

“Reunderstanding the secular and secularism: A new paradigm for beliefs and culture – Reflections from Canada.”

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It is a great pleasure to be here to give my first presentation at SAIFAC and I'd like to thank Dr. David Bilchitz for the invitation to give this paper to the Institute today.

Meanings of Words and the Use of Language:

Owen Barfield, himself a lawyer but also a learned writer on literature and language noted that “the most fundamental assumptions of any age are those that are implicit in the meanings of its common words.”¹ Barfield was of the view that one should pay special attention to those times *when words change their meanings*. The words I want to look at, in particular, “secular” and “secularism” both have important meaning changes that we should note.

* This article draws in large part upon articles that have been published elsewhere. See: Iain T. Benson “*The Freedom of Conscience and Religion in Canada: Challenges and Opportunities*” Vol. 21, No. 1, Emory International Law Review (Spring 2007) 113 – 165; Iain T. Benson, “Considering Secularism” in, Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion and Public Policy* (Montreal: McGill/Queens, 2004) 83 – 93; and, Iain T. Benson, *Notes Towards a (Re)Definition of the Secular*, 33 U.B.C. L. REV. 519, 520–38 (2000). The latter cited with approval by the Supreme Court of Canada in *Chamberlain*, see footnote #15, below. I would like to acknowledge my debt particularly in this article to two Canadian legal scholars and practitioners Bradley Miller (University of Western Ontario) and Peter Lauwers of Miller Thompson, Toronto. Much of my thinking in this area has been greatly assisted by sustained discussion with them on these and related matters over several years. I would also like to thank the Faculty of Law, Department of Constitutional Law and the Department of the Philosophy of Law at the University of the Free State, Bloemfontein, and Shaun de Freitas of that Faculty, for it was they who invited me to become a Research Fellow and provided financial travel assistance and hospitality in South Africa. I would like to thank the Board of the Centre for Cultural Renewal, Ottawa, whose support and encouragement over many years has been of inestimable assistance.

1 Owen Barfield, *Speaker's Meaning* (Middletown: Wesleyan University Press, 1967) p. 44.

With the term “secular” the “hidden” meaning of a “sacred secular” has been almost totally overtaken by the secularistic turn in culture to replace the term “secular” with a reading that is anti-religious and anti-sacred. Barfield notes:

One good reason for troubling to concentrate on the moment of change of meaning is that it directs our attention – awakens us – to fundamental assumptions so deeply held that no one even thinks of making them explicit.²

Barfield makes a distinction between “speaker’s meaning” and “lexical meaning” and notes that shifts in language can occur both by expansion of meaning and by contraction. He then states something of great importance to the change in the meaning of “secular” when he discusses the notion of lexical contraction. Of this Barfield states:

Whereas expansion of meaning can be seen to be the product of the mental *activity* of individual speakers, contraction of meaning can also be – it generally is – the product of their passivity. It is more often the product of something like force of habit, or rather the inertia of habit.³

The “inertia of habit” is evident when religious believers or believers in the idea of the sacred permeating all of human existence and all aspects of culture speak of the term “secular” as if it means “free *from* religion or the sacred.” In short, they do not mean what they say or realize what is imported in such usage. Similarly, those who (whether personally religious or not) believe that religious citizens have every bit as much right as non-religious citizens to be full players in the public aspects of society are also largely unaware how the construction of key terms in the area of religion and the state in contemporary society work against the full inclusion of all citizens.

This ambiguity regarding “secular” is different from the usual ambiguity that can accompany the meaning of words but is a different sort of confusion because it is not recognized *to be* ambiguous and because it carries within it a meaning that is not intended by many of those who speak it. I shall argue that the term “secular” as currently used, is antithetical to where the law is and must move in terms of how it understands the public dimension of religious liberty and expression in constitutional democracies today.⁴

Generally speaking both the South African and the Canadian courts have not followed the American approaches where debates over the history, meaning and nature of the “separation of church and state” has given a particular and contorted history to the legal tests. Canadian courts have not felt themselves bound to American interpretations about the religion clauses and approaches to them taken in that country. Differences between the

2 *ibid.* p. 46

3 *ibid.* p. 46 emphasis in original.

4 I leave aside from consideration the complex and sometimes incoherent approaches under the American “religion clauses” where “establishment” and “free exercise” have been twisted this way and that for reasons that have occupied veritable oceans of scholarly and judicial ink. The constitutional developments of countries such as Canada and South Africa do well to avoid following the American approaches. For a volume containing useful articles reviewing difficulties and inconsistencies in the American law, see: Stephen V. Monsma and J. Christopher Soper (eds.) *Equal Treatment of Religion in a Pluralistic Society* (Cambridge: Eerdmans, 1998).

culture and history of the two countries have been cited as reasons to reject following American religion cases.

Former Chief Justice Dickson stated that American decisions on freedom of religion must be applied with care by Canadian courts:

In my view the applicability of the [Canadian] *Charter* guarantee of freedom of conscience and religion does not depend on the presence or absence of an “anti-establishment principle” in the Canadian Constitution, a principle which can only further obfuscate an already difficult area of the law.⁵

How we understand these different meanings with respect to the “secular” and the related term “secularism” can lead us, and I would say, *ought* to lead us to re-evaluate them, develop jurisprudence that comports with the better uses and then take care, once we understand how misuse of both terms can undercut the very things we are trying to achieve to use them consistently in the re-crafted direction.

