

**LAW, EDUCATION AND RELIGION —  
PATHWAYS TO THE GOOD SOCIETY?\***

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**I. INTRODUCTION**

Australia's terrible bushfires have revealed the best and worst in people. While there have been many inspiring stories of tremendous courage, resourcefulness and generosity, there has also been a great deal of carping, squabbling and scapegoating. Much of the overheated debate has been about the causes of the fires. To what extent should we attribute responsibility to climate change, to high temperatures, to driving winds, to prolonged drought, to excessive fuel loads, or to arson and negligence? A great deal of the criticism was initially directed at the Australian Prime Minister, Scott Morrison, who was on an overseas family holiday when the fires first broke out, and was widely portrayed as being on the back foot as a result.

Amidst the recriminations, many varied solutions have been proposed: more action on climate change; fewer restrictions on hazard reduction; more education so that members of the community can better understand the nature of bushfires and what needs to be done to reduce their prevalence and severity; improved surveillance and policing focused on the prevention and detection of arson. None of these ideas are especially new. After the catastrophic 'Black Saturday' fires of 7 February 2009, which took 173 lives, the Victorian Government initiated an inquiry which delivered 67 recommendations calling for improved

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policies, revised legislative frameworks, and better public education.<sup>1</sup> Similar inquiries, with their own suite of recommendations, will undoubtedly come in the wake of the horrific bushfires of 2019-2020.<sup>2</sup>

These sorts of recommendations—calling for better policies, revised legislation, enhanced policing and improved education—all make sense, and it is not my intention to address them specifically. My intention rather is to draw attention to a particular quality they have in common. They all call for more government action, and they all call for better education. They illustrate a recurrent feature of our public discourse. When calamity strikes the best and only solutions we can imagine are more laws and better education. We turn to ‘law’ whenever we say that the government must ‘do something’—by undertaking an enquiry, enacting a law, appointing a regulator, and spending money on the problem. And we turn to ‘education’ when say that what is needed is more teachers, improved teacher training, better resources, more funding, some sort of advertising campaign, and so on. We think that through more laws and policies, and through better education, we can solve social and environmental problems and thereby build a better society and a healthier environment.

But despite all this extraordinary effort, lingering doubts remain. How much have we learned from the 51 bushfire inquiries and 1727 recommendations that have been proposed since 1939?<sup>3</sup> Australia is an ancient land that has always had its fires. The seeds of many Australian plants and trees need fire in order to germinate. Australia’s indigenous peoples have long recognised that responsible use of fire is the best way to manage and steward the land. But despite our familiarity with bushfires and the many inquiries, recommendations,

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<sup>1</sup> Victorian Bushfires Royal Commission, *Final Report* (2010).

<sup>2</sup> Inspector-General for Emergency Management (Victoria), *Inquiry into the 2019-20 Victorian Fire Season* <<https://www.igem.vic.gov.au/fire-season-inquiry>>.

<sup>3</sup> Michael Eburn, David Hudson, Ignatious Cha and Stephen Dovers, ‘Learning from adversity: what has 75 years of bushfire inquiries (1939-2013) taught us?’, Proceedings of the Research Forum at the Bushfire and Natural Hazards CRC & AFAC Conference, Wellington, 2 September 2014.

policies and regulations we have implemented, catastrophic fires still occur, serious mistakes are still made, and a distressingly large number of individuals deliberately light fires, or carelessly allow them to start, heedless of the havoc and destruction they leave in their wake.

Our response to bushfires is symbolic of our responses to the many other social and environmental problems we face as societies and the solutions we implement to fix them. Law, policies and regulation; education, training and information—these seem to express the limits of our political imagination. And yet, there is always a new problem to be addressed. Our solutions often seem to make little if any difference, and sometimes they make the matter worse. But as the problems pile up, we persist with the same solutions, and this is the result: our law books become bloated, our legal systems are overloaded, our school teachers are stressed, and our education systems are placed under increasing strain. More and more is expected of our teachers, our police officers, and our government regulators. But it is not clear that the root causes of our problems are ever addressed.

Education appears to be a promising way to solve social problems because it is more about prevention than cure. Law, by comparison, seems like a strategy of last resort. It defines what is legal and illegal, and the regulators are there to make sure you obey. If you break the law you will be punished by fines or imprisonment. Education strikes us as more effective than law because it has the capacity to shape and form our mindsets and mentalities, the idea being that a person who understands the consequences of his actions will think before acting. In this way, education deals with our beliefs and our outlooks. Law can only direct and respond to our external actions.

But even education is a limited and incomplete strategy. If law is inadequate because it can only deal with our external actions, education is deficient because it can only inform our minds and fill our heads with information. Something more is needed 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, I argue, is religion. Properly understood, religion offers something that mere law and mere education cannot. Religion penetrates to the heart. It motivates the will. There are not only two, but rather three pathways to the good society: law, education *and* religion.

