CCHA, *Study Sessions,* 50 (1983), 631-54

Pluralism and Secularism in Canadian Law and Society, 1968-1982*

by Alphonse de VALK, C.S.B.,

St. Joseph's University College,
University of Alberta, Edmonton.

Last year's paper "Understandable but Mistaken: Law, Morality and the Catholic church in Canada 1966-1969" offered a description and analysis of how the Catholic Bishops confronted the removal from the law of the prohibition to use and distribute contraceptives and the proposal to widen the grounds for divorce. Both measures were introduced during the years 1966 and 1967 and passed subsequently. The article briefly discussed the relationship of the Bishops' position on these two questions to the legalization of abortion which was enacted in 1969.

The present paper, like last year's, was written out of a need to understand the current relationship between public law and Christianity in a society commonly designated as pluralistic and secular. It examines briefly the nature of pluralism with an aggressive secularism seeking freedom under the law from moral restraints and customs dependent on the traditional influence of Christianity. Thus, it touches upon censorship, the Catholic school system, Sunday law and some related items. The paper does not define secularism but assumes under this term the ideology which opposes religious influence in public society. By implication, it raises the question whether the identification of pluralism with secularism now so common in certain circles is not a contradiction in terms. Because of the contemporary

* This is a much revised paper from the one originally delivered at the Learned Societies in Vancouver, June 1983. Other aspects touched upon then, such as the role and attitude of the Canadian Catholic Conference of Bishops towards abortion as a political issue, have been omitted and may be published elsewhere.

nature of the events and the inability to do research in depth, this paper does not, and cannot, pretend to be much more than a sketch.

CONFLICT

In order to grasp at once the seriousness with which the question of pluralism and secularism today must be treated, let us recall the issue which has become its most controversial sign: the legalization of abortion. Permit me to quote at some length from an article written in 1971 which summarizes this contradiction:

> In our democratic society people believe that political problems, whatever their nature, can always be "worked out." All that is needed is a little give and take and a sense of compromise. This attitude is reasonable as long as it is understood that compromise in daily life presupposes that we can agree on basic principles, such as the nature and ultimate destiny of man. When this presupposed agreement disintegrates, the much-lauder ability to compromise disappears. Society becomes divided into mutually-opposed groups whose views cannot be reconciled. Needless to say, under such circumstances government becomes increasingly difficult and eventually impossible.
>
> The legalization of abortion is significant precisely because it seems to indicate that this necessary agreement on basic principles is breaking down. Government is frequently faced with a variety of groups which challenge traditional views on one point or another. But only in recent years has it been confronted by demands for change in principles which the majority of the nation and the government itself have traditionally considered basic and unalterable.
>
> Two such principles are that life is to be preserved and that acts of violence are to be condemned and suppressed.
>
> If acts of violence directed against unborn life become so numerous that the government despairs of stopping them, the situation becomes critical.

> But when the government decides to change the nomenclature and makes these acts of violence "legal" in order to pacify the discontented who commit the violence, it undermines the intelligent use of language, it alienates those who cannot compromise, and it pursues the illusion of pacifying the discontented groups. When a new view of man and his destiny directly attacks the traditional view, it ultimately forces every person into one camp or another. Under such circumstances, voluntary compromise becomes surrender of betrayal or both.[1]

The meaning of the above statement should be clear. Pluralism requires political compromise. Throughout history people have maintained that certain beliefs and values are not subject to compromise or change because either human reason, or divine authority, or both indicate that they are necessary for the common good. Many Canadians are convinced that society's duty to preserve the lives of the innocent is one of these beliefs. For them to legalize abortion is intolerable because it subjects what ought to remain inviolable to the vagaries of human motivation and utilitarian manipulation. The better they understand the consequences of this change, the more alienated they will become from those who defend it. On the other hand, the utilitarians, having savoured a major victory in the name of the autonomy and self-sufficiency of man, will be anxious to pursue the removal of other religious influences from public life insofar as these continue to deny this autonomy. As a well-known editorial in the magazine *California Medicine* put it:

> It will become necessary and acceptable to place relative rather than absolute values on such things as human lives, the use of scarce resources, and the various elements which are to make up the quality of life or of living which is to be sought. This is quite distinctly at variance with the Judeo-Christian ethic and carries serious philosophical, social, economic and political implications for Western society and perhaps for world society.[2]

---

[1] "Compromise and Constraint," pp. 8-15 in *Abortion Politics in Canada, Several Arguments,* edited by Alphonse de Valk, Saskatoon, 1971, p. 58.

[2] "A New Ethic for Medicine and Society," September 1970, Vol. 113, Nr. 3, pp. 67-8.

In Canada, in 1972, Dr. Henry Morgentaler in his function as Chairman of the Committee to study Law Reform, a Committee of the Humanist Association of Canada, put the same idea more concretely when he proposed that the law should:

> stop enforcing a particular kind of religious morality on all the people of our country... that an individual has a right to do anything to himself in private without interference from the law...(that we seek) the repeal of all laws in the Criminal Code which relate to abortion, prostitution, pornography, gambling and suicide... (that) marijuana and hashish (be) legalized... (that) such proposals... would eliminate enormous injustices... (and that) they would be a step forward toward creating a more enlightened society.[3]

The presuppositions of the earlier statement quoted above should be clear as well. Among opposing views about various aspects of family morality, abortion is the most important because it concerns a separate human life. This human life begins at conception.[4] It is for this reason that so many people find the legalization of it so abhorrent. The medical journal already quoted puts it as follows. After explaining that the process of eroding the old ethic and substituting the new had already begun, it said:

> Since the old ethic has not yet been fully displaced, it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result had been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death.[5]

---

[3] *Humanist in Canada*, 1972, Nr. 22, Vol. V, p. 7.