I want to get us to look together at the terms “pluralism”, “secular” and “secularism” and a few other related terms (“belief/unbelief” and “faith”) and how these are used by everyone - - religious and non and often in ways that undercut what we think we are saying. Get these terms wrong and you cannot move towards fair and appropriate treatment of diversity in a society because you will have buried structural divisions into the analysis at the outset.

I will suggest that the way most people use most of the central terminology relating to religion and culture suffers from serious faults and actually furthers an ideology that most people who use the terms incorrectly would not support. Briefly then, I’d like to clear some underbrush first by looking at the terms “belief/believer” and “faith/faith communities.”

Who is a “Believer”?

The starting off point for my comments is an observation; “all human beings are believers, the question is not one of belief or non-belief but of what is believed in.”

Yet how often we hear those who do not believe religion described as “unbelievers.” Similarly, everyone has faith but the question, as with belief, is “faith in what?” Here again, the terminology is used in one direction such as when a term such as “faith-communities” or “faith-based initiatives” are used as meaning religious faith.

⁵ *Big M Drug Mart*, [1985] 1 S.C.R. at 339. In *Big M Drug Mart*, Chief Justice Dickson stated, “[i]n my view this recourse to categories from the American jurisprudence is not particularly helpful in defining the meaning of freedom of conscience and religion under the *Charter*” at 341. For academic rejections of the use of American approaches in Canadian constitutional law, see Lorraine Weinrib, *The Religion Clause: Reading the Lesson*, 8 *Supreme Court Law Review*, 507 (1986). Further examples may be found in Iain T. Benson “The Freedom of Conscience and Religion in Canada” above at the starred footnote above note # 1at f.n. #61 p. 126.

What is “faith?”

It was John Henry Cardinal Newman who, in one of his articles observed that “to act is to assume and to assume is to have faith.”⁶ Why then do we speak of “communities of faith” or “people of faith” when we mean those who have religion or are religious and implicitly suggest that all the others do not have faith?

As with belief, the separation of the world into two sharp divisions - - one of “faith” and the other ofwell, that’s the problem. The implicit suggestion of the contemporary period is that those who are not in communities of faith are people of facts and/or that they do not operate out of “faith” but (and here is another false division) “reason” alone. It is not so and when “faith” and “belief” (not necessarily religious of course) are understood to be aspects of human existence we begin to see that the watertight compartments currently being used to insulate and confuse our analysis need to be replaced by better conceptions.

So the fact/belief distinction is often furthered by those who, ironically, don’t actually believe that religious beliefs are un-factual or that atheism and agnosticism have stronger claims to material reality than religious beliefs.

As with “believer/unbeliever” used inaccurately (as set out above) this serves to bracket out religious adherents from other citizens; as the context usually shows, such a bifurcation is usually implicit and unintentional. In combination with other dualistic constructions, however, we shall see that this eventually leads to a general failure to understand relevant matters in a way that leads to accurate analysis of what is actually going on with respect to the state and public policy.

In short, the world is made up, in part, of believers called humans and all are parts of communities that have faith in this or that - - some of this faith and belief is religious some of it is not. These distinctions play out in terms of other major categories and I’d like now to turn to the terms “pluralism” and “liberalism.”

Part I: Pluralism and Liberalism:

There are basically two broad approaches to pluralism and liberalism. One ultimately assumes that we are moving towards agreement on everything (“convergence liberalism”) and the other that we cannot assume this and so must find ways to live together despite differences (I call this “diversity liberalism” or “diversity pluralism”). Though the term “pluralism” is used frequently in relation to law, politics and education, “pluralism” and “liberalism” are seldom defined or analyzed. This article argues that it is important to recognize these two different approaches and that which one we accept will determine whether or not freedom and diversity are tolerated or not. To pursue the wrong sort of

⁶ In his “Tamworth Reading Room Letters,” John Henry Cardinal Newman recognized that everyone who acts must take matters on faith and wrote: “Life is for action. If we insist on proofs for everything, we shall never come to action: to act you must assume, and that assumption is faith.” See *Discussions and Arguments on Various Subjects* (London: Longmans, 1899) at 295.

pluralism or liberalism or to have an incorrect notion of “the secular” will, in fact, determine whether our society can continue to nurture “liberalism”, “tolerance” and liberal democracy itself.

Two Approaches to “Pluralism” under the Canadian Constitution

It is important to consider the nature of pluralism in Canada. Like so many terms in our public discourse (“values”, “the secular”, “liberalism”, etc.) its common use masks the fact that it is seldom analyzed. As such, if there are presuppositions in the term, or an ambiguous usage that is not discovered or discussed, we can be misled as to what is actually being said when the term is used. Pluralism can connote a kind of relativistic approach, as in “because we are a pluralistic society, such and such a moral position cannot have any public validity.” It does not have to mean this, however, and in Canada our linkage of a language of pluralism with a firm commitment to group rights, for example, points us to a principled and structural or shared pluralism rather than one that is relativistic or, perhaps, totalistic.⁷ For the idea of assumed eventual consensus driven by Court decisions, is a notion of pluralism that views society as moving towards the articulation of one public policy and this language is antagonistic to the notion of plurality and tolerance of diversity.