Before making this argument, some preliminary definitions and distinctions are in order. For conceived in a certain way, law, education and religion might turn out to be different words for what is essentially the same thing. This is in part because law has an educative effect. It not only commands and prohibits; it also pronounces a view of what ought to be done and what ought not to be done. Law therefore reflects fundamental beliefs about human nature and human good—beliefs that look a lot like religious faith, even if we don't usually think of them as specifically religious. Likewise, education—the practical task of educating students in a school or a university—requires the formulation and implementation of law-like rules; and education, like law and religion, reflects certain fundamental beliefs about human nature and human flourishing. Even religion, conceived in itself, involves law-like codes of moral conduct, and religious practice usually includes efforts to teach or educate people about fundamental truths, such as truths about human nature and human good. Law, education and religion therefore seem to overlap, and we might wonder whether they are really only different words to designate distinguishable aspects of what is essentially the same thing. Considered from an alternative perspective, however, it might also be possible to argue that law, education and religion are very different things that offer quite distinct approaches to addressing our problems and making human life better. Law, we could say, deals only with external actions. Education informs the mind. Religion shapes the will. Viewed in this way, law, education and religion seem to be very different pathways to the moral formation of human beings and the building of a good society.

In the remainder of this article I will develop these ideas by beginning with definitions of law, education and religion that take this second track—which suggest that law, education and religion are different things, even though they might each make important contributions to the good society. I will first define law, then education, and finally religion. In doing so, I will use each definition to explore the particular ways in which law, education and religion can contribute to the good society. But having done that, I will seek to show how, when viewed from the perspective of religion, the three concepts can be redefined and reconsidered in a broader and deeper way so that they in fact overlap, inform and shape each other. My suggestion will be that it is only when viewed from the perspective of religion that can we see what the point of law and education might really be. The things that law and education can contribute to the formation of a good society are dependent upon law and education doing what they alone can do best, but in a manner which ensures that they do not attempt to do what only religion can do best, and that they leave room for religion to perform its unique function within society.

## II. LAW

There are two major contending approaches to the definition of law in contemporary legal theory. The first approach, popularised by Jeremy Bentham and especially John Austin in the late eighteenth and early nineteenth centuries, defines law as the command of a sovereign.<sup>4</sup> On this view law is an expression of the will of the governing authorities. Whatever they command that we should do or refrain from doing *is* the law. Law is what they require us to do, by commanding that we do it and punishing us if we don't. The law is effective because people obey it, and people obey it—ultimately—because they don't want to be punished for

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<sup>4</sup> Jeremy Bentham, *On Laws in General*, HLA Hart (ed) (London: Athlone Press, 1970); John Austin, *The Province of Jurisprudence Determined*, Wilfrid E. Rumble (ed) (Cambridge University Press, 1995). I deliberately pass over the important contribution of HLA Hart in his highly influential *The Concept of Law* (Clarendon Press, 1961), who was highly critical of the 'command' theory of law but defended the thesis that law can be separated conceptually from morality.

disobedience. The law is effective because the state is sovereign, and it is sovereign because it has the power to enforce its law, and people are in the habit of obeying the law because they are afraid of its sanctions. They are afraid of being punished.

This is a pretty depressing definition of law. The renowned American jurist, Oliver Wendell Holmes Jnr, thought it implies what might be called a ‘bad man’ theory of law.<sup>5</sup> It suggests a theory of the law seen from the point of view of the person who does not obey the law because it’s the right thing to do, but only because that person fears being punished for disobedience. I draw attention to this definition, not because I ultimately agree with it, but because it puts into stark perspective what law is capable of doing at its lowest common denominator. Law places a restraint on ‘bad’ people. Or perhaps more accurately: law places a restraint on us all, recognising that in some sense we are all bad people, we are all capable of doing bad things.<sup>6</sup>

Viewed in this way, law can do significant good, but only in a negative sense: it frightens us from doing bad things. And it is good that bad things don’t happen. But viewed in this way, law doesn’t seem to be able to do a lot of good in a positive sense. It is hard to imagine how it can make us do good things. Or more precisely: it might coerce us into saying certain things and performing certain actions that appear to be good externally considered, but it can hardly determine the content of our internal beliefs, dispositions, attitudes and motives. It can only compel behaviour in the form of a command that identifies what is to be done and what is not to be done. And if a lawmaker wants to eradicate bad behaviour entirely this must be done in increasingly specific detail. The law must command exactly what is to

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<sup>5</sup> Holmes, ‘The Path of the Law’ (1997) 110 *Harvard Law Review* 991 (an address delivered by Justice Holmes on 8 January 1897).

<sup>6</sup> For a recent discussion of the role of law in a world populated by individuals with different levels of awareness of their ethical and unethical behaviour, see Yuval Feldman, *The law of good people: Challenging states' ability to regulate human behavior* (Cambridge University Press, 2018).

be done and exactly what is not to be done, and it must do so in every significant domain of human life. Without the necessary internal dispositions to support obedience to law, a bad person—which is to say, all of us, in a certain sense—will only do exactly as the law requires, in accordance with what we anticipate the police will actively enforce—and no more than that.

Viewed from this perspective, law is inherently limited in what it can achieve. However, when we forget law's inherent limitations, when we try to use it to create a comprehensively good society, composed of truly good people, the consequence is this: the enactment of more and more law, which stipulates in more and more detail, exactly what must be done and exactly what must not be done, together with more and more government agencies tasked with regulating our behaviour and punishing us when we disobey. As Jonathan Sumption, a former Justice of the UK Supreme Court, has observed, we live in an age of 'unbounded confidence in the value and efficacy of law as an engine of social and moral improvement'.<sup>7</sup>

Our law books demonstrate the extent to which we have over-optimistic expectations of law and its efficacy. I venture there is not a country in the modern western world that has not experienced a tremendous proliferation of laws and regulations enacted by its legislature and executive year after year.<sup>8</sup> Take Australia as an example. Michael McHugh, a former Justice of the High Court of Australia, has observed that while in 1973 the Australian Parliament enacted 1,624 pages of statutes, in 1991 that yearly figure had increased to 6,905

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<sup>7</sup> Lord Sumption, 'The Limits of Law' in N W Barber, Richard Ekins and Paul Yowell (eds), *Lord Sumption and the Limits of the Law* (Hart Publishing, 1 ed, 2016) 15, 16.

