

# THE TWENTY-FIRST CENTURY CATHOLIC LAWYER

Michael Quinlan<sup>†</sup>

*[F]aith, if good deeds do not go with it, is quite dead.<sup>1</sup>*

## INTRODUCTION

Although the proportion continues to decline,<sup>2</sup> the majority of Australians still identify as Christians just as they have since the first census was taken.<sup>3</sup> Catholics are now the largest single religious denomination<sup>4</sup> and “Australia is one of the most religiously diverse countries in the world.”<sup>5</sup> There are increasing numbers of Australians who describe themselves as having “no religion.”<sup>6</sup> Although the evidence is sparse on this question, in the past, the religious profile of lawyers closely followed the religious profile of the general population.<sup>7</sup> If this remains so, it is likely that the decline in church attendance

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<sup>†</sup> Professor Michael Quinlan BA LLB, LLM (UNSW), PLTC (CL), MA (THEOLST) (with High Dist) (UNDA) Dean, School of Law, Sydney, The University of Notre Dame Australia.

1. *James* 2:14–17 (New Jerusalem Bible). Unless expressly stated, references to the Bible are to this translation.

2. *2016 Census Data Reveals “No Religion” Is Rising Fast*, AUSTL. BUREAU STATS., <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/7E65A144540551D7CA258148000E2B85?OpenDocument> (June 27, 2017) [hereinafter *2016 Census*]. Between 2001 and 2011, the proportion of the Australian population identifying with a Christian faith tradition fell from 68% in 2001 to 61% in 2011 to 52% in 2016. *Id.*; *Reflecting a Nation: Stories from the 2011 Census, 2012-13*, AUSTL. BUREAU STATS., <http://www.abs.gov.au/ausstats/abs@.nsf/lookup/2071.0main+features902012-2013> (last updated Oct. 19, 2017) [hereinafter *Reflecting on a Nation*].

3. *Reflecting on a Nation*, *supra* note 2.

4. *Id.* Catholics, as a percentage of the Australian population, declined from 25.3% in 2011 to 22.6% in 2016. *2016 Census*, *supra* note 2.

5. Adam Possamai et al., *Muslim Students’ Religious and Cultural Experiences in the Micro-publics of University Campuses in NSW, Australia*, 47 AUSTL. GEOGRAPHER 311, 312 (2016). In particular, there has been a significant increase in those identifying with non-Christian faiths, from around 7.2% of the total population in 2011 (up from 4.9% in 2001) to 8.2% of the total population in 2016. *Reflecting on a Nation*, *supra* note 2; *2016 Census*, *supra* note 2.

6. Growing from 15% of the population in 2001 to 22% in 2011 to 30.1% in 2016. *Reflecting on a Nation*, *supra* note 2; *2016 Census*, *supra* note 2.

7. David Weisbrot, *The Australian Legal Profession: From Provincial Family Firms to Multinationals*, in *LAWYERS IN SOCIETY: THE COMMON LAW WORLD* 271, 305 tbl. 6.6 (Richard L. Abel & Philip S.C. Lewis eds., Beard Books 2005) (1988).

among Australians generally<sup>8</sup> has also been replicated within the legal profession. At the same time, as Stephen Newton recently observed, “[Australian] [s]ociety is turning against the very fabric of [the Catholic] faith – society’s moves to control or redefine birth, marriage and death are before us every day in the form of abortion, marriage equality and euthanasia legislation.”<sup>9</sup> In this changing environment, a substantial majority of Australians (83%) continue to consider that Australia has a responsibility to be a moral leader in the world and to set an example for other countries to follow.<sup>10</sup> The legal profession in Australia has also been experiencing rapid change, including a significant growth in the number of students studying law,<sup>11</sup> the impact of globalisation, and the proliferation of developments in legal technology.<sup>12</sup> Given this rapidly changing environment, this paper considers the role that a Catholic lawyer in Australia ought to take in the twenty-first century. Part I considers the role and nature of lawyers in Australia. Part II considers the question of whether it is appropriate in the twenty-first century to speak of a legal profession or a “law business.” Part III considers the contemporary challenge for Catholic lawyers in the twenty-first century arising from the contemporary clash of irreconcilably different worldviews. With that background, Part IV considers the different ways to be a Catholic lawyer in the twenty-first century with some reflection on scripture and on the Magisterium.

## I. THE ROLE AND NATURE OF LAWYERS IN AUSTRALIA

Before discussing the role of Catholic lawyers, in particular, it is first important to understand something of the role and nature of lawyers in Australia because Catholic lawyers are found throughout the profession. Lawyers occupy an ever-expanding number of roles in Australia including

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8. M.D.R. EVANS & JONATHAN KELLEY, *AUSTRALIAN ECONOMY AND SOCIETY 2002: RELIGION, MORALITY AND PUBLIC POLICY IN INTERNATIONAL PERSPECTIVE 1984–2002*, at 35–36 (2004).

9. Stephen Newton, Speech given on the Occasion of the Retirement from the Board of the University of Notre Dame Australia (Nov. 23, 2017) (a copy is in the possession of the author).

10. DARRELL BRICKER, *WORLD AFFAIRS: CITIZENS IN 24 COUNTRIES ASSESS ENGAGEMENT IN INTERNATIONAL AFFAIRS FOR A GLOBAL PERSPECTIVE 47* (2017), <https://ipsos.com/sites/default/files/ct/news/documents/2017-11/Halifax-Security-Forum-Presentation-11-17-2017.pdf>.

11. COUNCIL OF AUSTL. LAW DEANS, *DATA REGARDING LAW SCHOOL GRADUATE NUMBERS AND OUTCOMES 1*, [https://cald.asn.au/wp-content/uploads/2017/11/Factsheet-Law\\_Students\\_in\\_Australia.pdf](https://cald.asn.au/wp-content/uploads/2017/11/Factsheet-Law_Students_in_Australia.pdf).

12. *See generally* THE LAW SOCIETY OF NEW SOUTH WALES COMMISSION OF INQUIRY, *FLIP: THE FUTURE OF LAW AND INNOVATION IN THE PROFESSION* (2017) [hereinafter *THE FLIP REPORT*] (discussing innovation and changes in the legal profession and making recommendations to enable lawyers to adapt to these changes).

solicitors, barristers, judges, magistrates, registrars, associates, and tipstaffs.<sup>13</sup> Solicitors are the largest proportion of legal practitioners. Barristers are self-employed and most work in city centres. Most solicitors also work in city centres either in firms, for the government, or as general or in-house counsel for corporates, non-government organisations, charities, or not-for-profits. Solicitors also work in the suburbs and the regions. The great majority of solicitors work in private practice, for the government sector, or for corporates. Of solicitors working in private practice, the majority work in small firms with ten partners. Solicitors also work in mid-sized firms<sup>14</sup> and large firms.<sup>15</sup> These law firms can be divided in a number of ways that tend to overlap, such as plaintiffs' firms<sup>16</sup> and defendants' firms;<sup>17</sup> rural, suburban, or city firms; mid-tier<sup>18</sup> or top-tier firms;<sup>19</sup> domestic<sup>20</sup> or international firms;<sup>21</sup> general commercial, specialist, or boutique firms.<sup>22</sup> Lawyers in Australia work across the full spectrum of areas of the law including corporate and commercial, banking and finance, litigation, conveyancing/real property, family law, and criminal law. Lawyers are also found in executive and managerial roles, professional compliance roles, and in finance and community sector roles.<sup>23</sup>

The Australian legal sector is rapidly changing due to the impact of globalisation and the proliferation of developments in legal technology.<sup>24</sup> The classification of firms within the categories identified above is in a very real state of flux as firms look to develop their global reach. In recent years, some relatively small players have become much more serious international players by merging or allying with global firms.<sup>25</sup>

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13. See ANTHONY MARINAC ET AL., *LEARNING LAW* 4 (2018).

14. That is, firms with eleven to thirty-nine partners like Carroll & O'Dea.

15. That is, firms with forty or more partners like Ashurst, Allens, Clayton Utz, Herbert Smith Freehills, King & Wood Mallesons, and MinterEllison.

16. *E.g.*, Maurice Blackburn, Carroll & O'Dea, and Slater & Gordon.

17. *E.g.*, Ashurst, Allens, Clayton Utz, Herbert Smith Freehills, and King & Wood Mallesons.

18. *E.g.*, Gadens.

19. *E.g.*, Allens, Herbert Smith Freehills, and King & Wood Mallesons.

20. *E.g.*, Clayton Utz.

21. *E.g.*, Clyde & Co., DLA Piper, Herbert Smith Freehills, Jones Day, King & Wood Mallesons, K&L Gates (formerly Middletons), Norton Rose Fulbright (formerly Deacons), and, arguably, the strategic alliance between Allens and Linklaters. Allens was originally a domestic Australian partnership but has partners in various overseas locations and is in a strategic alliance with global firm Linklaters.

