## Introduction

# UTS LAW REVIEW, VOLUME 8: RACISM, RELIGIOUS INTOLERANCE AND THE LAW

The topic of this edition of the *UTS Law Review* is "Racism, Religious Intolerance and the Law." The way in which the law responds to racial and religious intolerance is the subject of ongoing public debate in Australia. While it would be comforting to think that the problems of racial and religious intolerance are a thing of the past, the events of the Cronulla riots and the continuing deprivations endured by many Indigenous Australians are a stark reminder that they are ongoing.

What can law say about race and religion? Race has, as a biological construct for the imputing of inferiority or superiority, been debunked. In this sense, Australian law has nothing to say about race, and nor should it. However, the law should have something to say about racism. Religion, on the other hand, has traditionally been characterised as a personal matter and beyond the purview of government. However, the law should have something to say about religious intolerance.

The law has a powerful role to play in providing justice for those who suffer pernicious forms of racial and religious intolerance. It provides a mechanism by which disputes can be resolved. Law also has a symbolic effect, defining the boundaries of what is considered to be acceptable and unacceptable in contemporary society.

The articles in this edition approach the topic of "race, religious intolerance and the law" from a number of perspectives. Geoff Holland and Asaf Fisher focus on racial and religious vilification laws. Holland's article, "Drawing the Line—Balancing Religious Vilification Laws and Freedom of Speech", explores the tension that exists between religious vilification laws and freedom of speech in light of the controversy sparked by the publication of a series of cartoons depicting the prophet Muhammed in late 2005. Holland analyses whether the publication of those cartoons in Australia would have contravened relevant anti-vilification statutes. In doing so, he highlights the challenge of ensuring that anti-vilification laws operate in such a way as to protect individuals and groups from religious vilification, whilst simultaneously ensuring that they do not impose unnecessary, and unwarranted, restrictions on free speech.

Fisher's article, "Regulating Hate Speech", considers the constitutionality of regulating hate speech. He critiques arguments put forward against the regulation of hate speech using, as his backdrop, the First Amendment

jurisprudence of the United States Supreme Court. He acknowledges the dichotomy between speech and conduct—and the law's reluctance to "punish" the former but not the latter. He argues however, that speech and conduct are better positioned on a continuum and that it is legitamate to regulate those exceptional categories of speech, which sit on the cusp of speech and conduct. He contends that laws which regulate hate speech ought to be drafted in narrow terms so as not to capture within their net speech that would otherwise legitimately be protected.

Ben Saul's article, "Censorship of Religious Texts: The Limits of Pluralism", focuses on the censorship of two Islamic publications—"Join the Caravan" and "Defence of the Muslim Lands". He analyses the decisions of the Classification Review Board which refused classification to these two texts on the basis that they incited or instructed in matters of crime or violence. He locates his analysis in the legal landscape following 11 September 2001 and, in particular, the law relating to incitement of terrorism. Saul outlines, and critiques, the decisions of the Classification Review Board. He questions the correctness of the decisions and considers the broader policy implications of restricting religious speech. He contends that the law should only intervene to censor religious texts in those cases in which the text seeks to incite imminent violence, which is likely to occur, and draws attention to the potential for double standards to apply, resulting in some texts being censored but not others.

Mark Walters' article, "Changing the Criminal Law to Combat Racially Motivated Violence considers the phenomenon of racially motivated crime. He outlines the impact of this type of crime on both individuals and the community at large. He argues that Australia should introduce legislation which criminalises racially motivated crime. Walters acknowledges that it is already open to courts in New South Wales to take into account, during sentencing, the fact that an offender was motivated by the race of his or her victim. He argues, however, that this response to racially motivated crime is inadequate.

Jamila Hussain's article is an exposition of Shariah law. Hussain contends that Shariah law is misunderstood, and seeks to overcome that by dispelling some of the myths surrounding Shariah law. She acknowledges some of the stricter interpretations of Shariah law but contends that those who expound those interpretations are "at best on the extreme margins of the Muslim world and carry no credibility within it".

In her article, "Varieties of Religious Intolerance", Ngaire Naffine adopts a secular and naturalist standpoint from which to argue that Christian extremists in Australia, the United States and the United Kingdom exhibit a kind of religious intolerance: an intolerance of those who do not share their world view. Naffine makes the case that this intolerance has a profound influence on the law, particularly those laws on euthanasia and embryonic stem cell research which control and regulate the very limits of life.

Megan Davis and Joanne Lennan both consider the law's impact on

Indigenous people. In "The 'Janus Faces' of Offensive Language Laws, 1970–2005", Lennan considers the operation of New South Wales' offensive language laws, and their discriminatory enforcement. Indigenous people (and Indigenous women in particular) disproportionately experience the punitive face of offensive language laws, while having limited recourse to the laws' protections. This inconsistency, Lennan argues, undermines the laws' legitimacy.

In "The Perennial Footnote of Australian Democracy: Indigenous Australians and the Fundamental Disrespect of our Public Institutions", Megan Davis considers the recent track record of Australian public institutions in their treatment of Indigenous Australians. Davis argues that public institutions continue to exhibit a fundamental disrespect for Indigenous Australians; in particular, failing to adequately (or accurately) countenance Indigenous notions of religion and spirituality. Davis writes that indifference towards institutionalised racism—a kind of psychological *terra nullius*—persists, but that measures are needed to include Indigenous Australians in the public life of the nation. According to Davis, "The solution is perhaps a combination of reforms that Indigenous and non-Indigenous Australians have been advocating for: a Bill of Rights, a process toward a Treaty between Indigenous and non-Indigenous Australia, Indigenous seats of parliament, a national political representative model, new preamble or an apology."

The final article in the collection is "Intolerance of Terror, or the Terror of Intolerance? Religious Tolerance and the Response to Terrorism" by Agnes Chong. Chong critically analyses Australia's legislative responses to September 11. Chong concludes that "the current approach to combating terrorism in Australia has seen the implementation of a regime that has had an adverse impact on religious tolerance."

These articles are important, and sometimes controversial contributions, to the debate about how the law should protect people from racism and religious intolerance. This edition does not attempt to present definitive solutions to what are, by their nature, difficult and complex issues. However, we hope that this Law Review will act as a platform for future debate and discussion about how the law should uphold the principles of non-discrimination, tolerance and mutual respect that are essential in a multicultural society.