German Catholics Against the State: 
Ludwig Windhorst and Cardinal von Galen

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Chancellor, Dean, Attorney, ladies and gentlemen:

It is a great honour to have been invited to deliver this year’s Michael O’Dea oration. The honour comes not only from an appreciation of the distinguished speakers of earlier years – Professor Finnis and T E F Hughes. It comes from the stature of Michael O’Dea’s career, the quality of the legal firm he has built up, and the many public services he has rendered.

It is also a pleasure to deliver the Oration on such a happy occasion as a Prize Giving Ceremony. I congratulate all prize winners.

In January this year Lord Sumption delivered a remarkable dissenting judgment in the United Kingdom Supreme Court. The case was R (Prudential plc) v Special Commissioner of Taxation. In it, Lord Sumption referred to: “the complexity of the modern law and its
progressive invasion of the interstices of daily life.”¹ With that invasion comes a growth in State power. And with that growth comes the capacity and the temptation to abuse State power.

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.”

I want to look at two episodes which involve the abuse of State power. They reflect the German drama predicted by Heine. And they have contemporary significance. One relates to the authoritarian figure of Bismarck, Prussian and Imperial Chancellor in the later 19th century. The other relates to his incomparably more evil successor in the 20th century, Hitler.

The first concerns what is known as the *Kulturkampf*. The story begins in 1866 with the Austro-Prussian war, and with Bismarck’s decision to advance German unification by ensuring that Protestant Prussia gained control of the German States at the expense of Catholic Austria. Bismarck instructed his generals to ensure that their soldiers marched to the limits of the Protestant confession, and as far further as they could carry their fence posts. Some of the neutral North German

¹ [2013] 2 All ER 247 at 279 [120].
States resisted, and had to be dealt with after the war. One was Hanover. It was ruled by a blind man, King George V. Bismarck decided to depose George V as King of Hanover, to abolish his ancient Guelph dynasty, and to incorporate 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. It 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 Windhorst. Who was he? He was a 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, including those financial interests damaged by the seizure of the royal fortune. The King was in effect a client.

In some ways Windhorst 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 politician and a brilliant debater. Bismarck admired his skill but loathed him as a man. He described Windhorst’s remarkable oratory as not oil, but vitriol on an open wound. Windhorst is generally thought to be the greatest parliamentarian of 19th century Germany – and perhaps of anywhere. This is a large claim, since in his lifetime Peel, Disraeli, Bright, Gladstone, Cobden and Joseph Chamberlain flourished at Westminster.
In 1870 Windhorst helped to organise a new political party – the Catholic Centre Party. It was founded in response to perceptions of a rising anti-Catholic mood. The party obtained 57 seats in the Prussian elections of November 1870, and 53 seats in the March 1871 election to the new Imperial Reichstag – out of 382. It was the third largest party. At each election thereafter its position generally improved. It has survived into our own days, despite its commission of a terrible error in March 1933. It was reorganised after 1945 by Konrad Adenauer – a man whose integrity is attested to by his having been jailed before 1945 by Hitler twice and after 1945 by the British Army once. He served as Chancellor of West Germany from 1949 to 1963. The party has held office for most of the post 1949 period under the title “Christian Democrats”, and Chancellor Merkel, daughter of a Lutheran Pastor, is its current leader.

In 1870 the new party was highly unusual because of its social basis. The nascent Social Democrats represented the working class, the National Liberals the middle class, the Conservatives aristocratic and rural interests. But the Centre 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 to rival those of the Marxist parties. The Centre 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 – the Holy Roman Empire (including Austria) – had been split equally between Protestants and Catholics in
the religious settlement of the mid-16th 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 infuriated Bismarck for several reasons. It denied the validity of the treaties on which the 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. Strictly speaking, it was not a confessional party: it was not supported only by Catholics, and many Catholics did not support it.

Bismarck feared that this new party would gain support from Hanoverians, from Polish nationalists who were within the boundaries of the Reich, and from those who lived in the two provinces acquired from France, Alsace and Lorraine. He feared that the Centre 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 *Reichsteinde* – enemies of the Reich. Later they were joined by Poles, socialists and minorities of all kinds, but they were among the first on the list. In 1864 Pope Pius IX had published a “Syllabus of Errors”, diverging sharply from the outlook of the time. For him 1870 was a bad year. The Prussian war with, and then victory over, France in 1870 caused the withdrawal of French troops from Rome. That in turn
resulted in the Papal States becoming part of United Italy. For the first time since the fall of the Roman Empire, the Papacy lost temporal power in the Papal States in 1870. The Vatican Council proclaimed the doctrine of papal infallibility and recognised rigid papal authority over Catholics wherever they were. This “Ultramontanist”, as distinct from “Gallican”, doctrine, was controversial within Catholic circles. There were German Catholics who did not accept the Council’s and the Pope’s position. They were called the “Old Catholics”. They favoured the Church coming to terms with the new age, and opposed the adoption of unrealistic ultramontanist notions. The “Old Catholics” were small in number. But they were powerful in intellect. Initially they attracted significant support. Their greatest representative was Professor Döllinger of Munich, a friend of Gladstone. An English equivalent was Döllinger’s friend, Lord Acton. Döllinger refused to accept the Declaration of Infallibility. He summarised the doctrine, which he called “simple, concise and luminous”, 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”. Döllinger was excommunicated for his opposition, and dismissed from his academic post.

