

SIR JOHN  
GRAHAM  
LECTURE  
**m** 2024

# The Compass of Character

---

NICHOLAS ARONEY





# The Compass of Character

---

NICHOLAS ARONEY

SIR JOHN  
GRAHAM  
LECTURE

 2024

First published in September 2024 by Maxim Institute  
PO Box 49 074, Roskill South, Auckland 1445, New Zealand  
Ph (0064) 9 627 3261 | Fax (0064) 9 627 3264 | [www.maxim.org.nz](http://www.maxim.org.nz)

**Copyright © 2024 Maxim Institute**  
**ISSN 1179-4305 (softcover)**  
**ISSN 1179-4313 (PDF)**  
**ISBN 978-1-7386020-6-3 (softcover)**  
**ISBN 978-1-7386020-7-0 (PDF)**

This publication is copyright. Except for the purpose of fair review, no part may be stored or transmitted in any form or by any means, electronic or mechanical, including recording or storage in any information retrieval system, without permission in writing from the publisher. No reproduction may be made, whether by photocopying or by any other means, unless a license has been obtained from the publisher or its agent.

# Contents

---

About Maxim Institute 5

The Annual Sir John Graham Lecture 6

Nicholas Aroney 7

Annual Sir John Graham Lecture | *The Compass of Character* 9



## ABOUT MAXIM INSTITUTE

---

Our mission is to investigate the ideas shaping New Zealand, engage with our nation's leaders, and enrich our democracy

We're deeply committed to the people, land, history, and cultures of Aotearoa New Zealand. As a team, we work to produce rigorous research and present our recommendations to New Zealand's leaders and public.

We've produced long-form research on issues including intergenerational poverty, leadership in education, regional development, the effects of euthanasia legislation, and the barriers to employment for people with disabilities.

To increase the reach of our work, we host public conversation events throughout the year, speak regularly through media interviews and opinion pieces, and make all of our work freely available on our website. We also publish *Flint & Steel*, an annual magazine that examines the fundamental ideas shaping New Zealand's society and future.

To see our work and find out more, visit [maxim.org.nz](http://maxim.org.nz).

# THE ANNUAL SIR JOHN GRAHAM LECTURE

---

Sir John Graham was an exemplary New Zealander who displayed the consistency of character and care for others we see in our best leaders. Along with his well-known leadership roles as Captain of the All Blacks, Headmaster of Auckland Grammar, and Chancellor of the University of Auckland, Sir John inspired and led many organisations, including Maxim Institute.



He was recognised with a CBE in 1994 for services to education and the community and was knighted in 2011. As a Founding Trustee of Maxim, Sir John Graham's deep love for New Zealand, his passion for education, and concern for those on the margins of life remain at the heart of our work. We are honoured to be able to hold this annual lecture in his name.

The Annual Sir John Graham Lecture is one of our nation's premier opportunities to hear thought-provoking insights and energise public dialogue across Aotearoa New Zealand.



## NICHOLAS ARONEY

---

Nicholas Aroney is Professor of Constitutional Law at The University of Queensland and an External Fellow of the Centre for Law and Religion at Emory University. He has published extensively in constitutional law, comparative constitutional law, and legal theory, including books with Cambridge University Press, Oxford University Press, and others.



He is a co-convenor of the Queensland Chapter of the Australian Association of Constitutional Law and serves on the editorial boards of several law journals in the United States and Australia.

Professor Aroney has led several international research projects in comparative federalism, bicameralism, legal pluralism, and law & religion, and he speaks frequently at international conferences on these topics.



# Annual Sir John Graham Lecture

Friday 6 September 2024

## The Compass of Character

Nicholas Aroney

### **INTRODUCTION**

You may remember Australia's terrible bushfires of 2019/2020; I'm told they turned your skies red here in New Zealand. In my country, aside from putting huge areas to the torch, they also revealed the best and worst in people. While there were many inspiring stories of tremendous courage, resourcefulness and generosity, there was also a lot of carping, squabbling and scapegoating.

How we respond to extreme situations such as bushfires says a lot about our character, both collectively and individually. Character has to do with a person's ethical disposition. A person's character disposes them to certain attitudes (like hopefulness or despair) and to certain actions (like truth-telling or lying). A person of good character has virtuous character traits, like generosity, courage, temperance, integrity, prudence, and justice. Your character, when shaped by your conscience, orients your attitudes and shapes your habits, which will be good or bad depending on the strength of your character. If you have good character, you will be oriented towards the good and the right. Your internal compass will reliably point you towards True North, despite pressure to do otherwise or obstacles that might make others veer off course.

