# FROM GOD TO MAMMON:
# THE METAMORPHOSIS OF CIVIL RELIGION IN CANADA

by

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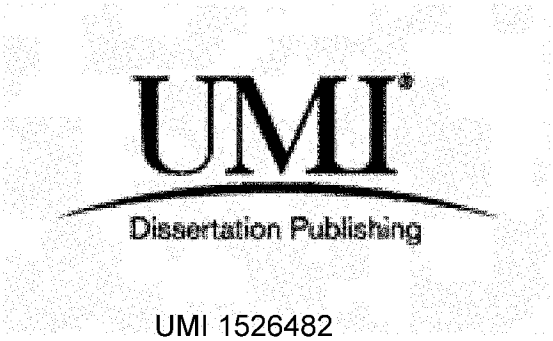





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**Abstract**

This thesis explores civil religion in Canada. It examines the work of Rousseau, Durkheim, and the reintroduction of the concept of civil religion by Robert Bellah in 1967. Although some scholars argue that Canada does not possess a civil religion, this thesis asserts that a civil religion has been well manifested in Canadian society. Since Confederation, Canada has seen the rise and fall of Christian civic piety, something that once permeated public life in Canada. The thesis studies the metamorphosis of civil religion and its impact on public policy in education. It examines legal challenges concerning religion in the field of education as exemplars to examine this metamorphosis. This thesis concludes that education policy and court decisions reflect a new-found belief in democratic faith, which has replaced Christian civic piety as Canada's civic religion. The conclusion raises questions about the capacity of this democratic faith to embrace religious pluralism.

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## Introduction

In 1967, Robert Bellah published his acclaimed article, "Civil Religion in America" in the journal *Daedalus.* This article launched a debate in America about civil religion and the relationship between faith and government that continues to this day. For Bellah, American civil religion could best be summarized as a public religious dimension to American politics - an expressed "set of beliefs, symbols, and rituals that I am calling the American civil religion" (Bellah 1967 , 4). These symbols include public holidays, such as Memorial Day to honour the dead and the birthdays of Lincoln and Washington, the flag, the national anthem, and sacred founding documents of the American republic. Some of this debate eventually extended into Canada (Bellah and Hammond 1980; Kim 1993). Canadian civil religion, as it existed, was more influenced by traditional, Christian religious fervour. This thesis examines contemporary civil religion in Canada and compares it with its more traditional identity. Ronald Beiner captures the essence of civil religion best. Beiner writes

> Civil religion is the empowerment of religion, not for the sake of religion, but for the sake of enhanced citizenship – of making members of the political community better citizens, in accordance with whatever conception one holds of what constitutes being a good citizen" (Beiner 2011, 2) .

One may question why the topic of civil religion matters at all today in an increasingly secular age. One need only look back to Bellah and other writers on the topic for the answer to this question. Robert Stauffer writes "the collective meaning ultimately derives not from a belief that society is good, but from belief that society has a special responsibility to *try* to be good. Thus, the civil religion always

confronts the nation with a potential judgment over nationalistic idolatry" (Stauffer 1975, 390). Stauffer argues that civil religion does not make a nation more nationalistic except when it is abused. This is a very important contribution to the field, because the power of civil religion means that it could be easily abused to wrong ends. Stauffer touches on a theme resulting from one of Bellah's subsequent works as well. Stauffer writes that Bellah believes

> cultural change is also needed because political change can no longer focus only on "negative freedom" the extension and protection of civil rights and liberties nor even on more equity in the distribution of wealth, but must include new goals which offer the possibility of "positive freedom" – of the freedom to exercise personal restraint and to act responsibly toward others which comes from a strongly shared sense of community (Stauffer 1975, 391).

The attachment to community which Stauffer and Bellah have both written about is what endows civil religion with its importance to contemporary Canada. The Canadian context is different from the context in the United States as there was no revolutionary zeal in Canada to promote the concept and transcendentalism of American civil religion. It is the absence of this zealous transcendentalism that leads some scholars such as Bellah, Kim and Hammond to at different times suggest that Canada is without a common civil religion. The country, it is argued, is too fractured due to linguistic, regional, and cultural differences for a common civil religion to exist. One critic, Andrew Kim, acknowledges however, that perhaps an argument can be made for multiple civil religions in Canada. This thesis recognizes two founding civil religions in Canada, one in Québec - mostly Roman Catholic and French speaking - and one in the rest of Canada - primarily Protestant and English speaking. I highlight the overlap between these two civic faiths and identify the common

features as Christian civic piety. Since 1982, however, Canada has witnessed the development of a new, unified civil religion, akin to what von Heyking refers to as a "democratic faith." This thesis reflects on the emergence and consequences of this new civil religion, and asks if new tensions between state and society have emerged as a result of this new civil religion.

I argue that Canada has always had a civil religion and that the nature of civil religion changed from a Durkheimian based Christian Civic Piety to a Rousseauian democratic faith. This means that the organs of the state have been facilitators of the change that has happened in Canada. I will do this by first examining what constitutes civil religion. I will then look specifically at the case of Canadian civil religion and how it has changed. I will argue that there have been three factors that have influenced this change: The Quiet revolution in Québec, the recognition of the multicultural reality in Canada through the formal adoption the multicultural policy and the adoption of the Canada *Charter of Rights and Freedoms.* These three factors are most evident in the evolution of education policy. With specific reference to court cases that deal with religion in the schools I argue that the Rousseauian model of civil religion has emerged in Canada.

This thesis thus examines three interrelated questions: first, what is civil religion, second, does Canada have a civil religion, and third, what is the relevance of civil religion in contemporary Canada? To address these questions, the thesis is structured as follows: Chapter One will review the literature on civil religion. Here, various explanations and functions of civil religion are identified, particularly relevant to the relationship between state and society. In Chapter Two, I will examine civil

religion in the Canadian context, and will identify a transformation of Canadian's civil religion from Christian civic piety to a new democratic faith. This may seem like a rather benign development, but this transformation reflects a shift in the relationship between state and society. To explore this shift in greater detail, I will next focus on public education. In Chapter Three, I turn towards the role of civil religion in public education and chronicle the role of Christian civic piety in public schools prior to the transformation noted in Chapter Two. Then, in Chapter Four I examine the replacement of Christian civic piety by democratic faith in public schools. To examine this development, this thesis focusses on court cases which reflect the changing nature of religious education and religious exercises in schools. Education is a critical intersection between state and society and therefore illustrates the impact and consequences of Canada's new civil religion.

## Chapter One: Studies in Civil Religion

This chapter reviews prominent studies on civil religion. It focusses on the work of three different authors: Jean Jacques Rousseau, Emile Durkheim, and Robert Bellah, and draws a distinction between civil religions that emerge from society and those shaped by the state.

Writing in 18th century France, Jean Jacques Rousseau argued that "a lengthy alteration of feelings and ideas is necessary before man can be resolved to accept a fellow man as a master, in the hope that things will turn out well for having done so" (Rousseau 1987, 220). In the *Social Contract*, in which Rousseau explored the principles and rights that would lay the foundation for a republic, he recognized that "a state has never been founded without religion serving at its base," and argued that man had "no other kings than the gods, and no other government than a theocratic one" (Rousseau 1987, 220). Rousseau recognized the great need for sovereign power to inspire people to become good and tolerant citizens, subject to one master. He claimed, however, that it was impossible for one to be subject to both the church and to the state: the tension of serving two masters would lead to social disunity, which was to be avoided at all costs (Rousseau 1987, 223). He thus proposed the idea of a civil religion, "a civic faith to be created and imposed by the sovereign as a way of promoting civic virtues and political unity" (Cristi 1997, 19).

Rousseau wrote his chapter on civil religion precisely because he believed that it was impossible to separate the temporal and the spiritual.[1]

In the *Social Contract*, Rousseau attempts a juggling act in that he professes the need for a state to be sacrosanct and possess a divine and enduring purpose in order to command the loyalty of its citizens. This civic responsibility and duty to transcend, however, must be accomplished without the strength of an outside church, as that would require the people to serve two masters. The awkward juggling is first evident in his expressed concerns with Christianity. On one hand, he acknowledges its moral strength and capacity to encourage equality and fraternity, but on the other hand notes its weakness in that it can divert people away from the affairs of earthly things and fails to provide a foundation for a vibrant civic identity. Despite praise for the gospel of Christianity, he criticizes its political utility: "Christianity preaches only servitude and dependence. Its spirit is so favorable to tyranny..." In this regard, Rousseau is caught between moral philosophy and political theory. The *Social Contract* is both a moral and a political treatise in which Rousseau attempts to contribute to both fields in the same work (Fourny 1987, 485).