Recent court challenges have raised these questions in a sometimes stark fashion. Professor John Gray has described the two main approaches to liberalism in relation to pluralism as follows:

Liberalism contains two philosophies. In one, toleration is justified as a means to truth. In this view, toleration is an instrument of rational consensus, and a diversity of ways of life is endured in the faith that it is destined to disappear. In the other, toleration is valued as a condition of peace, and divergent ways of living are welcomed as marks of diversity in the good life. The first conception supports an ideal of ultimate convergence on values, the latter an ideal of *modus vivendi*. Liberalism's future lies in turning its face away from the ideal of rational consensus

⁷ By “totalistic” I mean the implicit or explicit claim that all citizens must endorse a particular contested viewpoint or belief in “public” settings when the opposing beliefs are legal to hold. Such views claim that certain practices must be endorsed publicly and that such public endorsement (of, say, homosexual or lesbian conduct) trumps other viewpoints for reasons of “advancement”, “visibility” “the correction of historic wrongs” etc. This is to claim total control over the public sphere for a contested viewpoint - - hence it is a “total” claim or is “totalistic.” This article argues that these claims are inconsistent with allowing genuine diversity of belief and expression for all citizens. We need to begin to see certain beliefs (for example in relation to sexual conduct beliefs) as, in key respects, like religious conduct beliefs. As such, dogma can be sexual or religious and we should treat sexual dogma as we have learned to treat religious dogma - - bracketing it out of certain public areas as an aspect of developing a *modus vivendi*. Needless to say, for those who have fought long and hard to achieve certain public rights and recognitions it is tempting to continue such claims to the outer edges of the culture; to do so, however, is to go too far and, in time, as the saying goes, “cooler heads must prevail” so that the open texture of public agreement and disagreement is maintained. It was difficult for those who held religious hegemony to give up such things as public school indoctrination in matters of religion. It will be equally difficult for those who have won hard-fought recognition for same-sex rights to give up seeking (or having) control of public education curriculum within which they wish to push their arguments about sexual conduct - - but to recognize the limits of ones’ own viewpoint and claims *in legally contestable matters* marks an important stage in personal, group and cultural maturity.

and looking instead to *modus vivendi*.

The predominant liberal view of toleration sees it as a means to a universal civilization. If we give up this view, and welcome a world that contains many ways of life and regimes, we will have to think afresh about human rights and democratic government. We will refashion these inheritances to serve a different liberal philosophy. We will come to think of human rights as convenient articles of peace, whereby individuals and communities with conflicting values and interest may consent to coexist.⁸

The political condition in Canada respects the “*modus vivendi*” or as I prefer to call it “diverse pluralism.” Properly diverse pluralism is frequently under attack in Canada today.

Professor John D. Whyte has noted that the Canadian Constitution has not been promulgated upon any individualistic conception of liberalism but, rather, one that respects and nurtures each person’s communities. Moreover, the two kinds of rights protected by the *Charter*, group rights and individual rights, derive from different conceptions of the proper role of the state, which are both reflected in the Constitution:

There are two theoretical models for describing the modern democratic state. One derives from the political philosophy of liberalism, under which society is arranged without a particular conception of the good and in which individuals have claims of right to equal regard and respect. The other might be labeled the organic society, in which the primary focus is not the autonomy of the individual but the importance of nurturing communities or corporate life. Such a society adheres to a conception of the good in the sense that it accepts that the superior condition for individual well-being is not the maximization of personal autonomy but the growth of strong communities formed around common interests. The interest of individuals are best vindicated not through the recognition of each person’s formal equality but through the joining together of those with similar interests to create nurturing, supportive, normative communities. An organic nation is comprised of these various communities each working out a political accommodation which reconciles conflicting interests but which allows as much of the normative role to the particular communities as possible....The truly effective way to respect life and to achieve a fulfilled life may be through identification with a group and having the assurance that one community or another recognizes one as having distinguishable substantive value. ⁹

Professor Whyte points out that since Confederation, in 1867, the Constitution has provided for group rights in addition to individual rights. S. 133 of the *Constitution Act*, 1867, confers language rights that may be asserted by individuals because of their membership in a protected group. The Royal Proclamation of 1763 accommodates claims by members of aboriginal communities to special status. A number of provisions of the Constitution

⁸ John Gray, *The Two Faces of Liberalism* (2000), the New Press, Page 105

⁹ John D. Whyte, “Is the Private Sector Affected by the Charter?” in *Righting the Balance: Canada’s New Equality Rights*, L. Smith, ed.(Saskatoon: The Canadian Human Rights Reporter Inc., 1986) p. 145 at pp. 174-175.

protect denominational rights including Section 93 of the *Constitution Act*, 1867, Section 17 of the *Saskatchewan Act*, and Section 17 of the *Alberta Act*.