There have been metaphoric bushfires in both our countries—and around the world—that have elicited responses demonstrating both poor and exemplary character. Think of COVID and the ensuing anguish, anger and polarisation. Think of the economic downturn. The rise in crime. Such times test our character and our ability to respond.

After the Australian bushfires, amidst the recriminations, many varied solutions were proposed: more action on climate change; fewer restrictions on hazard reduction; and more education so that members of the community can better understand the nature of bushfires and what needs to be done to reduce their prevalence and severity; improved surveillance and policing focused on the prevention and detection of arson.

None of these ideas are especially new. After the catastrophic “Black Saturday” fires of 7 February 2009, which took 173 lives, the Victorian Government initiated an inquiry which delivered 67 recommendations calling for improved policies, revised legislative frameworks, and better public education.<sup>1</sup> Similar inquiries, with their own suite of recommendations, came in the wake of the horrific fires of 2019-2020.<sup>2</sup>

These sorts of recommendations all make sense, and I don’t intend to address them specifically. Rather, I want to draw attention to a particular quality they have in common. Almost without exception, they all call for *more government* action, and they all call for *better education*. They illustrate a recurrent feature of our public discourse. When calamity strikes, the best and only solutions we can imagine are *more laws* and *better education*. We turn to “law” whenever we say the government must “do something”—by undertaking an enquiry, enacting a law, appointing a regulator, and spending money on the problem. And we turn to “education” when we say that what is needed is more teachers, improved teacher training, better resources, more funding, some sort of advertising campaign, and so on. We think that through more laws, policies and regulation, and through better education, we can solve social and environmental problems and thereby instil character, thus building a better society and a healthier environment.

But despite all this extraordinary effort, how much have we learned from the 51 bushfire inquiries and 1,727 recommendations that have been proposed since 1939?<sup>3</sup> Australia is an ancient land that has always had its fires. The seeds of many Australian plants and trees need fire to germinate. Australia’s Indigenous peoples have long recognised that responsible use of fire is the best way to manage and steward the land. But despite our familiarity with bushfires and the many inquiries,

recommendations, policies and regulations we have implemented, catastrophic fires still occur, and tragic mistakes are still made. A distressingly large number of individuals deliberately light fires, heedless of the havoc and destruction they leave in their wake. People do these bad things because of poor character. Bad times don't cause them to behave any better.

Our collective response to bushfires is symbolic of our responses to the many other problems we face and the solutions we implement to fix them. Law, policies and regulation; education, training and information—and, on top of all that, the accumulation of wealth in the pursuit of happiness—these seem to express the limits of our political imagination. But our solutions often seem to make little, if any, difference to how we react in the moment of crisis. Sometimes, our laws and regulations make matters worse. And yet, as the problems pile up, we persist with the same solutions, and this is the result: our law books become bloated, our legal systems are overloaded, our schoolteachers are stressed, and our education systems are placed under increasing strain. More and more is expected of our teachers, our police officers, and our government regulators. But it is not clear that the root causes of our problems are ever addressed. Something is missing. In my talk tonight, I want to stimulate our thinking about what that might be.

We begin by exploring the law.

## **LAW**

There are two major contending approaches to the definition of law in contemporary legal theory. The first approach defines law as the command of a sovereign.<sup>4</sup> On this view, law is an expression of the will of the governing authorities. Whatever they command that we should do or should not do is defined by the law. The law is effective because people obey it, but we obey it—ultimately—only because we don't want to be punished for disobedience, *not* because we want to do the right thing.

This is a pretty depressing definition of law. The renowned American jurist Oliver Wendell Holmes Jr thought it implied what might be called a “bad man” theory of law.<sup>5</sup> It is a theory of law seen from the point of view of the person who does not obey the law because it's the right thing to do, but only because that person fears being punished for disobedience. I draw attention to this definition, not because I ultimately agree with it but because it puts into stark perspective what law is capable of doing at its lowest common denominator. Law places a restraint on “bad” people.