For Rousseau, the purposes of a civil religion were quite clear and he labeled them in the simplest of terms:

> For it is of great importance to the state that each citizen should have a religion that causes him to love his duties. But the dogmas of that religion are of no interest either to the state or to its members, except to the extent that these dogmas relate to morality and to the duties

[1] Some contemporary scholars of Rousseau have attempted to separate the temporal and spiritual, although Diane Fourny has explained how such efforts are clearly at odds with Rousseau's original intent. See Diane Fourny, " Rousseau's Civil Religion Considered " The French Review 60, no. 4 (1987)

> which the one who professes them is bound to fulfill toward others. Each man can have in addition such opinions as he pleases, without it being any of the sovereign's business to know what they are. For since the other world is outside the province of the sovereign, whatever the fate of the subjects in the life to come, it is none of its business, so long as they are good citizens in this life.
>
> There is, therefore, a purely civil profession of faith, the articles of which it belongs to the sovereign to establish, not exactly as dogmas of religion, but as sentiments of sociability, without which it is impossible to be a good citizen or a faithful subject. While not having the ability to obligate anyone to believe them, the sovereign can banish from the state anyone who does not believe them. It can banish him not for being impious but for being unsociable, for being incapable of sincerely loving the laws and justice, and of sacrificing his life, if necessary, for his duty. If, after having publicly acknowledged these same dogmas, a person acts as if he does not believe them, he should be put to death; he has committed the greatest of crimes: he has lied before the laws.
>
> The dogmas of the civil religion ought to be simple, few in number, precisely worded, without explanations or commentaries. The existence of a powerful, intelligent, beneficient divinity that foresees and provides; the life to come; the happiness of the just; the punishment of the wicked; the sanctity of the social contract and of the laws. These are the positive dogmas. As for the negative dogmas, I limiting them to just one, namely intolerance. It is part of the cults we have excluded (Rousseau 1987, 226).

Rousseau's civil religion is meant to be a catch-all of how people were to live, and how the state or sovereign was to "fix the articles." This would be done by encapsulating the concept of civil religion as described in the "positive dogmas." The primary purpose of civil religion for Rousseau is to articulate and promote the "sentiments of sociability" and to unify authority. If the church and the state were separate, the people would have two masters and it would not be possible for citizens to serve either completely. This was precisely the reason Rousseau dismissed a third type of religion. If the first type of religion was that of the pure Gospel, internal to each person and without any interference from external bodies, and the second was a common set of national values, the third type of religion or

"priestly religion" must be dismissed outright, as it cultivated competing identities and rival allegiances, "two sets of legislation, two leaders and two homelands" (Rousseau 1987, 223). Rousseau's civil religion was meant as a way to especially avoid this third type of religion. It would be acceptable for people to indulge in Rousseau's first type of religion because that would be a private matter between the individual and God. As long as the person embraced the civil religion as put forward by the state, all would be well.

By focusing on this "civil religion," Rousseau believed he had articulated a foundation for republican government and resolved the complicated relationship between individual sentiments and civic duties and obligations. Because Christianity could not fully fit the political needs of a republic, a civil religion was required. How well such a civil religion could reflect the spiritual and moral values of a society, and how such a civil religion risked promoting the interests of the state over the sentiments of society, however, remained to be seen. Rousseau's naïve belief in the transparency of the General Will overshadowed the tensions that might exist between these two very different purposes, an assumption of coincidence that has been at the core of rival interpretations of his work.

Like Rousseau, Emile Durkheim also recognized that religion had rich capacity to cultivate moral obligation within the individual and to strengthen social integration. Durkheim, however, focused on religion as the natural and spontaneous activity of a moral community, an organic and natural unifying force as opposed to Rousseau's more political, civil religion advanced by the state. Much of Durkheim's work addressed the normlessness of modern society. His earlier work on suicide

focused on the concept of *anomie*, and elsewhere he resisted the atomistic drift of most Enlightenment philosophy. His enduring concern for social order thus culminated in his work on religion. In his last major work, *The Elementary Forms of Religious Life*, Durkheim described religion as the most important integrating element for society (Emile Durkheim, 1915). With religion seemingly in decline in the modern world, Durkheim wondered if society might disintegrate. But he recognized religion beyond its institutions and creeds and noted that religion, above all else, was a "transcendental representation of the power of society" (Coser 1977, 138). Religion was therefore not merely a social creation, but society divinized (Coser 1977, 138). Although Durkheim himself never used the specific term civil religion, his contributions to the study of religion in society and civil religion are significant (Cristi 1997). Durkheim believed that "there can be no society which does not feel the need of upholding and reaffirming at regular intervals the collective sentiments and collective ideas which make its unity and its personality" (Cristi 1997, 39). Durkheim thus filled a gap between Rousseau and later scholars of civil religion in that he provides a less strict version of civil religion.

With Durkheim, one sees attention to a societal based, bottom up version of civil religion that is in contrast to a more statist model espoused by Rousseau. Durkheim stated,

> From the mere fact that we consider an object worthy of being loved and sought after, it does not follow that we feel ourselves stronger afterwards; it is also necessary that this object set free energies superior to these which we ordinarily have at our command and also that we have some means of making these enter into us and unite themselves to our interior lives. Now for that, it is not enough that we think of them; it is also indispensable that we place ourselves within

> their sphere of action, and that we set ourselves where we may best feel their influence; in a word, it is necessary that we act, and that we repeat the acts thus necessary every time we feel the need of renewing their effects (Emile Durkheim 1915, 417).

Durkheim further notes,

> the cult is not simply a system of signs by which the faith is outwardly translated; it is a collection of the means by which this is created and recreated periodically. Whether it consists in material acts or mental operations, it is always this which is efficacious" (Emile Durkheim 1915, 417).

Durkheim here is pointing out that it is important to the symbols and structure of the religion that the people practice what they believe. In this sense, his connection to civil religion is clear because civil religion is not just about what a society sees and does, but also what they believe. If a particular society does not have a strong foundation of some kind of self-sustaining idealism, it is likely to falter. This is where civil religion can, and in many societies does, play a role. In the United States, the ongoing belief in American exceptionalism is part of their civil religion. In Canada, the past role of Protestant and Roman Catholic religions made up its fundamental parts of its civil religion.

A key difference between Rousseau and Durkheim is the role society plays in the development of the individual. For Rousseau, society and individual must conform to the General Will. For Durkheim, the role of society is to provide a "refuge", "a shield," and a "guardian support which attaches the believer to his cult" (Emile Durkheim 1915, 418). This demonstrates that the role of society is crucial to the role of religion. As Demerath notes, "individuals take their moral cores from society rather than imparting morality to it" (Demerath 2003, 350).

Durkheim notes that "a society is not made up merely of the mass of individuals who compose it, the ground which they occupy, the things which they use, and the movements which they perform, but above all is the idea which it forms *of itself*' (Emile Durkheim 1915, 422). This is the central difference between Rousseau and Durkheim. As I have shown, Rousseau wanted society and the people to be subject to the civil religion of the state for political purposes, including receiving their moral grounding from the state. For Durkheim, this would not be possible, as society is made up of people, and the people get their moral codes from society, rather than the state.

Most of the body of work on civil religion today appears to have adopted the Durkheimian definition or structure. John Wilson states that the concept of civil society "concerns the possibility that specific social and cultural beliefs, behaviors and institutions constitute a positive religion concerned with civil order in the society" (Wilson 1986, 111). Flere and Lavrič define civil religion as a concept which "refers to a set of values, norms, beliefs, and attitudes by which a given society is sacralized and its substance is comprehended in a transcendent way, the society being ascribed a transcendent mission, and its political authority [having] a charismatic dimension" (Flere and Lavrič 2007, 595). Such definitions fit with the Durkheimian notion in *The Elementary Forms of Religious Life* that religion, its origin, its function and its meaning, can only be understood and explained by reference to society (Cristi 1997, 38).

The difference between the ideas of Rousseau and Durkheim are caught in this citation: "civil religion...may be seen either as a phenomenon expressing an

inward conviction on the part of members of a certain group (implicit culture), or as a political resource – a form of external compulsion or force used to support an existing political order" (Cristi 1997, 4). It is this difference in the utility of civil religion that marks the important distinction between Rousseau and Durkheim. As Cristi notes, civil religion is either a cultural given or a premeditated political ideology. In the latter, it is formulated to assert the interests of the state. Individual members of society are obligated to embrace it. Under Durkheim however, civil religion emerges from society itself and is part of the culture that reflects and promotes community norms and traditions.

Some five decades after Durkheim wrote *The Elementary Forms of the Religious Life*, Bellah launched what has become an ongoing discussion about civil religion in North America. In his article, "Civil Religion in America," Bellah highlighted American civil religion specifically. He noted that "the civil religion at its best is a genuine apprehension of universal and transcendent religious reality as seen in or, one could almost say, revealed through, the experience of the American people" (Bellah 1967, 12). Bellah's work was largely a continuation of the work of Durkheim, but put into an American context. As Stauffer notes, Bellah argued that it was not surprising that a society should 'sacralize its dominant values and that to dismiss this civil faith as nationalism was to overlook its ability to maintain a "cohesive and viable national society" (Stauffer 1975, 390). This clearly ties back into the work of Durkheim who believed that people derive their values from society, rather than the other way around.