22. Specializing in insurance (*e.g.*, HWL Ebsworth and Clyde & Co.) or family law (*e.g.*, O'Gorman Lawyers).

23. See MARINAC ET AL., *supra* note 13, at 9–10.

24. See *generally* THE FLIP REPORT, *supra* note 12.

25. *E.g.*, Deacons' transformation into Norton Rose Fulbright and the Middletons into K&L Gates.

There is a strong case for arguing that lawyers are the most powerful group in Australia. It is judges who interpret the Federal and State Constitutions and who interpret legislation which is passed by Acts of the relevant Federal, State, or Territory Parliament. Lawyers not only make law as judges and magistrates, but they are also heavily over-represented in Australia's Parliaments. For example, although lawyers account for approximately one-fifth of one per cent of the Australian population, over twenty-six and a half per cent of Federal Parliamentarians are lawyers.<sup>26</sup> Many of Australia's Prime Ministers have been lawyers,<sup>27</sup> seven of those Prime Ministers have been Catholics<sup>28</sup> and, of those seven, two have been legally trained Catholics.<sup>29</sup>

As a result of the key roles and the many other roles that they perform, lawyers are a very powerful group in Australia with a great ability to influence the law by voting for changes to the law in Australia's Parliaments, by interpreting the law in Australia's Courts, by advocating for or against changes to the law, by supporting campaigns for change economically, and in other ways. Recognition of this fact should have real implications for every law student and every lawyer. For Catholic lawyers in the twenty-first century these implications are even more profound.

## II. A PROFESSION OR A BUSINESS?

A detailed examination of the ethical obligations of lawyers to their clients, the courts, other practitioners, and the community is beyond the scope of this paper, but it is important for all lawyers in the twenty-first century, particularly Catholic lawyers, to continually remind themselves that they are members of a profession which is quite different than simply being in business.<sup>30</sup> Street CJ's 1950 observations remain true:

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26. Evan Whitton, *The Parliament of Australia(n Lawyers)*, INDEP. AUSTL. (Aug. 23, 2013), <http://www.independentaustalia.net/2013/politics/the-parliament-of-australian-lawyers/>.

27. Tim O'Dwyer, Opinion, *Beware the Rule of Lawyers!*, ON LINE OPINION (July 8, 2010), <https://www.onlineopinion.com.au/view.asp?article=10655>.

28. James Scullin, Joseph Lyons, Ben Chifley, Frank Forde, Paul Keating, Tony Abbott, and Malcolm Turnbull. See, e.g., ROY WILLIAMS, *IN GOD THEY TRUST?* 87, 92, 110, 193 (2013); John Warhurst, *The Religious Beliefs of Australia's Prime Ministers*, EUREKA STREET (Nov. 11, 2010), <https://eurekastreet.com.au/article/the-religious-beliefs-of-australia-s-prime-ministers#>.

29. WILLIAMS, *supra* note 28; GREG SHERIDAN, *GOD IS GOOD FOR YOU* 172–73 (2018); *Hon. Malcom Turnbull MP Biography*, PARLIAMENT OF AUSTL., [https://www.aph.gov.au/Senators\\_and\\_Members/Parliamentarian?MPID=885](https://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=885) (last visited Jan. 9, 2020); *Hon. Tony Abbott MP Biography*, PARLIAMENT OF AUSTL., [https://www.aph.gov.au/Senators\\_and\\_Members/Parliamentarian?MPID=EZ5](https://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=EZ5) (last visited Jan. 9, 2020).

30. ROBIN CREYKE ET AL., *LAYING DOWN THE LAW* 115 ¶ 5.12 (10th ed. 2018).

A trade or business is an occupation or calling in which the primary object is the pursuit of pecuniary gain. Honesty and honourable dealing are, of course, expected from every man, whether he be engaged in professional practice or in any other gainful occupation. But in a profession, pecuniary success is not the only goal. Service is the ideal, and the earning of remuneration must always be subservient to the main purpose.<sup>31</sup>

As the Chief Justice of New South Wales, the Honourable Tom Bathurst SC has observed part of the lawyer's role is to be "able to critically evaluate and, where necessary, contribute to reforming the legal system."<sup>32</sup> In his view, lawyers should be prepared "to contribute to the intellectual life of society, as citizens as well as professionals."<sup>33</sup> In 1992, the MacCrate Report spoke of "the professional value of the need to 'promote justice, fairness and morality' [as being] an essential ingredient of the legal profession."<sup>34</sup> It also observed that "success in the practice of law is not measured by financial rewards alone, but by a lawyer's commitment to a just, fair and moral society."<sup>35</sup> As these statements suggest, the life of a lawyer should always be about more than profit-making. Lawyers have obligations as professionals and adherence to those obligations need not be inconsistent with a sincere endeavour to live a faithful life as a Catholic lawyer. As Silecchia has observed, "a life in law—while clearly in and of this world—is not at all incompatible with a wholehearted, faith-filled devotion to justice."<sup>36</sup>

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31. *Id.* (quoting *Re Foster* (1950) 50 SR (N.S.W.) 149, 151).

32. Honourable T. F. Bathurst, Chief Justice of N.S.W., Address for the Fortieth Anniversary of the Foundation of MacQuarie Law School: Legal Education—Does It Make Good Lawyers? (Nov. 15, 2012), at ¶ 12, <http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/Pre-2015%20Speeches/Bathurst/bathurst151112.pdf>.

33. *Id.*

34. AUSTRALIAN LEARNING AND TEACHING COUNCIL, BACHELOR OF LAWS: LEARNING AND TEACHING ACADEMIC STANDARDS STATEMENT 15 (2010), <https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf> (quoting Robert MacCrate, *Legal Education and Professional Development*, 1992 A.B.A. SEC. LEGAL EDU. & ADMISSION B. 14).

35. *Id.*

36. Lucia Ann Silecchia, *On Doing Justice and Walking Humbly with God: Catholic Social Thought on Law as a Tool for Building Justice*, 46 CATH. U. L. REV. 1163, 1175 (1997).

### III. SOME CONTEMPORARY CHALLENGES: UNDERSTANDING THE CONTEMPORARY CLASH OF IRRECONCILABLY DIFFERENT WORLDVIEWS

A significant contemporary challenge for Catholic lawyers in the twenty-first century arises from the contemporary clash of irreconcilably different worldviews. As explained below, the Catholic Worldview and the Revisionist Worldview are in conflict.

#### A. *The Catholic Worldview*

The Catholic Worldview has many interconnected parts and resists a neat summary for that reason and others. It provides a comprehensive understanding of the person and it is an understanding of the person—not as an island<sup>37</sup>—but as part of a community.<sup>38</sup> In this community, each person has their own gifts and talents and there are many different ways to use those gifts.<sup>39</sup>

Whilst there is a growing tendency in the West to dismiss anything which has any religious overtones of any sort as being infantile, silly, anti-intellectual, or evil<sup>40</sup>—most of the moral positions of the Catholic Worldview

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37. As John Donne observed, “No man is an island, entire of itself; every man is a piece of the continent, a part of the main.” John Donne, Meditation XVII, *reprinted in* DEVOTIONS UPON EMERGENT OCCASIONS AND DEATH’S DUEL 103 (John F. Thornton & Susan B. Varenne eds., Vintage Books 1999) (1623).

38. 1 *Corinthians* 12:27.

39. According to St. Paul:

There are many different gifts, but it is always the same Spirit; there are many different ways of serving, but it is always the same Lord. There are many different forms of activity, but in everybody it is the same God who is at work in them all. The particular manifestation of the Spirit granted to each one is to be used for the general good. To one is given from the Spirit the gift of utterance expressing wisdom; to another the gift of utterance of expressing knowledge, in accordance with the same Spirit; to another faith, from the same Spirit; and to another, the gifts of healing, through this one Spirit; to another, the working of miracles; to another, prophecy; to another, the power of distinguishing spirits; to one, the gift of different tongues and to another, the interpretation of tongues. But at work in all these is one and the same Spirit, distributing them at will to each individual.

1 *Corinthians* 12:4–11; *see also* *Romans* 12:6–8; *Matthew* 25:14–28.