<sup>8</sup> Sumption observes that in the decade from 1997 to 2007, more than 3,000 new criminal or regulatory offences were added to the British statute book. Criminal offences, he says, 'appear like mushrooms after every rainstorm': *ibid* 16.

pages.<sup>9</sup> According to another study, in the first decade after federation, Parliament enacted a total of around 1000 pages of legislation. However, in the decade of the 1990s the total was over 54,000 pages.<sup>10</sup> Yet another recent study has estimated that for every page of legislation there are another eight pages of government agency documentation.<sup>11</sup> If we can extrapolate, that comes to something like 486,000 pages of laws, regulations and policies. If you don't believe me, just read the Australian *Income Tax Assessment Act*—all 11 volumes of it! No lawyer or accountant can really keep up with it. And nor can the ordinary citizen.

Now I said that there were two major approaches to the definition of law. The second definition is very different. It maintains that morality and justice are intrinsic to the very nature of law. Law is not merely the command of a sovereign. As Augustine of Hippo pointed out long ago, an unjust law would seem to be no law at all.<sup>12</sup> Thomas Aquinas put it this way: law is an ordinance of right reason directed to the common good.<sup>13</sup> On this view, our understanding of the nature, function and effectiveness of law will not altogether depend on the crabbed and miserly attitudes of the 'bad man', who only does exactly what the law requires and not an iota more. Because morality and justice are inherent in the nature of law, the law itself identifies the good purposes it seeks to achieve. This means, in principle, that the law need not spell out in excruciating detail every single thing that is to be done and every single thing that is not to be done. It can rely on an understanding that its rules are there for

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<sup>9</sup> Michael McHugh, 'The Growth of Legislation and Litigation' (1995) 69(1) *Australian Law Journal* 37.

<sup>10</sup> *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (Australian Government, 2006) 5.

<sup>11</sup> Kurt Wallace, *Regulatory Dark Matter* (Institute for Public Affairs, 2019) 3-4.

<sup>12</sup> *De libero arbitrio*, I.5.11, in Augustine, *The Teacher; The Free Choice of the Will; Grace and Free Will*, The Fathers of the Church (Catholic University of America Press, 2010).

<sup>13</sup> *Summa Theologiae*, I-II, 90.4, in Thomas Aquinas, *Summa Theologiae* (Fathers of the English Dominican Province trans, Burns & Oates, 1947-48).



good reasons which any rational person can comprehend.<sup>14</sup> This does not mean that a bad person will obey the law in accordance with its spirit and intent. Bad people will still seek to circumvent and avoid the law when it suits them. But it does mean that ‘good’ people—which is to say, potentially all of us—will not need the law to spell out exactly what is to be done and what is not to be done in every possible situation. Rather, good people will understand the good reasons for the law and conform their behaviour to it.<sup>15</sup> Consider the simplicity of the Ten Commandments.<sup>16</sup> Only ten rules! A genuinely good person probably doesn’t need much more guidance than this. Consider the two greatest commandments: love of God and love of one’s neighbour.<sup>17</sup> A perfectly good person needs nothing more. What a far cry from the reams and reams of legislation enacted by our parliaments every year. Oliver O’Donovan once used a phrase that aptly describes this phenomenon. He called it an ‘incessant stream of lawmaking’.<sup>18</sup>

### III. EDUCATION

Is all this lawmaking really necessary to create a good society? Or are we expecting too much of the law? And so, as a nation, we turn to education. We do this because we recognise that law is not enough. Bad people—which is to say, in a certain sense, all of us—will always find ways to circumvent the law. Merely increasing the volume and reach of the law does not address the underlying problem. In fact, the weight of law places a burden on good people

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<sup>14</sup> John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980) 318: ‘The law anticipates and seeks to capitalize upon, indeed to absorb and take over, the “good citizen’s” schema of practical reasoning, and to give it an unquestioned or dogmatic status.’

<sup>15</sup> Plato put this pithily when he observed that ‘[l]aws are partly framed for the sake of good men, in order to instruct them how they may live on friendly terms with one another, and partly for the sake of those who refuse to be instructed, whose spirit cannot be subdued, or softened, or hindered from plunging into evil’: Plato, *Laws* (Benjamin Jowett trans, Andrews UK, 2012) Bk IX, 880d-e (Athenian Stranger).

<sup>16</sup> *Exodus* 20:2-17; *Deuteronomy* 5:6-21.

<sup>17</sup> *Matthew* 22:35-40.

<sup>18</sup> Oliver O’Donovan, ‘Government as Judgment’, *First Things*, April 1999.

that often gets in the way of their efforts to do good things.<sup>19</sup> And so we realise that we would be better off as a society if we could only generate good, or at least better, people. And in our social imagination the most obvious instrument to achieve this is education.