Bellah thus operationalized the idea of an American civil religion. Clearly influenced by Durkheim, Bellah's work expanded the idea of civil religion in concrete terms. Bellah noted, for example, specific manifestations of civil religion in contemporary American politics. The historical references to a god, or a heavenly being, or providence are found throughout presidential inaugural addresses (Bellah 1967, 1-21). There is, however, no reference to Christ or Christianity in this civic faith. Christianity is not even implicit, as there was to be a clear distinction between regular religion and what Bellah has termed the American civil religion. The American civil religion relied on those principles and experiences Americans held in common, rather than particular pieces of religious dogma. This civil religion was not founded on mere rituals, but on foundational ideals of American society. The strength of this society is what allowed the United States to flourish as a new nation. This is another link between Durkheim and Bellah. Bellah writes "the civil religion was not in the minds of Franklin, Washington, Jefferson or other leaders, with the exception of a few radicals like Tom Paine, ever felt to be a substitute for Christianity" (Bellah 1967, 8) Indeed, Bellah wrote, "this religion – there seems no other word for it – while not antithetical to and indeed sharing much in common with Christianity, was neither sectarian nor in any sense Christian" (Bellah 1967, 8). This can also be seen in the inaugural address of President John F. Kennedy when he references God three times, but not a specific God, as noted by Bellah.

The American Civil War was just such a shared experience in the development of that republic. As Bellah notes, the start of the civil war for Lincoln was about preserving the union of the states (Bellah 1967, 9). It is worth quoting

from Lincoln's Gettysburg Address, itself one of the sacred American canons. Lincoln ended the Gettysburg address by noting,

> that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion -- that we here highly resolve that these dead shall not have died in vain -- that this nation, under God, shall have a new birth of freedom -- and that government of the people, by the people, for the people, shall not perish from the earth (Lincoln, 2013).

Bellah refers to the Gettysburg Address as a part of the "civil scriptures" of the American republic, effectively granting the Address canonical status.

In a further nod to the Durkheimian tradition, Bellah goes on to note some of the rituals and symbols of the American civil religion. The creation of Arlington National Cemetery, which Bellah calls the "most hallowed monument of the civil religion," includes the war dead of both sides during the civil war, the Tomb of the Unknown Soldier, and the last remains of President Kennedy and the eternal flame. This cemetery forms a backbone of American civil religion precisely because it symbolizes the many meanings of this civil religion. The graves of the honored civil war dead of which Lincoln spoke and the celebrated dead of the subsequent wars, whom are buried in Arlington, honor America as a cause, a city on a hill, with its noble mission for freedom.

As for rituals, there are many in the American civil religion. One of the major rituals of American civil religion is the observance of Memorial Day. As Bellah notes, this is when the honoured dead and the principles for which they served and died are remembered, as are the living members of the Services. These Americans are remembered and honoured for their "spirit of sacrifice and to the American vision"

(Bellah 1967, 11). Other rituals on the American civil religious calendar, according to Bellah, include the birthdays of Presidents Washington and Lincoln, the Fourth of July, and Veterans Day. Bellah also notes that public education plays a central role in civil rituals.

We have seen how Bellah described civil religion in America, and now I shall examine some of the defence of civil religion as written by Bellah, but much of which is still valid today. Bellah suggests that critics of American civil religion do so by holding up the best of their own religious creeds and practices and compare this to the worst of civil religion, whatever they feel that may be. Bellah makes a very strong argument when he states that "At its best, it [American civil religion] has never lacked incisive relevance to the American scene nor so particular that it has placed American society about universal human values" (Bellah 1967, 12).

If one looks at Rousseau's second type of religion and one recognizes that this could form the basis for a civil religious dogma in the service of the state, it becomes clear that civil religion might be little more than a servant of power and particular interests. Civil religion can be used to justify many actions, both for and against the people and society in question, as well as against foreign entities. Bellah concedes that the potential for tensions exist: President Lyndon B. Johnson appealed to civil religious beliefs to advocate both for voting rights for African Americans and for US involvement in Vietnam. Yet such endeavors were more than manipulations and resonate with the altruism of America's civil faith. The idea behind both of these actions were that the American people would be acting in the

interest of others, purely because it was the correct course of action, without any required reciprocal action on the part of the recipients.

Bellah concentrates his attention on the positive roles of civil religion. He highlights how American churches did not oppose the gradual development of a civil religion because a pan American creed did not threaten them. Instead, this civil faith worked in conjunction with established faiths in America. The many different denominations were able to continue their work because, according to Bellah, American civil religion was never anticlerical or militantly secular. This was because there was always a grounding of a common cause between the two, which was what de Tocqueville called a democratic and republican religion. Neither was the civil religion allied with any singular political interest: as far back as 1967, Bellah wrote that "for all the overt religiosity of the radical right today, their relation to the civil religious consensus is tenuous" (Bellah 1967, 14). Here Bellah was stating that even with the level of religiosity expressed by the some of the 'right' in America politics, they are not indicative of the civil religion Bellah wrote about. Their religious views were more exclusive than the civil religion views are required to be.

Bellah concludes with an impressive plea about civil religion in America when he writes,

> [civil religion] does not make any decisions for us. It does not remove us from moral ambiguity, from being, in Lincoln's fine phrase, an "almost chosen people". But it is a heritage of moral and religious experience from which we still have much to learn as we formulate the decisions that lie ahead (Bellah 1967, 19).

A central point to the study of civil religion is the distinction between two rival understandings of the term, and the separation of societal values from the values of the state. While there can certainly be some overlap between the two, the values of society or the people it represents are paramount in the Durkheimian approach to civil religion. In contrast, Rousseau's ideal represents the needs and interests of the state as the most important. This does not mean that people sometimes do not help drive the values of the state, but use state institutions to impose their will on the rest of the population, as will be examined more closely in Chapter Four.

In 1974, Donald Jones and Russell Richey responded to Bellah's celebrated article with a collection of essays that further explored and applied the concept of civil religion. Jones and Richey understood that the term meant different things to different people. They also recognized that civil religion was more than window dressing and that fundamental values and beliefs impacted public policy choices. In their work on civil religion, Jones and Richey attempted to operationalize the term and proposed a five-fold typology of civil religion to identify its multiple manifestations.

The first type identified by Jones and Richey is *folk religion*. They define this category of civil religion as,

> ...emerging out of the life of the folk. By examining the actual life, ideas, values, ceremonies, and loyalties of the people, conclusions are drawn as to the existence and status of civil religion, The starting point is not a normative view of what civil religion at best is but, rather, what it actually is on the basis of surveys, polls, and empirical studies (Jones and Richey 1974, 15).

The second category is *transcendent universal religion of the nation*. "This civil religion stands in judgment over the folkways of the people" (Jones and Richey 1974, 15). Sidney Mead views this as a prophetic faith, cosmopolitan in nature (Jones and Richey 1974, 15). The third category identified by Jones and Richey is *religious nationalism*. In this usage, the nation is not the church or national religion. Rather, it is "the object of adoration and glorification" (Jones and Richey 1974, 16). The fourth category is *democratic faith*. In this category, "the humane values and ideals of equality, freedom, and justice without the necessary dependence on a transcendent deity or a spiritualized nation represent civil religion at its best" (Jones and Richey 1974, 17). The final category identified by Jones and Richey is *Protestant civic piety*. The authors identify this as "the fusion of Protestantism and nationalism and the pervading Protestant coloring in the American ethos" (Jones and Richey 1974, 17).

These five different manifestations of civil religion are not mutually exclusive. In the next chapter, I investigate civil religion in Canada, and find that democratic faith and civic piety are most apparent. Yet the two interpretations of civil religion outlined here, between Rousseau and Durkheim, between the relative weight of state and society, are critical to understanding the different manifestations and dynamics of civil religion in Canada. I will return to these interpretations later in this thesis.

The fusion of the Protestantism and nationalism is known to Jones and Richey as Protestant civic piety, but in Canada, it is not so clear cut. In Canada, as this thesis discusses, there were two manifestations of civil religion, one in mainly

French and Catholic Quebec, and one in the rest of mostly protestant Canada. Whereas the US has indeed been founded with a revolutionary zeal and the American dream, Canada has always had language, religious, and regional cleavages to separate us. What had united Canadians is their mutual Christianity, although in different denominations. What is now seen in Canada is the transition away from the separate Christian Civic Piety to the democratic faith that unites the country, similar to the United States civil religion.