Or perhaps more accurately: law places a restraint on us all, recognising that, in some sense, we are all bad people; we are all capable of doing bad things.<sup>6</sup>

Viewed from this perspective, law is inherently limited in what it can achieve. And yet, as Jonathan Sumption, a former Justice of the UK Supreme Court, has observed, we live in an age of “unbounded confidence in the value and efficacy of law as an engine of social and moral improvement.”<sup>7</sup>

Our confidence in law leads us to believe that enacting statutes and issuing regulations will help us make people better and achieve an ideal society. As a result, we manufacture more and more laws.<sup>8</sup> Take Australia as an example. Michael McHugh, a former Justice of the High Court of Australia, has observed that while in 1973, the Australian Parliament enacted just 1,624 pages of statutes, in 1991, that yearly figure had quadrupled to 6,905 pages. According to another study, in the first decade after federation, Parliament enacted a total of around 1,000 pages of legislation. However, in the decade of the 1990s, the total was over 54,000 pages.<sup>9</sup> Yet another recent study has estimated that for every page of legislation, there are another eight pages of government agency documentation. If we can extrapolate, that comes to something like 486,000 pages of laws, regulations and policies.<sup>10</sup> If you don't believe me, just read the Australian Income Tax Assessment Act—all 11 volumes of it! No lawyer or accountant can really keep up with it. And nor can the ordinary citizen.

Can this sort of law provide us with a compass for our character? Well, yes, to a certain extent, it can. But we need to be aware of its limitations. This sort of law is generally better at telling us what *not* to do. It is not so good at telling us what we should positively *do*. And even when it tells us what to *do*, it is not very good at *motivating* us to do it because all it can do is punish us when we *fail* to comply. It can, therefore, motivate us *not to fail*, but it cannot motivate us to *succeed*. Our governments do sometimes *reward* us for doing good, for a lifetime of service to the community, but notice that these rewards are almost always honorary. We recognise that while it is good to praise and honour those who do good, there is something not quite right about giving heroes material or financial rewards for their heroic deeds.

But when we forget the fundamental limitations that are inherent in the law—when we try to use the law to *make* people be good and *do* positive things—we can only use the tools that the law gives us. And those tools are, by their nature, essentially negative, not positive. And so, we get a very strange result: we compile laws upon laws which prescribe exactly what must and must *not* be done in ever-increasing

detail, restricting our freedom of movement, stifling our creativity, and all too often frustrating our ability to get on with things and get them done.

Incidentally, the multiplication of laws reminds me of another thing we like to accumulate: our material resources, our money! Across the globe, despite what you might think, most peoples have experienced significant improvements in material well-being over the long term, measured not only in narrow economic terms but also in terms of health and life expectancy.<sup>11</sup> Yes, this has been accompanied by continued inequality which has increased in recent decades,<sup>12</sup> but in absolute terms, most of the peoples of the world are much better off than they were a century ago. However, like the proliferation of laws, it is not clear that the accumulation of wealth correlates with integral human welfare.<sup>13</sup> Other components of well-being, such as friendship and love, good mental health, and a sense of purpose, seem to be more closely associated with reports of subjective happiness and contentment than mere wealth.<sup>14</sup> Character isn't happiness. Nor is wealth a sign of good character. The annals of literature are filled with wealthy people who lack character. It seems that the multiplication of laws and the accumulation of wealth are not the key to a fulfilled life and healthy community. Perhaps we need to rethink our attitudes to money, and also law, as pathways to the good life.

Now, I said that there were two major approaches to the definition of law. The second definition is very different. It maintains that morality and justice are intrinsic to the very nature of law. Law is not merely the command of a sovereign. As St Augustine pointed out long ago, an unjust law would seem to be no law at all.<sup>15</sup> On this view, our understanding of the nature, function and effectiveness of law will not altogether depend on the crabbed and miserly attitudes of the “bad man,” who only does exactly what the law requires and not an iota more. Because morality and justice are inherent in the nature of law, the law itself identifies the good purposes it seeks to achieve. This means, in principle, that the law can rely on an understanding that its rules are there for good reasons, which any rational person can comprehend.<sup>16</sup> This does not mean that a bad person will obey the law in accordance with its spirit and intent. Bad people will still seek to circumvent and avoid the law when it suits them. But it does mean that “good” people—which is to say, potentially all of us—will not need the law to spell out exactly what is to be done and what is not to be done in every possible situation. Rather, good people will understand the good reasons for the law and conform their behaviour to it.

