

Editorial

One of the most interesting developments in Australian religion over the past decade has been the seemingly-sudden surge in so-called ‘Nones’. A catch-all term for those who disclaim an affiliation with organised religion, the ‘Nones’ are a disparate and fascinating mix of the ‘Spiritual but not Religious’, committed atheists and agnostics, and people for whom religion simply is not a topic they think or care much about. For previous generations, when the ‘Nones’ made up only a small percentage of the population, they might be a curiosity for sociologists and (as ‘hippie New Agers’) a source of amusement for mainstream society. But with the 2021 census finding that 38.9% of the population chose ‘No religion’ when asked about their religious affiliation,¹ it is clear the demographic change warrants further scholarly investigation.

In the context of law, the ‘Rise of the Nones’ presents challenges for a Western common law and constitutional system that has its origins and long evolution in a society in which it could be taken for granted that the vast majority of people were religious — and indeed, mostly members of one of a handful of major Christian denominations. Important concepts in Western legal systems, such as freedom of religion, religious charities, and religious trusts, were developed on the premise that a ‘religion’ was a formal, organised, well established, and hierarchical institution with set tenets and obligations for its members. Subsidiary concepts like ‘conscience’ and ‘sincerity’ have been understood by courts and legislators alike from within this context. In the traditional legal view, everyone has the right to membership in a religious group, and ‘freedom of religion’ is the right of that individual to worship according to the rites and tenets of that group without undue restraint from the government.

This traditional legal understanding of religion could easily encompass *different* religions — such as the ‘Protestant-Catholic-Jew’ default of mid-century America² — or even the gradual demographic growth in ‘new’ religions like the Church of Jesus Christ of Latter-day Saints or ‘foreign’ religions like Islam. But what it has not yet come to terms with is growth of large segments of the population who have an entirely different conception of spiritual life. Instead of belonging to a set organisation with a set array of beliefs, the ‘Spiritual but not Religious’ are likely to craft their own unique individual and idiosyncratic package of beliefs, perhaps drawing from a wide variety of faiths, occult traditions, scientific concepts, and more. Historically, the courts have given short shrift to claims that such beliefs are protected by freedom of religion, but this attitude is increasingly contested in a Western world where institutionalist accounts of religion are being joined by alternative accounts. In short, the ‘Rise of the Nones’ is an issue that legal systems will surely be grappling with for the foreseeable future.

This issue’s Special Topic Forum includes four contributions on how the Nones may change our understanding of law and religion. Rhys Gower and Adam Possamai discuss the ‘Mark “No Religion”’ campaign that may have influenced the surprising results of the 2021 Australian census. Jesse Smith and Ryan Cragun discuss, from an American perspective, the ‘push’ and ‘pull’ factors responsible for the demographic increase in the ‘Nones’. One of us, Jeremy

¹ See Australian Bureau of Statistics, ‘Religious Affiliation in Australia: Exploration of the Changes in Reported Religion in the 2021 Census’ (Article, 4 July 2022) <<https://www.abs.gov.au/articles/religious-affiliation-australia>>.

² See Will Herberg, *Protestant, Catholic, Jew: An Essay in American Religious Sociology* (Doubleday, 1955).

Patrick, has previously published a book on this topic³ and here contributes a rejoinder to Professor Mark Movsesian's 2022 journal article⁴ that was critical of legal recognition of the Nones. Anna Halafoff, Andrew Singleton, and Elenie Poulos provide snapshots of several aspects of the 'Nones', including the results of an important survey into the spiritual beliefs of 'Generation Z' Australians (those aged 13–18).

We are especially pleased to be co-publishing 'The Rise of the Nones' with *Canopy Forum*.⁵ A digital publication of the Center for Law and Religion at Emory University, *Canopy Forum* has, for the past five years, presented several series of online essays on important topics in law and religion. This joint initiative between *Canopy Forum* and the *Australian Journal of Law and Religion* on 'The Rise of the Nones' will help each publication find new sets of readers in different parts of the globe. It has been a pleasure to work with the editors of *Canopy Forum*, and we hope this series is a success that can lead to further cooperation in the future.

In addition to the Special Topic Forum and three book reviews, this issue includes an impressive array of research articles: Neil Foster continues the debate about the constitutional scope of State anti-discrimination laws, Joseph Lee examines the personal injury liability insurance coverage of religious institutions, Rosemary Langford and Malcolm Anderson discuss governance standards for religious charities, and Brady Earley presents an intriguing look at how religious exemptions worked in ancient China. A noteworthy addition to the issue is the *Australian Journal Law and Religion's* first ever interview, as the Hon Michael Kirby AC CMG sits down with us for a discussion on law, faith, and sexuality. We hope you find something interesting and insightful in the pages that follow.

Alex Deagon
Jeremy Patrick
Co-Editors

³ See Jeremy Patrick, *Faith or Fraud: Fortune-telling, Spirituality, and the Law* (University of British Columbia Press, 2020).

⁴ See Mark L Movsesian, 'The New Thoreaus' (2022) 54 *Loyola University Chicago Law Journal* 539.

⁵ *Canopy Forum* (Web Page) <<https://canopyforum.org/>>.