40. *See* David N. Hempton, *Christianity and Human Flourishing: The Roles of Law and Politics*, 12 *J.L. & RELIGION* 53, 53–54, 58 (2017). For example, the Sydney Morning Herald and Sun Herald feature weekly columns from the militant atheist, Peter FitzSimons, who regularly includes anti-Christian and anti-Catholic diatribes in his columns. *See, e.g.*, Peter FitzSimons, Opinion, *Folau’s Thoughtless Comments Are an Anathema to the Greatest of Rugby’s Values*, SYDNEY MORNING HERALD, Apr. 6, 2018. *See generally* Michael Edwards, *Andrew Denton Lashes Out at “Subterranean Catholic Force” Blocking Voluntary Euthanasia Laws*, ABC NEWS (Aug. 10, 2016), <http://www.abc.net.au/news/2016-08-10/denton-blames-catholic-force-blocking-voluntary-euthanasia/7718152>; *Andrew Denton Trying to Exclude Catholic*

are shared by what might be referred to as the “traditional Western worldview,” and certainly all are consistent with the natural law theory of jurisprudence.<sup>41</sup> This Western worldview represents an understanding of the individual and of the community which would have been the basic bedrock understanding of almost all people raised within the Western legal tradition until the 1950s or so and most people brought up in the Western tradition until quite recent times. As Pasley has observed:

[W]e can and do find our Catholic tradition embedded in the common law. The fundamental conceptions of equality before the law, of the accountability of the ruler to God and the law, of civil rights and liberties, of the individual’s responsibility for his own acts, of *mens rea*, of the sanctity of promises, in fact the whole structure and content of our constitutional, civil, and criminal law, are all derived from the Judaeo-Christian tradition, and can only be fully understood by one who has studied and mastered that tradition.<sup>42</sup>

Love of God and love of neighbour are fundamental to the Catholic Worldview.<sup>43</sup> The Catholic Worldview is not an anti-intellectual tradition,<sup>44</sup> instead it sees harmony between faith and reason rather than conflict.<sup>45</sup> It believes in the existence of truth and values the truth.<sup>46</sup> It values empirical evidence which is objective and truthfully presented. It values conscience and religious freedom.<sup>47</sup> This helps explain why Catholicism was the birthplace of the university and of law schools, and why it has always been a great supporter of education wherever it takes root in the world. The Catholic Worldview has a very particular focus on the value of every person because all are created in the image of God, and it teaches that we are all deserving of

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*Voices from Euthanasia Debate*, CATH. WKLY. (Aug. 17, 2016), <https://www.catholicweekly.com.au/andrew-denton-trying-to-exclude-catholic-voices-from-euthanasia-debate/>; Graham Richardson, Opinion, *Catholic Church on the Nose: Contraception, Divorce, Celibacy*, AUSTRALIAN, Jun. 15, 2018.

41. See Pope John Paul II, *Veritatis Splendor* [Encyclical Letter on the Splendor of the Truth] ¶¶ 31, 32, 50, 51, 80 (1993) [hereinafter *Veritatis Splendor*]; Patrick McKinley Brennan, *Law in a Catholic Framework*, in *TEACHING THE TRADITION* 437–55 (John J. Piderit, S.J., & Melanie M. Morey eds., 2012).

42. Robert S. Pasley, *The Position of the Law School in the University*, 16 CATH. U.L. REV. 34, 50 (1966).

43. See *Mark* 12:28–34.

44. Christ asks us to love God not just with our heart or our soul but “with all [our] mind[s].” *Mark* 12:30; *Matthew* 22:37.

45. See Pope John Paul II, *Fides et Ratio* [Encyclical Letter on Faith and Reason] (1988).

46. See *John* 18:37; *John* 14:6.

47. Pope Paul VI, *Dignitatis Humanae* [Encyclical Letter on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious] (1965); FRANK BRENNAN, ET AL., *CHALICE OF LIBERTY: PROTECTING RELIGIOUS FREEDOM IN AUSTRALIA* 29–34 (2018).

love and respect for that reason alone.<sup>48</sup> The Catholic Worldview speaks of the value of work and the need for its just reward; the need to care for the homeless, the sick, and the poor.<sup>49</sup> As Father Jacek (Jack) Cichy observed in answer to the question why the Church was full at Easter:

We are here because of what I call the Easter Church, the bedrock, base church. By this I mean the everyday church, the two-thousand-years old church that continues to display quiet, persistent, daily heroism. For over 2000 years ordinary people have done the deeds of love, forgiveness, charity and compassion in the name of the risen Saviour. Among them were people who taught us how to read and write and preserved civilisation during the dark ages, the people who founded and to this day operate the hundreds of thousands of schools, leprosaria, hospitals, orphanages and the largest AIDS support in the world.<sup>50</sup>

This captures some of the keys to much of the Catholic Worldview. The Catholic Worldview is not morally neutral nor is it relativist but, whilst recognising evil, it calls on us to love our enemy.<sup>51</sup> Saint Matthew records Christ observing the many different ways in which we may be blessed, including when we strive for uprightness, when we show mercy and purity of heart, when we seek to resolve disputes and bring peace, when we are abused, defamed, or persecuted for our faith in Christ,<sup>52</sup> and when we feed the hungry, give drink to the thirsty, welcome the stranger, and clothe the poor.<sup>53</sup> Scripture

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48. *Genesis* 1:27.

49. *Matthew* 25:35–45; see also Pope John Paul II, *Laborem Exercens* [Encyclical Letter on Human Work on the Ninetieth Anniversary of *Rerum Novarum*] (1981); Leo XIII, *Rerum Novarum* [Encyclical on *Capital and Labor*] (1891).

50. Fr. Jacek Cichy, *From Fr Jack*, ST MARTHA'S PARISH BULL., (Strathfield, N.S.W.), Apr. 16, 2017, at 2.

51. See *Matthew* 5:43–48; *Luke* 6:27–36.

52.

How blessed are the poor in spirit: the kingdom of heaven is theirs. Blessed are the gentle: they shall have the earth as their inheritance. Blessed are those who mourn: they shall be comforted. Blessed are those who hunger and thirst for uprightness: they shall have their fill. Blessed are the merciful: they shall have mercy shown them. Blessed are the pure in heart: they shall see God. Blessed are the peacemakers: they shall be recognized as children of God. Blessed are those who are persecuted in the cause of uprightness: the kingdom of heaven is theirs. Blessed are you when people abuse you and persecute you and speak all kinds of calumny against you falsely on my account. Rejoice and be glad, for your reward will be great in heaven, this is how they persecuted the prophets before you.

*Matthew* 5:3–12.

53.

Come, you whom my Father has blessed, take as your heritage the kingdom prepared for you since the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you made me welcome, lacking clothes and you clothed



also informs us of the virtue of simplicity and the dangers of duplicity, craftiness, and deception.<sup>54</sup> In short, we are called by our faith to moral action.<sup>55</sup>

One of the keys to understanding the Catholic Worldview is understanding that it draws a clear distinction between persons and actions. It sees no persons as evil or incapable of forgiveness, but it does see some actions as “intrinsically evil.” In his encyclical letter *Veritatis Splendor*, Saint (Pope) John Paul II observed:

Reason attests that there are objects of the human act which are by their nature “incapable of being ordered” to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed “intrinsically evil” (*intrinsece malum*): they are such *always and per se*, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances. Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that “there exist acts which *per se* and in themselves, independently of circumstances, are always seriously wrong by reason of their object.” The Second Vatican Council itself, in discussing the respect due to the human person, gives a number of examples of such acts: “Whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical and mental torture and attempts to coerce the spirit; whatever is offensive to human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children; degrading conditions of work which treat labourers as mere instruments of profit, and not as free responsible persons: all these and the like are a disgrace, and so long as they infect human civilization they contaminate those who inflict them more than

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me, sick and you visited me, in prison and you came to see me.” Then the upright will say to him in reply, “Lord, when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and make you welcome, lacking clothes and clothe you? When did we find you sick or in prison and go to see you?” And the King will answer, “In truth I tell you, in so far as you did this to one of the least of these brothers of mine, you did it to me.”

*Matthew 25:34–40; see also Luke 16:19–31.*

54. *See Wisdom 1:1–7; John 1:47–48.*

55.

How does it help, my brothers, when someone who has never done a single good act claims to have faith? Will that faith bring salvation? If one of the brothers or one of the sisters is in need of clothes and has not enough food to live on, and one of you says to them, “I wish you well; keep yourself warm and eat plenty,” without giving them the bare necessities of life, then what good is that? In the same way faith, if good deeds do not go with it, is quite dead.