[4] The view that life begins at conception was upheld most recently by nine medical withnesses at the Regina trial of Borowsky versus The Attorney General of Canada and The Minister of Finance of Canada in May *1983.* See A. de Valk, *Joseph Borowsky and the Trial of the Century,* Edmonton, Life Ethics Centre, St. Joseph University College, 1983, p. 12. Also see transcript of trial.

[5] *California Medicine*, 1970, Nr. 3, p. 68.

Let us add also that opposition to abortion is not, in first instance, based on a religious view and certainly not on a denominational or "sectarian" view. It may be held, indeed is held by people of no religious affiliation, and it finds its strength first in human reason. After all, it is biology, not faith, that tells us that a fertilized ovum is the earliest form of life.[6]

The above provides a context which must be borne in mind when approaching the question of what it means when people today speak of the pluralist state. In other words, there are people now who fear, with the issue of abortion as illustration, that the pluralist society, if it ever existed, is in process of self-destruction.

PLURALISM

The idea of the pluralist society goes back roughly to the days when separation of Church and State was first launched with the Constitution of the United States in the eighteenth century. One may recall that this American separation was unlike the separation of Church and State brought about a few years later during the French Revolution which began in 1789. The latter was essentially one of hostility of State towards the Church, even to the point of creating a new religion, the worship of the "Supreme Being." The American separation of Church and State, on the other hand, was born out of the desire to treat all religious groups equally, without discrimination. Thus the State was to be neutral in a beneficent kind of way, allowing various religious groups to co-exist without favour to any in particular.

Canada accepted neither the French nor the American model of separation of Church and State, but pursued the example of Great Britain, whereby the State recognizes some of the public functions and roles of the Christian religion, even under the aspect of denominationalism, as worthy of public support and incorporates this support in law and policy. That is why today, for example, Canada. unlike the United States, has a legally

---

[6] For the view that (legalized) abortion is not only a defiance of human reason and an attack upon the rights of man, see the author's *Abortion: Christianity, Reason and Human Rights,* Edmonton, Life Ethics Centre, St. Joseph's University College, 1982, pamphlet, p. 16.

recognized Catholic school system, and in the four provinces of Quebec Newfoundland, Alberta and British Columbia also a legally recognized Protestant system, supported in lesser or greater degrees by public provincial funding. It is worth-while to note, therefore, that are different kinds of separation of Church and State, indeed as many, it seems, as there are countries.

The term pluralism does not have a univocal meaning; that is, it is sometimes used for different concepts.[7] In the political arena there seem to be two popular uses of the term which should be distinguished. There is the older use mentioned above, related to a benevolent separation of Church and State in whatever form. Pluralism in that sense means that it is not the government's task to enforce the beliefs of any particular (Christian) denomination or group; yet these churches or groups should contribute to the body politic to enrich and enhance the quality of life. The general presumption of this kind of pluralism is that society must hold certain basic philosophic, religious and moral values in common. A newer use of pluralism, on the other hand, implies that there is no consensus on values or truths. It claims that the modern separation of Church and State refers to the State being secular in the sense of rejecting support for any public religious influence or manifestations. These are looked upon at best as of no interest, at worst as dangerous to the Commonwealth. Evidently, then, this newer use clashes with the older. This conflict should not come as a complete surprise.

The idea that it is not the government's task to enforce Christian beliefs brings us to a recent remark of a great legal scholar and practitioner of law in England, Lord Devlin:

> A state which refuses to enforce Christian beliefs has lost the right to enforce Christian morals.[8]

This sets the unpleasant truth before us in a rather bold manner. The possibility that societies, conceived as democratic and pluralistic, would

---

[7] For an American discussion, see Val J. Peter "A primer on pluralism," in *Communio,* (International Catholic Review), Summer 1983, pp. 133-146.

[8] *The Enforcement of Morals*, London, Oxford University Press, 1965.

come to the point of driving out Christian principles from their legal system was always present, as least in theory. Until recently, this possibility has remained somewhat far-fetched. But in more recent days, the trend in some Western countries, if not in theory then in practice, has been to deny little by little any special place to Christianity. As an American commentator has noted, today the dominant view in articulate public opinion in the United States is that:

> We are now to be protected not from tyranny, but from the imposition of anyone's or any group's values on anyone else. No opinion and no policy can be regarded as legitimate which threatens to conflict with this supreme norm of 'our pluralistic society.' It is uncommitted, not only to any particular beliefs, but to any moral principles... The pluralistic society, therefore, stand upon no moral principles but is unified only by the procedural principle of an official neutrality that treats all beliefs equally.[9]

The same author has also shown that in a society so conceived, the pluralist game becomes a confidence game by which certain groups press government into the service of their own goals under the pretence of establishing neutrality.[10] A recent Canadian illustration was the demand of a feminist group, the National Association of Women and the Law, in April, 1982, that sexual provisions of the Criminal Code be brought "into the twentieth century" by rejecting the "legislation of morality." The very terminology employed indicates the belief that the law should be free from morality, in other words, neutral.[11]

This case is simply a recent example in a string of similar instances going back to the early sixties. Many of the arguments in favour of "liberalizing the law," as it came to be called, centred precisely around this

---

[9] P. 358 in Francis J. Canavan, "Our Pluralistic Society," *Communio*, Vol. IX No. 4, Winter 1982, pp. 355-367. To protect from tyranny was the original purpose of the American Constitution.

