

Editorial

Welcome to a special issue of the *Australian Journal of Law and Religion* on the theme of ‘Theology and Jurisprudence’. It is fitting for theology and jurisprudence to engage in a dialogic relationship, for legal philosophers need to be aware of the theological influences on legal thinking, while theologians need to be aware of the details and limits of legal structures their ideas may undergird.¹ Jurisprudence typically purports to provide a non-theistic account of ‘law’.² However, foundational to many theories of law is some kind of theology. Natural law, of course, is deeply influenced by its theological articulation through Thomas Aquinas, and even modern ‘secular’ theories of natural law retain vestiges of this influence. The idea of natural law as comprehending the good through reason owes its origin to theological categories and theological analysis.³ The main proponents of legal positivism (such as Thomas Hobbes and John Austin) often engaged with different aspects of Christian theology. Hobbes famously called his Leviathan the ‘mortal god’ under the ‘immortal God’ as an illustration of the complete sovereign power of his proposed state, and Austin similarly called God the ultimate sovereign when articulating his idea of law as command.⁴ Moreover, theological influences on legal theory are not limited to Christianity; jurisprudential viewpoints around the world have been shaped by a broad range of theological traditions.⁵ The tendency of jurisprudence to ground itself in some kind of theology is not surprising given its need for an ontological foundation for legal authority.

In conjunction with some external submissions, the articles in this special issue represent some of the papers presented and discussed at the 2023 Theology and Jurisprudence Symposium at the University of Adelaide. The Theology and Jurisprudence Symposium, now an annual event hosted by different universities, aims to consider jurisprudence from a variety of theological standpoints and to critically examine the reliance of diverse theories of law on theological perspectives. Along with regular co-editor Alex Deagon, this special issue was guest edited by the organisers of the 2023 Symposium.

In the first article, Zachary Calo explores the concept of healthy secularity from the perspective of Pope Benedict’s Catholic social thought. Calo argues that a healthy secularity which leaves space for the theological heightens engagement between the church and the state, allowing a Christian critique of modern liberalism which simultaneously transcends any social and political order. Jonathan Crowe, arguably Australia’s leading expert on natural law, considers the relationship between natural law and theism. He suggests that although natural law is not necessarily theistic, adopting a theistic perspective may make the natural law outlook more plausible. Alex Deagon’s article begins a conversation with respect to articulating a theological foundation for religious freedom. He argues that the development and deployment of a ‘Christian Natural Law’ enables the identification of three themes — Love, the True, and the Good — which can form a theological framework for religious freedom. Constance Lee’s article critiques the secular account of conscience as ontologically deficient. In contrast, she argues that a natural law conception of conscience provides greater explanatory power for

¹ See Rafael Domingo, ‘Theology and Jurisprudence: A Good Partnership?’ (2017) 32(1) *Journal of Law and Religion* 79.

² See, eg, John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 2nd ed, 2011) where Finnis purports to construct a natural law apart from reliance on God’s existence and will.

³ See, eg, Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (William B Eerdmans, 2005).

⁴ Alex Deagon, *From Violence to Peace: Theology, Law and Community* (Hart Publishing, 2017) 98–100.

⁵ See, eg, the range of chapters and perspectives in Jonathan Crowe and Constance Lee (eds), *Research Handbook on Natural Law Theory* (Edward Elgar, 2019).

moral theory. Joshua Neoh's article considers the paradox of the law of love: if love is commanded, it is compelled, and consequently it is not free. Neoh draws on an eclectic framework of Kierkegaard, Benedict, and More in an effort to resolve this problem. Lukas Opacic examines the issue of corporate compelled speech, arguing that corporations need to be considered as moral agents. Corporations thus assume a conception of the common good, and it follows that whether a corporation can compel its employees to speak or act in a particular way is determined by whether it contributes to the common good. The final article is by world-leading law and religion scholar John Witte Jr. writing in combination with work by the late Harold Berman on Christianity and law in the Enlightenment. They demonstrate that Christianity exerted significant influence on the development of jurisprudence, constitutional law, criminal law, and more in the Enlightenment period through interaction between secular and Christian scholars on these subjects.

The articles within represent the perspectives of a diverse range of scholars at different points in their careers, yet in unison they engage with the disruptive question of how theology has influenced jurisprudence and how jurisprudence focuses theology. What is revealed are the manifold contributions theology makes to creating a flourishing legal community which is constantly striving for the common good.

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On behalf of the Organising Committee for the 2023 Theology and Jurisprudence Symposium:

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