Bismarck came to believe that the Declaration of Papal Infallibility 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 of Papal Infallibility 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 of Infallibility 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. It was presented as a struggle between the modern age as reflected in the National Liberals and the Progressives and an earlier age – a struggle between large Protestant Prussia and small Catholic States – 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 claims of spiritual power and the individual conscience.

The 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. Ministers were not members of the Reichstag and were not answerable to it. Bismarck’s tenure of office depended on the favour of the Emperor – first Kaiser Wilhelm I, then Kaiser Friedrich
III, then Kaiser Wilhelm II – not 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. Bismarck was not the leader of any party. Hence he had to obtain support from changing blocs of parties in order to secure majorities in the Reichstag.

Bismarck, it seems, planned the *Kulturkampf* as a popular national crusade against what he saw as a principal enemy of the Reich. By it he sought to get Reichstag approval from the left-leaning National Liberals, Progressives and Radicals. He succeeded in getting that support. Indeed it was one of the Progressive deputies, a celebrated pathologist, Rudolf Virchow, who christened the battle the “*Kulturkampf*”, seeing 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.

A significant aspect of the *Kulturkampf* was a body of anti-Catholic laws. These were drafted by one of Bismarck’s Ministers, Adalbert Falk, an ardent anti-clerical rationalist, who wanted a complete separation of church and State. Under those laws, the Jesuits were expelled. Civil marriage was made compulsory. The Catholic Bureau in the Ministry of Education, which 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. Certain ecclesiastical sanctions were forbidden, or limited to German authorities. All ecclesiastical appointments were placed under State control – hardly a regime which 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 effects of these measures were not foreseen, and they were disastrous. Windhorst organised a campaign of passive resistance against the laws. Many priests refused to comply with the laws. Many priests, bishops and archbishops, and thousands of other Catholics, were jailed, or fined, and then jailed because the fines were not paid. Government refusal of consent to the appointment of priests led to over a thousand parishes being without a priest. Punitive measures against hard-working 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. Social divisiveness increased. Even Protestant conservatives turned against the government. Catholics as a class refused to recognise the validity of the legislation and openly rebelled against it. The Catholic Centre Party doubled its vote in the 1874 election.

Windhorst shrewdly pointed out the impotence of 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 led him to remark that the only path by which the State could succeed was to bring in the guillotine – if it dared.
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.”

Windhorst and the Centre Party vigorously opposed Bismarck’s policies. Windhorst described anti-Catholicism as the anti-Semitism of the intellectuals – that is, 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 which is growing truer today. Windhorst’s success was reflected in a large rise in the Centre’s Reichstag representation after the 1874 elections to 91 members. In 1887 it had 99 Reichstag members. The success of Windhorst’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 Windhorst; the one for love, the other for hate.”

By the time of the death of Pope Pius IX in 1878, Bismarck had had enough of the unrest which 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. In a fashion not entirely to Windhorst’s liking, Bismarck came to terms with the much more conciliatory and modern-minded Pope Leo XIII – the author of the famous liberal encyclical *Rerum Novarum* (1891). Most of the offending legislation was either not applied or repealed. Falk was dismissed.
The *Kulturkampf* had two paradoxical consequences.

The first is that while it was designed to weaken the Catholic Church, instead it strengthened it. Pope Pius IX had split the Church into two factions: the *Kulturkampf* reunited them against Bismarck. The *Kulturkampf* also attracted some non-Catholic support for the Catholic cause. Windhorst himself saw the campaign as defending the interests of all religions and all kinds of free thought.

The second paradox was that the Papacy, which had chosen to punish freedom of thought on the part of the Old Catholics, ended up 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 about the purpose of civil government, its relation to ecclesiastical authority, and 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, and to recreate the medieval conflicts between Guelph and Gibelline, and Empire and Papacy. It also led to ill-feeling among Catholics after the *Kulturkampf* had ended.

Windhorst 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.