[10] F. Canavan, "The Pluralist Game," *Law and Contemporary Problems*, 44, No. 2, Spring 1981, pp. 23-37

[11] "Women reject legislation of morality," *Edmonton Journal,* April 28, 1982, A8.

idea of "getting Canada into the twentieth century." This, in turn, was to be done by ridding the country of an "outmoded morality" an expression which became standard in editorials and articles of newspapers, such as the *Toronto Globe and Mail* and magazines, such as *Chatelaine.* It was argued that opposition to legal contraceptives, divorce, homosexual activity and abortion were based either on religious foibles, such as those peculiar to Roman Catholics and others still stuck with a 'Victorian Morality,' or based on, or supported by, religious morality. The latter, it was argued, is purely personal and private and therefore should never be "imposed" upon anyone.[12] A typical expression of such sentiments in the House of Commons may be found in the statement of the leader and spokesman of the NDP, Mr. David Lewis, during the 1969 debate on the Omnibus Bill which covered 109 changes in the Criminal Code including abortion and homosexuality. Mr. Lewis stated:

> Much of our law developed during a period when society was governed by the Church...; now that separation of Church and State has developed... let us not term public crimes those actions which are matters for an *individual's* conscience. (Underlining mine).

He went on to say that "in our criminal law we ought to amend everything that is a relic of the past and not consistent with modern morality."[13] The case was stated in its boldest form by the government spokesman who guided the passage of the Omnibus Bill, the Minister of Justice, John Turner, who claimed that the Criminal Code of Canada is neutral and cannot represent 'private moralities.'[14]

An unexpected subsidiary theme of this so-called neutrality of the State was that those members of parliament or groups of society who still believed

---

[12] For a fuller discussion of this aspect, see Chapter VIII in A. de Valk, *Morality and Law in Canadian Politics: The Abortion Controversy*, 1974.

[13] Hansard, January 23, 1969, pp. 4755-4759. See also A. de Valk, *Morality and Law in Canadian Politics*, 1974, pp. 111-112.

[14] See de Valk, *op. cit*., pp. 102-105. In reality the Criminal Code is simply a moral code which is public rather than private.

in the validity of the old moral principles – rational or religious or both – were told in no uncertain terms to be silent, that they had no *right* to present their private moralities, that if they were to do so they were *imposing* their private views, something clearly unacceptable. Few seemed to notice that these people, for all practical purposes, were being dis-enfranchised. Meanwhile, those who favoured abolishing the old morality demanded a free hand in order to make the Code neutral, and secular, and, therefore, presumably, acceptable to everyone.

CENSORSHIP

With the above in mind, let us see briefly what other development have taken place, or are taking place, within the pluralist Canada of today with respect to matters of family morality or some traditional Christian features of our society. The question of obscenity and censorship is not new to the period 1968-1982; nevertheless, these years seem to mark a crucial stage in the debate. Even a cursory examination shows that over the last twenty years the pornography trade in North America has expanded from almost nothing into a billion dollar industry with a fair share of that in Canada, accompanied by increased acceptance in society and an increased hostility towards all forms of censorship.[15]

The first major setback for control of pornography, whether in books or movies, came in the early sixties, when *Lady Chatterley's Lover* (1963) and *The Moon is Blue* were held not to be obscene. Ten years later, views had changed so quickly that some people supported the abolition of all restrictions, including censorship boards, following similar recommendations in the USA. This stand was adopted in 1973 by the Government's Law Reform Commission, which recommended repeal of all legal restrictions prohibiting adults from buying or possessing pornography. In May 1977, the Supreme Court of Canada ruled that municipalities may not protect public morality by withholding a business license. In the same month, an Ontario

[15] In 1982, the National Film Board stated that "at the lowest estimate, the pornography industry has increased from an nual turnover of $5 million to $5 billion during the past 12 years," a turnover greater n that of the film and music industries combined. Letter, *Globe and Mail,* March 23, 1983, 7.

provincial judge ruled that a Miss Nude contest was not contrary to the law. The following month, an Ontario County Court jury ruled assorted pornographic magazines such as *Penthouse* and *Gallery* not obscene. In July 1977, the Ontario Supreme Court decided that pornographic magazines do not automatically become obscene if they are available for viewing by children.[16] In years following, municipalities found it almost impossible to pass anti-pornography by-laws which were not successfully challenged in the Courts.

Those favouring uncensored movies played out provincial censors against each other as, for example, in 1972 when the movies *Clockwork Orange* and *Last tango in Paris* were condemned in some provinces and accepted in others. Again, as time passed by, the anti-censorship forces became more vocal. In April 1978, ACTRA, the Association of Canadian Radio and Television Artists wanted the Ontario government to end all film censorship.[17] In the same province, censorship opponents created controversies over cuts in the movies *Pretty Baby* in 1978 and *The Tin Drum* in 1980. In 1981, they helped rally radio and TV artists, the Association of Canadian Publishers, the Periodical Distributors, the Writer's Union, the Canadian Association of University Teachers, the Civil Liberties Union and assorted newspaper editorial writers to oppose stricter laws proposed by the Federal Government. In 1982, under the name "Ontario Film and Video Appreciation Society," they launched a constitutional challenge to the censor which was rewarded by a decision of three Ontario Supreme Court justices who in March 1983 ruled that the Ontario Film Censor Board is operating in violation of the Charter of Rights.[18]

Opponents of total freedom were neither entirely without support, nor completely passive. For example, in 1974 the Catholic Holy Name Societies of Hamilton protested nudity on Toronto's Channel 19.[19] In 1975 some action was undertaken in Ontario to pledge Christian women to bring back

---

[16] Re license, see *Globe,* May 8, 1977; Miss Nude, *Globe,* May 26, 1977; re magazines, *Globe,* June 24, 1977; re Children, *Globe,* July 29, 1977.