*James 2:14–17; see also Matthew 7:21–27.*

those who suffer injustice, and they are a negation of the honour due to the Creator.<sup>56</sup>

This explanation demonstrates the breadth of the Catholic Worldview. It should again be stressed that the fact that some acts are “intrinsically evil” in the Catholic Worldview does not mean that persons who commit an intrinsically evil act or who are tempted to do so are “intrinsically evil” or that forgiveness is unattainable to all who ask for it, or that Catholics are generally called upon to judge individuals.<sup>57</sup> In the Catholic Worldview, we are called to love one another—hating sin or identifying some acts as evil does not mean ceasing to love our neighbour. It recognises the differences (body, mind, and spirit) between men and women, the complementarity of one man and one woman, and the complementarity between one man and one woman’s significance to sex, sexuality, and marriage, consistent with the definition of marriage in the *Marriage Act, 1961* (Cth) (the *Marriage Act*) prior to the amendments made in 2017.<sup>58</sup> The Catholic Worldview is not universally shared or supported in the contemporary Western world, and the legal profession of contemporary Australia is no exception to that.<sup>59</sup>

#### B. *The Revisionist Worldview*

Whilst some aspects of the Catholic Worldview, such as feeding the hungry and helping the poor, may still have some resonance in the broader community, some aspects conflict with a different way of looking at the world which this paper refers to as the “Revisionist Worldview.” The Revisionist Worldview emphasises, what Somerville terms “intense individualism,” personal autonomy in relation to sex, sexuality, marriage, and life.<sup>60</sup> As a consequence, in contrast with the Catholic Worldview, it advocates for euthanasia (which it calls euphemistically dying with dignity or going gently), assisted suicide (which it prefers to call assisted dying), for liberal abortion laws, for laws which require all doctors and hospitals to provide abortion

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56. *Veritatis Splendor*, *supra* note 41, at ¶ 80.

57. *E.g.*, *Matthew* 7:1–5.

58. *E.g.*, *Matthew* 19:1–12; CATECHISM OF THE CATHOLIC CHURCH ¶¶ 1602–66 (2d ed. 2016). See generally *Don’t Mess With Marriage: A Pastoral Letter from the Catholic Bishops of Australia to All Australians on the “Same-Sex Marriage Debate”*, AUSTL. CATH. BISHOPS CONF. (2015), [https://www.sydneycatholic.org/pdf/dmm-booklet\\_web.pdf](https://www.sydneycatholic.org/pdf/dmm-booklet_web.pdf); *Marriage Act, 1961* (Cth) (Part I (5)).

59. See Pope Benedict XVI, *Porta Fidei* [*Apostolic Letter for the Indiction of the Year of Faith*] ¶ 10 (2011); Paul Kelly, *A New Secularism Thrashes Tradition*, WEEKEND AUSTL., Apr. 15, 2017, at 18.

60. MARGARET SOMERVILLE, *DEATH TALK: THE CASE AGAINST EUTHANASIA AND PHYSICIAN-ASSISTED SUICIDE* 4 (2001).

services, and for medical and surgical interventions as treatments for childhood gender dysphoria. In the Revisionist Worldview, each individual has the right to work out for themselves, irrespective of their biological sex, whether they identify as a man or a woman or in some other way, and whether they are attracted to men, to women, or to neither, or a combination of them.<sup>61</sup> The Revisionist Worldview rejects the complementarity of one man and one woman and argues for marriages of any two persons, irrespective of their biological sex, to be recognised by the State and for laws mandating that understanding for all service providers and others in their actions.<sup>62</sup> It is an ideological approach, which seeks to inform children at younger and younger ages of this view of sex, sexuality, and marriage, and encourages children to identify themselves within one of an expanding group of sexual identities before adulthood.<sup>63</sup> In Australia, the Revisionist Worldview in relation to sex and sexuality is most closely associated with the La Trobe University Australian Research Centre in Sex, Health, and Society (which was heavily involved in developing the much criticised Safe Schools programme and which wrote the much criticised *Writing Themselves in 3*).<sup>64</sup> The fact that the Revisionist Worldview has gained ascendancy over the Catholic Worldview in contemporary Australia is evident from the results of the postal poll in favour of the redefinition of marriage in Australia;<sup>65</sup> the legislation which effected the redefinition of marriage;<sup>66</sup> the rejection by the Senate and the House of Representatives of the Commonwealth Parliament of amendments to that legislation to better protect the freedom of conscience, belief, and

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61. See generally RYAN T. ANDERSON, WHEN HARRY BECAME SALLY: RESPONDING TO THE TRANSGENDER MOMENT 108–09 (2018).

62. Sherif Girgis et al., *What is Marriage?*, 34 HARV. J.L. & PUB. POL'Y 245, 246–47 (2011); Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. ILL. L. REV. 839, 848–51 (2014). See generally Douglas Laycock & Thomas C. Berg, *Protecting Same-Sex Marriage and Religious Liberty*, 99 VA. L. REV. ONLINE 1 (2013).

63. See Wanda Skowronska, *Fighting the Pronoun Police*, CRISIS MAG. (Dec. 29, 2016), <https://www.crisismagazine.com/2016/fighting-pronoun-police>.

64. Rebecca Urban, "No Hard Evidence" for Safe Schools Rollout, WEEKEND AUSTRAL. (Apr. 8, 2017, 12:00 AM), <http://www.theaustralian.com.au>.

65. In response to the question "Should the law be changed to allow same-sex couples to marry?" the majority of Australians voted yes, 7,817,247 (61.6%), while a minority, 4,873,987 (38.4%), voted no. *Australian Marriage Law Postal Survey 2017: National Results*, AUSTRAL. BUREAU STATS. (Nov. 15, 2017), <https://marriagesurvey.abs.gov.au/results/>.

66. See *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) (Austl.).

religion;<sup>67</sup> the introduction of lawful euthanasia in Victoria, Australia;<sup>68</sup> the decision of the Full Court of the Family Court of Australia to reject the need for Court approval for the treatment of childhood gender dysphoria;<sup>69</sup> the introduction of exclusion zones across many States and Territories to preclude vocal prayer and a range of other activities near abortion clinics; the abolition of religious confession privilege in certain cases in the Australian Capital Territory<sup>70</sup> and South Australia;<sup>71</sup> and demands for uniform laws across the nation of that kind.<sup>72</sup>

### C. Revisionist Lawyers

Recognition of the fact that there is a deep, broad, and irreconcilable conflict between these two worldviews is critical for twenty-first century Catholic lawyers. There are good reasons to conclude that the majority of lawyers and the majority of law firms subscribe, in whole or in part, to the Revisionist Worldview. The support of the successful campaign in Australia to redefine marriage in a manner inconsistent with the Catholic Worldview testifies to this.<sup>73</sup> According to the Australian Marriage Equality website, the Law Institute Victoria supported the redefinition of marriage as did many law

67. Rachel Baxendale, *SSM Bill Result Shows Turnbull is "A Strong Leader,"* AUSTRALIAN (Nov. 30, 2017), <https://www.theaustralian.com.au/national-affairs/pm-lacks-leadership-nationals-mp-andrew-broad-says/news-story/0a058d7ec913dfe388d4d7cdf4a18d42>.

68. See *Voluntary Assisted Dying Act 2017* (Vict.) pt 1 (Austl.).

69. *Re Kelvin* [2017] FamCAFC 258 (30 Nov. 2017) (Austl.).

70. See Katie Burgess, *Reportable Conduct Scheme Extended to Confessional, Despite Last-minute Plea,* CANBERRA TIMES (June 7, 2018), <https://www.canberratimes.com.au/politics/act/reportable-conduct-scheme-extended-to-confessional-20180607-p4zk0j.html>.

71. Eugene Boisvert, *SA Catholic Church Blindsided by Move to Scrap Confession Protection,* ABC NEWS (June 14, 2018, 9:51 PM), <http://www.abc.net.au/news/2018-06-14/sa-to-scrap-church-confession-protection/9868332>.

72. See Rachel Baxendale, *Breaking Confessional Seal Won't Help: Bishop,* AUSTRALIAN (June 11, 2018), <http://www.pressreader.com/australia/the-australian/20180611/2818400540054368338>; Mark Bowling, *New Law Requiring Priests to Break Confession Seal "Premature and Ill-judged," Archbishop Coleridge Says,* CATH. LEADER (June 13, 2018), <http://catholicleader.com.au/news/new-law-requiring-priests-to-break-confession-seal-premature-and-ill-judged-archbishop-coleridge-says>.

73. Whilst some prominent Catholics publicly supported the redefinition of marriage, in doing so, they were promoting an understanding of marriage inconsistent with the Catholic Worldview. Catholic Communications, Sydney Archdiocese, *Brennan "Wrong" on Same-Sex Marriage,* MELBOURNE CATH. LAW. ASS'N (Oct. 26, 2017), [https://www.sydneycatholic.org/news/latest\\_news/2017/20171026\\_173.shtml](https://www.sydneycatholic.org/news/latest_news/2017/20171026_173.shtml); Peter Rosengren, *Catholic Theologian Takes Fr Frank Brennan, Greg Sheridan to Task Over Marriage,* CATH. WKLY. (Oct. 24, 2017), <https://www.catholicweekly.com/au/catholic-theologian-takes-fr-frank-brennan-greg-sheridan-to-task-over-marriage>.

firms.<sup>74</sup> On August 19, 2017, the Law Society of New South Wales, the Bar Association of New South Wales, and the Australian Medical Association of New South Wales, issued a joint press release which asserted that the then current definition of marriage was contrary to the rule of law and that it may have been discriminatory under international law.<sup>75</sup> This statement seemed in conflict with the findings of the Senate Committee Report which had looked into this question and found:

Evidence before the committee confirmed that Australia is not required to make a change to the definition of marriage under jurisprudence in international law, but nor is there an impediment to it doing so. The United Nations Human Rights Committee has made it clear that so long as a nation state has legislation to recognise and protect same-sex relationships—as Australia has—then the right to freedom from discrimination and equality before the law is fulfilled because under the *International Covenant on Civil and Political Rights*, marriage is defined as being between a man and a woman (Article 23). The European Court of Human Rights has made a number of judgements in recent years supporting this approach.<sup>76</sup>

The joint press release included these assertions:

The President of the Law Society of NSW Pauline Wright said denying couples of the same sex the choice to enter a civil marriage contravened the principle of equality before the law.

