance, and it is often claimed that even many Catholics decline to accept it for themselves. Despite this, and despite the abundant availability of affordable or even free contraception in a society like the United States, the federal government there is determined to require Catholic and other Christian employers to ensure that contraception, abortion and sterilisation are covered in the health insurance packages they provide their employees. This is a flagrant attempt to use the power of the government to impose a set of beliefs on communities and individuals who hold very different beliefs, and to restrict them from upholding and acting on what they believe. Church groups, including the Catholic Church and the Baptists, are challenging the legality of these laws.

Those who promote the homosexual agenda regularly do so by invoking tolerance and diversity and the beauty of the rainbow. Once again, however, it seems that diversity and tolerance only go one way. After the federal government conceded that it had overreached in its efforts to produce a consolidated anti-discrimination law earlier in the year, it moved to amend the Sex Discrimination Act in some significant ways. One of these amendments removed the protection for religious providers of Commonwealth-funded residential aged care services to provide services in accordance with their beliefs; for example, by providing shared rooms to married couples only[13]. They are now being coerced to act against their religious

12. Julian Savulescu, "Conscientious objection in medicine", *British Medical Journal* 332 (4 February 2006), 296.

13. **Sex Discrimination Act 1984:**
Section 37. Religious bodies
(1) Nothing in Division 1 or 2 affects:

(a) the ordination or appointment of priests, ministers of religion or members of any religious order;
(b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
(c) the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice; or
(d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013
Section 49B.
At the end of section 37 [ie: of the SDA 1984] Add:

beliefs. Surprisingly, Catholic Health Australia supported this amendment. When it came before the parliament the Opposition voted against it in the Senate, but when it came back to the House of Representatives it was passed on the voices.

The importance of this amendment lies not so much in the particular matter it addressed (the number of unmarried or homosexual couples seeking a shared room in a Catholic nursing home is unlikely to be large), as in the precedent it establishes for withdrawing religious freedom protections in anti-discrimination legislation. Interestingly, one week after this amendment passed in the federal parliament, a NSW upper house MP proposed amending the NSW Anti-Discrimination Act to remove the religious freedom protections for religious schools. These protect the right of the communities which established these schools to conduct them in accordance with their beliefs and teachings, and to ensure that those they employ and enrol will be happy to support the ethos and witness of these schools.

These sorts of attacks on religious freedom, whether made directly or by salami tactics slice by successive slice, are usually promoted by arguing that they enhance diversity, tolerance and human rights. However the diversity that is sought seems to be more about enforcing compliance with the objectives of an imperialistic concept of secularism. The tolerance that is preached seems to be limited to allowing Christians to think differently if they really must, as long as they keep these thoughts to themselves and under no circumstances seek to act upon them. Human rights arguments invoking equality and freedom end up in practice treating some rights as being strong enough to extinguish other rights.

An approach to human rights which applies some rights so broadly that they can almost always be predicted to trump others, while others are read down, given the narrowest possible application, and always forced to yield to more privileged rights, is fatal to respect for human rights in the longer term. Religious freedom is one canary in the mineshaft. If it becomes enfeebled, other fundamental rights such as freedom of association and freedom of speech will rapidly take on a sickly hue as well.

Recently at Sydney University, a pro-life group founded Life Choice, a society to promote discussion around abortion and euthanasia. For such a group to be affiliated with the Student Union and receive some funding, they are required to hold an initial meeting with at least twenty members and then make application. Their first application was denied by a subcommittee because such a group would not enhance student life! An appeal against this exclusion was made to the full Student Union board and the Life Choice group won affiliation by one vote.

Two details are interesting. Professor Peter Singer, the Australian philosopher from Princeton University, intervened to support the right of Life Choice to affiliate; and

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(2) Paragraph (1)(d) does not apply to an act or practice of a body established for religious purposes if:

(a) the act or practice is connected with the provision, by the body, of Commonwealth-funded aged care; and

(b) the act or practice is not connected with the employment of persons to provide that aged care.

one of the Student Union opponents proclaimed that a woman's right to choose abortion comes before freedom of expression. Here we have a glimpse of the future.

The situation is serious, but we also need to keep things in perspective. There is no present danger of religious persecution in Australia. We have the benefit of seeing where the trends are leading in other English-speaking countries and can make a noise about it. As in the United States, Catholics make up about a quarter of the population and with the percentage of people of other faiths who are seriously religious we have the capacity to exercise our democratic rights to freedom of speech and make our presence felt. This is not so much the case in the United Kingdom or New Zealand, where the percentage of Catholics and serious believers is much lower. The strains of anti-Catholicism here are also more muted than they are in the US and the UK, and we should work to keep it that way.