[17] Canadian Press, "End urged to film censorship," Saskatoon, *Star-Phoenix,* April 20, 1978.

[18] "Court in landmark censor ruling." The *Edmonton Journal,* March 26, 1983, p. 1. It's business as usual for Ontario's Censors, *Globe,* March 29, 1983, p. 2.

[19] *Catholic Register,* January 19, 1974., pp. 1-2.

decency in dress. In December 1976 Archbishop Pocock of Toronto launched a campaign to remove pornographic magazines from neighbourhood stores and push for a stricter federal definition of obscenity. The Archbishop started his anti-pornography campaign with an Open Letter of Concern published as an advertisement in Toronto daily papers on December 3 and read at Sunday parish Masses. He called on concerned people to refrain from patronizing the publications, theatres and places of business which encourage pornography.

Father Brad Massman, director of the archdiocesan social action office, reported support from the Anglicans, the Salvation Army, Baptist and Greek-Orthodox Churches as well as from the group Citizens for Decency. A department of the United Church Head Office expressed interest also. The diocesan spokesman stated he was especially impressed by the coverage provided by the CBC and the *Toronto Star* and the support from major magazine dealers wanting help in breaking the wholesaler's system which forces them to take allotments of magazines they don't want.[20] As for the Courts, in April 1977 the Federal Court in Ottawa ruled that a particularly vile issue of *Penthouse was* obscene and in January 1978 the Supreme Court of Canada upheld the office of Provincial film censor, thereby fighting off an attempt to remove all restrictions.[21] On lower levels, police actions against obscenity did bring an occasional conviction here and there.

Despite actions and decision such as the above, every Canadian city today has its "adult" bookstore, adult being a euphemism for sex, violence, sadism, self-abuse, rape, lesbianism, homosexuality and masochism. Restrictions on the content of films are minimal, if they exist at all. In one medium large Canadian city, one-third of the movies shown recently in its 52 theatres carried the classification "Restricted Adult" (the equivalent of an X-rating elsewhere); another one-third were classified "Mature," a grading often accompanied by the warning: "crude language and violence"; and only seven out of the 52 were designated fit for family entertainment.[22] When the

---

[20] The *Casket*, Antigonish, December 30, 1976. See also *Globe and Mail*, December 3, 1976, pp. 5 and ff., and, for example, the *Saskatoon Star-Phoenix*, December 14.

[21] Re: Penthouse, *Globe and Mail,* April 21, 1977, p. 10; Re: censors, *Globe* January 20, 1978, p. 1.

[22] Edmonton, first week in February of 1983.

movie *Caligula* was seized in the same city, the court ruled that it was not obscene. Yet, the regular film reviewer of the local newspaper, the *Edmonton Journal* had noted that the film contained "numerous scenes of sexual intercourse, homosexuality, lesbianism, orgies, decapitations and disembowelings" and the judge who presided at the trial found this film "revolting, repulsive, repugnant and offensive."[23] As an informed commentator put it recently, we are moving "towards the limits of brutality."[24] Around the world of movies and books there is a rising tide of meta porn, an ever bolder world of nudists, sex aid shops, female mud wrestlers, live sex shows in night clubs, male strippers, coarse language and nudity on the stage, and various public expressions of sexual perversity now even brought into the home by means of video tapes and Pay TV. A great many people, be it a silent majority or minority, are convinced that there is a cause and effect relationship between that world and the world of crime and violence in the streets.[25]

---

[23] Justice C.G. Yanosik, Court of Queen's Bench, *Edmonton Journal,* December 6, 1981.

[24] Dr. David Dooley, *Censorship in a Pluralistic Society,* Canadian Pamphlet No. 8, Life Ethics Centre, St. Joseph's University College, Edmonton, p. 10.

[25] After scoffing for years at the common sense view often represented only by Christian women's groups and Catholic teaching, the sociological experts are finally catching up, though not quite all the way. For example, in 1983 M.P. Lynn McDonald (NDP, Broadview-Greenwood) said that recent research had disproved the "commonly held" belief that the availability of violent pornography reduces the incidence of sexual offences by providing an outlet for men's aggressive impulses. Earlier research, she said, especially studies in the 1970's in Scandinavian countries following the liberalization of sexually explicit materials there, dealt only with erotica and not with violent pornography. New research is showing that men who view films and magazines which depict violence against women are more likely to commit such acts than men shown materials that are sexually explicit but not violent. Miss McDonald went on to say that

> "Because they are based on sex, rather than on violence, our current obscenity laws are clearly inadequate." (Michael Kieran, "Pornography turns to violence against women," *Globe,* May 14, 1983.)

As yet the sociologist do not seem to accept the relationship between sexual violence and what they term "erotica."