“The Law Society of NSW is committed to ensuring that all Australians are equal before the law in rights and dignity, regardless of sexual orientation or gender identity,” Ms Wright said.

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74. The law firms that supported the redefinition of marriage included: Allens, Arnold Block Leibler, Ashurst, Baker McKenzie, Boyd Law, Clyde & Co., Corrs Chambers Westgarth, Dowson Turco Lawyers, Gilbert & Tobin, Henry Davis York, Herbert Smith Freehills, jlegal, K&L Gates, Lander & Rogers, Nulegal, Pinsent Masons, Salyer Law, Slater & Gordon, Squire Patton Boggs, and Surrano Law Offices. *An Open Letter from Australian Business Leaders in Support of Marriage Equality*, AUSTL. MARRIAGE EQUALITY, <http://www.australianmarriageequality.org/open-letter-of-support> (last visited Aug. 28, 2019).

75. See *Barristers, Solicitors and Doctors Unite to Support Marriage Equality Laws* L. SOC'Y N.S.W., Aug. 19, 2017, [http://inbrief.nswbar.asn.au/posts/4df95d7a2fb43495d5966ad0621ee85/attachment/SSM\\_media\\_release.pdf](http://inbrief.nswbar.asn.au/posts/4df95d7a2fb43495d5966ad0621ee85/attachment/SSM_media_release.pdf) [hereinafter *Barristers, Solicitors and Doctors Unite*].

76. AUSTL. S. SELECT COMM., REPORT ON THE COMMONWEALTH GOVERNMENT'S EXPOSURE DRAFT OF THE MARRIAGE AMENDMENT (SAME-SEX MARRIAGE) BILL, at vii (2017), [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Same\\_Sex\\_Marriage/SameSexMarriage/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Same_Sex_Marriage/SameSexMarriage/Report).

“Failing to recognise same-sex marriage can have a negative impact on the mental health and wellbeing of LGBTI people and their families, including those in the legal profession.

“It may also amount to discrimination on the basis of sexual orientation which is contrary to the International Covenant on Civil and Political Rights, to which Australia is a signatory.”

NSW Bar Association President Arthur Moses SC said it was an extraordinary step for the medical and legal profession to speak with one voice on an issue.

“This is an important issue. The rule of law requires that all Australians are treated equally,” Mr Moses said.

“Discrimination in the Marriage Act on the basis of sexual orientation or gender identity is contrary to the rule of law.”<sup>77</sup>

After criticism of this statement by some lawyers,<sup>78</sup> the Joint Statement was supported by a Media Release issued by Australian Lawyers for Human Rights.<sup>79</sup> Responding to the criticisms, the President of the NSW Bar Association said that he accepted “that people will have different views in relation to [the redefinition of marriage]” and that he respected “their right to hold those views, even though [he] disagree[s] with those views.”<sup>80</sup> The Law Society of NSW issued a statement in which it acknowledged “that there is a diversity of opinion within the profession and the Council on the topic of same-sex marriage, and respects those opinions.”<sup>81</sup> Following the results of the postal poll, which favoured the redefinition of marriage, the Law Society

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77. *Barristers, Solicitors and Doctors Unite*, *supra* note 75.

78. See Neil Foster, *Neil Foster on the Media Release from the Wilberforce Foundation*, ANGLICAN CHURCH LEAGUE (Sept. 1, 2017), <http://acl.asn.au/neil-foster-on-the-press-release-from-the-wilberforce-foundation/>.

79. *The Marriage Equality Postal Opinion Poll: Human Rights Lawyers Throw Their Support Behind NSW Law Society President*, AUSTL. LAW. FOR HUM. RTS. (Aug. 30, 2017), <https://alhr.org.au/support-nsw-law-society-president/>.

80. Michaela Whitbourn, *Call for Law Society President to Resign Over Support for Same-Sex Marriage*, SYDNEY MORNING HERALD (Aug. 28, 2017), <https://www.smh.com.au/national/nsw/call-for-law-society-president-to-resign-over-support-for-samesex-marriage-20170828-gy-5sv.3.html> (quoting N.S.W. Bar Association President, Arthur Moses, SC).

81. *Council of the Law Society of NSW Supports Respectful Debate on Same-Sex Marriage*, L. SOC'Y N.S.W., <https://www.lawsociety.com.au/advocacy-and-resources/news-and-media/Law-Society-Council-on-same-sex-marriage> (last visited Oct. 23, 2019).

of NSW indicated that two working groups would be formed to review any draft legislation and forward a recommendation to the Law Council of Australia to be included in a submission made by that body to the government.<sup>82</sup> The President of the Society indicated that “[t]hese working groups will advise the Law Society about safeguards to protect existing freedoms and rights including rights of free speech, conscience, thought, religion, association, assembly and expression.”<sup>83</sup> She also “acknowledged there were divergent and deeply held views within the legal profession and the broader community on the topic of same-sex marriage.”<sup>84</sup> At the same time, the President stated that “the Law Society had since 2012 consistently supported the introduction of laws to enable same-sex marriage in order to address discrimination against same-sex couples.”<sup>85</sup>

Both before and after the calling of the postal poll, the Law Council of Australia<sup>86</sup> issued several statements in support of the redefinition of marriage.<sup>87</sup> It has also issued several statements opposing changes to the draft legislation to improve religious freedom protections.<sup>88</sup> As these statements make clear, the two largest representative bodies for lawyers in New South Wales and the national body representing lawyers all supported the redefinition of marriage into a form inconsistent with the Catholic Worldview. Whilst the subsequent more conciliatory statements of the two New South Wales’ bodies recognised differences of opinion, none supported a preference for an understanding of marriage consistent with the Catholic Worldview. The

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82. L. Soc’y N.S.W., *The Law Society of NSW Notes the Outcome of the Australian Marriage Law Postal Survey*, MEDIANET (Nov. 15, 2017), <http://www.medianet.com.au/releases/148083/>.

83. *Id.*

84. *Id.*

85. *Id.*

86. Which describes itself as

the peak national representative body of the Australian legal profession. The Law Council represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice. The Law Council is a federal organisation representing 65,000 Australian lawyers through their bar associations and law societies and Law Firms Australia (the Constituent Bodies).

*About Us*, L. COUNCIL AUSTL., <https://www.lawcouncil.asn.au/about-us> (last visited Oct. 10, 2018).

87. *E.g.*, *Vote “Yes” for Marriage Equality, “Yes” for Human Rights*, L. COUNCIL AUSTL. (Sept. 7, 2017), <https://www.lawcouncil.asn.au/media/media-releases/vote-yes-for-marriage-equality-yes-for-human-rights>.

88. *New Bill an Extraordinary Winding Back of Anti-Discrimination Laws Under Cover of Same-Sex Marriage*, L. COUNCIL AUSTL. (Nov. 13, 2017), <http://www.lawcouncil.asn.au/media/media-releases/new-bill-an-extraordinary-winding-back-of-anti-discrimination-laws-under-cover-of-same-sex-marriage>; Melissa Coade, *Marriage Equality: Get It Done*, LAW. WKLY. (Dec. 6, 2017), [http://www.lawyersweekly.com.au/wig-chamber/22381-marriage-equality-get-it-done?utm\\_source=Lawyers Weekly&utm\\_campaign=06\\_12\\_17&utm\\_medium=email&utm\\_content=2](http://www.lawyersweekly.com.au/wig-chamber/22381-marriage-equality-get-it-done?utm_source=Lawyers Weekly&utm_campaign=06_12_17&utm_medium=email&utm_content=2).

express support by leading representative bodies of moral positions inconsistent with the Catholic Worldview puts Catholic lawyers who maintain the Catholic understanding of marriage in a position of dissent from their own professional bodies and many large employers of lawyers. Whilst this would not appear to pose any immediate threat to the accreditation of Catholic lawyers as appropriate persons to practice law, this nevertheless should be a matter of concern for Catholic lawyers given recent Canadian experience. Law societies in Canada have refused to accredit the Trinity Western Law School because of its traditional Christian moral position on marriage,<sup>89</sup> and the Law Society of Upper Canada has required its 50,000 members to sign “a statement of principles acknowledging their obligations to promote equality, diversity and inclusion generally.”<sup>90</sup> Failure to sign this statement could lead to sanctions or the loss of the license to practice law.<sup>91</sup> Given the Canadian experience, it would be naïve to ignore the possibility of this form of intolerance of the Catholic Worldview arising at some future time in Australia.

