

Speech: 'Religion, Law and Social Stability'

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Thank you.

I'd like to thank Brigham Young University for inviting me to attend and speak at the 22nd Annual International Law and Religion Symposium.

As Australia's Human Rights Commissioner I have prioritised religious freedom as a focus of my work. I am not a lawyer. My interest and background is public policy. I am personally irreligious.

Religion was once the most powerful source of authority outside of government; it sat in a privileged position amongst liberties.

But when I look at Australia's demography, changing social and cultural norms, migration patterns and changed attitudes to religion, it's clear that religious freedom is going to be one of the most challenging human rights frontiers for our nation.

There's no singular driver. The rise of people who identify with no religion, the increase in the number of people who identify with a religion other than Christianity, particularly those born overseas, and the rise of other non-governmental sources of authority such as the environment, secular ethics and equality and social justice movements, among others, all bring religious freedom into the spotlight.

For some people, religion holds no authority and for others it retains a significant status. But I suspect for most people its authority is dependent on what it adds to themselves and our society. To that extent moral authority depends on integrity. That's why preaching Puritanism while faiths don't have their own house in order not only falls flat, it opens faiths up to ridicule.

In response to the declining status of religion, the increasing effort by some to claim victimhood on the basis of their faith will not work. It is scoffed at and dismissed by those individuals and groups that have either traditionally had limited power, or feel that they

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have been victim to the influence and power of religion in the past. I can understand why some people feel their religious liberty is being curtailed. In many ways I agree with their concerns. But I equally think that religious freedom has enjoyed being in a position of privilege in the past and is now exposed to the same vulnerabilities as other freedoms.

Yet against this backdrop, religious freedom is and remains central to the Australian way of life. Preserving freedom of conscience, thought, expression and association, is central to that objective. This is because these fundamental freedoms are essential for individuality and identity.

Constitutionally Australia is secular. The government is neutral in matters of religion. Secularism allows our society to be truly pluralist in every sense: for religion, but also every other expression of an individual's identity.

It was meant to be this way. In his speech to the 1897 Constitutional Convention, future Prime Minister of Australia, 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. That is the line of division maintained in every State in which there is not a predominant church government which dictates to all civil institutions ... The best plan which can be adopted as to a proposal of this kind, which is so likely to create dissension foreign to the objects of the any church, or any Christian community, is that secular expressions should be left to secular matters while prayer should be left to its proper place.¹

The secular nature of Australia's government does not limit it from funding religious organisations as is deemed necessary for a public policy benefit, such as schools and hospitals.

But once we enter the contemporary political domain the perceived role and place of religious freedom is mixed. Like all issues of 'rights' in the Australian context, religious freedom does not sit in isolation. Rights sit in a basket of contested political values supported by Australians including rights, freedoms, responsibility, justice and fairness. Solely appealing to one of these values will rarely win you an argument in the court of public opinion.

With an established democracy, mature laws and an economy that fulfils our material needs, our society increasingly searches for guidance about how to resolve the great areas of peoples' relationships to each other.

Civil society makes an enormous contribution to this task. Civil society smooths over the gaps between the two, builds and binds community, and engenders a culture of respect and trust.

Religion has an enormously important role as part of civil society. In a truly pluralistic society it provides an important source of non-governmental consideration and authority on public policy matters, as well as consideration of morality. Not all morality comes from religion. But religion certainly has a legacy of informing public understanding of morality and what is necessary for a just society to inform our laws and economic transactions.

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Denying freedom through inequality before the law and the unequal application of the law compromises stability in a free society. Law must treat and respect everyone equally. Equality before the law is the foundation of social stability and cohesion built on a system of formal equality for all citizens.

But when law is used as a tool to deny the exercise of basic liberties it only fosters resentment and undermines social stability and cohesion.

Perceptions of the inconsistent application of the law regularly feeds resentment in our country when national security laws are perceived to target one section of our multicultural, multi-faith society. So too, it breeds resentment when laws are used to target the development of religious houses of worship, or to stop people wearing religious clothing.

Sadly, resentment around perceptions of discriminatory law and social participation has contributed to Australia having a disturbingly high rate of young Muslim men becoming sufficiently radicalised to jump on planes and fight in wars that have nothing to do with them, and often then commit horrific acts. We are about to face another round of questions about the use of law to silence and censor people's opinions as we increasingly deal with the difficult task of stopping speech that leads to acts of violence, as well as situations where the speech may not directly incite violence. This is as a result of a horrific incident in Sydney only last week when a fifteen year old boy was allegedly cultivated by extremists operating out of a Sydney Mosque to kill another person.

But resentment also develops when a religion uses their values to impose an inequality in the law. And the perennial debates around the equal protection of same-sex attracted individuals and their relationships is the most obvious contemporary example.

Some faiths do not have a proud history in this space. For example, many opposed efforts only forty years ago to decriminalise consenting sexual acts between adults. I argue that such an approach is politically foolish, and also inconsistent with a moral society. For a society to be moral people must be free to choose an immoral path, but choose the moral path.

It's in that context that I strongly believe the future of religious freedom rests in the hands of faiths. Religious communities have a choice; recognise the reality and use it as the basis for a broader compact about enlarging the freedom of all, or oppose broader social changes inconsistent with their beliefs and risk being cast aside as being unreasonable.

Advancing religious freedom in 21st century Australia is intrinsically linked to respecting and advancing the rights of others. Religion simply isn't a trump card to justify curtailing others' liberties. In essence, if you want your rights and freedoms respected then you have to respect the rights and freedoms of others.

No one credibly contests the rights of those of faith to believe as they wish and to act consistent with their faith when it has no impact on others. But when we talk about the manifestation of religious freedom beyond one's self it can quickly interact with the rights of others.

Preserving religious freedom has to come with a recognition of the parallels between those of faith and others being free to act consistent with their conscience.

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I believe strongly in the need to accommodate the freedom for people to act consistent with their conscience. But any accommodation has to require that an individual acts consistently, not selectively, and that it can be evidenced as their genuine belief. Any threshold should be set high and be transparent.

It's to this end that I've been working with religious communities about how to design law that accommodates religious freedom as part of changes in the law reflecting contemporary social and cultural norms.

Recently I proposed a reform of our marriage laws that seek to enlarge the freedom of same-sex couples to be able to access civil marriage, while also working to protect the tradition of religious marriage and provide an enlarged space for people not to act against their conscience.

There's strong debate about how far a person's capacity to act consistent with their conscience can be protected. But it seems to me that we should work to enlarge this space so long as it does no harm to others.

The proposal we developed was built on the understanding that marriage has cultural, legal, religious and social power, and that the law needs to reflect that power. Dividing the civil and religious institutions in law would enable greater nuance to ensure no one need be unnecessarily forced to act against their conscience.

The intention was not a compromise. It sought to accommodate people's deeply held continuous objection without people being exposed to retribution.

How Australia seeks to resolve this debate will be instructive for the future of religious freedom. If it is approached sensibly and respectfully, it can be used to enhance the standing of religious freedom.

This particular debate will have a significant influence on the public's attitude to religious freedom generally. The tone of the public's attitude toward religious freedom the day after reform is heavily informed by the tone the day before.

That is not achieved through compromises. It is achieved through an accommodation built on a mutual respect for the rights and freedoms of all.

Thank you and I look forward to your questions.

¹ E Barton, *Constitutional Convention Debates*, Vol III, pp 1187-88.