Traditional Catholic teaching has maintained that what is now called "erotica"` is part of a process of undermining the dignity of women by making them into objects of lust. However, half a loaf may be better than none and perhaps it is possible to limit the pornographic explosion by outlawing sexual violence and child

The collapse of effective controls over obscenity is due to the same factors which brought about the changes in law during the years 1966-1969 mentioned earlier: a new permissiveness reflecting a secular spirit which demands complete freedom of action. The law, revised in 1959, considers material to be obscene if its dominant characteristic is the "undue exploitation" of sex in conjunction with crime, horror, cruelty and violence. Undue exploitation in turn, is to be measured by contemporary Canadian community standards. But it is precisely these community standards which, some claim, have disintegrated.

While it is difficult to know what to do under these circumstances, the supposed disintegration of standards does not explain wholly the lack of resistance on the part of the Christian churches. These are of good will and supportive of initiatives such as the 1982 federal government proposal to prohibit child pornography. Yet, at the moment, the more determined forms of opposition to pornography seem to be left to groups of feminists. Originally, feminist groups were part of the problem because of their pressure politics for less restraints and greater freedom in all aspects of marital morality. Yet, today many feminists have begun to understand that pornography and violence against women are closely associated. Thus, during the national "pornography-on-Pay-TV-controversy" of January and February 1983, groups of feminists demonstrated in many Canadian cities against the corporations and businesses whose financial backing makes the Canadian production of pornographic TV films a reality. Later on a number of churches such as the United and Anglican Churches also expressed concern about the turn of events in the television industry. The CCCB, the Canadian Conference of Catholic Bishops, issued a public letter addressed to the CRTC, the regulatory agency of radio and television, in February 1983.[26]

---

pornography.

[26] See daily newspapers, January 19, 20, 21, 1983. Quite obviously such demonstrations are not enough. What appears needed for society as a whole to fight obscenity is a concerted, well-prepared and coordinated campaign to organize the many voices of opposition into an effective instrument for political change. This requires a radical break with the present "we-cannot-impose-our-views, we-live-in-a-pluralist-society" attitude.

CATHOLIC SCHOOLS

A second area in which the "secular state" concept has come to influence current thinking is the attitude of some who hold that even religious affiliated institutions such as denominational schools should comply with secular standards. I am not now referring to the hostile attitude of the organs of intellectual liberalism such as the Toronto *Globe and Mail* whose views range from a 1965 editorial entitled "Religion in the schools: a destructive influence" to a 1978 editorial demanding compulsory sex education à la Planned Parenthood.[27] Religion in *public* schools is a separate question not here discussed. It involves issues such as the use of the Lord's Prayer at the beginning of the school day and the place of religious education, if any. The trend seems to be against the use of the Lord's Prayer as illustrated, for example, by the August 1979 decision of the Toronto Board of Education to discontinue it, although one month later the Ontario Minister of Education ordered the prayer re-instated, refusing even to accept one minute silent meditation as an acceptable replacement.[28] The same subject came up in Regina in January 1981 when Rabbi Sheldon Korn expressed concern about new guidelines confirming the established practice of allowing the Lord's Prayer and Bible readings during opening exercises in city public schools. In answer it was pointed out that non-Christian teachers were not required to read from the Bible and that the guidelines allow Christian teachers to exclude children from minority religious groups from participating in the Lord's Prayer and Bible readings, neither of which he found very satisfactory.[29] Pressure with public schools to remove the last few remnants of its earlier Protestant character naturally are evidence of secularizing tendencies.

This, however, is not the subject of my remarks nor am I here concerned with the nature, quality and, possibly, the secularization of values taught within the confessional school system. My reference is to the legal challenges which have been directed over the last few years against the corporate and

---

[27] *Globe and Mail,* June 27, 1978.

[28] "School Pupils will not recite Lord's Prayer," *Globe,* August 25, 1979. "Meditation not prayer, Stephenson says," *Globe,* September 15, 1979.

[29] "School's prayer policy could create problems," *Edmonton Journal,* January 31, 1981.

institutional right of Catholic schools to hire Catholic staff who conform to the Church's teaching and discipline and to dismiss those who do not. Such a challenge came to the Essex County Separate School Board when it dismissed two teachers in 1974 for contracting civil marriages. In 1977 the Divisional Court of the Ontario Supreme Court ruled in favour of the Board's decision, overthrowing an earlier Board of Reference judgement which had denied the School Board's right to fire the two teachers. Though the split decision (two to one) upheld the Catholic Board, it is noteworthy that the dissenting judge took the position that Section 93 of the BNA Act gave the separate school trustees "the same rights and privileges in law with respect to their teachers as the trustees in the common (public) schools and no more."[30] The majority decision led to an angry editorial in the Globe, ""Teachers rights 110 years later." This argued that

> what constitutes a denominational school in 1977... is the curriculum. Separate schools ought not to have power to limit the civil rights of teachers, which certainly include the right to be married in a civil ceremony.[31]

The *Globe* recommended an appeal, and appealed it was, only to be rejected once more in October 1978, this time by the Ontario Supreme Court which stated that it was "obvious that if a school board can dismiss for cause, then in the case of a denominational school cause must include denominational cause."[32]

Similar court challenges have appeared in other provinces, all leading to lengthy legal battles. In British Columbia, St. Thomas Aquinas School in Vancouver dismissed a teacher married outside the Church. She appealed under the B.C. Human Rights' Act. In November 1979, a B.C. Human Rights branch in Vancouver upheld the dismissal stating that in the case of

---

[30] "Court says RC Board can dismiss teachers for civil marriages," *Globe,* June 20, 1977, p. 1. Idem, Saskatoon *Star Phoenix,* June 20, 1977, p. 6.