This tradition of providing constitutional protection for group rights has been continued under the *Constitution Act, 1982*, including the Charter. *Native rights* are protected by s. 25 of the Charter and Parts II, IV and IV.1 of the *Constitution Act, 1982*. *Language rights* are protected by s. 16 through 21 of the Charter. *Minority language educational rights* are protected by s. 23 of the Charter. Denominational education rights are protected by s. 29 of the Charter. These group rights comprise almost a third of the Charter's provisions. Further recognition of the value of communities and their role in Canadian society is found in the Charter's guarantees of freedom of religion and association (s.2), its recognition of legal or customary rights or privileges (s. 22), and of the multi-cultural heritage of Canada (s. 27), and the limitation on Charter rights and freedoms (s.1).¹⁰

Consequently, as Professor Whyte observes:

...It is impossible to discern in the constitutional text either the clear direction to promote liberal values as wholeheartedly as possible or the direction to sustain communitarian values to the greatest extent possible. The Charter reflects the tension. Of course, it gives impetus to the nation's change to liberalism, but it does not reveal, in any precise way, where the limit should be drawn to protect other political values."¹¹

The Canadian model depicted above does not start with the proposition that either form of right is paramount or will necessarily converge or has a "trump" over other claims, but instead looks for the proper sphere of operation of each. This is a form of structural pluralism which must be respected. Recent commentary in the United States has recognized the principles of "structural pluralism." James Skillen notes that:

...a just society is one in which multiple institutions and diverse spheres of responsibility can function together in freedom, under protection of the law [so] then part of the legal obligation of a just government is to recognize and protect that complex diversity of society. Closely related to this principle, and mutually interdependent with it, is the principle of religious freedom....government should act in accord with the principles of justice by treating faiths and faith communities with equal public protection. Government cannot do this, however, without respecting the freedom and diversity of those faiths.¹²

Claims that are, therefore, totalistic and which claim to represent in themselves all of "public policy" where such recognition effectively delegitimizes other legal perspectives, must be rejected as overreaching. Totalistic claims for "recognition" by any particular advocacy group do not respect diverse pluralism that holds together notions of group as well as individual rights and a plurality of moral perspectives.

¹⁰ *ibid.* pp. 176-177

¹¹ *ibid.* 177-178

¹² James Skillen "The Theoretical Roots of Equal Treatment" in Stephen V. Monsma and J. Christopher Soper (eds.) *Equal Treatment of Religion in a Pluralistic Society*, above, note #4, 55 – 74 at 72.

The same sort of confused language applies to the term “secular” but here the use by religious believers is almost exactly the same now days as it is by those who are non-religious believers. Consider how we speak of “Religion AND the secular.”

I want to suggest that this use is deeply erroneous and mis-describes the nature of the contemporary society and its state dimensions of law and politics. The media, given its importance to our contemporary society, in perpetuating this set of linguistic errors just furthers the separation of religious relevance from the various aspects of society.

Sometimes this wish to marginalize religious significance is expressly desired but often it is not. To understand the variants and why they are significant I want to suggest that we learn about the nature and origins of another term: “secularism.”

Indoctrination and dogma, after all, are not limited to religions and, as French philosopher Jacques Maritain once observed, there is such a thing as “atheist theocracy” or as another writer, Graham Good, has noted, there is a rise of what may be termed “the new sectarianism” animated by pious zeal but not by religious convictions *per se*.

Our societies and their constitutions set out protections for respect, diversity and tolerance yet a sizeable and growing body of academic literature and court decisions are having to wrestle with just how terms of general application apply in the specifics of cases. I have had the privilege in various cases over the last decade or so, of acting for various religious bodies and inter-faith groups and have seen how many of them believe that religions are not being accorded the respect they deserve and are entitled to. In Canada, many religious believers and groups speak openly about feeling excluded and threatened by developments they see around them but often fail to see how key assumptions buried within their own language perpetuate the very exclusion of religion from cultural relevance that they lament.

Simply put: they fail to engage because they use the wrong language. They are missing a key problem with how we view what we all, religious and non-religious, refer to as “the secular.”

Part II: The Nature of the “Secular”:

The term “secular” has changed its meaning over the last century and a half. The term in general usage now means, essentially, free *from* religion as in “we ought to keep religion out of the schools because they are secular.” This was not the original meaning, nor is it a meaning which recognizes the *modus vivendi* or diversity pluralism referred to above. In short, the term “secular” must have a neutral meaning lest it be taken in an anti-religious direction.

All citizens, as a matter of fact, make their decisions in life based upon their beliefs. On one level, therefore, we are all “believers.” The question is: “what do we believe in” and “for what reasons” and does the origin of our beliefs mean that some people (or some beliefs) have less importance in a society that says it will respect the ability of citizens to have the

fundamental right and freedom to “belief” and “expression” in addition to “conscience and religion.”

