*Michael Spence**

# SPEECH
# GIVEN ON THE OCCASION OF THE LAUNCH OF THE UNIVERSITY OF ADELAIDE RESEARCH UNIT FOR THE STUDY OF SOCIETY, LAW AND RELIGION

It is a great privilege to be invited to open this Research Unit for the Study of Society, Law and Religion. As someone who works in the field of intellectual property theory, I have to admit to feeling somewhat out of my depth. You might think that my qualification for being here is that as an academic, a lawyer and an Anglican priest, I could be thought to have reflected deeply upon how those three parts of my life fit together. But like most of us, I am much better at theorising the complex lives of others than I am my own.

A research unit for the study of society, law and religion has, of course, a very broad canvas upon which to draw.[1] Not much in human society lies outside the scope of those three nouns. The obvious issues range from the complicated historical interaction of law and religion, to the question of whether a theistic account of the nature of law is the most fully satisfying.

But the issue upon which I thought we might briefly pause today is the issue that most often lights fires in the popular press, the issue of the competing jurisdictions of law and religion, of the competing claims to loyalty of the City of God and the City of Man. In doing so, I should say that I make no claim to advance understanding of this fascinating issue. But I do think that even the briefest consideration of the issue should reveal in how rich, and important, a field of enquiry this new research institute has been planted.[2] And that is my purpose this afternoon: to wish this research unit well as it begins its crucial work.

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* Vice Chancellor and Principal, University of Sydney. This speech was given to launch the University of Adelaide Research Unit for the Study of Society, Law and Religion on 13 November 2008. I would like to thank Peter Burdon of the University of Adelaide Research Unit for the Study of Society, Law and Religion for his research assistance in preparing the speech for publication in this Special Issue.

1 See, eg, the projects currently underway at the first such centre for the study of law and religion: Center for the Interdisciplinary Study of Religion, Emory University, <http://cslr.law.emory.edu/>.

2 See, eg, Leslie C Griffin, *Law and Religion, Cases and Materials* (2006); John Witte Jr, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (1997); *Christianity and Law: An Introduction* (2008); *God's Joust, God's Justice: Law and Religion in Western Tradition* (2006); Harold J Berman, *Faith and Order: The Reconciliation of Law and Religion* (1993). For an Australian example, see Paul Babie, 'Breaking the Silence: Law, Theology and Religion in Australia' 31 *Melbourne University Law Review* 296.

This issue of competing jurisdictions can be evinced by three demands that a person of faith might make of a legal system. First, the person of faith might demand the freedom to be exempt from the requirements of the law, as when a conscientious objector refuses the draft. Second, the person of faith might demand the freedom to do what the law prohibits, as when Islamic French school children demanded the right to wear headscarves in contravention of the principle of laicité.[3] Third, the person of faith might seek the use of state power to enforce the norms of a particular faith community against members of that community itself, as in the vexed question of the recognition that should be given to the decisions of religious courts.

Each of these demands potentially places in tension with one another the multiple identities, and the various loyalties, of the person of faith. Each, in an ascending order of intensity, raises difficult questions for a legal system about the monopoly that it claims over the state enforced regulation of behaviour within a given society. Each, in other words, asks the question of when it is appropriate that a legal system give way to a different normative system grounded in the claims of a particular faith community.

Even a quick review of these demands reveals how important it is that they be addressed if we are to live together successfully as a community, particularly given the obvious fallacy of the claimed inevitability of secularism. Of course, I am not assuming that religious identities and religious norms are the only ones giving rise to these types of demands, but it is those with which this research unit is concerned, and those which have often provided a focus for discussion.

Suggestions for determining which of these demands might be met and which might be justifiably resisted, for reconciling those demands, have abounded. But often those suggestions raise more questions than they answer. We are, for example, glibly told that we should render to Caesar that which is Caesar's and to God, that which is God's,[4] without any acknowledgment of the rich and teasing ambiguity of that claim, both in its original context and today.