Consider the simplicity of the Ten Commandments. Only ten rules! A genuinely good person probably doesn't need much more guidance than this. Consider the two greatest commandments: love of God and love of one's neighbour. A perfectly good person needs nothing more. What a far cry from the reams and reams of legislation enacted by our parliaments every year. Oliver O'Donovan once used a phrase that aptly describes this phenomenon. He called it an "incessant stream of lawmaking."<sup>17</sup>

Is all this lawmaking really necessary to create a good society? Or are we expecting too much of the law? Bad people—which is to say, in a certain sense, all of us—will always find ways to circumvent the law. Without moral constraints, as even Adam Smith (the patron saint of free-market capitalism) himself recognised, those engaged in commerce are just as likely to conspire *against* the public interest as they are to contribute to the common good. However, as Smith also realised, merely increasing the volume and reach of the law does not address the underlying problem.<sup>18</sup> We confer enormous powers on regulatory agencies but then have to create secondary agencies to ensure that the primary agencies exercise their powers lawfully and ethically. And when those secondary agencies themselves are found to have engaged in misconduct, we see how we are failing to address the underlying problem.<sup>19</sup> Through all of this, the weight of law and regulation places a burden on good people that often gets in the way of their efforts to do good things. And so, we realise that we would be better off as a society if we could only generate good, or at least better, people.

The most obvious instrument to achieve this is education.

## **EDUCATION**

Let's again consider two views of education. The first sees education as primarily concerned with the transmission of knowledge and the development of skills. This is a pragmatic view of education. The goal of education is to fill children's heads with facts and equip their hands with practical skills.

Now, it is not as if this vocational orientation doesn't have its advantages. Occupational specialisation enables a division of labour in which each person contributes to the good of society through the application of their particular knowledge and skills. We are all better off as a result.<sup>20</sup> But if that is all that education is about, then it doesn't grapple with the problem we identified earlier. It doesn't necessarily produce good people. It merely produces people who are clever and skilful. Being clever and skilful



is good, as long as it is accompanied by good character. Without good character, being clever and skilful can be downright dangerous.

This problem runs very deep. Take this commonplace belief: the better educated you are, or the more intelligent you are, the more likely you are to form your views on the basis of well-established evidence and careful logical reasoning. And consider also the corollary: the more ignorant, the less intelligent, the more poorly educated you are, the more likely you are to be driven by emotion, prejudice, superstition, and dogma. These are widely shared views. However, the cognitive and behavioural science literature suggests this is simply not the case. Rather, as one author put it, “those who are highly educated, intelligent or rhetorically skilled tend to be significantly less likely than most to revise their beliefs or adjust their positions when confronted with evidence or arguments that contradict their priors.”<sup>21</sup>

This is a curious—even shocking—finding. What could possibly explain it? One plausible explanation is this: clever, well-educated people are better skilled at responding to uncomfortable facts and challenging arguments.<sup>22</sup> Such people are able to apply their highly refined critical abilities to scrutinise others and their beliefs rather than themselves and their own beliefs.<sup>23</sup> This particularly applies to academics (like me). Despite all our critical abilities, it seems that we academics tend to be more ideological, more ideologically rigid and more ideologically extreme in our beliefs.<sup>24</sup> The literature also suggests that we are more likely to form our positions on issues and then change our positions based on one-sided, partisan cues of what we’re supposed to think based on our political allegiances—to the left or to the right.<sup>25</sup>

This is not a very flattering self-portrait. What could possibly be done about it? Perhaps the answer lies in *better* education—education primarily directed to the formation of good character.<sup>26</sup> Education, on this second view, is about the inculcation of wisdom and virtue. It is about the qualities of honesty, integrity, courage, self-discipline and generosity. It also involves the development of intellectual virtues such as curiosity, attentiveness, and perseverance.<sup>27</sup> As Werner Jaeger said of Socrates’ teaching: “Education is not the cultivation of certain branches of knowledge ... The real essence of education is that it enables men to reach the true aim of their lives.”<sup>28</sup> True education is about the pursuit of the good, the true and the beautiful. It is about the care and perfection of the soul.<sup>29</sup> It means “deliberately moulding human character in accordance with an ideal.”<sup>30</sup>

A recent report initiated by the New South Wales government has underscored the importance of character.<sup>31</sup> The report observes that there has been a decline in

institutions such as the family (and, we might add, the church) that once played a key role in developing character. In this context, submissions to the review proposed that there should be a focus on “building character” and that “the development of personal attributes—including students’ mindsets, values, attitudes and dispositions—are among the most important outcomes of the education process.” The submissions argued that the building of character requires “the development of moral and ethical understanding” and the ability “to make judgements of value and worth, to know the difference between right and wrong, and to make ethical decisions for the common good.”<sup>32</sup>

This, of course, sounds very good. But notice the language. The key attributes that we need to instil in our students are said to be more knowledge, deeper understanding, and greater discernment. But is that quite right? Plato taught that this kind of education—an education for character—requires a *conversion of the soul*.<sup>33</sup> Our minds, he said, need to be redirected from their preoccupation with mere appearances to an understanding of the deeper, underlying reality of things. Only when this happens, he taught, can our souls be oriented rightly. That which is good, beautiful and true functions like a magnetic North Pole, attracting the compass of our conscience towards that which is good and away from that which is bad.