But again, we encounter the problem of definition. What is education? Again at the risk of oversimplification, I propose we consider the implications of two views. The first view sees education as primarily concerned with the transmission of knowledge and the development of skills. This is a pragmatic or instrumental view of education. The goal of education is to fill children's heads with facts and equip their hands with practical skills. Education exists to train the next generation of workers. Its focus is on the particular role each person will perform within our society. On this view, education becomes more and more specialised, more and more vocationally oriented. Thus, by the time children are teenagers, we are already expecting them to decide their chosen vocation, and to select the subjects they will study at school accordingly. And then we send them off to college or university to study accounting, engineering, marketing, or law. And in Australia especially (unlike the United States), our society actively discourages students from pursuing a generic liberal arts education. We ask them: what will be your job when you graduate?

Now, it is not as if this vocational orientation doesn't have its advantages. Occupational specialisation enables a division of labour in which each person contributes to the good of society through the application of their particular knowledge and skills. We are all better off as a result.<sup>20</sup> But if that is all that education is about, then it doesn't grapple with

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<sup>19</sup> The matter is more complex than this, of course. For a discussion of the various grounds on which people comply with the law, see Jonathan Jackson et al, 'Why do People Comply with the Law? Legitimacy and the Influence of Legal Institutions' (2012) 52(6) *British Journal of Criminology* 1051, building on Tom R Tyler, *Why people obey the law* (Princeton University Press, 2006).

<sup>20</sup> This seems to be the underlying perspective of the recent *Report of the Review to Achieve Educational Excellence in Australian Schools* (Canberra: Commonwealth of Australia, March 2018), chaired by David Gonski.

the problem we identified earlier. It doesn't necessarily produce good people. It merely produces people who are clever and skilful. Being clever and skilful is good, as long as it is accompanied by good character. Without good character, being clever and skilful can be downright dangerous.

This problem goes very deep. Take this commonplace belief: the better educated you are, or the more intelligent you are, the more likely you are to form your views on the basis of well-established evidence and careful logical reasoning. And consider also the corollary: the more ignorant, the less intelligent, the more poorly educated you are, the more likely you are to be driven by emotion, prejudice, superstition, and dogma. These are a widely shared views. However, the cognitive and behavioural science literature suggests this is simply not the case. Rather, as one author put it, 'those who are highly educated, intelligent or rhetorically skilled tend to be significantly less likely than most to revise their beliefs or adjust their positions when confronted with evidence or arguments that contradict their priors.'<sup>21</sup>

This is a curious—even shocking—finding. How could it be so? What could possibly explain it? One plausible explanation is this: clever, well-educated people are better skilled at responding to uncomfortable facts and challenging arguments.<sup>22</sup> Such people are in a position to apply their highly refined critical abilities to scrutinise others and their beliefs, rather than themselves and their own beliefs.<sup>23</sup> This is something that particularly applies to academics

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<sup>21</sup> Musa al-Gharbi, 'Academic and Political Elitism', *Inside Higher Ed*, 27 August 2019.

<sup>22</sup> Milton Lodge and Charles S Taber, 'The Automaticity of Affect for Political Leaders, Groups, and Issues: An Experimental Test of the Hot Cognition Hypothesis' (2005) 26(3) *Political Psychology* 455, 476-7; Charles S Taber and Milton Lodge, 'Motivated Skepticism in the Evaluation of Political Beliefs' (2006) 50(3) *American Journal of Political Science* 755, 760-65.

<sup>23</sup> Bruno Latour, 'Why Has Critique Run out of Steam? From Matters of Fact to Matters of Concern' (2004) 30(2) *Critical Inquiry* 225, 237-43. While all of us tend to attribute bias to others more than ourselves, this tendency appears to be greater among those with higher cognitive ability: Richard F West, Russell J Meserve and Keith E Stanovich, 'Cognitive Sophistication Does Not Attenuate the Bias Blind Spot' (2012) 103 *Journal of Personality and Social Psychology* 506.

(like me). Despite all our critical abilities, it seems that we academics tend to be more ideological, more ideologically rigid and more ideologically extreme in our beliefs.<sup>24</sup> The literature also suggests that we are more likely to form our positions on issues, or even change our positions on issues, based on one-sided, partisan cues of what we're supposed to think based on our political allegiances—to the left or to the right.<sup>25</sup> It also appears that we are more prejudiced, at least against those who hold views different to our own.<sup>26</sup> While highly educated people may be well versed about contemporary political gossip, dramas and scandals, they are not necessarily better informed about substantive facts about the world outside their fields of expertise. There is evidence to suggest that the level of knowledge about political matters has not appreciably increased over time notwithstanding massive increases in educational attainment and unprecedented expansion in the quantity and quality of information available to the public generally.<sup>27</sup>

This is not a very flattering self-portrait. As Alasdair MacIntyre once observed: 'a surprising number of the major disorders of the latter part of the twentieth century and of the first decade of the twenty-first century have been brought about by some of the most

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<sup>24</sup> Indeed, the more educated we are, the more we know about politics, and the more we are politically engaged, the less likely it is that we will encounter the articulation of contrary political views in our daily lives: Diana C Mutz, *Hearing the Other Side: Deliberative versus Participatory Democracy* (Cambridge University Press, 2006) 30-33. Further, those who are inclined to reflect most deeply about issues are more likely to engage in ideologically motivated reasoning: Dan M Kahan, 'Ideology, motivated reasoning, and cognitive reflection' (2013) 8(4) *Judgment and Decision Making* 407.