# Chapter Two: Civil Religion in Canada: From Civic Piety to Democratic Faith

The existence of a Canadian civil religion has been debated in the past. From the time of Canada's inception it would be fair to say that there have been regional, linguistic, and religious tensions which militate against a strong sense of unity. Andrew Kim has argued that such tensions have prevented a pan-Canadian form of civil religion from developing. Bellah claims that the lack of revolutionary myth and founding has also inhibited the development of a pan-Canadian civil religion. This has changed over time. The adoption of the Canadian *Charter of Rights and Freedoms* was an explicit attempt to overcome such differences. Prime Minister Pierre Trudeau and his adherents in the constitutional patriation project were convinced that a more liberal rights oriented document was needed to replace the quasi-Burkean document and organization which had shaped Canada during its first century.[2] A constitutional shift, however, involved more than legal documents. It also required more than a modest alteration of the values and symbols of the Canadian polity. This chapter examines civil religion in Canada and its transformation, and then explores the potential tensions and challenges that this transformation invites. These potential tensions become more evident as I apply the Durkheimian and Rousseauian models of civil religion identified in the previous chapter.

[2] Von Heyking, John. 2010, "Civil Religion and Associational Life under Canada's "Ephemeral Monster": Canada's Multi-Headed Constitution" in *Civil Religion in Political*, in Civil Religion *in* Political Thought, 298-328. New York, The Catholic University Press of America.

## Civil Religion in Canada

The Canadian situation is more difficult to discern than perhaps it first appears. Kim and Bellah have argued at different times that there is no civil religion in Canada. Kim argues that there is not, and cannot be a civil religion in Canada because the population is too fragmented. This fragmentation comes from regionalism, religious and ethnic backgrounds of the citizenry, and other factors that all militate against a firm civil religion, unlike the United States.[3] Kim does however acknowledge, in a footnote, that,

> this is not to argue, however, that the concept of civil religion necessarily implies that a given state has only one civil religion. Nor is it implied here that the lack of civil religion is responsible for disunity and vice versa. In light of the fact that many scholars simply *assume* the absence of civil religion in Canada, this article attempts to analyze systematically the hindering factors. This essay can also be taken as an examination of dual civil religions of Canada; one for Quebec and the other for the rest of Canada (Kim 1993, 258).

Bellah also argues that Canada has no civil religion, but for different reasons. He argues that Canadians, unlike the citizens of the United States, do not have a founding creed which unites them. There is no Canadian version of the 'American Dream.' Like Kim, Bellah also argues that the existence in Canada of a "large province that is linguistically, ethnically, and religiously distinct from the rest of Canada" prevents the development of a unifying civil religion (Bellah and Hammond 1980, xiii).

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[3] Kim, Andrew. 1993. "The Absence of Pan-Canadian Civil Religion: Plurality, Duality, and Conflict in Symbols of Canadian Culture." *Sociology of Religion* 54 (3): 257-275

I counter both Kim and Bellah to argue that there is, and always has been a form of civil religion in Canada, even if that form has shifted over time. What is at issue is the nature, structure and beliefs of this civil religion. Rather than focus on the religious differences between Catholic Québec and Protestantism found mostly in the rest of Canada, it is yet possible to identify many similarities and common themes in the ways in which religious belief both animated and influenced civic behavior across Canada. I find *Protestant civic piety* the most relevant to an historical Canadian centric discussion on civil religion, although I propose to broaden the definition and expand it to *Christian civic piety*[4] in order not to exclude Catholicism and more accurately reflect the particular identity of civil religion in Canada prior to the 1960s. Admittedly, such a conflation is easier to make in hindsight: in the 1950s, the distinction between Protestants and Catholics might have seemed much more critical than it does now in the twenty-first century. The point, however, is that the country liberally expressed Christian civic piety throughout the first century of confederation. It should be noted here that the Christian civic piety I am writing about is Durkheimian in nature and originated more from society than from the state. The piety was driven by the social norms of society, unlike the more Rousseauian type of civil religion that stems more from the state.

The suggestion that Canada lacked a unified civil religion has been a recurring problem for scholars trying to identify Canadian culture, or what it means to be a 'Canadian.' Some identify Canada with subsidized health care and a generally

[4] In Canada it was not possible to refer to one single civil religion, even as a protestant civic piety. This is due to the continuing Catholic influence both in Quebec and other pockets of the country. This is also noted by Kim in his article "The Absence of Pan-Canadian Civil Religion: Plurality, Duality, and Conflict in Symbols of Canadian Culture."

strong social safety net as if federal policy is what defines Canada. Canada clearly existed well before the Canada Health Care Act and other elements of the state sponsored social safety net. It is important to explore the traditional Christian civic piety that was once a part of its identity.

As evidence of the Christian basis of the Canadian identity, as well as the widespread foundation of this Christian basis, one can review the work of Preston Jones when he writes

> when Quebec's French intellectuals and principal public figures wondered what French Canadians were *for* – when they wondered what the French Canadian's place in the world was – they arrived at answers quite different from those offered by English-speaking writers and speakers. But – to stick with the simple division – both sides relied on the Bible. Both sides knew they were special – more special than the other. They knew this because the Bible told them so.
>
> English-speaking Canadians and Franco-Canadians were chosen peoples. The former were chosen because they were part and parcel of the British Empire, which, 'like the might tree described by the Prophet,' had spread godly roots around the globe. The latter were special because they had picked up where ancient Israel (the chosen nation of old) had left off. Protestant Canadians were special, some said, because they honored the Sabbath and the family more than any other people on earth. French-Canadian Catholics were special because Quebec was 'the instrument chosen by divine Providence to evangelize the American continent... (Jones 2010, 285)

In the English Canadian civil religion tradition, the people were not all members of the same church or even followed the Christian faith. This is equally true of the United States and most other western countries. What is true is that there was a tradition which focused on the religious needs of society, and recognition of the need to acknowledge and accommodate God in public life. This acknowledgement and accommodation will be examined more in the next chapter, where it will also be noted that such behavior reflected recognition by the state of the values of the

society it governed rather than an imposition by the state on society. Cristi noted this distinction in her study of civil religion

> ...the central focus of Bellah's thesis is that there is a set of national symbols and rituals in America that transcend and effectively neutralize differences in beliefs and values of American citizens, irrespective of their religions, ethnic backgrounds, or social positions (Cristi 1997, 5).

This was true in Canada as well. One need only look to such things as the motto of Canada. In 1867, the Fathers of Confederation accepted the suggestion of Leonard Tilley when Canada needed a description or motto. A deeply devout Christian man, Tilley was "struck by Psalm 72:8: 'His dominion shall be also from sea to sea.'" He suggested this designation as appropriate, and the other Fathers of Confederation agreed. "The Dominion of Canada it would be" (Dictionary of Canadian Biography Online 2000), (Moore 1997, 279). Preston Jones notes that "Catholic Québecers'" cultural identity, like Protestants, was shaped by biblical language and themes" (Jones 2010, 280-297).

The Confederation of four colonies to create Canada did not directly involve churches as such. Congregations as communities seemed ambivalent to overt political discussions (Grant 1969). It was mostly politicians who were involved in the Confederation project. This is not to say that there were no religious voices calling for spiritual unity of the land. George Brown, as editor of the *Globe* and an early proponent of Confederation, looked to the new nation to provide a government that would "endeavour to maintain liberty, and justice and Christianity throughout the land" (Grant 1969, 330). Brown's advocacy was reflective of an active religious press.

While supportive of the confederation project overall, there were religious reservations about the particulars. One of these reservations surrounded the issue of education and the role of religion in the schools. Baptists and Congregationalists were unhappy about the provision of denominational schooling being enshrined in the British North America Act in 1867, the Act of the British Parliament which constituted Canada (Grant 1969, 332). The Baptist and Congregationalist viewpoints regarding denominational education were greatly at odds with the powerful Roman Catholic and Anglican Church views. The Roman Catholic and Anglican churches especially wanted a strong religious component to the educational systems, which they definitely wanted to manage if they could not outright control.

The churches in English Canada and in Québec were very influential in the country's functioning after Confederation, especially in the spheres of social services and education. Most people were followers of one Christian denomination or another, although such affiliation did not always and necessarily translate into high levels of church attendance. Québec was an exception, where the numbers of attendees at Catholic Mass were very high, bordering on ninety percent (Noll 2006, 249). The rationale for such attendance in Québec was that the church was more directly involved in all areas of life for the Québec people, including schools and hospitals. Attendance at church was a logical extension of this involvement. As the clergy and active lay people were directly involved in the day to day operation of the province of Québec and the lives of the people, attendance at Church was simply another way for the people to show their loyalty to the Church and their community.

Despite the role of the Catholic Church in *Québec*, there was no single, state established church throughout the whole of Canada. There were, however, non-state efforts by churches to assume a national role. With the merger of Methodists and a majority of Presbyterians in Canada in 1925, for example, a new "United Church" declared its readiness to tackle the moral and spiritual needs of the country. As Neil Semple described,

> The support for church union was heavily bound up with the optimistic vision of Canada itself...If Canada's destiny was to have a spiritual and moral base, a patriotic national church must instill a common set of Christian principles, help preserve national and social stability, guide the country's conscience, and make Canada a legitimate model for the entire world (Semple 1996, 427).