[31] *Globe,* June 21, 1977.

[32] "Court upholds separate schools; two teachers may appeal ruling," *Globe,* October 4, 1978.

a Catholic school "religion and marital status can be considered a bona fide qualification in respect to employment."[33] Subsequently this judgement was overthrown by the B.C. Supreme Court which ruled that the Human Rights Code of the Province applies even to separate schools. This decision, Vancouver Archbishop James Carney said, threatened "the very existence of Catholic schools in the province." The "Caldwell" case was reversed once more in March 1982 when the British Columbia Court of Appeal overruled the Supreme Court and found in favour of St. Thomas Aquinas School. Since that time the case has moved to the Supreme Court of Canada.

In Alberta, in October 1980, an Edmonton teacher who refused to state whether or not he was a practicing Catholic won his case in court for a permanent contract with the Edmonton Separate School Board. This lawsuit, however, was not decided on the religious aspect but on the technicality that a permanent contract must be extended to teachers who have held temporary contracts for three years or more, which was the case here.[34] In May 1981, the Edmonton Catholic Trustees won their appeal to have the case re-tried. Meanwhile, in Saskatchewan, in the Spring of 1982, the Court of Queen's Bench ruled Saskatoon's St. Paul Catholic School was within its rights to fire Elaine Huber, a clerk-stenographer, because she said on a job application form she was married when actually living common-law. This ruling overturned an earlier labour arbitration board which had ordered her reinstated. This decision come despite provisions in the province's Human Rights Code prohibiting discrimination on the basis of marital status, with a common-law relationship specifically included within the definition of marital status. Judge Estey ruled that the Separate School Board in Saskatoon is not an employer as defined by the provincial code. His decision angered those who were afraid that it would encourage religious groups and others not to hire someone living in a common law relationship, something which, according to Miss Huber's lawyer, is "quite contrary to what most people think in 1982. People are fairly horrified about it."[35]

---

[33] "B.C. Human Rights upholds dismissal," *Western Catholic Reporter,* November 17, 1979.

[34] "Religion issue ignored but teacher wins case," *Globe,* October 16, 1980. Also *Alberta Report,* October 24, 1980, p. 21.

[35] Marina Strauss "Upheld firing over marital status prompts concern," *Globe,* March 15, 1982, pp. 1-2. The Saskatchewan code says the term employer does not include "an exclusively charitable, philanthropic, fraternal, religious" body.

In Newfoundland, a Catholic teacher with tenure was fired in Conception Bay in September 1982 after marrying in the Anglican Church. She appealed her dismissal to an arbitration board, becoming the first Catholic teacher to do so in Newfoundland's denominational public school system.[36] Meanwhile, back in Ontario, there were newspaper headlines in November 1980 about the firing in Kitchener-Waterloo of a teacher in a Catholic school marrying a divorced man.[37] Fortunately for the Catholic schools in that province, the existing Code already explicitly sanctioned religious discrimination as "a reasonable occupational qualification" and the new Human Rights Code of 1981 recognizes the BNA provisions for separate schools.[38] During the preparation of the new Code, however, Dignity, the organization of Catholic homosexuals, made a submission to the province, presented by Father Tim Ryan. It argued that schools should not be permitted to refuse hiring homosexuals. This view was opposed by the Metropolitan Toronto Separate School Board and it led the Ontario Conference of Bishops to submit a letter re-iterating the corporate rights of

> "a Catholic education system, Catholic organizations in general and the official Church ministry" to "be free to exclude those who would publicly proclaim and indulge in homosexuality as a morally acceptable way of life."[39]

---

[36] In early September 1983, the Arbitration panel upheld Mrs. Baron Babb's Appeal, arguing that the school by-law requiring Catholic Teachers to conform to appropriate denominational standards cannot be used as just cause for dismissal because it was established outside the collective bargaining process to which the Newfoundland Teachers' Association must be a party. *Globe,* September 1983. Reprinted in *Catholic New Times,* September 16, 1983. The case, presumably, will be appealed.

[37] "Wed to divorced man, RC teacher fired," *Globe,* November 13, 1980, p. 1.

[38] Human Rights code, 1981. Statutes of Ontario 1981, Chapter 53, Section 18, (1). "This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards of their supporters under the *British North America Act, 1867* and the *Education Act*" (R.S.O., 1980, C. 129).

[39] *Western Catholic Reporter,* October 1981.

This, then, was another attempt to impose conformity to secular standards, only this time the initiative came from an organization from within the Catholic Church itself.

While the Catholic schools were occupied with defending themselves against an indiscriminate application of provincial Human Rights Acts created to put a stop to discrimination, the Federal Government introduced its constitutional packages, including a Charter of Rights in the fall of 1980. The original draft did not mention the rights of separate schools, Catholic or Protestant. The Canadian Conference of Catholic Bishops was unable to formulate a common position on the Charter because of disagreement between the Bishops of Quebec and those from the rest of Canada about how to approach the Charter during the few days at their disposal at the annual October meeting in Ottawa.[40] Subsequently, briefs were submitted on separate schools by Archbishop Alphonsus Penney of St. John's, Newfoundland, and by the Canadian Catholic School Trustees. Cardinal Carter of Toronto, on behalf of the Ontario Bishops, formulated a brief which touched upon the rights of three groups, the unborn, separate schools and natives.[41] As the president of the Canadian Catholic School Trustees Association (CCSTA) noted, the Charter, as it stood, emphasized individual freedoms such as the freedom of a teacher to practice his own religion as he saw fit, but didn't mention group freedoms such as the freedom of a Catholic school board to fire a teacher not living in accordance with the Catholic faith.[42] However, among the 25 or so major amendments that were passed in

---

[40] The Quebec Bishops apparently objected to the idea of a federal Constitution overriding provincial rights. One year later, in October 1981, they refused to consider particular questions such as the rights of the unborn and natives in the Constitution proposal now rapidly moving towards completion. Their own area of concern was that of language. They insisted that the Constitution be either discussed clause by clause or not at all. Because of lack of time detailed discussion was not possible. (Discussion of author with Archbishop Joseph McNeil, April 1983). Subsequently, the CCCB issued a condemnation of the neutron bomb, something they could all agree on. For difficulties within the CCCB, see also *Catholic Register,* November 6 and 13, 1982.

