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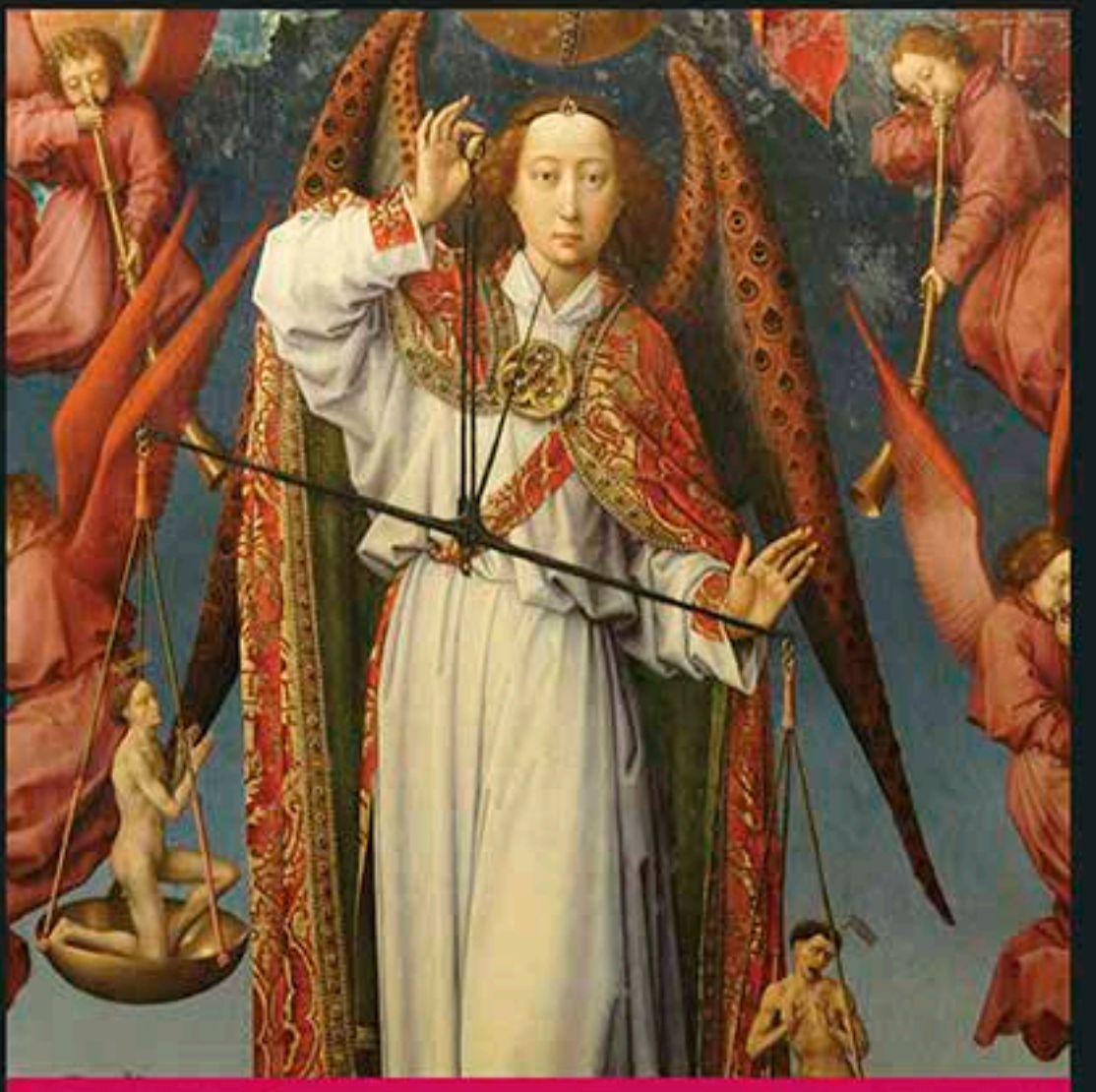
Law, theology, and religion in Australia



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Law, theology, and religion in Australia

Editorial

Issues relating to the law, theology, and religion in Australia have in recent years occupied a prominent place in Australian public discussion and scholarly debate. This is because they are perennially important issues in any modern western, pluralistic society where rule of law prevails, but it is also because such issues have been thrown into sharp relief in the wake of the Royal Commission into Institutional Abuse, the plebiscite over changes to marriage law for same-sex couples, and the recent Ruddock "Religious Freedom Review." This edition of *St Mark's Review* offers a contribution to these important discussions, in this case from the perspective of Australian legal scholars whose research interests bring these important spheres of Australian life—law, religion, and theology—into productive dialogue.

