Editorial

Do words matter? According to the trite sayings, actions speak louder than them, a single image is worth a thousand of them, and they can never hurt me. But in the distinct fields of religion and law, words matter a great deal. In the history of Christianity, the early ecumenical councils shaped orthodoxy and heresy (matters of life and death, for some) through charged controversy and debate by formulating precise verbal articulations of perceived truth. In law, 'mere' words can lead to severe and tangible consequences, both civil (such as in defamation) and criminal (such as in hate speech). It should be no surprise then, that when we study the intersection of law and religion we see a tremendous amount of attention being given to words of ambiguous or contested meaning.

Where law and religion meet, we often find that denotation (the literal meaning of the word) matters less than connotation (the broader, often emotive baggage accompanying the word). For example, political theorists of the 18th and 19th centuries used to discuss, in great detail, the 'toleration' of religion. In one sense, this is simply the familiar and still-relevant question of what rights and privileges religious groups and individuals should be afforded by law. But in everyday conversation, we *tolerate* behaviour we do not like but reluctantly have to put up with. By implying that religion is a problem, it is easy to see why 'religious toleration' has become a less common phrase.

The modern alternative, 'accommodation of religion', is an intriguing formulation. In general conversation, we often use 'accommodate' in the sense of a host making room for a guest's special needs: the wedding caterer can accommodate the gluten-free bridesmaid by preparing a special meal, the motel can accommodate the guest walking in crutches by changing their booking to a room on the first floor, etc. 'Accommodation of religion' seems to mean more than mere *freedom* of religion (the absence of legal restraint or coercion), and instead implies a positive duty on behalf of the government or society (the host) to do something in recognition of the special needs of religion (the guest). This raises important and fascinating questions about how far this purported duty extends, whether it is *religion* that is being accommodated or *religious people*, and whether (to carry the metaphor on) it can reach a point where the host's non-religious guests start to feel slighted. But of course, even this formulation can have problematic connotations, treating as it does secular society as the baseline and religion as the "special need" some people have.

A perfect example of the debate over the meaning of words at the intersection of law and religion has played out very publicly in Australia over the past few years in the context of the *Sex Discrimination Act 1984* (Cth) and its provisions relating to religious schools and LGBTIQ+ students and staff. If a school chooses not to hire an openly gay teacher, have they engaged in 'selecting and preferencing' their ethos (a positive connotation), or engaged in 'discrimination' (a negative connotation)? The result is the same, but the feelings we attach to the description matter in whether we view it favourably or not. Should the law's current provisions, which provide legal protection for religious schools to make decisions in employment and admissions while taking into account sex, gender, and sexual orientation, be characterised as 'exemptions' (implying everyone has to follow the law but religious schools do not, a negative connotation) or 'balancing clauses' (implying the law is respectfully

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acknowledging multiple interests and weighting them carefully, a positive connotation)?[1] In this issue, Joel Harrison continues the debate in the context of the Australian Law Reform Commission's report that recommended major changes to the provisions.[2] Specifically, Harrison argues against attempts to have courts and administrative tribunals attempt to resolve these issues by recourse to 'maximising' or 'balancing' rights — which, in his view, leads to religion being seen as just another 'individual interest' to throw onto the scales, thus diminishing religion's importance. In other words, whether we see 'balancing' as a good way to resolve these issues may depend on what connotation we give the term.

Contested definitions are indeed a coincidental — or some might say providential —theme for this issue of the *Australian Journal of Law and Religion*. Renae Barker and Tania Pagotto take on the weighty task of trying to formulate verbal descriptions for how to categorize the different ways countries around the world handle the relationship between law and religion. Michael Quinlan, recently retired from a long stint of service as head of University of Notre Dame Australia's law school, discusses what a specifically *Catholic* legal education should look like. And in a parallel exercise in a different setting, Salim Farrar examines what a specifically *Islamic* liberal arts education looks like in the United States. The issue also has shorter comments by Gabriël Moens on the cultural and religious implications of voluntary assisted dying and Suzanne Rutland on Australian Catholic University's response to anti-semitism. It concludes with book reviews by David VanDrunen on theological approaches to civil law (Benjamin Saunders) and Jeremy Patrick on religious liberty in our polarised age (Thomas Berg). As a package, these contributions demonstrate that the meaning of words change and evolve over time — much like, separately and sometimes in concert, law and religion do.

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[1] See, eg, Neil Foster, 'Religious Freedom, Section 109 of the *Constitution*, and Anti-discrimination Laws' (2022) 1 *Australian Journal of Law and Religion* 36, 38.
[2] See Australian Law Reform Commission, *Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws* (Report No 142, December 2023).