[41] These briefs were submitted to the government during November and December 1980.

[42] Terry Lavender, "Human rights laws may threaten Catholic schools," *Western Catholic Reporter,* December 22, 1980, p. 19. The president was Mr. Phil Hammel of Saskatoon.

a second period of hearings during the first two months of 1981, one guarantees the rights of the separate schools under federal law by incorporating Sections 93 of the 1867 BNA Act concerning separate schools into the new Constitution.

One final note. In Quebec, in 1981, the Minister of Education put forward proposals to abolish the entire confessional system, Catholic and Protestant, English and French to be replaced by a secular system divided by language. Opposition has been expressed by some parents as well as by the Quebec Bishops, but until recently with a rather uncertain tone.[43] Nevertheless, these plans had not been executed at the time of writing.[44]

The overall view for the period 1968-1982 is that most and, perhaps, all challenges to the corporate rights of the Catholic school system have been settled in favour of the school system though none without dissenting legal interpretation somewhere along the line of arbitration and litigation. It may well be that the system will be able to ride out the current pressure to comply with secular standards in employment practice. Nevertheless, the very number of dissenting opinions would seem to indicate that the situation has not yet become stabilized. Moreover, the testing of school rights against the federal Charter of Rights has not even begun.

With respect to schools and the process of secularization, it should be noted finally that in 1977, British Columbia extended provincial financial support to 'independent' schools, including Catholic schools, for the first time in its history. Also, religious oriented schools outside the public and Catholic systems have been increasing in number in Ontario and Alberta.[45] These may be indications that while the secularization of the public school

---

[43] The Bishop's letter, for example is more a pleading than a forceful argument on the rights of parents under federal law to have a confessional system. For text, see Montreal's *New Catholic Times,* October 1981.

[44] But in January 1984 it was announced that Quebec wanted to talk with Ottawa about changing the education provisions of the Canadian Constitution. ("Quebec wants education guarantees changed," *Globe,* January 19, 1984, p. 13.)

[45] In Alberta, such schools receive financial support which rises to a maxinam of 80% of school costs over a five year period. In B.C., non-public schools presently receive provincial funding for 30% of their operating costs. Ontario gives no support to independent schools. The increase in such schools is due precisely to increased secularism within the public system.

system seems to continue, some of those who disagree with it are shifting children to other school systems.

SUNDAY LAWS

Let us touch upon a few more items which affect the public status of Christianity within Canadian society. They are not placed here in order of importance, nor does their mention imply that their unchanged status should be regarded as absolutely essential to either the survival or the effectiveness of Christianity in Canada. They are listed as an indication of the spirit of our days; time does not permit to go into details.

One illustration is the advocacy to tax church property. This was discussed in the media and in municipal councils such as that of Saskatoon in the early seventies. The Catholic Bishops of Ontario had felt it necessary to address their provincial government already in 1964, pointing out that the "imposition of municipal taxation on property thus far exempt" would eventually require that the beneficial work of many Church institutions would have to be taken over by the government at considerably higher expense. The same issue was gone over again by the 1967 Smith Committee which, in a three volume Report, proposed to remove all property exemptions in favour of having various levels of government (federal, provincial, municipal) allow exemptions annually or, failing that, tax the properties but offset this tax by an annual grant. This idea was brought forward twice in provincial budgets, the second time by D'Arcy McKeough, treasurer of Ontario, in his 1976 proposed "Reform of Property Taxation in Ontario." A Commission appointed to examine the matter, headed by Mr William Blair, received many submissions from religious communities maintaining schools, hospitals and homes for senior citizens throughout the province, expressing alarm at the idea of having to apply for exemptions every year. Subsequently, Mr McKeough announced that "schools and private institutions had nothing for fear from the legislation" and the idea was abandoned.[46]

---

[46] Roman Catholic Bishops of Ontario, Brief to the Ontario Committee on Taxation, January 1964, p. 34. Budget Paper E, Ontario Budget 1976. See "Reform of Property Taxation in Ontario (some specific implications) Father Fogarty, C.S.C.