<sup>25</sup> Bert Bakker, Yphtach Lelkes and Ariel Malka, 'Understanding Partisan Cue Receptivity: Tests of Predictions from the Bounded Rationality and Expressive Utility Perspectives' (2020) 82(3) *The Journal of Politics* 1061.

<sup>26</sup> P J Henry and Jaime L Napier, 'Education is Related to Greater Ideological Prejudice' (2017) 81(4) *Public Opinion Quarterly* 930; Toon Kuppens et al, 'Educationism and the irony of meritocracy: Negative attitudes of higher educated people towards the less educated' (2018) 76 *Journal of Experimental Social Psychology* 429.

<sup>27</sup> Ilya Somin, *Democracy and political ignorance: Why smaller government is smarter* (Stanford University Press, 2013) 20.

distinguished graduates of some of the most distinguished universities in the world'.<sup>28</sup> How could this be so? And what could possibly be done about it? Perhaps the answer lies in *better* education. And so emerges a second view, which sees education as primarily directed to the formation of good character.<sup>29</sup> Education, on this view, is not essentially about the acquisition of knowledge and skills. Rather, it is about the inculcation of wisdom and virtue. It is about the formation of good habits. It is about the qualities of honesty, integrity, self-discipline and generosity. It also involves the development of intellectual virtues such as curiosity, attentiveness, fair-mindedness, honesty, humility, imaginativeness, courage and perseverance.<sup>30</sup> As Werner Jaeger said of Socrates' teaching: 'Education is not the cultivation of certain branches of knowledge ... The real essence of education is that it enables men to reach the true aim of their lives.'<sup>31</sup> True education is about the pursuit of the good, the true and the beautiful. It is about the care and perfection of the soul.<sup>32</sup> It means 'deliberately moulding human character in accordance with an ideal'.<sup>33</sup>

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<sup>28</sup> Alasdair MacIntyre, 'The Very Idea of a University: Aristotle, Newman and Us' (2010) 91 *New Blackfriars* 4, 17.

<sup>29</sup> For a contemporary discussion and defence of this approach, see Kristján Kristjánsson, 'Ten Myths About Character, Virtue and Virtue Education – Plus Three Well-Founded Misgivings' (2013) 61(3) *British Journal of Educational Studies* 269.

<sup>30</sup> Jason Baehr, *The Inquiring Mind: On Intellectual Virtues and Virtue Epistemology* (Oxford University Press, 2011) 21-22. See also Robert Campbell Roberts and W Jay Wood, *Intellectual virtues: An essay in regulative epistemology* (Clarendon Press, 2007). See also Aristotle, *Nicomachean Ethics*, Bk VI, 1139b15-1143b and Thomas Aquinas, *Summa Theologica*, I-II, 57-58.

<sup>31</sup> Werner Jaeger, *Paideia: The Ideals of Greek Culture, Volume II: In Search of the Divine Centre*, Gilbert Highet trans (Oxford: Oxford University Press, 1943) 69.

<sup>32</sup> Plato, *Apology*, 29e.

<sup>33</sup> Werner Jaeger, *Paideia: The Ideals of Greek Culture, Volume I: Archaic Greece – The Mind of Athens*, Gilbert Highet trans (2nd ed; Oxford: Oxford University Press, 1945) xxii. For a wonderful anthology of writings on the tradition of classical educational philosophy, see Richard Gamble (ed), *The Great Tradition: Classic Readings On What it Means to be an Educated Human Being* (Wilmington: ISI Books, 2007).

A recent report initiated by the New South Wales government has underscored the importance of character.<sup>34</sup> The report observes that there has been a decline in institutions such as the family (and, we might add, the church) that once played a key role in developing character.<sup>35</sup> In this context, submissions to the review proposed that there should be a focus on ‘the building of character’ and that ‘the development of personal attributes—including students’ mindsets, values, attitudes and dispositions’ are among the most important outcomes of the education process, perhaps even more important than the development of knowledge and skills.<sup>36</sup> The submissions argued that the building of character requires ‘the development of moral and ethical understanding’ and the ability ‘to make judgements of value and worth, to know the difference between right and wrong, and to make ethical decisions for the common good’.<sup>37</sup>

This, of course, sounds very good. But notice the language. The key attributes that we need to instil in our students are said to be more knowledge, deeper understanding and greater discernment. But is that quite right? Plato taught that this kind of education—an education for character—requires a *conversion* of the soul.<sup>38</sup> Our minds, he said, need to be redirected from their preoccupation with mere appearances to an understanding of the deeper, underlying

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<sup>34</sup> *Nurturing Wonder and Igniting Passion: Designs for a future school curriculum (NSW Curriculum Review, Interim Report* (NSW Education Standards Authority, October 2019).

<sup>35</sup> Ibid 4.

<sup>36</sup> Ibid 14.

<sup>37</sup> Ibid 15. See, similarly, *Report of the Review to Achieve Educational Excellence in Australian Schools* (Canberra: Commonwealth of Australia, March 2018) 129, defining the ‘knowledge, skills and dispositions’ considered necessary to enable students to live and work successfully in the 21<sup>st</sup> century as including ‘personal and social capability’ and ‘ethical understanding’.