Courts have, recently, come to acknowledge that any pre-emptive exclusion of “religion” from the category of “beliefs” that may operate in the public sphere of society, is an unwarranted attack on the freedom of “conscience and religion” set out in Section 2(a) of the *Charter of Rights and Freedoms*. To allow only the beliefs of atheists and agnostics to have any public relevance is not to treat those beliefs and those who hold them as equal citizens. To allow only those beliefs that emanate from the convictions of atheists and agnostics to have public relevance is discriminatory against religious beliefs just as much as to allow only religious beliefs to have public relevance.

The principles of a free and democratic society require that all citizens are entitled to have their viewpoints respected within certain very broad parameters. It is not simply a matter of how beliefs are expressed but of what communities are nurtured and created by the analysis that must be examined. To the greatest extent possible society must try to encourage the diverse communities of belief that make up the tapestry of Canadian society or any “plural” society.

We must be careful to guard against definitions that build into their use an assumption that is unexamined. Just as this has happened where totalistic pluralism can look like diverse pluralism (when they are very different) so, too, how we define what we mean by the term “secular” is also important.

Where the *Oxford English Dictionary* defines “secular,” the uses of the word that suggest that the secular is “non-sacred” in character arise as recently as the mid-nineteenth century.¹³ The term as we now have it originated in the mid 19th Century in the works of George Holyoake, Charles Bradlaugh and their fellow secularists. It is in works such as theirs (atheistic and agnostic in belief) that the current usage is adopted in which the “secular” is viewed as stripped of religious beliefs and assumptions but not other beliefs and assumptions.

In fact, this more recent use of “secular”, which we may justly call the atheistic or agnostic interpretation, is seldom viewed alongside against alternate understandings. This is not helpful since an atheistic definition, if used as the meaning for a central term such as “secular”, fails to give a proper place to religion in the private and public dimensions of society. The atheistic “secular” becomes, in effect, a blueprint for the naked public square. A more informed historical understanding, built upon a richer epistemological ground, better reflects both the reality of beliefs in society and the principles of freedom that ought to undergird a properly civil society.

If we start off with the assumption (building into our use of the term “secular” for example) that religion has no place in the secular, then, of course, we will tend to diminish the role of the religious in civil society. But this is really to adopt implicitly or explicitly the ideology of

¹³*The Oxford English Dictionary*, 2nd ed., “secular,” “secularism,” and “secularity.” All uses suggesting a meaning of “secular” that denotes an absence of connection with *religion* post-date G.J. Holyoake, *The Principles of Secularism Briefly Explained* (London: Holyoake & Co., 1859).

atheistically driven “secularism”, because the “secular”, viewed historically, does not require such a removal of the sacred dimension from all aspects of life. The secular is, properly understood, a realm of *competing faith/belief claims*, not a realm of “non-faith” or “non-belief” claims because, strictly speaking, there can be no such realm. Human life and legislation are inescapably moral however implicit such morals are.¹⁴ Given the dominance of the atheistic definitions of “secular” and “separation of church and state”, it will take some time for them to be redefined and consistently applied so as to better support the right ordering of freedoms in contemporary society. Such changes in law, politics and general use are, however, possible and as this article shows, changes in law have already occurred in Canada - - though even there, the deeply engrained nature of the prior uses shows how slow it will be to develop richer conceptions that support our underlying theories of inclusion and access to the public realms.

In contemporary usage, “secular schools”, “secular government”, etc. are generally understood to mean non-religious or not influenced by religion or religious principles. I suggest that this is because we have adopted a secularist (which may be atheistic, agnostic or even religious) definition of “secular” rather than a richer and more properly inclusive conception. The separation of church and state is, after all, a jurisdictional distinction important to both the church and the state. A valid separation should not preclude a valid *cooperation* between church and state. Most religious groups in the west, for example, do not in fact want the state to run “the church” or vice versa.

The historical shift in the use of “secular” should be recognized. It is tempting to glance off the historical critique by continuing to use the term “secular” and “religious” as if they describe different worlds. But they do not describe different worlds; they describe different functions. When we are tempted to use the term “secular” when we mean “the public realm” or “the state” we would be better to say “public realm” or “state” as these are free of the religiously exclusive baggage that currently encumbers use of the term “secular.”

When the British Columbia Court of Appeal, in the decision in *Chamberlain v. Surrey School Board*, overturned the newer atheistic use of “secular” and affirmed the secular as a realm that has, properly, a place for beliefs that emerge from religious commitment, it was performing just the sort of linguistic reclamation argued for in this article.

Justice McKenzie, for a unanimous three-justice panel, analyzed the term “secular” as follows:

Can "strictly secular" in s. 76(1) of the *School Act* be interpreted as limited to moral positions devoid of religious influence? Are only those with a non-religiously informed conscience to be permitted to participate in decisions involving moral instruction of children in the public schools? Must those whose moral positions arise from a conscience influenced by religion be required to leave those convictions behind or otherwise be excluded from participation while those who espouse similar

¹⁴ Without delving too far into a vexed and complex area of jurisprudence it is worth pointing out that this is not to say that *all* legislation is internally about moral subjects - - for example conventions on such things as all aspects of the *Highway Code*, might well not amount to moral determinations. Much legislation, however, is moral or contains moral determinations that are often hidden and most people would recognize that the decision to refuse to obey law (whether the law is internally moral or not) is itself a moral question.

positions emanating from a conscience not informed by religious considerations are free to participate without restriction? Simply to pose the questions in such terms can lead to only one answer in a truly free society. Moral positions must be accorded equal access to the public square without regard to religious influence. A religiously informed conscience should not be accorded any privilege, but neither should it be placed under a disability. In a truly free society moral positions advance or retreat in their influence on law and public policy through decisions of public officials who are not required to pass a religious litmus test.