#### *D. Intolerance and Revisionism in Australia*

Whilst not yet taking the form seen in the legal profession in the examples above from Canada, some proponents of some or all of the Revisionist Worldview in Australia are also demonstrating increasing intolerance towards those who hold to some or all of the Catholic Worldview. This intolerance has been demonstrated by events such as the reporting of the Archbishop of Hobart for alleged discrimination in relation to his support for the preservation of traditional marriage, abuse of hotel employees leading to the cancellation of a meeting of supporters of traditional marriage, attacks on a brewer because two politicians drank their beer whilst politely discussing their differing opinions on marriage, and calls for an academic and a businessman to be dismissed because of their support for traditional marriage.<sup>92</sup> This form of intolerance,

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89. Barry Bussey, *Respect for the Religious Freedom of a Christian Law School in British Columbia, Canada*, UNIV. NOTRE DAME AUSTL.: ON THE CASE, Issue 19, <https://www.notredame.edu.au/about/schools/sydney/law/school-resources/on-the-case/issue-19>; Barry Bussey, *Religious Freedom and the Return of Common Sense in Nova Scotia*, UNIV. NOTRE DAME AUSTL.: ON THE CASE, Issue 17, <https://www.notredame.edu.au/about/schools/sydney/law/school-resources/on-the-case/issue-17>; Barry Bussey, *Where the Offended Take Away Religious Freedom*, UNIV. NOTRE DAME AUSTL.: ON THE CASE, Issue 16, <https://www.notredame.edu.au/about/schools/sydney/law/school-resources/on-the-case/issue-16>.

90. Robin Speed, Opinion, *Law Societies Do Not Speak for All Members*, AUSTRALIAN (Dec. 1, 2017), <https://www.pressreader.com/australia/the-australian/20171201/28271622737508>.

91. *Id.*

92. Archbishop Julian Porteous, Letter to the Editor, *Corporate Bullying Threatens Our Freedoms*, WEEKEND AUSTL., Apr. 15, 2017; Tess Livingstone, *Catholic Archbishop Fisher to CEOs: “Butt Out of*



particularly if it is endorsed by the State, appears to be quite inconsistent with a pluralist and diverse society such as Australia. Some argue that there are benefits from discussion rather than suppression of alternative viewpoints on contentious issues. As Iain Benson has put it:

[W]e need to be wary of claims that a particular position represents “*the* state interest”. More often than not, when what is at issue is a contestable viewpoint, the state interest is multiple, not singular. The state, simply put, should not have only “one” view on controversial matters. These are questions that the state should keep as “open” as far as possible.<sup>93</sup>

This more tolerant approach shows a greater willingness to tolerate the varieties of diversity which exist in the Australian politic and is to be contrasted with an intolerant approach which seeks to aggressively snuff out countervailing views. This is the sort of approach described by Rex Ahdar (not expressing his own view here of course): “[W]e have finally triumphed when it comes to gay rights, reproductive rights, and so on, but the conflict is stubbornly kept alive when the state is willing to grant exemptions to recalcitrant citizens who refuse to move with the times.”<sup>94</sup>

The Canadian experience demonstrates the existential risk posed by this type of thinking to Catholic universities that wish to teach law in a Catholic context and to include the Catholic Worldview as one of the intellectual pursuits to which law students are exposed, and to Catholics who choose to pursue a career in the law. The Canadian experience can appropriately be described as the “new sectarianism.”<sup>95</sup>

#### E. *Politicised Research*

It is unfortunate that much of the research published in the areas where the Catholic Worldview and the Revisionist Worldview are most in conflict—

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*Same-Sex Marriage Debate*,” AUSTRALIAN, Apr. 1, 2017; Archbishop Anthony Fisher, *Rogue Business: The State of Our Democracy*, CATH. WKLY. (Apr. 16, 2017), <https://www.catholicweekly.com.au/archbishop-fisher-rogue-buisiness-the-state-of-our-democracy/>; William Dawes, *The Loud Crowd’s Gift for Intolerance: Who Will Protect the Christian Worker?*, CATH. WKLY. (Apr. 6, 2017), <https://www.catholicweekly.com.au/loud-crowds-gift-intolerance-will-protect-christian-worker/>.

93. Iain T. Benson, *The Politics of Drift: Civic Virtues, Associations and Citizenship*, 33 POL’Y, Winter 2017, at 45, 47 (alteration in original).

94. Rex Ahdar, *Exemptions for Religion or Conscience Under the Canopy of the Rule of Law*, 5 J.L., RELIGION & STATE 185, 209 (2017).

95. See generally HON. DYSON HEYDON AC QC, *CATHOLIC RESISTANCE TO GERMAN STATE PERSECUTION: LESSONS FOR MODERN AUSTRALIA* (2014).

such as in the areas of sex, sexuality, marriage, abortion, conscientious objection, and euthanasia—is heavily politicised. Most of the published research is written by those with the Revisionist Worldview. Reliable statistics require random samples and the comparison of like with like, in terms of factors, such as racial background, social and economic status, and education.<sup>96</sup> Research relying on “small biased convenience samples” is problematic.<sup>97</sup> The quality of data can be adversely impacted where it is obtained in a political environment, particularly when the respondents have been aware of the use to which the research is intended to be put, particularly when that information is obtained via interviews or surveys.<sup>98</sup> An example of a report produced by proponents of the Revisionist Worldview is the *Writing Themselves in 3* report. This report has been criticised by academics for a variety of shortcomings including being unreliable as representative due to the self-selection of participants;<sup>99</sup> however, it is still regularly referred to as though it is authoritative. Bias is to be found in much of the academic writing on both sides of such issues which makes it very difficult, especially for those without expertise in the particular discipline involved, to determine the truth and to locate reliable and unbiased scientific and empirical research in these areas. Decisions are often made on controversial moral issues without adequate evidence.<sup>100</sup>

#### F. *A State of Confusion*

Whilst there are strong advocates for the Revisionist Worldview—in whole or in part—most Australians are not intellectuals, philosophers, or political activists. It would be wrong to think that every person—who has lost their faith, denies the existence of God, feels himself attracted to another person of the same sex, supports euthanasia or the new definition of marriage,

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96. See Douglas W. Allen, *High School Graduation Rates Among Children of Same-Sex Households*, 11 REV. ECON. HOUSEHOLD 635, 640 (2013).

97. *Id.* at 638; Simon R. Crouch et al., *Parent-Reported Measures of Child Health and Wellbeing in Same-Sex Parent Families: A Cross-Sectional Survey*, 14 BMC PUB. HEALTH 2014; John Ross, *Small Studies Skew Results Much More than Industry Influence*, AUSTRALIAN, Mar. 29, 2017, at 31.

98. Walter R. Schumm, *A Review and Critique of Research on Same-Sex Parenting and Adoption*, 119 PSYCHOL. REP. 641, 715–16 (2016); see also Allen, *supra* note 96, at 636; Anna Malmquist & Karin Zetterqvist Nelson, *Efforts to Maintain a “Just Great” Story: Lesbian Parents’ Talk About Encounters with Professionals in Fertility Clinics and Maternal and Child Healthcare Services*, 24 FEMINISM & PSYCHOL. 56, 68–70 (2014).

99. Urban, *supra* note 64; See, e.g., Patrick Parkinson, *The Controversy Over the Safe Schools Program—Finding the Sensible Centre*, SYDNEY L. SCH. RES. PAPER NO.16/83, Sept. 2016, at 1, 7, 31, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2839084](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2839084).