Even as churches did not have as direct an influence on the political realm in Canada as established churches in some countries, overall Christian themes were well on display in Canadian politics throughout this first century of Confederation. As Noll argues:

> the marks of that civilization [Christian Canada] included fruitful cooperation between churches and provincial governments in organizing education, social services and eventually health care; noteworthy syntheses of traditional faith and modern learning that avoided the excesses of both secularization and fundamentalism; deep interpenetration of religious convictions and social values in the outworking of family and community life in many localities; and, not least, steady strengthening of the main denominations...(Noll 2006, 250-251).

The ability of the governments to rely so heavily on the churches for the provision of services was because most of the citizens at the time were members of various different Christian denominations. In his inaugural 1947 Gray Lecture series, for example, Louis St. Laurent noted,

> I am sure, however, that in our national life we are continually influenced by the conceptions of good and evil which emerged from Hebrew and Greek civilization and which have been transformed and transmitted through Christian traditions of the Western World. These are values which laid emphasis on the importance of the individual, on the place of moral principles in the conduct of human relations, on standards of judgment which transcend mere material well-being (St. Laurent 1947).

Such a speech might have seemed rather innocuous in 1947, but with the subsequent rise of the secular state, it is unlikely a speech like this could and would be given by someone in Mr. St. Laurent's position today. At the time, Mr. St. Laurent was a senior cabinet minister and he was elected party leader and Prime Minister the next year.

**Questioning Christian Civic Piety**

This prevalence of Christian civic piety – even in more benign or latent forms - remained much the same for most of the first hundred years of Canadian history. I will show in the next chapter how Christian civic piety was especially manifest to include religious exercises in education across Canadian provinces. My purpose here, however, is to underscore that by the 1950s and 1960s the religious landscape in Canada began to change. Regarding the late 1950s to early 1960s, George Egerton writes in retrospect that "...the former privileged public status and functions of religion in Canada have been severely curtailed, as churches have been politically marginalized and religious expression privatized in an increasingly secularized political culture of pluralism" (Egerton 2004b, 2). Egerton notes that the churches were willing to be involved in the new human rights debate following the war, but they wanted the debate to have a theological underpinning. This was not always a

simple proposition, and can be seen in the discussions about the debate regarding the adoption of the Canadian Bill of Rights prior to and during the Diefenbaker era. The original drafts of the Bill did not include any reference to God or any other deity, which was unacceptable to many people, including some influential politicians at the time. This led to the inclusion of a reference to God in the Preamble. At the time, it was made clear that a Christian reference was unacceptable due to the need to recognize the sensitivities of other religions, in this case particularly the Jewish community (Egerton 2004b, 2). This view was very actively promoted by politicians such as Paul Martin Sr. of the Liberal Party of Canada and other members of the House of Commons (Egerton 2004b, 16). Leading Canadian political luminaries held out great connections for the religious history of Canada. Some still maintained the Christian nation concept even after the start of the recognition to include other faith perspectives.

In his Chancellor's inaugural address at Victoria University, Lester Pearson stated '"countries which are the heirs of Christendom" were confronted "both by military danger and by the menace of false doctrines"' (Egerton 2004b, 4). In the debates leading up to the adoption of the Canadian Bill of Rights, much of the discourse related to Human Rights language had called for an explicit recognition of the need for a religious referent in any document (Egerton 2004a). I shall demonstrate the role of Christian civic piety in Canada as manifested in this debate. The role of religion, preferably Christianity, but not necessarily any specific denomination, was paramount to reaching an acceptable compromise. As Egerton noted, "in this the traditional Canadian constitutional fusion of Christian religion and

liberal ideology maintained its privileged role in articulating national identity and purpose" (Egerton 2004b, 17).

In *God and the Canadian Constitution*, George Egerton writes

> ...constitutional debate and decisions, especially the seminally important quest to define and constitutionally entrench human rights, illuminate most clearly the historic shifting in Canada from a Christian to a pluralist jurisprudence and political culture (Egerton 2005, 13).

The point in time Egerton writes about above can be seen as the start of the shift away from the traditional form of civil religion Canadians had followed up to approximately the 1960s. From this point on, there would be a shift towards a more secular, or as George Egerton notes above, a pluralist form of worship. Egerton recognized that Canada's civil religion changed from one based on traditional Christian religion tenets to a more pluralistic and secular civil religion.

**The Emergence of a Democratic Faith**

What happened to this overt Christianity in the Canadian polity? Christian civic piety is now overshadowed by what Richey and Jones term "democratic faith." This democratic faith relies not on a transcendent piety. Rather, it relies on "the humane values and ideals of equality, freedom, and justice without necessary dependence on a transcendent deity or a spiritualized nation represent civil religion at its best in the American experience" (Jones and Richey 1974, 17). This is also noted by von Heyking in his chapter "Civil Religion and Association Life under Canada's "Ephemeral Monster"" in *Civil Religion in Political Thought.* He notes that "the most recent attempts to evoke civil religion are found in the myth that the *Charter of*

*Rights and Freedoms* represents the progressive historical unfolding of human potentiality, freedom and equality" (Weed and von Heyking 2010, 299).

Democratic faith as civil religion has as its mainstay a reliance on the goodwill of people towards each other, and the goodness of human nature, often driven by the ideals of the state. It does not necessarily rely on the presence of a deity to rule over the people as required by Rousseau's civil religion. This distinction invites attention to the dichotomy between the Durkheimian and the Rousseauian types of civil religion. The Durkheimian civil religion relies on the role of society and the social norms of that society to provide for a common civil religion, whereas the Rousseauian civil religion relies more on the role and influence of the state to determine how people interact with each other. How democratic faith as civil religion is exercised in Canada might be much more than mere expression of values and ideals. It may also reflect a shift in the relationship between state and society.

As late as the 1950s, the faith of the people was an active consideration in public life and in the actions of the state. The role of the churches and the role of religion in general were more important to the state than in subsequent periods. In the pre-1950s period, the state was very observant of the role society needed to play to make the new country a success. One can see this in the role of the churches and the provision of public services to the people. Even people who were not members of a particular denomination could still receive health care or other social services from a religious order.

From the 1950s through to approximately the early 1980s and the adoption of the Canadian *Charter of Rights and Freedoms*, one can see the place of religion taking less of a role in the functioning of the country. During these three decades, I also show the rise of the welfare state and the diminished role of the churches in the provision of the services to society. These services were now to be provided by an emerging, all-encompassing state. The new situation, in the case of the United Church and other protestant denominations, left "little to offer in the way of specific Christian content in the radically transformed conditions of the 1960s, when Canadian governments acted far more effectively than the churches in guaranteeing personal welfare" (Noll 2006, 267). This period also saw the rise of the civil rights movements, and the articulation of human rights principles. Some of the churches were involved in this movement, especially the United Church of Canada. This shift away from the role of the churches in the everyday life of the people also coincided with a shift away from church attendance. This was, as Noll explains, especially true for those churches that had forgone their primary role as religious bodies focused on spiritual salvation and more concerned with issues of social justice.

In the period from the early 1980s until contemporary times one sees the role of religion almost effectively erased from the public square. By the early 1980s, with the constitutional debate in full swing, a new era in state-society relations begins. The government of the day was interested in the provision of a *Charter of Rights and Freedoms* being adopted along with the constitutional patriation project. There was a full scale debate about the need to include a reference to God or a deity in the new constitution. In the end, the pro side of the argument won, and a reference to God

was included in the Preamble. In subsequent years, as will be argued later in this thesis, the role of religion in the public square was slowly silenced.

Why does civil religion matter, and what is the importance of the concept in this context? Civil religion simply put is a measurement of how state, society, and the individual all co-exist. If one is to follow a Rousseauian form of civil religion, then the direction over society and the individual must come from the sovereign, or the state. If, however, one follows a more Durkheimian form of civil religion, it must come from society, as the morals of the individual are created from the society. Looking at Bellah's form of civil religion, it is more in line with the Durkheimian form of civil religion, except there the individual plays more of a role than in pure Durkheimian civil religion.

Civil religion reflects how people and societies live together. It refers to the values that are upheld, the traditions, rituals and symbols that are important to people and societies. In the traditional, civic piety form of civil religion one sees in Canada's past, Christian values, symbols, creeds, and rituals were omnipresent. In the new civil religion of democratic faith, these values, symbols, creeds, and rituals largely have been replaced by more humanistic and secular forms of worship.

**Explaining the Change in Civil Religion: The Politics of 20 Years (1960-1980)**

To explain the change in civil religion in Canada, it is important to look at some of the historical factors that led to this change. Here I will look at three of these facts. The first factor was the Quiet Revolution in Québec, which forever changed the relationship between the state and the individual, and also the

relationship between Québec and the rest of Canada. The second factor I shall examine is the role the adoption of a formal multicultural policy played in the change to a new civil religion. The third factor is the adoption of the Canadian *Charter of Rights and Freedoms*. I will discuss how this has affected the Canadian political landscape and how the *Charter* relates to this thesis.