And so, a critical question arises: in what does this conversion consist? For Plato and Socrates, the reorientation comes through knowledge. Knowledge is the solution to our problems because our essential defect is ignorance. Our salvation lies in enlightenment. No one, on this view, willingly does what is evil.

A lot of modern education is premised on this idea. We think that if we give children more knowledge and better understanding, they will embrace what is good and pursue it. But is this true to reality? Think again of that class of people who are the most educated in our society—people with PhDs who hold academic positions at universities. Do these people live in a manner that is more virtuous than the less well-educated? Call me a cynic, but I’m not so sure. Indeed, it’s quite possible that these people are more inclined to overestimate their virtues and underestimate their vices.

And so, we turn to religion.

## RELIGION

The High Court of Australia defines religion in terms of three primary elements: firstly, belief in a supernatural being, thing or principle; secondly, acceptance of canons of conduct giving effect to that belief; and, thirdly, the existence of an identifiable group of people who adhere to those beliefs and practices.<sup>34</sup> Now, there is something very important about this definition that I want to emphasise. Notice that this definition comes close to treating religion as if it ultimately boils down to a special kind of *education* (instruction in a set of beliefs) and a special kind of *law* (adherence to particular canons of conduct).

What happens when we define religion in this way? One benefit is that it offers an inclusive definition that embraces virtually everything that we regard as “religious,” including sometimes non-theistic religions like Buddhism and highly commercialised religions like Scientology. Defining religion in this way is useful as far as law goes. But something is also lost because it effaces the sharp edge of what makes each religion distinctly what it is.

Moreover, it is not at all clear that ostensibly neutral, “secular” theories are any better at approaching the question of “religion” than the perspectives of particular religions.<sup>35</sup> Indeed, there is reason to think that people of religious disposition are sometimes much better at understanding, empathising with and accommodating other religions than those who claim to be secular in their beliefs. A recent study by Professor Jonathan Fox of the University of Bar-Ilan in Israel has shown that contrary to expectation, Western democracies, despite their secularism, engage in more government-based religious discrimination than many countries of Asia, sub-Saharan Africa and Latin America—particularly many of the Christian-majority countries of those regions.<sup>36</sup>

A better definition might be based on what faith *does*. Socrates and Plato, as we have seen, recognised that the development of good character requires a conversion of the soul. But they also thought our central problem to be a deficiency of the mind, not a defect of the will. St. Augustine of Hippo Regius in Northern Africa begged to differ. He rejected Plato’s teaching that the human soul is naturally moved towards the good.<sup>37</sup> Our underlying disorder is not ignorance, he said, but an inclination to self-justification, a tendency to judge others more harshly than we judge ourselves.<sup>38</sup> To see the small speck in our neighbour’s eye while ignoring the plank in our own.<sup>39</sup> Augustine believed that human pride is our fundamental problem and that humility must be the first and essential step towards our moral improvement.

This is a disturbing teaching. Religion, in this sense, goes further than mere *education* because it puts us in a relationship with an ideal, which forces us to be humble and to ask deep questions about our *motivations*. It forces us to *self-examination*. It scrutinises our *inner* thoughts and *hidden* desires. And following this self-examination, it challenges us to *confess* and to *repent*—not just to confess the truth about our outward actions and behaviours, but to repent of our darkest inward thoughts and our deepest motivating desires. It sets before us a model not of self-justification and self-rationalisation but of candid acknowledgement of our failures.<sup>40</sup> It presses us to admit that we are in need of forgiveness and that we need to forgive one another.<sup>41</sup> And in this way, through deep self-examination, it sharpens our conscience and reorients our entire character—slowly, all too slowly—but surely and relentlessly.

Religion, understood in this way, is not simply a system of beliefs and practices, it is a conversion of the soul. This conversion of the soul involves a humble relationship with an ideal, which is able to do what law, education, and material wealth cannot: it reorients our will and grounds our character.

## CONCLUSION

What, then, are the proper roles of law, education, commerce and religion in generating character and, thus, good societies? It is beyond doubt that good laws, universal education and growing economies have made important contributions to human well-being. It is better to live in a well-ordered society where crime and corruption are kept under control. It is better to live in a well-educated society in which human knowledge is being expanded and put to good work. It is better to live in a prosperous society where basic human needs are met, and everyone has the opportunity to live a fulfilled and satisfying life. But these, on their own, are insufficient because they don't fully address where good character, which is the essential foundation of a truly good society, comes from.