100. Urban, *supra* note 64.

or experiences gender dysphoria—has had any exposure to the Catholic Worldview on those matters, has fully thought through the issues, is fully informed, or necessarily subscribes to the Revisionist Worldview. Unfortunately, given the politicisation of research and of the media, it is very difficult to become fully informed on these issues. Many deeply misunderstand Catholicism, Christianity, and religion. Whilst nearly eighty per cent of Australians know at least two Christians, eight per cent do not know any Christians.<sup>101</sup> Almost eighteen per cent of Australians know nothing about the Church in Australia.<sup>102</sup> These facts provide perhaps a partial explanation for the fact that, as Brugger has observed:

Australia is a more secularized country than the United States. . . . Faith and religion, Christianity and its doctrines are further from the minds of the ordinary person here. In the U.S., everyone is conscious of religion and religious questions. Some are bitterly opposed to Christianity, others are devoted to it, and still others try to tiptoe gently around institutional religion to avoid being soiled by it. . . . But there is no really religiously oblivious part of the United States. Here in Australia, there is an astonishing level of religious ignorance and oblivion. Religion is simply not in the daily categories of thinking, and Catholicism, in general, has a negative connotation on the streets here.<sup>103</sup>

The issue for Catholic lawyers in the twenty-first century in Australia is not just that their religious tradition is poorly understood by a sizeable proportion of the Australian population, but that more than a quarter of Australians have a negative view of Christianity.<sup>104</sup> Thirteen per cent of Australians have strong reservations about Christianity and five per cent are passionately opposed to it.<sup>105</sup> Many Australians associate Christians with very negative stereotypes. Some non-Christian Australians consider Christians to be judgmental and greedy, that their beliefs are outdated, and that they impose their beliefs on others.<sup>106</sup> Whilst Australians who know Christians most identify them with positive traits such as caring (forty-one per cent), loving (thirty-five per cent), kindness (thirty-five per cent), and honesty (thirty-two

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101. MARK MCCRINDLE, MCCRINDLE RESEARCH PTY LTD., FAITH AND BELIEF IN AUSTRALIA: A NATIONAL STUDY ON RELIGION, SPIRITUALITY AND WORLDVIEW TRENDS 10 (2017).

102. *Id.*

103. Eddie O'Neill, *Lifting Up the Faith Down Under*, NAT'L CATH. REG. (Jul. 29, 2017), <http://www.ncregister.com/daily-news/lifting-up-the-faith-down-under> (quoting Christian Brugger).

104. Twenty-six per cent, MCCRINDLE, *supra* note 101, at 9.

105. *Id.* at 30.

106. *Id.*

per cent), a significant proportion of Australians who know Christians associate them with negative characteristics.<sup>107</sup> These include being judgmental (twenty per cent), opinionated (eighteen per cent), hypocritical (seventeen per cent), intolerant (twelve per cent), insensitive (five per cent), and rude (four per cent).<sup>108</sup> Among Generation X, Christianity is considered to be “unaccepting of people who don’t follow the rules”<sup>109</sup> and to be a religion in whose name “a lot of bad things have been done.”<sup>110</sup> Generation Y considers Christianity to include beliefs which are rigid and outdated, and the “demonising of normal human emotions and acts such as sexuality.”<sup>111</sup> Christianity is also associated with intellectual and mental feebleness by a substantial proportion of the Australian population. Twenty-two per cent of Australian men and thirteen per cent of Australian women (that is eighteen per cent of Australians) consider that “religion is a crutch for the weak to lean on.”<sup>112</sup> Some people consider even discussing the Catholic Worldview on, for example, abortion, euthanasia, or traditional marriage, identifying flaws in the research relied upon to support early medical interventions on children suffering from gender dysphoria, or supporting redefining marriage hateful and offensive and akin to supporting racism and slavery.<sup>113</sup>

Catholic lawyers in the twenty-first century need to continue to recognise that there is a battle of worldviews which are irreconcilable and that individual Australians—particularly children—are suffering. Catholic lawyers must be aware of perceptions that the Catholic Worldview adds to, rather than, reduces suffering. This means that it is essential that Catholic lawyers continue to look for ways to best help the suffering individual—and to be seen doing just that—whilst at the same time, not just seeking to ignore reason and truth or to deal with crises as they emerge, but seeking to find ways to enable our society to rediscover the Western tradition, if not, the whole of the Catholic Worldview. How Catholic lawyers best go about doing that in the twenty-first century, if this chapter has identified the issues—at least in broad brush correctly—is a great challenge.

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107. *Id.* at 35.

108. *Id.*

109. *Id.* at 30.

110. *Id.*

111. *Id.*

112. *Id.* at 14.

113. Rachel Olding, *Pubs Boycott Coopers Beer Following Bible Society Marriage Equality Marketing Campaign*, SYDNEY MORNING HERALD (Mar. 14, 2017), <https://www.smh.com.au/business/pubs-boycott-coopers-beer-following-bible-society-marriage-equality-marketing-campaign-20170314-guxbk8.html>; ANDERSON, *supra* note 61, at 209.

### G. *The Importance of Catholic Lawyers Knowing Their Faith*

Unfortunately, it is not controversial to observe that most Catholics in Australia, particularly those born after 1960, do not know their faith very well. Those who do not spend time getting to know their faith are in real danger of rejecting its truths, not because they are not true, but because Australian Catholics have no formation and insufficient understanding of the Catholic intellectual tradition. Like Richard Dawkins and Andrew Denton, uninformed and uncatechised Catholics are at risk of rejecting a moral truth or any other element of the faith on false premises. Studying the Catholic faith involves examining a rich heritage of two thousand years of deep thinkers who have reasoned through—and rejected for cogent reasons—most of the very same issues that the Revisionist Worldview now embraces as true. John Howard’s description of “a conservative [being] someone who doesn’t regard himself as morally superior to his grandfather”<sup>114</sup> could well be applied to Catholics who respect tradition and learn from the past rather than seeking to dismiss or ignore it entirely. As Sargent has explained:

[A] good Catholic must be committed to truth (including the Truth) and to justice. This assumes that truth and justice in fact exist and are knowable, and that one must live one’s life (including one’s professional life) ethically. If this is the case, a legal professional skeptical about the value of justice is in conflict with an essential part of the Catholic worldview.<sup>115</sup>

## IV. CATHOLIC LAWYERS ARE NOT ALONE IN THE TWENTY-FIRST CENTURY AND MAKING SURE THAT THEY ARE NOT ALONE

Even in the twenty-first century Catholic lawyers are not alone. Sharing the very particular issues that arise for Catholic lawyers with other lawyers of the same faith—or of other faiths experiencing the same issues—is very fortifying and valuable. One source of support may be societies of Catholic lawyers, such as the Saint Thomas More Society in Sydney. If there is no Bible group or discussion group for Catholics or Christians in the workplace, Catholic lawyers ought to seek to establish such a group, depending on the numbers, for all Christian staff or all Catholic staff. In 1961, as Pope John

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114. DAMIEN FREEMAN, *ABBOTT’S RIGHT: THE CONSERVATIVE TRADITION FROM MENZIES TO ABBOTT* 174 (2017).

115. Mark Sargent, *We Hold These Truths: The Mission of a Catholic Law School*, COMMONWEAL MAG. (June 22, 2014), <https://www.commonwealmagazine.org/we-hold-these-truths>.

XXIII observed in *Pacem in Terris*:

[M]an has a natural right to be respected. He has a right to his good name. He has a right to freedom in investigating the truth and . . . to freedom of speech and publication, and to freedom to pursue whatever profession he may choose. He has the right, also, to be accurately informed about public events. . . . Also among man's rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public. . . . As a human [being] he is entitled to the legal protection of his rights, and such protection must be effective, unbiased, and strictly just.<sup>116</sup>

Whilst employers and law firms may not be persuaded by these words, there are sound reasons why it is in their own business and financial interests to encourage, embrace, and respect varieties of diversity within the workplace. As Bond and Haynes have observed:

Benefits [of organisations successfully addressing diversity] include: relief from discrimination and harassment, greater opportunities for growth and increased job satisfaction, and better mental and physical health. Members of majority groups (e.g., heterosexuals, Whites, and males) have also reported benefits such as increased job satisfaction when harassment of others is reduced.<sup>117</sup>

Organisations which respect diversity may also enjoy increased productivity, reduced absenteeism and turnover of staff, and improvements in commitment to the employer.<sup>118</sup> They will also be more representative of the community and their client base and avoid the risk of becoming too homogenous an organisation, which may discourage clients and staff from other backgrounds from sending them work or seeking employment with the firm.<sup>119</sup> These factors support recognising the varieties of diversity in the workplace, which includes considering the impact of behaviours if not actively supporting Catholic employees and avoiding stereotyping them. However, as

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116. Lucia Ann Silecchia, *On Doing Justice and Walking Humbly with God: Catholic Social Thought on Law as a Tool for Building Justice*, 46 CATH. U.L. REV. 1163, 1169–70 (1997) (first and third alteration in original) (quoting Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, and Charity] ¶¶ 12–14, 27 (1961)).

117. Meg A. Bond & Michelle C. Haynes, *Workplace Diversity: A Social-Ecological Framework and Policy Implications*, 8 SOC. ISSUES & POL'Y REV. 167, 170 (2014) (citations omitted).

118. *Id.* at 170.

119. *Id.* at 175.