The co-operation of Catholics and Baptists in the US to oppose Obama's contraception mandate is an example of religious co-operation which we should do more to follow here. The Australian Christian Lobby has already played an important part in fostering this sort of co-operation. In Sydney, Archbishop Jensen was always open to dialogue and co-operation, which I am sure will continue with Archbishop Davies. It will be interesting to see whether the existing co-operation between Catholics and evangelical Anglicans in Sydney can go to the next level. Co-operation between the different Christian communities should be natural to us, not just because of a common interest in preserving religious freedom and the freedom to present Christian teaching, but also because of our shared commitment to a free society and respecting the rights of others.

There is every reason to believe that some people would like to see religious voices and witness driven from the public square. By and large I suspect this goal will be pursued by small successive regulations or changes to legislation (such as the aged care amendment to the Sex Discrimination Act I discussed earlier), rather than by frontal assault. Both the charities and not-for-profit reforms and the Gonski reforms of school funding initially included attempts to increase significantly the power of government to intervene and control charities and schools.

The original ambition was to establish the Australian Charities and Not-for-profit Commission (ACNC) along the lines of the Charities Commission for England and Wales, with the capacity to withhold or withdraw charitable status from religious and other non-government agencies if they do not comply with government objectives, not least in the area of equality and non-discrimination[14]. The Gonski

14. So for example Catholic Care in the diocese of Leeds, the last Catholic adoption service operating in the UK after equality laws forced Catholic adoption agencies to close (instead of being coerced to provide adoption services to same-sex couples), was refused permission by the Charities Commission to provide its services in accordance with Catholic beliefs. "Catholic Care loses its five-year legal battle", *Catholic Herald*, 2 November 2012. The establishment of the Charities Commission for England and Wales has created serious uncertainty, and similar legislation has been used to apply substantial control over church activity in Canada. In Australia, when the early drafts of the ACNC legislation were circulated religion was in fact excluded as a charitable purpose (which it has always been under the common law). When concerns were raised about this, government officials

proposals, which promise to deliver enormous increases in school funding to all sectors, entailed to the very last moment significantly enhanced powers for the government to make decisions about matters which had never been part of normal oversight and regulation of school funding previously. Both these dangers have been seen off, but vigilance is going to be more and more indispensable into the future.

While I think that greater regulation and administrative control represent the more likely strategy for those who want to wind back religious freedom in the longer term, there will also be open political conflict from time to time. This will certainly be the case if same-sex marriage is ever legalised in Australia. In saying this it is important to note that I do not think same-sex marriage is in any way inevitable here. I am not surprised that supporters of same-sex marriage do not want a referendum on the issue.

But if I am wrong on this and same-sex marriage comes to pass in Australia, there will then be enormous pressure to present homosexual unions as being as valid as real marriage, and to prevent the teaching of the Christian understanding of sexuality, marriage and family, even in church schools. There will be even more pressure to silence people who oppose same-sex marriage and to force them to co-operate with it, as experience from the US, the UK and Canada has put beyond any shadow of a doubt, with any legislative protections for religious communities quickly shown to be of little value. If those pursuing this goal expect Catholic parishes, schools and agencies to fall into line with these requirements, they are making a serious miscalculation.

The awareness of this is one reason why individuals such as President Obama seek to separate Catholics whose default position tends to follow secular or "informed" opinion on some or all moral issues, from the bishops and the teaching of the Church which they are committed to upholding. Obama has started with contraception. If he succeeds, pressure will follow to oblige Catholic hospitals to provide abortion and euthanasia, for religious celebrants to bless homosexual unions, and for church schools to refrain from teaching Christian doctrines.

The meaning of religious freedom

Professor Mary Ann Glendon has drawn attention to one of the major problems surrounding religious freedom, namely "the persistent lack of consensus on its meaning, foundation, and relation to other rights"[15]. It might be helpful to offer some brief thoughts on this problem.

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responded that this was an error and oversight and it was corrected. In addition and importantly, it was proposed to reverse the presumption that the work of charities is for the public benefit. What this would have meant in the Archdiocese of Sydney was that parishes would have had to justify their actions on an annual basis to the new government regulator to maintain their charitable status. The same rule would have applied to non-religious charities and not-for-profit groups. This danger was also averted.