<sup>38</sup> Plato, *Republic*, Bk VII, 518b-d. Plato illustrated this in his famous allegory of the cave, in which those accustomed all their lives to living the murky shadows of the cave, are finally released from their intellectual bondage through their escape into the outside world where, if they will just look up, they will be able to see the source of all light, the sun.

reality of things—the true, the beautiful and the good. This requires a kind of self-examination. For, as Socrates put it, ‘the unexamined life is not worth living’.<sup>39</sup>

But in what does this conversion consist? For Plato and Socrates, it involves the illumination of the soul. Knowledge is the solution to our problems because our essential problem is ignorance. Our salvation lies in enlightenment. No one, on this view, willingly does what is evil. By nature, Socrates taught, human beings pursue that which they consider to be good. Evil occurs, he said, because we are ignorant of the truly good, and so we pursue that which is evil, mistaking it for good. And so the remedy lies in acquiring knowledge.<sup>40</sup>

A lot of modern education is premised on this idea. We think that if we give children more knowledge and better understanding, they will embrace what is good, and pursue it. But is this true to reality? Think again of that class of people who are the most educated in our society—people with PhDs, people who hold academic positions at universities. Do these people live in a manner that is more virtuous than the less well-educated? I doubt it. Indeed, it’s quite possible that these people are more inclined to overestimate their virtues and underestimate their vices. Why might this be so? St Augustine of Hippo had a word for it. He called it Pride.

And so we come to religion.

#### IV. RELIGION

As with law and education, it is possible to distinguish two approaches to religion. The first is exemplified in definitions of religion often used in contemporary anthropology, sociology, politics and law. In these disciplines we encounter attempts to develop generic definitions of religion that are sufficiently *inclusive*—so as not to exclude any particular religion that

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<sup>39</sup> Plato, *Apology*, 28b, 38a.

<sup>40</sup> Plato, *Protagoras*, 352c, 358b-d.

should be included—and yet sufficiently *incisive*—so as to identify those features that are specifically characteristic of religion and do not include philosophical beliefs or social practices that lack the features that make religion what it is. The purpose, in other words, is to develop a definition that is objective and neutral as between different religions.<sup>41</sup> Yet a fundamental problem remains. There doesn't seem to be a way to define what is and isn't religion without adopting a particular theoretical point of view which is likely to be as controversial as any particular religious standpoint.<sup>42</sup>

The idea that there is a thing which we call 'religion' in this sense is a modern invention. And it is associated with an attempt to replace what (are now called) religious interpretations of reality with secular ones. As John Milbank has observed, sociology uses the 'category of the social to explain, reduce or redefine all religious phenomena'. But it is only able to do so 'to the extent that it conceals its own theological borrowings and its own quasi-religious status'.<sup>43</sup> The corralling of religion within the theoretical confines of secular thought-forms is thus part of an attempt to confine religion to the private and the personal, limiting or prohibiting its influence in public and social life.<sup>44</sup> This is exemplified to an extent in the provision of the Australian Constitution which prohibits the Commonwealth from making any law for the establishment of any religion or for the prohibition of the free exercise thereof (section 116). Under this provision, the extent to which religion is excluded from public expression while also protected in private expression depends on how the key terms are defined: 'religion', 'establishment' and 'free exercise'. In Australia, religion has been defined as involving belief in a supernatural being, thing or principle; acceptance of canons of

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<sup>41</sup> See, eg, Emile Durkheim, *The Elementary Forms of the Religious Life* (Joseph Ward Swain trans, George Allan & Unwin, 1915) 4-5.

<sup>42</sup> Eg, *ibid* 9-20.

<sup>43</sup> John Milbank, *Theology and social theory* (Blackwell, 2nd ed, 2006) 52.

<sup>44</sup> *Ibid* 106, 110.



conduct giving effect to that belief; and the existence of an identifiable group of people who adhere to those beliefs and practices.<sup>45</sup> Notice that this definition comes close to treating religion as if it ultimately boils down to a special kind of education (instruction in a set of beliefs) and a special kind of law (adherence to particular canons of conduct). Compared with interpretations of the similarly worded First Amendment to the United States Constitution, the meaning attributed to the Australian provision has been less prohibitive of public establishments of religion while also being less protective of private expressions of religion.<sup>46</sup> In the field of antidiscrimination law we see a similar tension. Prohibitions on discrimination on the basis of various grounds (including religion) are strongest in relation to decisions of government departments and agencies, but non-existent in relation to the most personal or private of decisions, such as one's choice of life partner and the arrangement of one's domestic affairs. In the middle ground are the most difficult areas: employment and the provision of goods and services, especially when the organisation providing the employment or the goods and services is itself religious, such as religious charities and religious schools.<sup>47</sup> The line to be drawn between the 'public' and the 'private' in these particular contexts is inherently controversial.

But before addressing these difficult questions about the lines to be drawn between freedom of religion and rights to equal treatment, it is important for us to grapple with a second, very different approach to conceiving religion. This second approach focusses on the much older term *religio*, conceived not as a system of beliefs and practices, but as a personal virtue or

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<sup>45</sup> *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120.

<sup>46</sup> *Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth* (1943) 67 CLR 116; *Attorney-General (Vic); Ex rel Black v Commonwealth* (1981) 146 CLR 559.