Some people view history as a series of great symbolic scenes or tableaux. One example is the signing of the Treaty of Versailles in 1919. Another is the retirement of the ill and weak Emperor Charles V, supported by his son Phillip II on one side and William the Silent on the other – who then spent the next three decades on opposite sides of the Revolt of the Netherlands. Bismarck recalled one of those scenes on 14 May 1872. Bismarck proclaimed to the Reichstag: “Do not fear, we will not go to Canossa, either in body or spirit.” This was an allusion to one of the most dramatic scenes in the Middle Ages – and for German patriots, one of the most distressing. It took place during the “Investiture Controversy” about the Holy Roman Empire’s right to consent to and control ecclesiastical appointments, an issue which arose in another form in the *Kulturkampf*.

In the course of the Investiture Controversy, Pope Gregory VII forced the German Emperor Henry IV to come to Canossa, a north Italian town in the mountains, in winter, and to kneel in a white shroud and do penance for three days, shivering in the snow. Bismarck’s promise not to go to Canossa was greeted by prolonged cheering.

But in the end Bismarck did have to go to Canossa in spirit. 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 sent emollient presents to Bismarck, including a copy of his own Latin poems. Bismarck did not send in
return a copy of the speeches in which he had said he would not go to Canossa.

The strangest irony is that in 1890 two tableaux took place closing Bismarck’s career. They both took place at his Chancellery. In the first, he met his old foe Windhorst and conceded all or most of Windhorst’s demands in relation to ending the *Kulturkampf*. He did so in order to obtain the support of the Centre Party. But as Windhorst left Bismarck’s house, he said perceptively: “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 and demanded a meeting in half an hour. The aged Chancellor only just got dressed in time. Without being able to have breakfast, he met the Kaiser. After a great quarrel, the Kaiser dismissed Bismarck from office – after 28 years as Prussian Chancellor and 19 years as Imperial Chancellor – for negotiating with Windhorst behind the Emperor’s back.

Windhorst died in the following year. Bismarck lived another eight years, which he devoted to composing his 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 Liberals were the other great victim. The failure of their loathing for Catholicism caused a steady weakening in their electoral position.

I turn more briefly to the second German Catholic episode.
In 1933, shortly after coming to office, Hitler concluded a Concordat with the Papacy. He breached many of its terms in the next eight years. Many priests were arrested and imprisoned. Catholic lay organisations were closed down. This angered the Catholic Bishops. Then, in 1940, it became known that the Nazis were conducting an organised programme of compulsory euthanasia for those who mental or physical incapacities were incurable. A judge protested to Nazi officials. So did charity workers. And so did doctors, including the famous surgeon Sauerbruch. None of these private protests succeeded.

In 1941, at the height of Hitler’s apparent success and popularity, the programme of compulsory euthanasia continued and grew.

At that time the Catholic Bishop of Münster, who happened to be an aristocrat, was Graf Clemens von Galen.

On four consecutive Sundays he preached sermons attacking the government. The first three criticised the euthanasia programme, the occupation of church properties, and the expulsion of monks, nuns and lay brothers and sisters. The police attempted to intimidate the Bishop by imprisoning his sister, who was a nun. But this only angered him. In the fourth sermon, on 3 August 1941, the Bishop launched a much more intense attack on the Nazi programme.

He attacked the programme as “plain murder”. He said that human beings should not be treated as if they were old horses or cows. He demanded that those responsible be prosecuted on murder charges. He also pointed out that the programme 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 North Africa. Copies of that sermon were distributed throughout
Germany, and circulated among the soldiers at the front. The British
Broadcasting Corporation broadcast parts of the sermon to German
audiences. The Royal Air Force dropped translated copies of the
sermon over Occupied Europe. The Bishop, who expected martyrdom,
became an admired hero. What was the government reaction?
Himmler wanted him to be arrested. The local Gauleiter, Meyer, wanted
him to be hanged. So did Bormann. Goebbels, however, was an
unlikely advocate of mercy. 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 until he was placed in a
concentration camp after the bomb plot on 20 July 1944. The
euthanasia programme was terminated in 1941 and did not resume.

One lesson taught by the careers of Ludwig Windhorst and Bishop
von Galen is that minority interests and views, if effectively ventilated
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 but as a matter of practical power.

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 Catholic firms 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. There had been very few Catholic judges in New South Wales before the McGirr Government came into office in 1941; since then there have been many, including the great Sir Cyril Walsh.

But now there may be a new anti-Catholic movement, particularly among the intellectuals, if that is the correct word for journalists. To adapt Windhorst’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, and indeed to the life of the nation as a whole. The new anti-Catholicism may cause suffering, but it is suffering which may unify Catholics. It may bring other elements of society in behind Catholics, for its programme is more than anti-Catholic. Whether these desirable results flow depends on new Windhorsts and new von Galens. The hard question is: Where are they to be found?