The Quiet Revolution was in many ways a defining moment in Québec's history. Prior to the Quiet Revolution, Québec society was dominated by the Catholic Church on social matters. As Axworthy writes,

> Quebec had for centuries jealously guarded its prerogatives on language, culture, and religion: there has always been Quebec nationalism. But, the pre-1960s province of Quebec was characterized by a very conservative--almost reactionary--political-economic system, a social structure dominated by the Catholic church [sic] and an economic structure dominated by an Anglo elite. These together produced a passive provincial government. When it came to pushing Quebec's interests in the federal union, the Francophone federal members of parliament were compliant.
>
> As a result, the national government and the rest of Canada were able to substantially ignore the increasing threat to the preservation of French culture in Canada. The interests of Canadians in early postwar decades was [sic] to promote economic growth and advance the social security systems. This was a role the national government undertook, with general acquiescence from the provinces. It appeared to be a very successful model, in keeping with the original blueprint of Confederation (Axworthy 1988, 133).

Gérard Pelletier concurs as he writes

> Before 1960, our English-speaking compatriots referred to Quebec as "the priest-ridden province". While the same label could also have been applied to other western provinces whose prime ministers were clergymen, there had never been a single priest in the government of Quebec. Nevertheless, the Catholic clergy had a tremendous influence on the society of Quebec, especially since almost all the French-speaking Quebecers were Roman Catholics, 85 percent of them practicing. (Only half the English-speaking Quebec residents, on the

> other hand, who made up 15 percent of the total population, were Catholics; the other half were Anglicans or Protestants.)
>
> Assisted by lay religious organizations, the Catholic clergy controlled education from elementary school to the university level. The same religious groups of nuns and monks were dominant in the fields of hospital care and youth protection (orphanages, homes for delinquent youth), and in the social services. The groups also had a huge real estate patrimony and controlled a substantial part of the press. The clergy could promote its views in almost all public debates--and could silence all those who did not agree. It was hardly an exaggeration to say that, at that time, the Catholic clergy was omnipresent and omnipotent in Quebec and that no political structure could govern without the support of its bishops and clergymen (Pelletier 1988, 266).

According to Axworthy, the new found freedom the French Canadians in Québec found after the start of the Quiet Revolution unleashed a torrent of change in the arts, economic development, and education areas of provincial life (Axworthy 1988, 133). This also created a profound challenge to the established political order in Canada. According to Axworthy, there were two movements that arose as a result of the Québec awakening. One promoted outright independence, and others promoted a renewed federalism which would provide greater power for Québec. Axworthy quotes Gérard Pelletier, who wrote

> Canadian federalism has not failed: the truth is that it has never really been tried. Neither by our English-speaking partners who had abused their position of strength, nor by ourselves because we had not known how to put to work the means we actually possessed (Axworthy 1988, 134).

This period of time also saw the rise of the Québec politicians on the federal scene, particularly Pierre Trudeau. He brought with him the experiences of watching the Quiet Revolution and the start of the separatist movement in Québec. Although a Québecer himself, Trudeau was by no means either a Québec or Canadian extremist. As Powe writes about Trudeau

> For sixteen years a civil war was waged in Canada...The civil war had one champion, one general architect: Pierre Elliot Trudeau. His goal: a bilingual, cosmopolitan state unified by a central, nationalist idea. His war was fought against those who sought to fracture the nation into a loose federation; it was waged against the passive and dull, against isolationists (Powe 1996, 71).

Trudeau enforced the bilingualism provisions of federal policy by implementing it in federal services and over federally regulated business across this country. To his credit, Trudeau did this because he felt it was the correct action to save Canada, and not because it was popular. As Axworthy notes, it was an unpopular act, especially in western Canada, and cost Trudeau's federal Liberal Party political support. The bilingualism policy was also not fully embraced in Québec, as the strong nationalists believed it was not enough, and even the moderate provincial Liberal Party pushed for more provincial powers to protect and promote the French language (Axworthy 1988, 135-136).

It is important to put this change into the context of this thesis. Before the start of the Quiet Revolution, Pelletier writes, the Catholic Church controlled the school system. However, this had not always been the case. As Graham Spry notes, Québec had state control of education till 1875. Spry writes that the new Québec education ministry was

> the first since such a ministry was abolished in 1875 by a conservative and clerical-minded government of Quebec and education at all levels was left to the administration of the clergy, increasingly subsidized by the taxpayers (Spry 1971, 185).

In Chapter Four, two of the exemplar cases deal with Québec's decision to implement a new Ethics and Religion Course in Québec schools. *S.L vs. Commission Scolaire Des Chênes* is about Catholic parents seeking an exemption

for their children, and *Loyola High School v. Courschesne* deals with a Catholic school seeking an exemption from the programme of the Course. Writing in 1971 about Québec, Graham Spry noted

> ...the government's education and social welfare policies, also expressed the new attitude of the State to the Church, and of clerical or lay Catholic opinion towards the role of the State (Spry 1971, 187).

Prior to the Quiet Revolution, the people of Québec were more conservative and restricted in their personal decision-making when not directly influenced by the Catholic Church. Once they saw that it was permissible to live life without seeking permission of the Church, they did so. This can be seen in the dramatic decline in Church attendance in Québec after the start of the Quiet Revolution (Noll 2006, 249).

While the Quiet Revolution was going on in Québec, the rest of Canada was seeing changes as well, including in its demographic construction. At the time of Confederation, the majority of the population was derived from British or French ancestry (Driedger 2011, 223). This was mainly from immigration but also from the children of immigrants. While there had been some changes throughout the years, there had been movements to assimilate the new arrivals. For example, Wilson notes that there was a "campaign launched in English Canada calling for the assimilation of immigrant communities, the inculcation of the 'highest Anglo-Saxon ideals', and the wiping out of existing pockets of cultural diversity (Wilson 1984, 63). Berry also notes that "historically, the multicultural vision has not always been with us and is not guaranteed for the future" (Berry 1984, 103).

While the concern about the effect of immigration from outside the traditional pools of immigrants continued, by the 1960s there were voices on the other side of the debate making their voices heard. For example, in 1967, Ramsay Cook wrote

> perhaps constantly deploring our lack of identity, we should attempt to understand and explain the regional, ethnic and class identities that we do have. It might just be that it is in these limited identities that 'Canadianism' is to found (Cook 1967, 663).

It is in this period that Pierre Trudeau introduced the official multicultural policy in 1971. When introducing the policy of multiculturalism, Trudeau stated

> A policy of multiculturalism within a bilingual framework commends itself to the government as the most suitable means of assuring the cultural freedom of Canadians. Such a policy should help to break down discriminatory attitudes and cultural jealousies. National unity, if it is to mean anything in the deeply personal sense, must be founded on confidence in one's own individual identity; out of this can grow respect for that of others and a willingness to share ideas, attitudes and assumptions. A vigorous policy of multiculturalism will help create this initial confidence. It can form the base of a society which is based on fair play for all (Hebert 1990, 138).

Canada, it should be noted, has always had a multicultural reality in the sense that we have always been a nation of immigrants since the original French colonizers were greeted by the First Nations. Berry comments that Trudeau's multicultural policy was simply an intersection between policy and reality (Berry 1984, 103).

Before going further, I will provide some explanation as to what actual constitutes multiculturalism. This explanation will provide the context as to how this multiculturalism policy helped to change the country, and moved Canada from

having a Christian civic piety form of civil religion to a democratic faith form of civil religion.

I will use Keith McLeod's typology of the principles of multiculturalism to explain the policy. The first fundamental principle of multicultural policy is *equality of status*. This means that all groups were to be treated equally, although in a bilingual setting, recognizing Canada's historical reality. The second principle is equally important, as the emphasis is on *Canadian identity*. McLeod argues that the various new groupings who found their new status enhanced with the multicultural policy were still Canadians, and this contributed to a fundamental part of Canadian identity, namely pluralism. The third principle is *sharing our culture*, which McLeod describes as our values, attributes, histories, experiences, and institutions. McLeod's fourth principle is *greater choice of lifestyles*. This fourth principle means that we are freer now to enjoy and be exposed to other cultural realities (McLeod 1984, 30-33).

Of these principles, the one most relevant to this thesis, and which helps to explain the change in civil religion is *Canadian identity*. McLeod writes

> "one factor that English Canadians and French Canadians do not reflect upon is that many institutions which they have dominated and regarded as part of mainstream Canadian life were, and still are very exclusive to their groups" (McLeod 1984, 30).

It must be remembered that this was written in 1984, 13 years after the adoption of the multicultural policy, but only two years after the adoption of the Canadian *Charter of Rights and Freedoms.* It was the *Charter* that would change the French-English exclusivity which McLeod was writing about, and it is the adoption of the *Charter of Rights and Freedoms* in Canada that I shall turn to now.