A contrary interpretation is not only insupportable in principle, it would raise immense practical difficulties. How would it be determined that a moral position is advanced from a conscience influenced by religion or not? If the restriction were applied only where the religious conviction was publicly declared it would privilege convictions based on a conscience whose influences were concealed over one openly proclaimed. The alternative would be to require inquiry as to the source of a moral conviction, whether religious or otherwise. Both alternatives are offensive and indefensible. 15

A leading American scholar on the law relating to religion, now a judge, Michael W. McConnell, writes that:

The beginning of wisdom in this contentious area of law is to recognize that neutrality and secularism are not the same thing. In the marketplace of ideas, secular viewpoints and ideologies are in competition with religious viewpoints and ideologies. It is no more neutral to favour the secular over the religious than it is to favour the religious over the secular. It is time for a reorientation of constitutional law: *away* back from the false neutrality of the secular state, *toward* a genuine equality of rights.¹⁶

Consistent with the criticism of the term “secular” presented in this article, however, observe that while Professor (and now Justice) McConnell correctly identifies the “non-neutral” nature of the “secular”, he perpetuates the false bifurcation between “the secular” and “the religious.” This, too, must change for there to be a proper delineation of the issues that are at stake in these areas. The paragraph would have read more clearly and communicated its point better if the term “secular” was omitted and the sentence read: “it is no more neutral to favour the non-religious over the religious than it is to favour the religious over the non-religious.” Similarly, in the last sentence, what McConnell wished to say, I think, was “away back from the false neutrality of a religiously excluded state toward a genuine equality of rights.” The use of “secular” in both instances just confuses the issue. Still, despite this

15 *Chamberlain v. Surrey School Board* (2000), 80 B.C.L.R. (3d) 181 (C.A.); reversing (1998), 60 B.C.L.R. (3d) 311 (S.C.). A more detailed analysis of the Court of Appeal decision may be found on the *LexView* section of the website of the Centre for Cultural Renewal at <www.culturalrenewal.ca> This decision was upheld on this point by a unanimous (*on this point*) Supreme Court of Canada in which the majority judgment of Chief Justice McLachlin endorsed the reasoning on the nature of “secular” found in the dissenting judgment of Justice Gonthier so that all nine judges accepted the notion of what we could call a *religiously inclusive* secular; *Chamberlain v. Surrey Sch. Dist. No. 36*, [2002] 4 S.C.R. 710, 749 (Can.).

16 Michael W. McConnell “Equal Treatment and Religious Discrimination” in Monsma and Soper, above, note #4, 30 – 54 at 33.

error, McConnell rightly criticizes the notion that there is a “neutrality” that can be stripped of religious beliefs and claims in such a manner that what is left represents an adequate “consensus” for civil society.

Secularism:

The term “secularism” is not often examined and I want to show why an examination of that term ought to lead us to challenge fundamentally any idea that “secularism” is a valid principle upon which to base an open and democratic society. 17

The reason this needs to be challenged is that the majority judges of the Supreme Court of Canada, in the *Chamberlain* decision in December 2002 said that Canada was “based upon the principles of secularism” and referred to the *Charter of Rights* imposing what they called “the requirement of secularism.” I suggest that they were deeply wrong to do so and had they looked a little (as they did not) at the meaning of “secularism” (there was no argument before them on the point) they would not have said what they did about Canada being based upon “secularism.” Their language with regard to “secularism” was, with respect, *per incuriam*.

Consider the following definition of “secularism” from the *Encyclopedia Britannica* 11th Edition.

Secularism, a term applied specially (see Secular) to the system of social ethics associated with the name of G.J. Holyoake (q.v.). As the word implies, secularism is based solely on considerations of practical morality with a view to the physical, social and moral improvements of society. It neither affirms nor denies the theistic premises of religion, and is thus a particular variety of utilitarianism. Holyoake founded a society in London which subsequently under the leadership of Charles Bradlaugh advocated the disestablishment of the Church, the abolition of the Second Chamber and other political and economic reforms.¹⁸

Secularism on this reading “neither affirms nor denies the theistic premises of religion.”; so matters stood, apparently, in 1911, when the above definition was published. *The Oxford English Dictionary* informs us, the term “secularism” was, in fact, coined by George Jacob Holyoake around 1851.

The official website of The National Secular Society, the society that emerged from the work of Holyoake in 1866, states, amongst various goals and principles that “[w]e assert that *supernaturalism is based upon ignorance and is the historic enemy of progress.*”¹⁹

17 There may be other definitions of “secularism” than the one I am criticizing in this article. I limit my analysis to the stream of meaning emanating from the man who coined the term in English. Other definitions or meanings than the one I am discussing (say, emerging from an Indian context) would have to be clearly set out and analyzed against the categories of analysis discussed elsewhere in this article in order to see whether they are equally offensive to a more open and fair pluralism.