Augustine's Prayer Book offers a powerful insight into what this means in practice.<sup>42</sup> It is difficult to read and meditate on this work without being forced into self-examination as one reflects on one's failings: vanity, arrogance, snobbery, resentment, envy, malice ... and those are just in the section for Constitutional Law Professors. Actually, the list goes on: ruthlessness, domination, avarice, gluttony, cruelty. These vices can only be addressed in the subterranean recesses of our hearts. It is only in facing up

to our vices and in reorienting ourselves to the virtues that the deepest sources of a good life and a good society are to be found.

But hang on, you might say. What about those who have no faith? What about those who haven't undergone the soul conversion I'm talking about? Well, the argument remains relevant in the wider historical context of who we are. In an important essay, contemporary German political philosopher—and professing atheist—Jürgen Habermas recently acknowledged that something is missing in the prevailing social imaginary of the modern secular West. Habermas proposes that enlightenment reason is becoming aware of a “defeatism lurking within it,” which is “threatening to spin out of control.”<sup>43</sup> Although not a religious believer himself, he suggests that religion is an “unexhausted force” that can awaken “an awareness of what is missing, of what cries out to heaven.”<sup>44</sup> His point is that, for all its achievements, the modern secular state cannot, from its own resources, arouse in its citizens the sense of solidarity needed to motivate them to act for the common good.

Elsewhere, he has acknowledged that not only did our modern respect for human rights and human dignity emerge in the context of a Christian civilisation, but that these ideals are a “direct legacy of the Judaic ethic of justice and the Christian ethic of love.” Even more startlingly, he emphasised that for all the rational and critical reflection on human rights that has occurred in the modern West, there remains no alternative source for these, our deepest convictions about human dignity. “We must continue to draw sustenance,” he said, “from this substance. Everything else is idle postmodern talk.”<sup>45</sup>

Ernst-Wolfgang Böckenförde, another German professor and also a very distinguished former judge of the German Constitutional Court, makes a similar point. While the modern liberal state offers its citizens important liberties, he says, “it can only survive if the freedom it grants to its citizens is regulated from within, out of the moral substance of the individual.” Professor Böckenförde observed that this raises a very urgent question, namely whether the secular state must, in the final analysis, “be sustained by the *inner impulses* and *binding forces* that religious faith imparts to its citizens.”<sup>46</sup>

Böckenförde, by the way, is Catholic. But if a Catholic and an atheist can agree on such a basic and fundamental matter, then perhaps good laws, universal education and growing economies are not enough. In the midst of all this prosperity and peace, the compass of our character counts for a great deal. What orients our hearts and souls to the good, the true, and the beautiful? Law cannot do it on its own because its

sanctions are essentially negative and punitive. The economy cannot do it because its benefits are essentially material, not spiritual. Even education cannot do it alone insofar as its focus is on the intellect, not the will. What is missing is something deeper. Something that sharpens our conscience, reforms our will, generating humility in the presence of an ideal.

This missing element is religion. Religion understood as a conversion of the soul. This sort of religion is not just “belief” in a set of doctrines or adherence to a set of “rules.” If it were only this, then it would be merely yet another kind of law and another kind of education. By contrast, religion, understood as a conversion of the soul, is something that softens the heart and redirects the will. Something that penetrates to the little lies we tell ourselves. Something that can orient us to True North.