At the risk of controversy, the one attempt at reconciling those demands for a liberal political system upon which I would like briefly to touch is that offered by the Archbishop of Canterbury in his infamous lecture 'Civil and Religious Law in England: a Religious Perspective'.[5] Perhaps rather bravely, I want to suggest that a core intuition of that lecture would repay further study. The position that the Archbishop outlines is only as fully theorised as might be possible in a short lecture, and it is built upon a very particular, and contestable, understanding of the purpose of law. However, he does sound an important warning to communities

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3 See René Rémond, *Religion and Society in Modern Europe* (1999); Evelyn M Acomb, *The French Laic Laws, 1879-1889: The First Anti-Clerical Campaign of the Third French Republic* (1941).

4 Matthew 22:15-22; Mark 12:13-17; Luke 20:20-26.

5 Archbishop of Canterbury, 'Civil and Religious Law in England: a Religious Perspective' (Speech delivered at the foundation lecture, Royal Courts of Justice, 7 February 2008).

committed to sustainable pluralism in their dealing with those who find themselves caught between their loyalty to the City of God and their loyalty to the City of Man.

At the heart of the lecture, Archbishop Rowan Williams argues that:

> The rule of law is … not the enshrining of priority for the universal/abstract dimension of social existence but the establishing of a space accessible to everyone in which it is possible to affirm and defend a commitment to human dignity *as such,* independent of membership in any specific human community or tradition, so that when specific communities or traditions are in danger of claiming finality for their own boundaries of practice and understanding, they are reminded that they have to come to terms with the actuality of human diversity …[6]

In other words, a system of law appropriate to the life of a pluralist political system must be grounded in a real recognition of the diversity of human identities, and a willingness to ask very clearly the question of whether 'membership of one group' is being allowed unnecessarily to restrict 'freedom to live also as a member of an overlapping group'.[7] This is a warning to secularists that membership of a secular society is only one of the multiple identities that an individual might claim, and to which the law might appropriately give expression. It is a warning that, to the extent to which there is conflict between those identities, it ought not lightly to be assumed that the secular identity is that one that should prevail. Rather, any conflict should be mediated by a respect for human dignity, which at once acknowledges the importance of our different identities, and itself sets limits to the extent to which the law should give them expression.

In many ways, of course, the Archbishop's lecture raises some very difficult questions, not least around the core concept of 'human dignity',[8] but it does at least remind us that

> a defence of an unqualified secular legal monopoly in terms of the need for a universalist doctrine of human right or dignity is to misunderstand the circumstances in which that doctrine emerged, and that the essentially liberating (and religiously informed) vision it represents is not imperilled by a loosening of the monopolistic framework.[9]

There is in that sentence alone, plenty of work to be done in teasing out how best the law ought to make room for the important religious identities to which many of

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6 Ibid (emphasis in original).

7 Ibid.

8 See R Kendall Soulen and Linda Woodhead, *God and Human Dignity* (2006); Jurgen Moltmann, *On Human Dignity: Political Theology and Ethics* (1984); Richard Amesbury and George Newlands, *Faith and Human Rights: Christianity and the Global Struggle for Human Dignity* (2008).

9 Archbishop of Canterbury, above n 5.

the members of a pluralist society owe loyalty, and that an easy assumption of the priority of a secular identity is not justifiable.

It gives me great pleasure to open this Research Unit for Society, Law and Religion; a unit that I hope will have these amongst its many other questions on its work-slate. Given that religious identities seem to be becoming more, rather than less, important, it is one that we must urgently address. Both Paul Babie and the University of Adelaide are to be congratulated on their ability to see just how timely and important such questions are in the development of our legal systems. If we fail to pay them attention, then the legal system will arguably be unable to deal with one of the most important social phenomena of our time: the resurgence of religious belief. But focusing on these questions is an important way for lawyers to help build a more inclusive and sustainable community life. I wish the research unit all the best in its important work.