Dagit has observed: “Religion is often missing from conversations about corporate diversity policies.”<sup>120</sup> Out of fear of acting wrongly or unlawfully “[w]hen it comes to faith, most companies, ‘stay as far away as they can’” from developing policies to respect religious diversity.<sup>121</sup> According to Fontana, a survey conducted by Tanenbaum, which is a not-for-profit seeking to eradicate religious discrimination, “found that workers at companies with religious nondiscrimination policies were less likely to say that they were seeking a new job. And, those with access to flexible hours for religious observance were more than twice as likely to say they looked forward to coming to work.”<sup>122</sup> Similarly, the Law Society of New South Wales FLIP Report<sup>123</sup> observed that: “Lawyers continue to be held back from full participation due to a variety of factors including gender, disability, family status, *faith* and cultural identity.”<sup>124</sup>

Quoting Wesley Lalich, Senior Associate of MinterEllison, this report identified the financial benefits of firms respecting diversity:

The importance of diversity in the workplace is that it encourages people to be themselves at work, so you get more out of them. . . . Employees who are more comfortable being themselves in the workplace are going to be mentally more ‘at’ the workplace, and you’re also less likely to lose good talent if people feel comfortable at the workplace.<sup>125</sup>

In Australia, people tend to talk about diversity and negative stereotyping as though they relate only to sex, sexual orientation, and gender,<sup>126</sup> but there are varieties of diversity and those examples are just a small subset. A Catholic lawyer should be and should recognise the reality of being different than other people in the Australian legal community. Some may feel compromised if they work at one of the firms that signed up to support the redefinition of marriage. Christian and Catholic lawyers ought not be ignored when firms think about diversity. Their faith and that of others in the law ought to be

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120. Francesca Fontana, *Is Religion at Work Still Taboo? Not Everywhere*, WALL ST. J. (July 19, 2017), <https://www.wsj.com/articles/is-religion-at-work-still-taboo-not-everywhere-1500386401> (quoting Deb Dagit).

121. *Id.*

122. *Id.*

123. THE FLIP REPORT, *supra* note 12.

124. *Id.* at 89 (emphasis added).

125. *Id.*

126. *See, e.g.*, Melissa Coade, *BigLaw and LGBTQI Rights: A Law Firm Partner Reflects*, LAW. WKLY. (May 22, 2018), <https://www.lawyersweekly.com.au/biglaw/23284-biglaw-and-lgbtqi-rights-a-law-firm-partner-reflects>.

recognised as warranting equivalent recognition and respect. The impact of negative stereotyping of Christian and, in particular, Catholic lawyers discussed above should not be ignored. As Bond and Haynes have observed:

Research suggests that the prospect or “threat” of confirming a stereotype can have a detrimental impact on one’s performance [at work]. A person does not have to directly experience bias or even be directly reminded about stereotypic expectations; rather, qualities of settings have the power to signal whether or not someone can anticipate that their social identity will place them at risk of differential treatment. People look for environmental cues, like organizational values for diversity and the availability of co-workers who share one’s social identity, to assess whether or not they will be safe [from stereotype-based biases in the workplace].<sup>127</sup>

They conclude that:

Ignoring differences neither makes them disappear nor renders them irrelevant; philosophies that recognize and value differences tend to have more positive effects on reducing bias and other barriers to the inclusion of diverse group members. Organizations can promote the full inclusion of diverse members, and mitigate the potential negative repercussion that may accompany diversity, in a wide range of ways—by signaling acceptance/safety for members of minority groups; by increasing the sense that the organization considers diversity an asset; by disrupting the negative consequences of social categorization; by communicating clearly that discriminatory behavior is not acceptable; and/or by establishing practices that communicate the importance of both a shared mission and a collective value for the contributions of diverse others.<sup>128</sup>

Along with the postal poll on marriage, the introduction of euthanasia and assisted suicide in Victoria; endeavours to introduce similar legislation federally<sup>129</sup> and in other parts of the country;<sup>130</sup> the introduction of exclusion zones in Victoria, the Australian Capital Territory, Tasmania, the Northern Territory, and New South Wales;<sup>131</sup> the abolition of religious confession

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127. Bond & Haynes, *supra* note 117, at 181 (citations omitted).

128. *Id.* at 183–84.

129. See *Voluntary Assisted Dying Act 2017* (Vict.) pt 1 (Austl.); *Restoring Territory Rights (Dying with Dignity) Bill 2016* (Cth) (Austl.).

130. See, e.g., *Voluntary Assisted Dying Bill 2017* (N.S.W.).

131. *Reproductive Health (Acceptance to Terminations) Act 2014* (Tas.) pt 2 s 9 (Austl.); *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015* (Vict.) s 5 (Austl.); *Health Act 1993* (Austl. Cap. Terr.) pt 6 div 6.2 ss 85–87 (Austl.); *Termination of Pregnancy Law Reform Act 2017* (N. Terr.) pt 3 (Austl.);



privilege in certain cases in the Australian Capital Territory<sup>132</sup> and South Australia;<sup>133</sup> and demands for uniform laws across the nation of that kind,<sup>134</sup> cause the shadow of the past to hang over the Catholic Church in Australia. The trials of the former Archbishop of Melbourne and Sydney, Cardinal George Pell, in relation to alleged historic child sexual offences will probably take several years to conclude.<sup>135</sup> There is no reason to conclude that life is going to become any easier for Catholic lawyers in Australia in the remainder of the twenty-first century. Catholic lawyers in the twenty-first century need support and they will need more of it. If Catholic lawyers in the twenty-first century do not get organised, they can expect firms of the future to support more of the causes of the Revisionist Worldview, to be more and more opposed to the Catholic Worldview and, soon enough, to avoid hiring those who do not subscribe to their worldview or to make it very difficult for them to continue to practice in good conscience by requiring acknowledgment of obligations such as those required by the Law Society of Upper Canada.<sup>136</sup>

#### V. WORKING OUT WHAT SORT OF TWENTY-FIRST CENTURY CATHOLIC LAWYER YOU ARE AND WHAT SORT OF TWENTY-FIRST CENTURY CATHOLIC LAWYER YOU WANT TO BE

As Mark Sargent puts it:

[A] good Catholic must be committed to truth (including the Truth) and to justice. This assumes that truth and justice in fact exist and are knowable, and that one must live one's life (including one's professional life) ethically.

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*Public Health Amendment (Safe Access To Reproductive Health Clinics) Act 2018* (N.S.W.) sch 1 pt 6A ss 98A–98C, 98F (Austl.). Such legislation has been proposed but not, as yet, enacted in Western Australia. See *Safe Zone Call for Abortion Clinics*, GREENS W. AUSTL. (Feb. 15, 2017), <https://greens.org.au/wa/news/media-release/safe-zone-call-abortion-clinics>.

132. Burgess, *supra* note 70.

133. Boisvert, *supra* note 71.

134. See Baxendale, *supra* note 72; Bowling, *supra* note 72.

135. Adam Baidawi, *Cardinal George Pell to Stand Trial on Historical Sex Offenses*, N.Y. TIMES (Apr. 30, 2018), <https://www.nytimes.com/2018/04/30/world/australia/cardinal-george-pell-trial-sexual-abuse.html>.

136. Speed, *supra* note 90. This sort of behaviour is common for many hospitals in the Netherlands who only interview applicants with no conscientious objection to euthanasia. Graduates from medical schools which do not favour euthanasia may have a difficult time obtaining employment in the Netherlands and “many of those who refuse [to euthanize patients] on principle grounds, are considered harsh, dogmatic, and immoral.” Theo A. Boer, *After the Slippery Slope: Dutch Experiences on Regulating Active Euthanasia*, J. SOC’Y CHRISTIAN ETHICS Fall/Winter 2003, at 67, 76.

If this is the case, a legal professional skeptical about the value of justice is in conflict with an essential part of the Catholic worldview.<sup>137</sup>

In a world where the Catholic Worldview is widely rejected, remaining “committed to truth (including the Truth) and to justice” is a great challenge for all Catholics, but perhaps most particularly for Catholic lawyers. As noted at the beginning of this paper, according to the Catholic Worldview, we are all given particular gifts and talents and there are many ways in which we can serve the Lord as twenty-first century Catholic lawyers. Readers who are Catholic lawyers in the twenty-first century might usefully reflect on these questions:

*What sort of twenty-first century Catholic lawyer am I?*

*What sort of twenty-first century Catholic lawyer do I want to be?*

This paper has demonstrated the wide range of different activities on which Catholic lawyers in the twenty-first century might focus their particular gifts and talents and the range of actions that Catholic lawyers might take consistently with the Catholic Worldview. Critically, Catholic lawyers are called by their faith to moral action. They are called to act honestly, strive for justice, show mercy and purity of heart, seek to resolve disputes and bring peace, and engage in acts of charity. Exactly how each lawyer is called to do so is a question that this paper cannot answer. This is a matter every Catholic lawyer must continually ponder for themselves, taking into account their workplace, their resources, and their particular gifts and talents. It is hoped that the matters considered in this paper will provide Catholic lawyers with some raw material to enable them to think carefully through these questions for their own good and the good of our society.

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137. Sargent, *supra* note 115.