In 1976, the separatist Parti Québécois came to power in Québec. Toward the end of its mandate in 1980 the Parti Québécois government held a province-wide referendum on what they termed sovereignty association with the rest of Canada. While this referendum failed, it was a wakeup call for all federal politicians in Ottawa. One of the recurring themes used by Prime Minister Trudeau was that he would make a new constitutional deal. According to Axworthy, Trudeau's original vision was to patriate the constitution which included an amending formula and would add certain language and cultural guarantees (Axworthy 1988, 137).

The constitutional debate in the early 1980s included many groups, not just the traditional English-French privileged groups McLeod wrote about. Axworthy captures this new trend very well when he writes

> it signified a major broadening of the field of human and civil rights in Canada and in this way brought the constitutional, indeed the entire political, framework into greater conformity with the far more pluralistic and heterogeneous society that Canada has become (Axworthy 1988, 138).

Abu-Laban and Gabriel note that the patriation project and the decision to include a Charter brought together many groups to broaden recognition who advocated for the inclusion of a multiculturalism reference to recognize the Canadian demographic reality (Abu-Laban and Gabriel 2002, 110). As Uberoi notes, over 30 percent of the Canadian population was from non-United Kingdom or French descent (Uberoi 2009, 809).

Earlier I wrote that of McLeod's four-fold typology, I found the *Canadian Identity* most relevant. I further support this argument by quoting from a 1971 Liberal Cabinet Document of the Canadian government, which stated

multiculturalism would be "'a unifying force to build a strong Canadian identity" - Cab. Doc. 981-71, 1971 (Uberoi 2009, 809). In 1980, a federal minister stated the following to the Canadian Consultative Council on Multiculturalism

> this new Constitution will be written for Canadians and it must faithfully reflect the reality of Canada today. Since this country is bilingual and multicultural, the Constitution will recognise this fact without ambiguity. I can tell you without hesitation that the government itself has absolutely no objection to inserting the word 'multiculturalism' in the text of the Constitution, although the bill on the text of the Constitution, which was made public last June, already does take into account the realities of Canada's diverse nature (Uberoi 2009, 811).

Uberoi argues that there were three main factors that led to the federal government's agreement to include multiculturalism in the constitution. The first factor was the growing acceptance of the new reality by the political elite; the second was the growing ethnic influence in Canada as from non-United Kingdom and French descent reached approximately 30 percent of the population; lastly, the actual acceptance of the federal government itself that there was a new multicultural reality in Canada (Uberoi 2009, 811). Thus we see that the inclusion of the multicultural fact in the *Charter of Rights and Freedoms* was merely recognition on the part of the political elite in Canada and the rising power of the non-traditional elements of Canadian society. There is, however, another element to the *Charter* that is important to this thesis, namely the newfound power of the courts.

A concern about the adoption of the *Charter of Rights and Freedoms* was that it would lead to "excessive emphasis on our rights against the state [and] might undermine fulfillment of our responsibilities to each other and thus undermine our communal well-being" (Weinrib 2007, 401). While Weinrib focusses on Justice

Iacobucci in her article, this could equally be written about anyone thinking about the *Charter.* Weinrib goes on to write

> Instead, his [Justice Iacobucci ] judgments demonstrate that he came to the understanding that the Charter not only mandates reconstruction of the very social arrangements and institutions of government that be bad instinctively sought to insulate from change but also contains a transformative dynamic that introduces or intensifies the application of principles that be fully endorsed. The Charter, so conceived, supports the flourishing of all members of Canadian society, as free and equal individuals, within a revised configuration of the social, communal, and political spheres of life (Weinrib 2007, 402).

Smithey (Smithey 2001, 85-107), notes that while there are no "explicit textual limits" to the promotion of religion by government in the constitution, the courts have indeed limited this right.

The newfound power on the part of the courts is not without its critics, however. Smithey notes that "many of the critics focus on the negative results of transferring 'political power from more accountable democratic institutions to relatively unaccountable judicial and quasi-judicial agencies" (Smithey 2001, 86).

For the purposes of this thesis, Gidney and Millar are most instructive. They write about the situation in Ontario and the removal of religious exercises and education there. They wrote

> What resolved the issue was not a uniformly secularized public opinion increasingly indifferent to the traditional role of Christianity in the schools. Opinion indeed was deeply divided. Substantial numbers of those who supported Ontario's public schools continued to form their vision of the good school within a Christian context. Others, though less committed to that view, were reluctant to sunder public education entirely from the outward symbols of the faith. What really pried the lid open was the passage, by the federal Parliament [and provincial parliaments except Québec], of the Canadian Charter of Rights and

> Freedoms, and two crucial court cases that followed from it (Gidney and Millar 2001, 288).

At the outset of this section, I outlined three major factors that have led to change in Canada: from a Christian civic piety form of civil religion to one founded on democratic faith. The Quiet Revolution forever changed the way in which Québecers interacted with the provincial state, but also how Québec interacted with the rest of Canada. It setup the secularization trend that has continued to this day, which can be seen in the case of *Loyola High School v. Courschesne.* Indeed, in that case, the trial judge specifically referred to the new Ethics and Religion course being implemented as part of the secularization trend within educational programs in Québec (Quebec Superior Court 2010, pp. 47-48).

The multicultural policy adopted by the Trudeau government was another major factor in the change at that time, which led to the type of democratic faith civil religion that is currently observed within Canada. This policy recognized that Canada was no longer a bilingual and bi-cultural country, but instead consisted of many peoples, including First Nations, but also other immigrant groups alongside the long entitled French and English peoples. This policy was difficult for some to accept, particularly in Québec because for some this meant they were losing some of their special place in the country.

The Canadian *Charter of Rights and Freedoms* was another factor that changed the way Canada functioned and how Canadians related to each other. The *Charter* was instrumental in empowering previously less powerful groups as the

courts in Canada became more involved in interpreting the *Charter* along multicultural and individual rights perspectives.

**Why does this shift matter?**

The role of religion and the churches has now been replaced, some argue, with the courts as the "conscience of the nation" (Weed and von Heyking 2010, 300). As Jeffrey Simpson stated, "The *Charter of Rights and Freedoms* is the closest thing Canadians have to a canon these days with the Supreme Court justices as legal cardinals" (Simpson March 31, 2000, A15). These ideas may seem foreign to some Canadians, but it seems to be the accepted wisdom that once the Supreme Court has ruled on an issue, the ruling is to be accepted, even if people disagree with the outcome. This is sovereignty of the courts, not of the people or their Parliament, where the courts are supreme. Chief Justice McLachlin calls the ideals and principles found in the Charter, Canada's 'hypergoods' (McLachlin 2004, 12-34). As the Supreme Court is the final arbiter of these 'hypergoods,' Canadians see the sovereignty of the people's parliament overshadowed by an organ of the state.

Von Heyking argues that the courts in Canada have redefined what it means to be tolerant, and that this is the beginning of the court's involvement with the Charter. The Charter has its own explicitly laid out statements of protection, but the courts have expanded on this over time to include other interpretations. For example, the religious organizations in Canada are free to practice their beliefs as long as they do no 'harm' to others. Religious groups should be free to practice their religion as long as no one can show harm to themselves as a result of this practice.

Lately, this 'harm' has come to include not having one's identity recognized by these religious organizations (Weed and von Heyking 2010, 303).

Here arises a difficulty for society. In order to successfully accomplish change in the way values are adopted and maintained, von Heyking argues, the state must "change the beliefs and customs of its citizens, and so requires an expansive state taking a paternal or maternal tutelary role over its citizens in protecting them" (Weed and von Heyking 2010, 303). I will show this is the goal of the state in the provision of education. According to my research, this tutelary role has been a primary goal of educators since before Confederation. The difference is the basis of this education. As mentioned earlier, the role of the civil religion in a Durkheimian context is to draw the social norms and values from society, whereas the Rousseauian civil religion of democratic faith has more influence from the state over the society.

The idea that the origins of values will change, as von Heyking argues, is why the concept of civil religion is important to understanding state-society relations. In Rousseau's universe, the people must be conditioned to accept a new way of thinking that will right historical wrongs and promote a new and tolerant society. The more people come to rely on this new civil religion to replace the old religions, the more powerful the state must become to 'protect' individuals, not only from others but also from themselves. This is what I shall turn to now.

At the beginning of this chapter, I identified Christian civic piety as Canada's early civil religion. Christian civic piety was woven from two threads: one mostly

found in French, Catholic Québec, and one in the rest of the mainly English speaking, mostly Protestant Canada. With the emergence of democratic faith, an attempt is being made to construct a pan-Canadian civil religion that unites the entire country under one dominant belief. Von Heyking argues that this pan-Canadian civil religion is to be fully secular and a complete vision of Canadian citizenship (Weed and von Heyking 2010, 305). It is therefore quite logical to expect some tensions and conflict between these two creeds to emerge.