# ENDNOTES

---

- 1 Victorian Bushfires Royal Commission, Final Report (2010).
- 2 Inspector-General for Emergency Management (Victoria), Inquiry into the 2019-20 Victorian Fire Season <<https://www.igem.vic.gov.au/fire-season-inquiry>>.
- 3 Michael Eburn, David Hudson, Ignatious Cha and Stephen Dovers, "Learning from adversity: what has 75 years of bushfire inquiries (1939-2013) taught us?", Proceedings of the Research Forum at the Bushfire and Natural Hazards CRC & AFAC Conference, Wellington, 2 September 2014.
- 4 Jeremy Bentham, On Laws in General, HLA Hart (ed) (London: Athlone Press, 1970); *John Austin, The Province of Jurisprudence Determined, Wilfrid E. Rumble (ed) (Cambridge University Press, 1995)*. I deliberately pass over the important contribution of HLA Hart who, in his highly influential *The Concept of Law* (Clarendon Press, 1961), was highly critical of the "command" theory of law but defended the thesis that law can be conceptually separated from morality.
- 5 Holmes, "The Path of the Law" (1997) 110 *Harvard Law Review* 991.
- 6 For a recent discussion of the role of law in a world populated by individuals with different levels of awareness of their ethical and unethical behaviour, see Yuval Feldman, *The law of good people: Challenging states' ability to regulate human behavior* (Cambridge University Press, 2018).
- 7 Lord Sumption, "The Limits of Law" in N W Barber, Richard Ekins and Paul Yowell (eds), *Lord Sumption and the Limits of the Law* (Hart Publishing, 1st ed, 2016) 16.
- 8 Sumption observes that in the decade from 1997 to 2007, more than 3,000 new criminal or regulatory offences were added to the British statute book. Criminal offences, he says, "appear like mushrooms after every rainstorm": *ibid* 16.
- 9 Michael McHugh, 'The Growth of Legislation and Litigation' (1995) 69(1) *Australian Law Journal* 37.
- 10 Kurt Wallace, *Regulatory Dark Matter* (Institute for Public Affairs, 2019). See also *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (Australian Government, 2006).
- 11 David E Bloom and David Canning, 'The Health and Wealth of Nations' (2000) 287(5456) *Science* 1207; David E Bloom, '7 Billion and Counting' (2011) 333(6042) *Science* 562.
- 12 Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Belknap Press, 2017)Belknap Press, 2017, 31.
- 13 Carol Graham, *The pursuit of happiness: An economy of well-being* (Brookings Institution, 2011) 16; Richard A Easterlin, 'Happiness, Growth, and Public Policy' (2013) 51(1) *Economic Inquiry* 1.
- 14 Graham, *op cit*, 13, 21.
- 15 De libero arbitrio, I.5.11, in Augustine, *The Teacher; The Free Choice of the Will; Grace and Free Will, The Fathers of the Church* (Catholic University of America Press, 2010). See also Thomas Aquinas, *Summa Theologiae* (Fathers of the English Dominican Province trans, Burns & Oates, 1947-48) I-II, 90.4.
- 16 John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980) 318: "The law anticipates and seeks to capitalize upon, indeed to absorb and take over, the 'good citizen's' schema of practical reasoning, and to give it an unquestioned or dogmatic status."
- 17 Oliver O'Donovan, 'Government as Judgment', *First Things*, April 1999.
- 18 Adam Smith, *Wealth of Nations*, Bk I, ch 10 (Glasgow ed, p 145).
- 19 The Australian States have established special standing commissions charged with responsibility to investigate alleged misconduct and corruption within public agencies. But the commissions themselves are all too often found to have engaged in misconduct themselves. For a recent example (among many), see Tony Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (Brisbane, Queensland, 2022).
- 20 This seems to be the underlying perspective of the recent Report of the Review to Achieve Educational Excellence in Australian Schools (Canberra: Commonwealth of Australia, March 2018), chaired by David Gonski.
- 21 Musa al-Gharbi, 'Academic and Political Elitism', *Inside Higher Ed*, 27 August 2019.