¹⁸ *Encyclopedia Britannica*, (Cambridge: Cambridge University Press, 1911) (11th ed.) p. 573.

¹⁹ Web site of the National Secular Society <http://secularism.org.uk/> emphasis added.

Turning to Holyoake's major work, *English Secularism: A Confession of Belief*²⁰ we discover the inaccuracy of the *Encyclopedia Britannica*'s claim, simply, as it turns out, lifted from Holyoake's book directly, that secularism "neither affirms nor denies the theistic premises of religion." The claim is false but the *Encyclopedia Britannica*, and later works, have missed this fact.

Extolling the liberation of humanity by the exercise of reason, Holyoake writes:

Self-regarding criticism having discovered the insufficiency of theology for the guidance of man, next sought to ascertain what rules human reason may supply for the independent conduct of life, which is the object of Secularism... Secularists say we have found [truth] at least, so much as replaces the chief errors and uncertainties of theology.²¹

Setting out the essential principles of Secularism, Holyoake states that it is "a code of duty pertaining to this life, founded on considerations purely human, and intended mainly for those who find theology indefinite or inadequate, unreliable or unbelievable."²²

Holyoake stakes out, as it were, a high ground that is "beyond speculation" which he says is the limitation of both the atheist and the theist. He claims that:

Though respecting the right of the atheist and theist to their theories of the origin of nature, the Secularist regards them as belonging to the debatable ground of speculation. *Secularism neither asks nor gives any opinion upon them, confining itself to the entirely independent field of study – the order of the universe. Neither asserting nor denying theism or a future life*, having no sufficient reason to give if called upon; the fact remains that material influences exist, vast and available for good, as men have the will and with to employ them. Whatever may be the value of metaphysical or theological theories of morals, utility in conduct is a daily test of common sense, and is capable of deciding intelligently more questions of practical duty than any other rule. Considerations which pertain to the general welfare, operate without the machinery of theological creeds, and over masses of men in every land to whom Christian incentives are alien, or disregarded.²³

For Holyoake the "order of the universe" is ascertainable by human reason and all this outside of any necessity of asserting or denying theism or a future life. His work is, as the sub-title affirms, "a confession of belief" and a bold one at that. But it is not, and secularism so conceived cannot hold itself as he and contemporary followers assert: "beyond assertion or denial." For his claim to comprehend "the order of the universe" without, at some point, necessarily denying or affirming the claims of a creator God is inaccurate. The significance of such a high stance - - today we might call it the claim to "liberal neutrality" is clear for later developments.

²⁰ George Jacob Holyoake, *English Secularism: A Confession of Belief* (Chicago: Open Court Publishing Co., 1896)

²¹ *ibid.* pp. 34 – 35.

²² *Ibid.* p. 35.

²³ *Ibid.* p. 37 emphasis added.

Holyoake, under the chapter heading “Rejected Tenets Replaced by Better” suggests the superiority of “secularism” and invites the reader to “suppose that criticism has established...” the following:

1. That God is unknown.
2. That a future life is un-provable.
3. That the Bible is not a practical guide.
4. That Providence sleeps.
5. That prayer is futile.
6. That original sin is untrue.
7. That eternal perdition is unreal.²⁴

Secularist truth “should tread close upon the heels of theological error”²⁵ and, to counteract such errors, Holyoake would turn against the theological so that, for example, “...for the providence of Scripture, Secularism directs men to the providence of science, which provides against peril, or brings deliverance when peril comes.”²⁶

Instead of “futile prayer”, secularism proposes “self-help and the employment of all the resources of manliness and industry.” Instead of belief in “original depravity” (one assumes by this that Holyoake means the concept of “sin”) secularism aims to “...promote the moralization of this world which Christianity has proved ineffectual to accomplish.”²⁷

That Holyoake views secularism as a substitute for religion is clear in his book. He seems to believe that secularism and Christianity have different missions in many ways and, as I have quoted, secularism’s is superior. The following passage shows that Holyoake saw secularism as a superior ethical system for society. He describes the mission of secularism in the following terms:

None of the earlier critics of Secularism, as has been said (and not many in the later years), realized that it was addressed, not to Christians, but to those who rejected Christianity, or who were indifferent to it, and were outside it. Christians cannot do anything to inspire *them* with ethical principles, since they do not believe in morality unless based on their supernatural tenets. They have to convert men to Theism, to miracles, prophecy, inspiration of the Scriptures, the Trinity, and other soul-wearying doctrines, before they can inculcate morality they can trust. We do not rush in where they fear to tread. Secularism moves where they do not tread at all. ²⁸

The Secularist policy is “...to accept the purely moral teaching of the Bible, and to controvert its theology, in such respects as it contradicts and discourages ethical effort.”²⁹ In fact, we are informed that it is Christians who do not respect God:

²⁴ Ibid. p. 71

²⁵ Ibid. p. 72

²⁶ Ibid.

²⁷ ibid. p. 73.

²⁸ Ibid. pp. 82 – 83 emphasis in original.