<sup>47</sup> Philip Ruddock et al, *Religious Freedom Review: Report of the Expert Panel* (Commonwealth of Australia, 2018).

quality of character.<sup>48</sup> As traditionally understood, *religio* is a moral virtue; more specifically, it is a particular aspect of the moral virtue of justice; it is the particular virtue by which due honour or reverence is given to God.<sup>49</sup> It is distinct from the theological virtues of faith, hope and love, but closely associated with them.<sup>50</sup> As Thomas Aquinas put it, *religio* is a special virtue, distinct from all the others, because it involves giving due honour to God, who ‘infinitely surpasses all things and exceeds them in every way’.<sup>51</sup>

This is, of course, a particular understanding of religion, officially Roman Catholic but with roots in earlier Latin usage.<sup>52</sup> However, it is not at all clear that ostensibly neutral, ‘secular’ theories are any better at approaching the question of ‘religion’ than the perspectives of particular religions.<sup>53</sup> Indeed, there is reason to think that people of religious disposition are sometimes much better at understanding, empathising with and accommodating other religions than those who claim to be secular in their beliefs.<sup>54</sup> A recent study has shown that, contrary to expectation, Western democracies, despite their secularism, engage in *more* government-based religious discrimination than many countries of Asia, sub-Saharan Africa and Latin America—particularly many of the Christian-majority countries of those regions.<sup>55</sup>

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<sup>48</sup> Peter Harrison, *The territories of science and religion* (University of Chicago Press, 2015), ch 1.

<sup>49</sup> Aquinas, *Summa Theologica* II-II.81.2; *Catechism of the Catholic Church*, §1807.

<sup>50</sup> *Catechism of the Catholic Church*, §2095.

<sup>51</sup> Aquinas, *Summa Theologica* II-II.81.4; see also II-II.81.6.

<sup>52</sup> René Gothóni, 'Religio and Superstitio Reconsidered' (1994) 21(1) *Archive for the Psychology of Religion* 37, 40: '[f]or Cicero, *religio* was the positive counterpart to *superstitio*, because *religio* was a virtue, *superstitio* a vice', citing Cicero, *De Inventione*, II.165; *De Natura Deorum*, I.117-118.

<sup>53</sup> William Connolly, *Why I Am Not a Secularist* (University of Minnesota Press, 1999) ch 1.

<sup>54</sup> For a discussion of this theme, from a Christian point of view, see John Milbank, 'Shari'a and the True Basis of Group Rights: Islam, the West and Liberalism' in Rex Ahdar and Nicholas Aroney (eds), *Shari'a in the West* (Oxford University Press, 2010) 135, 138-9.

<sup>55</sup> Jonathan Fox, *Thou shalt have no other gods before me: Why governments discriminate against religious minorities* (Cambridge University Press, 2020) 4, 162, 230, 237.

Understanding religion as *religio*—as a virtue, rather than a collection of beliefs—brings it into conversation with approaches to education aimed at the development of character. Socrates and Plato, as has been seen, recognised that the development of good character requires a conversion of the soul. But they also thought that the central problem to be a deficiency of the mind, not a defect of the will. Augustine begged to differ. For him, ‘true religion’ (*uera religio*), which he associated with ‘correct piety’ (*recta pietas*) and the appropriate ‘service due to God’ (*Deo debita seruitus*), is something rendered both outwardly and inwardly, and both corporately and individually, in acts of praise, devotion, sacrifice and love.<sup>56</sup> True religion consists in us being united with God, for it is in this true union with God that the soul is ‘filled and impregnated with true virtues’.<sup>57</sup> But for this to be the case, Augustine believed that true *religio* requires a conversion of the soul that goes further than anything Socrates or Plato imagined. Augustine put it this way (with a delightful play on words):

Hunc *eligentes* uel potius *religentes* (amiseramus enim *neglegentes*) — hunc ergo *religentes*, unde et *religio* dicta perhibetur, ad eum dilectione tendimus, ut perueniendo quiescamus, ideo beati, quia illo fine perfecti.

Being *attached* to Him, or rather let me say, *re-attached* (for we had *detached* ourselves and lost hold of Him) being, I say, *re-attached* to Him, we tend towards Him by love, that we may rest in Him, and find our blessedness by attaining that end.<sup>58</sup>

This passage brings into focus the one central point on which Augustine rejected Plato’s teaching: the human soul is *not* naturally moved towards the good.<sup>59</sup> The fundamental

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<sup>56</sup> Augustine, *City of God*, X.3.

<sup>57</sup> *Ibid.*

<sup>58</sup> Augustine, *City of God* (Marcus Dods trans) Bk X, ch 3 (emphasis added). Source: Philip Schaff (ed), *Nicene and Post-Nicene Fathers, First Series, Vol 2* (Buffalo: Christian Literature Publishing Co, 1887). For an alternative translation, see Augustine, *Concerning the City of God against the Pagans* (Henry Bettensen trans, Penguin, 1972) 377-8: ‘By our *election* of him as our goal—or rather by our *re-election* (for we had lost him by our *neglect*); by our *re-election* (and we are told that the word “religion” comes from *relegere*, ‘to re-elect’), we direct our course toward him with love, so that in reaching him we may find our rest, and attain our happiness because we have achieved our fulfilment in him’ (emphasis added).