- 22 Milton Lodge and Charles S Taber, 'The Automaticity of Affect for Political Leaders, Groups, and Issues: An Experimental Test of the Hot Cognition Hypothesis' (2005) 26(3) *Political Psychology* 455, 476-7; Charles S Taber and Milton Lodge, 'Motivated Skepticism in the Evaluation of Political Beliefs' (2006) 50(3) *American Journal of Political Science* 755, 760-65.
- 23 Bruno Latour, 'Why Has Critique Run out of Steam? From Matters of Fact to Matters of Concern' (2004) 30(2) *Critical Inquiry* 225, 237-43. While all of us tend to attribute bias to others more than ourselves, this tendency appears to be greater among those with higher cognitive ability: Richard F West, Russell J Meserve and Keith E Stanovich, 'Cognitive Sophistication Does Not Attenuate the Bias Blind Spot' (2012) 103 *Journal of Personality and Social Psychology* 506.
- 24 Indeed, the more educated we are, the more we know about politics, and the more we are politically engaged, the less likely it is that we will encounter the articulation of contrary political views in our daily lives: Diana C Mutz, *Hearing the Other Side: Deliberative versus Participatory Democracy* (Cambridge University Press, 2006) 30-33. Further, those who are inclined to reflect most deeply about issues are more likely to engage in ideologically motivated reasoning: Dan M Kahan, 'Ideology, motivated reasoning, and cognitive reflection' (2013) 8(4) *Judgment and Decision Making* 407.
- 25 Bert Bakker, Yphtach Lelkes and Ariel Malka, 'Understanding Partisan Cue Receptivity: Tests of Predictions from the Bounded Rationality and Expressive Utility Perspectives' (2020) 82(3) *The Journal of Politics* 1061.
- 26 For a contemporary discussion and defence of this approach, see Kristján Kristjánsson, 'Ten Myths About Character, Virtue and Virtue Education – Plus Three Well-Founded Misgivings' (2013) 61(3) *British Journal of Educational Studies* 269.
- 27 Jason Baehr, *The Inquiring Mind: On Intellectual Virtues and Virtue Epistemology* (Oxford University Press, 2011) 21-22. See also Robert Campbell Roberts and W Jay Wood, *Intellectual virtues: An essay in regulative epistemology* (Clarendon Press, 2007). See also Aristotle, *Nicomachean Ethics*, Bk VI, 1139b15-1143b and Thomas Aquinas, *Summa Theologica*, I-II, 57-58.
- 28 Werner Jaeger, *Paideia: The Ideals of Greek Culture, Volume II: In Search of the Divine Centre*, Gilbert Highet trans (Oxford: Oxford University Press, 1943) 69.
- 29 Plato, *Apology*, 29e.
- 30 Werner Jaeger, *Paideia: The Ideals of Greek Culture, Volume I: Archaic Greece – The Mind of Athens*, Gilbert Highet trans (2nd ed; Oxford: Oxford University Press, 1945) xxii. For an anthology of writings on the tradition of classical educational philosophy, see Richard Gamble (ed), *The Great Tradition: Classic Readings On What it Means to be an Educated Human Being* (Wilmington: ISI Books, 2007).
- 31 *Nurturing Wonder and Igniting Passion: Designs for a future school curriculum* (NSW Curriculum Review, Interim Report (NSW Education Standards Authority, October 2019).
- 32 *Ibid* 14-15. See, similarly, Report of the Review to Achieve Educational Excellence in Australian Schools (Canberra: Commonwealth of Australia, March 2018) 129, defining the "knowledge, skills and dispositions" considered necessary to enable students to live and work successfully in the 21st century as including "personal and social capability" and "ethical understanding."
- 33 Plato, *Republic*, Bk VII, 518b-d. Plato illustrated this in his famous allegory of the cave, in which those accustomed all their lives to living the murky shadows of the cave are finally released from their intellectual bondage through their escape into the outside world where, if they will just look up, they will be able to see the source of all light, the sun.
- 34 *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120.
- 35 John Milbank, 'Shari'a and the True Basis of Group Rights: Islam, the West and Liberalism' in Rex Ahdar and Nicholas Aroney (eds), *Shari'a in the West* (Oxford University Press, 2010) 135, 138-9.
- 36 Jonathan Fox, *Thou shalt have no other gods before me: Why governments discriminate against religious minorities* (Cambridge University Press, 2020) 4, 162, 230, 237.
- 37 Alasdair MacIntyre, *Three Rival Versions of Moral Inquiry: Encyclopaedia, Genealogy, and Tradition* (London: Duckworth, 1990) 84.
- 38 *Romans* 2:1.
- 39 *Matthew* 7:3.

- 40 Luke 18:9-14.
- 41 Matthew 18:21-35.
- 42 Saint Augustine's Prayer Book, Revised Edition, ed by Loren Gavitt and Archie Drake (Holy Cross Publications, 1967).
- 43 Jürgen Habermas, *An Awareness of What Is Missing: Faith and Reason in a Post-Secular Age*, tr Ciaran Cronin (Polity Press, 2010) 18.
- 44 Ibid 18-19.
- 45 Jürgen Habermas, *Religion and rationality: Essays on reason, God, and modernity* (Polity, 2002) 149.
- 46 Ernst-Wolfgang Böckenförde, "The Rise of the State as a Process of Secularization [1967]" in Mirjam Künkler and Tine Stein (eds), *Religion, Law, and Democracy: Selected Writings*, tr Thomas Dunlap (Oxford University Press, 2021), 167, citing GWF Hegel, *Encyklopädie der philosophischen Wissenschaften* (1830), §552 (emphasis added).





**MAXIM**  
INSTITUTE

PO Box 49 074, Roskill South, Auckland 1445, New Zealand | 49 Cape Horn Road, Hillsborough, Auckland  
Ph +64 9 627 3261 / Fax +64 9 627 3264 / [www.maxim.org.nz](http://www.maxim.org.nz)