15. Pontifical Academy of Social Sciences, *Universal Rights in a World of Diversity: The Case of Religious Freedom*, Acta 17 (Proceedings of the 17th Plenary Session, 29 April-3 May 2011). Eds. Mary Ann Glendon & Hans F. Zacher (Pontifical Academy of Social Sciences, Vatican City: 2012), "Introduction", 20-21.

The Second Vatican Council's landmark declaration on religious freedom takes us quickly to the essential meaning of the concept. It means freedom from coercion in matters of religious belief and conscience. Everyone is "to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to forced to act in a manner contrary to his own belief, whether privately or publicly, whether alone or in association with others, within due limits"[16].

Unless it is tempered by solidarity, freedom can quickly come to be a radical assertion of the self against others. The Universal Declaration of Human Rights (1948) did not stop at declaring: "All human beings are born free and equal in dignity and rights". The very next sentence bound this claim for freedom and legitimate personal autonomy to solidarity, declaring that we "are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"[17].

What this means for religious freedom is that, like other rights, it is not unlimited. This is acknowledged in the major international human rights instruments, and also in *Dignitatis Humanae*. We are to exercise our rights — all rights, not just the right to religious freedom — with "respect both for the rights of others and for [our] own duties towards others and for the common welfare of all". It is also acknowledged (as *Dignitatis Humanae* puts it) that "society has the right to defend itself against possible abuses committed on the pretext of freedom of religion"[18]. At the same time, as the United Nations Human Rights Council emphasised in 2010, "restrictions on the freedom to manifest one's religion and belief" must be non-discriminatory and "applied in a manner that does not vitiate the right to freedom of thought, conscience, and religion"[19].

With these principles in mind we can identify four basic points to show what religious freedom means in practice:

1. Freedom of religion is not just freedom to go to church on Sundays or pray at home. It also means being free to act on your beliefs in the public square, to speak about them and seek to persuade others. It means not being coerced or bullied into silence by speech-control and equality laws or by accusations of "Homophobe!" "Discrimination!" "Anti-Choice!" or "I'm offended!"[20].

16. Second Vatican Council, Declaration on Religious Freedom *Dignitatis Humanae* (1965), §2.
17. Universal Declaration of Human Rights (1948), Article 1.
18. *Dignitatis Humanae* §7.
19. United Nations General Assembly, Human Rights Council, "Freedom of religion or belief: mandate for the Special Rapporteur on freedom of religion or belief" (A/HRC/RES/14/11), 18 June 2010, §4.
20. In passing I might add that as a society we need to reject more generally the notion that disagreeing with someone or even disapproving of their beliefs or conduct somehow means disrespect for them. This is emotional intimidation used as a conversation-stopper. The logic seems to be that on certain topics, anything short of complete endorsement of what someone else believes or does is a form of disparagement. Naturally, it is important to be sensitive, courteous, and to respect other people's freedom, and it is possible to disagree or disapprove while being completely

2. Freedom of religion means being free to provide services that are consistent with the beliefs of the sponsoring religion. Neither the government nor anyone else has the right to say to religious agencies "we like your work with vulnerable women; we just need you to offer them abortion as well"; or "we really like your schools, but we can't allow you to teach that marriage between a man and a woman is better or truer than other expressions of love and sexuality". Our agencies are there for everyone without discrimination, but provide distinctive teachings and operations. In a wealthy, sophisticated country like Australia, leaving space for religious agencies should not be difficult.

3. Religious freedom means being able to employ at least a critical mass of employees who support the ethos of the sponsoring religion. All Catholic works are first and foremost works of religion. Our hospitals, schools, universities, welfare agencies, services for the refugees, the disabled and the homeless are established because this is what our faith in Christ the Lord impels us to do. The good people happy to help us in these works as staff or volunteers do not all need to share the faith, but they need to be happy to support it and work within it. It is also essential that a preference can be exercised for people who are actively committed to the religious convictions at the heart of these services. It is not enough for just the CEO or the religion teacher to be Catholic. It is not unjust discrimination to prefer committed Catholics to staff Catholic services, but it is coercion to attempt to interfere in or restrict our freedom to do so. No one would dream of suggesting that (for example) the ALP must employ some activist members of the Liberal Party.

4. Religious freedom and government funding. The secular state is religiously neutral and has no mandate to exclude religion, especially when a large majority of the population are Christians or followers of other major religions. Church members also pay taxes. Substantial levels of government funding are no reason to prohibit religious schools, hospitals and welfare agencies from offering services compatible with their beliefs; no sufficient reason to coerce them to act against their principles. The separation of church and state provides important protections for religious communities against the intrusions of governments. In a free society like our own, different groups have a right to make distinctive offerings, provided they are not damaging the common good. We need to foster a tolerant pluralism, not intolerant secularism.