The first article, by Joel Harrison, offers a penetrating critique of contemporary Australian "public reason" requirements that religion "keep to its place" in the domain of private belief and stay out of the public square. Harrison shows that such "public reason" requirements rest on their own, often unsubstantiated, "thickly normative" and "even theological" traditions that assert how "politics, community, and the individual should be understood." After clearing away this "public reason detritus," Harrison considers questions about how theologians and political activists might engage with law and politics, as well as in critical self-examination. While some modes of discourse have tended to hinder fruitful engagement, Harrison notes others—such as rights discourse and constitutionalism—that can offer fruitful avenues for future dialogue.

Nicholas Aroney considers a longstanding and growing tendency in Australian life to seek to solve social ills through increased legislation and education. He contends, however, that these are limited and incomplete strategies, dealing with only beliefs and outlooks, or external actions. "Something more is needed," however, "if we are to be motivated to do what is best for ourselves, for our communities and for the world in which we live. This something more … is religion. Properly understood, religion offers something that mere law and mere education cannot. Religion penetrates to the heart. It motivates the will." The pathway to "the good society," Aroney concludes, is "law, education, *and* religion."

In the wake of the recent Royal Commission into Institutional Abuse, Mitchell Landrigan considers the "Ellis defence," a legal doctrine that, he argues, "has great significance for law and religion in Australia." The Ellis defence, although

legally orthodox, made it impossible to establish the Catholic Church's liability for offending priests; it also made it immensely difficult for victims of sexual abuse—such as John Ellis, who experienced child sexual abuse at the hands of a priest—to engage with the Church in seeking justice or redress. Landrigan draws out the profoundly negative implications of this legal doctrine for both victims of sexual abuse and the Church, drawing on recent Royal Commission findings and a recent decision in the Supreme Court of Victoria.

Like Aroney, Michael Quinlan reflects on the place of religion in law and Australian society, both historically and in recent decades. Quinlan notes recent societal shifts in Australia, especially in relation to increasing numbers of adherents to non-Christian religious traditions, non-religious beliefs, and identity politics. In dialogue with the recent work of English public intellectual Douglas Murray, Quinlan stresses the limits of "the law's ability to force people with such disparate viewpoints and beliefs to live together in relative harmony." Such harmony can only be achieved, contends Quinlan, "if people are willing to recognise and accept difference."

Keith Thompson engages with issues at the intersection of law and freedom of conscience and belief. Using the decision in a recent New South Wales Court of Appeal as a springboard, Thompson observes that although apex courts such as those of the United Kingdom and the United States have recognised that they do not always "have the skills to adjudicate cases that involve religious questions and accordingly defer to church autonomy," the Australian High Court has not been so reticent. This has left supreme and intermediate Australian courts of appeal little option but to follow suit. In such a context, Thompson argues, Australia's religious freedom record needs to be brought into step with international norms. Phillip Ruddock's recent "Religious Freedom Review", along with the Morrison's drive to implement a Religious Discrimination Act are, suggests Thompson, are important steps towards guiding the judiciary "in more respectful engagement with religious issues that arise in the civil courts in the future."

Finally, Neil Foster explores questions relating to hermeneutics, locating points of contact between legal/statutory interpretation and biblical interpretation. The task of interpretation is common to courts and pastors alike, observes Foster, and is "something that can be tested and approved by well-known rules and principles." Moreover, both legal and biblical interpreters have a concept of an ancient text that "still speaks," whether that is the Australian Constitution or

the Bible. The various "rules and principles" of legal and biblical hermeneutics are the focus of Foster's article.

Before going further, however, a caveat is in order. It will be apparent from a casual glance at the table of contents that all contributors to this issue are men. It should be noted that this due neither to design nor oversight. A number of women in the field were also approached, but for various reasons none was able to contribute to this issue.

Taken together, the following articles provide substantial and incisive reflection on pressing legal, religious, and theological issues for Australians, whether those relate to issues of religious freedom and conscience, the vital importance of religious voices in the public square, Australian churches' use of the law to address their own grave abuses and moral failures, or the significant limitations of the law and courts for addressing the complex social issues that contemporary Australian society faces. These articles also offer a model for how thinking about the relationship between law, theology, and religion might be done with creativity, thoughtfulness, and rigour. I commend these articles to the readers of *St Mark's Review.*

Michael Gladwin
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