<sup>59</sup> Alasdair MacIntyre, *Three Rival Versions of Moral Inquiry: Encyclopaedia, Genealogy, and Tradition* (London: Duckworth, 1990) 84.

problem of human nature is not a deficiency of the mind; rather, it is a defect of the will. The underlying disorder is an inclination to self-justification. A tendency to judge others more harshly than we judge ourselves.<sup>60</sup> To see the small speck in our neighbour's eye, while ignoring the plank in our own.<sup>61</sup> Augustine believed that human pride is our fundamental problem, and that humility must be the first and essential step towards our moral improvement. As Alasdair MacIntyre explained, it is only through a 'transformation of the will from a state of pride to one of humility that the intelligence can be rightly directed'. For the will 'is more fundamental than intelligence and thinking undirected by a will informed by humility will always be apt to go astray'.<sup>62</sup>

Augustine offered a striking image of this problem when he wrote of 'Pleasure', sitting 'like a voluptuous queen on a royal throne', with all the virtues arrayed around her as her attendant handmaidens, ready to do whatever she might command.<sup>63</sup> The image suggests that a person might adopt certain virtuous practices—for example, by being wise, moderate and fair in his dealings with other people—but not out of the goodness of his heart, nor even for the good of those people, but only as means of satisfying his selfish desires. Augustine points out that human pride and the desire for glory works the same way. These motivate us not to do good for its own sake but only to do good—or more precisely, to *appear* to do good—so that others will think well of us and we will get more out of them. In this way, human pride is the deepest root of our problems, for it infects us even at our very best moments when we appear to be doing good. But because the desire for glory and honour only motivates us to appear to be good, it doesn't motivate us to do what is right when no one is

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<sup>60</sup> *Romans* 2:1.

<sup>61</sup> *Matthew* 7:3.

<sup>62</sup> MacIntyre, *Three Rival Versions of Moral Inquiry*, 91.

<sup>63</sup> Augustine, *City of God*, Bk V, ch 20.

looking, when no one sees, or when we can get away with it. And herein lies the seed of all our problems.

St Basil of Caesarea put it this way:

To praise virtue in public with brilliant words and with long drawn out speeches, while in private preferring pleasures to temperance, and self-interest to justice, finds an analogy on the stage, for the players frequently appear as kings and rulers, although they are neither ... [E]very man is divided against himself who does not make his life conform to his words ... Such a man will seek the appearance of virtue rather than the reality. But to seem to be good when one is not so, is, if we are to respect the opinion of Plato at all, the very height of injustice.<sup>64</sup>

This is a disturbing teaching. But it is the teaching of religion, best understood. Religion in this sense goes further than education, because it forces us to ask deep questions about our motivations. It forces us to self-examination. And it challenges us to confess and to repent—not just to confess the truth about our outward actions and behaviours, but to repent of our darkest inward thoughts and desires. It sets before us a model not of self-justification and self-rationalisation, but of candid acknowledgement of our failures.<sup>65</sup> And it presses us to admit that we are in need of forgiveness, and that we need to forgive one-another.<sup>66</sup>

## V. CONCLUSION

Religion is more, therefore, than mere education. And it is much more than mere law. Education without religion can only inform the mind and train the hand; it cannot convert the soul. Law without religion can only require outward conformity and punish when there is disobedience; it cannot redirect the heart. Law and education therefore need to leave room for religion, so that religion can do what it alone is capable of: soften the heart and redirect the will. An education system that recognises this will leave room for religion. Public schools will allow religious education to occur on their premises so that the children can, with their

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<sup>64</sup> St Basil the Great, 'Address to Young Men on the Reading of Greek Literature' in Ryan N S Topping (ed), *Renewing the Mind* (Catholic University of America Press, 2015) 107, 112.

<sup>65</sup> *Luke* 18:9-14.

<sup>66</sup> *Matthew* 18:21-35.

parents' consent, learn about the kind of self-examination of which Augustine taught. A legal system that recognises this will also leave room for religion. The law will acknowledge the freedom of private schools to be religious.

This does not mean that there are not important roles for law and education, alongside religion. In response to the Australian bushfires, there is every good reason to review our policies, revise our laws and improve our education. But if we rely only on laws and education, how will our people be motivated to obey and act selflessly when disaster strikes? The Australian bushfires have revealed the best and worst in people. Acts of extraordinary courage and self-sacrifice. Acts of reprehensible cowardliness and selfishness. Law is needed to address situations where people deliberately or carelessly start fires. Education is needed to inform people about how best to prepare and respond. But more is needed. Religion, properly understood, is what motivates and empowers people to acts that are not only prudentially wise and minimally right, but also heroic and supererogatory.

The fifth century desert father and Coptic monk, Abba Poemen, put it best when he said that it is more important that a teacher be an example to his students, rather than merely 'instruct' them with words and exercises. '[B]e their example [*tupos*]', he said, 'not their legislator [*nomothetes*]'.<sup>67</sup> In this model of education—in this deeply religious model of education—the role of the teacher is first to be an example or model of character and behaviour, and only secondarily as someone who is knowledgeable, learned and an enforcer of rules.<sup>68</sup> Religious education is concerned with something deeper and ultimately more important than knowledge of facts and development of skills. It is about the formation of character and it recognises, with Augustine, that a truly good character depends ultimately on

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<sup>67</sup> Lillian Larsen and Samuel Rubenson, *Monastic education in late antiquity: the transformation of classical Paideia* (Cambridge University Press, 2018) 23.

<sup>68</sup> *Ibid* 21.

our inner motives and the inclination of our wills. This is why religious schools need to be free to include religious instruction and religious services of worship in their curricula. For it is through instruction in the faith and the practices of prayer and confession that the theological virtues of faith, hope and love, and the moral virtue of *religio*, are inculcated in our souls. And it is why the schools need to be free to employ staff who are spiritual models to their students, and not merely skilled in the dissemination of knowledge. For it is far better to be their example than their legislator.