The issue keeps appearing at hearings of revenue hungry municipal councils, most recently in Vancouver which had also considered – and rejected it – ten years earlier, in 1971.[47] It should not be thought that no connection exists between proposals of this nature and commitment to secularism. Three members of the Humanist Fellowship of Vancouver, for example, submitted a brief on "Taxation of Churchs" to the B.C. Legislature's Select Committee on Municipal Matters, concerning the equitable distribution of real property taxation in September 1974. They recommended that "public worship of God" no longer be a criterion for exemption of taxation on the grounds that there is no agreement on the meaning of "worship" or "God." They also claimed that many within the Churches do not approve of the exemption of Churches from taxation, in support of which they appended an extract from an article entitled "Church Taxation" by Rev. Bruce McLeod, moderator of the United Church of Canada, in the *United Church Observer,* April 1974. Finally, they pointed to the valuable land occupied by Churches which could restore a substantial 'lost income' to municipalities. In support of this, they provided an extract from an article in the *Toronto Star,* October 21st, 1968 by D.H. Fullerton, Chairman of the National Capital Commission, Ottawa, who claimed that it was an injustice, in times of declining church attendance, to exempt churches from taxation.[48]

Other illustrations of secularizing trends include the objections of a Toronto alderman to crucifixes on the walls of the St. Lawrence Community Health Centre,[49] partly sponsored by St. Michael's Hospital, as offensive to non-Christians. The objections did not receive a favourable hearing in the press. Another example, was the publicly expressed desire of the Head of the Protestant Theological College at Queen's University, Kingston, Ontario in 1981, that the University drop the prayer at Convocation.[50] A similar

---

to CRC-O Assembly, September 23, 1976," and James Hanrahan, C.S.B., "CRC-O Report of the President, 1976-78," April 23, 1978. In Archives Canadian Religious Conference, Ottawa, CRC-O, Volume III.

47 See, for example, Nicholas Read, "Fundamentalist group heats up Church tax issue," *The Vancouver Sun,* August 17, 1981, A15.

48 *Humanist in Canada*, Vol. 7, 1974, No. 31., pp. 37-8.

49 "Clinic's Crucifixes Should Be Removed," Alderman Declares, *Globe and Mail,* January 21, 1981.

50 *Globe and Mail,* January 23, 1981.

proposal had been moved by a similar source ten years earlier within the then newly formed School of Religious Studies, University of Saskatchewan, Saskatoon. This was motivated by the desire to show the rest of the University a gesture of friendship and broadmindedness. However, less "liberal" minds who did not think a School of Religious Studies should start its career by suggesting the abolition of public prayer, defeated it and Convocation prayers continued.

It is easy to move from the abolition of one religious symbol to another. Thus there is the suggestion from Winnipeg Lawyer, Israel Ludwig, made at the 1982 Vancouver Conference on Racism, that the federal government abolish Christmas and Good Friday as statutory holidays on the grounds that they discriminate against religious minorities such as Jews, Moslems and Seventh Day Adventists.[51] One year later, a House of Commons Committee on Racism was told by Brenda Taylor, an official of the Canadian Council of Christians and Jews, that performing in Christmas pageants and singing Christmas carols in school can be harmful to non-Christian students, often contributing to feelings of isolation. Here, too, the implication was that these customs be banned.[52]

Perhaps the most obvious current sign of the secular spirit at work is the threatened abolition of the Sunday as a day of rest. The movement is gathering strength quite rapidly, it seems, after simmering for a number of years. Business as usual for stores on Sunday was proclaimed policy in Vancouver beginning in January 1982. Also in 1982, the huge Edmonton West Mall under executive director Rueben Stahl began to deliberately break the Province of Alberta Lord's Day act. In 1983 stores in Toronto did the same in the hope of changing the Ontario regulations. Significantly enough, and also ironically, in Calgary on March 9, 1983 and in Edmonton, in May, first one judge, then another ruled that the federal Lord's Day Act violates the "freedom of religion" section of the Charter of Rights. Judging by the tenor or editorials in various newspapers, stores may soon be kept open on

---

[51] *Globe,* April, 23, 1982.

[52] *Toronto Star* and *Globe and Mail,* October 12, 1983. While these proposals ostensibly appear sensitive to measures which "discriminate" against some people, their practical outcome in the present secularist thinking will not be the granting of religious holidays peculiar to the minority but the taking away of the religious holidays of the Christians who, according to the 1981 census, still form the vast majority in Canada.

Sundays in the name of freedom of religion, (or is it really freedom *from* religion?).[53]

CONCLUSION

The history of the last fifteen years shows that the public position of Christianity and the values it represents are under attack. Most obvious has been the erosion of Christian marital and sexual moral standards. As someone observed the so-called "new morality" is, in reality, the old immorality. But today, Canada also faces a collapse of effective control over pornography in literature, film and television. Moreover, religious symbols such as Sunday rest laws and religious holidays are threatened. Even the corporate rights of the Catholic school system are being challenged.

Until now the conflict between church and state has not been serious despite the fact that with the legalization of abortion a controversy has been introduced which cannot be resolved by compromise. Protestants remain divided on the issues discussed above. Catholic politicians have adopted a secular view of law and government. Catholic Bishops have been uncertain how to counteract the secularizing trends. The very unpopularity of defending traditional family morality against the assaults of the permissive society has been at the very root of the reluctance to fight back. Many of the faithful seek compromise without appearing to do so or without understanding the consequences. The Christian community in general and the Catholic Bishops in particular, are confronted with a most difficult dilemma.

This paper has restricted itself to illustrate the process of secularism at work. It seems clear to the author, perhaps also to others, that "secularism" flows from an understanding of God, man and the world which is incompatible with religion. To identify "pluralism" with "secularism," is to demand the removal of religious values from our present society. With this in mind, Catholics, Protestants and others should re-examine their approval of the "pluralist" society.

---

[53] Early in November 1983 the Alberta Court of Appeal upheld the rulings of the lower courts. See approving editorial of the Ottawa *Citizen,* November 22, 1983 and the *Toronto Star* editorial "Why not open Sundays?", October 19, 1983.