²⁹ ibid. p. 91.

True respect would treat God as though at least he is a gentlemen (sic). Christianity does not do this. No gentleman would accept thanks for benefits he had not conferred, nor would he exact thanks daily and hourly for gifts he had really made, nor have the vanity to covet perpetual thanksgivings. He who would respect God, or respect himself, must seek a faith apart from such Christianity.³⁰

Finally, in listing the early and continuing aims of Secularism, Holyoake notes the desire to: ...convert churches and chapels into temples of instruction for the people....to solicit priests to be teachers of useful knowledge.³¹

As if to highlight the alternative religious nature of Secularism, Holyoake ends his book with a rewriting of what he terms “secularist ceremonies” since he recognizes that ceremonies should be consistent with the opinions of those in whose names the ceremonies take place. Listed are descriptions of a Secularist theory for the ceremony of marriage; the naming of children; the death of children and a kind of admonition regarding how everyone should have “a career of public usefulness.”³²

With a variety of typically Victorian quotations from Tennyson, Edwin Arnold and Harriet Martineau, of the “every man should do his duty in the face of life’s vicissitudes” type, there is something strangely certain (and empirically unverifiable) about Holyoake’s concluding statements in which we are told, with certainty, that “between the cradle and the grave is the whole existence of man.”³³

To conclude on this part then, it would seem that “secularism” is not properly described as “neither affirming nor denying the premises of theism”³⁴ a claim made by Holyoake himself but denied by the rest of the book in which this claim appears. Holyoake, in fact, as we have seen, denies theism root and branch. The error made by the *Encyclopedia Britannica* in picking up Holyoake’s own phrase uncritically, has been adopted and repeated by later dictionaries through the twentieth and into the present century.³⁵

30 Ibid. 113

31 Ibid. 119.

32 Ibid. pp. 126 – 141.

33 Ibid. p. 141.

34 Ibid. p. 37.

35 See, most recently, Pearsall J. and Trumble B. eds. *Oxford English Reference Dictionary* (2nd ed. Revised, 2002) where the definition of “secular” is secularist in nature. For further detail of the dominance of “secularistic” definitions and some suggestions as to how this occurred based upon the conception of “hidden” versus “express” meanings of words see: Iain T. Benson “The Secular: Hidden and Express Meanings” *Sacred Web* 9 (2002) 125 – 139.

There is far more in the clearly stated objectives of “secularism” than the dictionary or encyclopedia uses suggest and secularization itself, in so far as it represents a move in the direction of “secularism” can be shown to have an expressly anti-religious motivation from its earliest roots.

Because secularism of this sort has set itself expressly against religion it is surprising, therefore, to note that modern dictionaries, with few exceptions, repeat the same mistake as the *Encyclopedia Britannica* and fail to note an “anti-religious” definition of the secular and the goals of secularism itself. It is as if all the language relating to the “secular” has simply been co-opted in an anti-religious direction and that few have noticed.

Similarly, the notion that there could be a religious view of a “sacred secular” has been ignored here and dominated by the secularist definitions. The “secularistic” sense has dominated the dictionary entry just as thoroughly as that interpretation has dominated contemporary culture. Secularism is and always has been anti-religious.³⁶

It is to be hoped that those who recognize the importance of religions to society will cease using the terms “secularism” and “secular” in ways that further drive religions out of society in a “secularistic” direction. As I have suggested, there are usually better terms for what we mean when we use “secular” - - such as “the State” or “the public realm” or when we mean aspects of society that are non-religious, we should say so.

A richer understanding would necessarily reject “secularism” as an ideology inconsistent with the equality of all citizens. Such a rejection of “secularism” would also be consistent with its correctly religiously inclusive use of the term “secular.”

Conclusion:

Only a richer conception of how citizens with differing belief systems can co-exist can solve the dilemma posed by erroneous uses of key terms in aid of universal consensus. What is clear is that claims for “neutrality” based upon the prior exclusion of religious beliefs but the inclusion of other beliefs under misuse of terms’ such as “believer/unbeliever”, “secular” or “faith” fail to support a proper approach to accommodation of differing beliefs. Approaches to “pluralism”, “equality” or “tolerance” that implicitly or expressly see us moving towards eventual agreement on all matters, need to be rejected as inconsistent with human freedom or a proper understanding of diversity and accommodation.

Law and politics should keep ever before us the need to find ways in which people who do not believe the same things can, nonetheless, share the public realm and even work together in their joint task and privilege of citizenship. To do this going forwards requires a re-thinking and re-formulation of some of the central terms in our understanding of religions and the state, terms that have, as this article has attempted to show, been much influenced

³⁶ That the principles of “secularism” and “religion” will inevitably conflict has been made by Kathleen Sullivan, “Religion and Liberal Democracy”, 59 U. Chi. L. Rev. 195 (1992) at p. 197 cited in Christine L. Niles, *Epistemological Nonsense? The Secular/Religious Distinction*, 17 Notre Dame J.L. Ethics & Pub. Pol’y (2003) 561 – 592 at 577 footnote 62.

by ideological developments intended to limit and exclude public relevance of religious beliefs and religious communities.

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