Protecting religious freedom

This year 2013 marks 1,700 years since the Edict of Milan, when the Emperor Constantine granted religious freedom to Christians after nearly three hundred years of intermittent and increasingly ferocious persecution. This anniversary year is then a good opportunity for considering how we might strengthen respect for religious freedom as a fundamental human right, one of a handful of rights under the International Covenant of Civil and Political Rights which cannot be abrogated

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respectful. The idea that disagreeing with someone is to insult them shows just how fragile — or cynical — some who are active on particular issues have become.

("derogated") even in a "time of public emergency which threatens the life of the nation"[21]. To conclude then, a few preliminary suggestions:

- **Protections, not exemptions:** federal and state anti-discrimination laws usually include a range of "exemptions" or "exceptions" for religious organisations (and other groups). The purpose of these exemptions is to protect other rights, but the language of exemptions creates the impression that they are simply concessions or special permissions to discriminate granted by the state for political reasons. This is completely misleading and helpful to no one, except those who want to misrepresent the situation and remove protections for religious freedom. The language of exemptions should be replaced with the language of protections, clearly identifying the human right that is being protected.

- **Exercising other rights is not discrimination:** Professor Nicholas Aroney and Professor Patrick Parkinson have suggested that the prohibition of unlawful discrimination ought to be drafted in such a way that when a right to freedom of religion, association or cultural expression is being legitimately exercised, this cannot be seen or judged to be unlawful discrimination[22]. They are not the first to make suggestions along these lines, and I think they are worth serious consideration. Treating these rights as exemptions reinforces the strong impression that anti-discrimination is more important than other rights and will always trump them. John Finnis has observed that anti-discrimination law is concerned with whether differential treatment is justified. Using the language of "discrimination" is dangerous because it suggests that differential treatment is not justified, even when it is "exempted"[23].

- **Protection for individuals as well as groups:** individuals are the bearers of rights, and it is strange that protections for religious freedom in anti-discrimination laws focus on groups and institutions rather than on individuals. As always, the rights of others to goods and services have to be protected, but there should be explicit scope to provide protections for individuals so that they are not coerced to act against their beliefs in their work or businesses.

- **Legislate conscience protections:** Rather than coercing people to act against their religious or conscientious convictions, as the Victorian Abortion Law Reform Act does, the states and commonwealth should legislate protections for them, perhaps along the lines of the resolution adopted by the Parliamentary Assembly of the Council of Europe in 2010. While requiring states to ensure timely access to "lawful medical care", it also holds that "No

21. International Covenant on Civil and Political Rights (1966), Article 4.
22. Patrick Parkinson & Nicholas Aroney, "Consolidation of Commonwealth Anti-Discrimination Laws", January 2012 (www.freedom4faith.org.au).
23. John Finnis, "Equality and Differences", *Solidarity: The Journal of Catholic Social Thought and Secular Ethics* (2:1, Article 1), 16-17 & n52.

> person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist, or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason"[24].

Last year the first lady of the United States, Mrs Michelle Obama, summed up very well what religious freedom means in practice. She told a conference of the African Methodist Episcopal Church:

> Our faith journey isn't just about showing up on Sunday. It's about what we do Monday through Saturday as well — especially in those quiet moments, when the spotlight's not on us, and we're making those daily choices about how to live our lives. Jesus didn't limit his ministry to the four walls of the church. We know that. He was out there fighting injustice and speaking truth to power every day. He was out there spreading a message of grace and redemption to the least, the last, and the lost. And our charge is to find Him everywhere, every day by how we live our lives. . . . This is how we practice our faith[25].

As Pope Benedict XVI said in 2011, "the Church seeks no privileges, nor does she seek to intervene in areas unrelated to her mission". All we claim is the right to carry out that mission with freedom[26]. In the end, this is what religious freedom is all about.

24. Council of Europe Resolution 1763 of 2010 on *The right to conscientious objection in lawful medical care*, Article 1.
25. "Remarks by the First Lady at the African Methodist Episcopal Church Conference", Nashville, Tennessee, 28 June 2012 (http://www.whitehouse.gov/the-press-office/2012/06/28/remarks-first-lady-african-methodist-episcopal-church-conference).
26. Benedict XVI, "Address to members of the Diplomatic Corps", 10 January 2011.