The work of Alexis de Tocqueville can illuminate the relevance of these tensions and conflict. Using Tocqueville's argument one can "show Canadians how the logic of equality can become a statist "democratic faith" hostile to other forms of faith" (Weed and von Heyking 2010, 303). This "democratic faith" can become dangerous because it can crowd out other legitimate beliefs of society. This can result in a situation where individuals are expected to embrace all that the state professes, with little room left for public discussion or displays of other beliefs. The other beliefs most likely to suffer would be the religious beliefs of the people. This will be shown more clearly in Chapter Four where I examine conflicts between Christian civic piety and democratic faith.

This thesis does not argue that the role of the state should not be used to promote worthwhile goals. The danger is in determining who decides what these worthwhile goals are. Tocqueville was clear that an overzealous passion for equality would invite risk to the principles of liberty. The requirements of equality, particularly as they are commonly articulated through the language of rights, invite the state to play an ever increasing role. As von Heyking argues, "conflicted between his belief

in his own independence and his perception of his powerlessness, the democrat slouches toward the "immense being" that is the tutelary state" (Weed and von Heyking, 2010).

Tocqueville, of course, was a friendly critic of democracy. As such, Tocqueville wanted to promote the concept of democracy but also warn people to keep their minds open to the dangers of this style of government. Tocqueville argues that religious bodies are well suited to promote democracy but also to keep it 'in line.' People would benefit from memberships in religious organizations in order to prepare them for membership in the wider society.

Tocqueville wrote,

> When religion is destroyed in a people, doubt takes hold of the highest portions of the intellect and half paralyzes all the others. Each becomes accustomed to having only confused and changing notions about matters that most interest those like him and himself; one defends one's opinions badly or abandons them, and as one despairs of being able to resolve by oneself the greatest problems that human destiny presents, one is reduced, like a coward, to not thinking about them at all.
>
> Such a state cannot fail to enervate souls; it slackens the springs of the will and prepares citizens for servitude (de Tocqueville, Mansfield, and Winthrop 2000, 418).

Tocqueville suggested that the pursuit of equality can lead a people to lose their freedom and their capacity for self-government. This concern is demonstrated as society has diminished influence over important public policy, such as education. In Canada one can see some of this where the courts have taken an active role in defining what McLachlin defines as 'hypergoods,' without direct input of the people.

We have now seen that the concept of a civil religion in Canada is contested by the likes of Bellah and Kim. I have attempted to demonstrate, however, that there is an always has been a form of civil religion in Canada. It is only the type of civil religion that has changed. The original, Durkheimian form of civil religion form of Christian civic piety has changed to become a more Rousseauian form of civil religion, namely democratic faith. The decline of religious influence in Canadian society has been accompanied, or perhaps caused by an increase in the level of state involvement in society.

In Chapter Three, I will examine the role of education and how it was intertwined with the original form of civil religion, namely Christian civic piety. This is important as I shall show how all-encompassing the metamorphosis from Christian civic piety to democratic faith is manifested when I examine the education exemplars in Chapter Four.

## Chapter Three: Education and Christian Civic Piety

In the previous two chapters I have studied the concept of civil religion and identified the dominant characteristics of Canadian civil religion. In this chapter, I turn towards the role of religion in public education, first as a manifestation of Christian civic piety, and then (later) as an avenue to explore the emergence of democratic faith as a new civil religion in Canada. I first examine the work of Egerton Ryerson, the first superintendent of schools for Upper Canada (Ontario) in the 1840s. This might seem like an unnecessary digression, but Egerton Ryerson's work is relevant to education across Canada. As Child notes, "immigrants from Ontario, especially those who had attended normal school and taught in the province, had been strongly influenced by the Ryerson tradition" (Child 1978, 279). This tradition, which placed a premium on Christian civic piety, dominated Canadian schools until the mid-twentieth century. In the latter decades of the twentieth century, Christian civic piety was overshadowed in the public schools by democratic faith. How this change came about can inform our understanding of the dynamics of civil religion in Canada, and is examined more carefully in Chapter Four.

Prior to his taking on the role of Superintendent of Education for Upper Canada in a formal capacity, Egerton Ryerson conducted tours of Europe and the United States to come up with ideas on how best to structure an effective school system. As a consequence of his tours, he became convinced that the need for moral instruction of students was as crucial as any other type of learning. Moral instruction thus became an important educational objective of the school system he

devised (Cragg 1979, 28). In his *Report on a System of Public Elementary Instruction for Upper Canada*, Ryerson spends considerable time on this topic.

Ryerson was adamant that an effective school system would be based on the principles of Christianity, and thus unite the combined influence and support of the Government and the people (Ryerson 1847, 9). Ryerson believed that education should be provided to all children not just the children of the rich. This would prevent 'pauperism,' and all the evils that came with it. This would also strengthen the Christian foundations of society. Indeed, Ryerson believed that it was crucial to have state funded schools for all children as the poor could not afford to educate their children. In his report, he notes "it is the poor indeed that need the assistance of the Government, and they are the proper objects of its special solicitude and care; the rich can take care of themselves" (Ryerson 1847, 20). This expression of Christian charity was a hallmark of Ryerson's life and his work on the school system.

It was Christianity Ryerson was speaking of when he used the term religion. What he was most careful to pronounce against, however, was any type of sectarianism in the school system. He believed that it was possible to create a school system that promoted a general form of Christianity that would not break down the Christian community into sectarian components. He believed that it was necessary to promote this type of moral education to promote the secure future of the country.

When discussing the need for moral and religious education, Ryerson was convinced that this could, in fact, be done without the problems caused by religious

sectarianism. Ryerson believed that "to teach a child the dogmas and spirit of a sect, before he is taught the essential principles of religion and morality, is to invert the pyramid" (Ryerson 1847, 23). Ryerson believed that it was "possible to teach a child the entire *history of the Bible,* its *institutions, cardinal doctrines and morals* together with the *evidences* of its *authenticity*" (Ryerson 1847, 23-24). He did not believe this could be done in the constraints of the elementary system however, no matter how desirable this might be.

The state of the schools in Upper Canada was also a concern for Ryerson when he wrote his report. He lamented that morality and religion, specifically Christianity, were ignored to a large extent in the schools. He wrote, "such an abuse of that which should be the primary element of education, without which there can be no Christian Education; and without a Christian education, there will not long be a Christian country" (Ryerson 1847, 31). He was concerned about the lack of Christian educators and the lack of Christian content in the schools at this time.

Ryerson quoted at length from a number of education reformers outside of Canada. A few will suffice to demonstrate how he was influenced by these people. He quotes Thomas Wyse, Esq. as lamenting the lack of moral education in the United Kingdom. Wyse writes that it is not sufficient to simply impart 'knowledge' as this will not allow the children to grow up to be complete citizens. Wyse writes, "When I speak of moral education, I imply religion; and when I speak of religion, I speak of Christianity" (Ryerson 1847, 33). Ryerson also relied on the work of one Dr. Fellenberg who set up numerous schools in Europe to educate the children of people from various countries. Fellenberg wrote that

> I call that education which embraces the culture of the whole man, -- with all his faculties, -- subjecting his senses, his understanding, and his passions to reason, to conscience and to the evangelical laws of Christian Revelation (Ryerson 1847, 32).

Professor Stowe was tasked to complete a similar study to Ryerson's for the State of Ohio. He wrote that in his discussions with various educators in Europe, he was constantly reminded that "to leave the moral faculty uninstructed was to leave the most important part of the human mind undeveloped" (Ryerson 1847, 37). This again was to be done in a non-sectarian manner, as Ryerson makes clear. The Prussian school system promoted and taught the Bible at great length, it was done using common Christian ideals. As Ryerson writes, "so far as Bible lessons are concerned, I can ratify the strong statements made by Professor Stowe, in regard to the absence of sectarian instruction or endeavors at proselytism" (Ryerson 1847, 38). Ryerson also quoted approvingly of the General Law of Prussia about the state of education and what is expected of it. He wrote:

> The chief mission of every school is to train the youth in such a manner as to provide in them, with the knowledge of man's relations to God, the strength and desire to regulate his life according to the principles and spirit of Christianity (Ryerson 1847, 47).

As for Upper Canada, Ryerson stressed that it was the duty of the state to reflect the makeup of its people. It should be recognized that while there were non-Christians living in Canada at the time, these were not taken into account as the overwhelming majority of the population were Christians. Ryerson writes that "[a] Government that practically renounces Christianity in providing for the education of its youthful population, cannot be Christian" (Ryerson 1847, 50).

Ryerson noted that it was important for the Government of Canada to recognize that Canada was a Christian country with a Christian creed and that this obliged the government to be supportive of the morals and religion of the people (Ryerson 1847, 50). According to Ryerson, the government could and should provide the facilities for educating the different groups of Christians. This did not mean that the government should build churches, but that society should be allowed to use government schools to teach its children. This was to be reflected in later school acts. The use of the Bible as a core teaching device was to be promoted most fully, but only in a way that did not divide the people (Ryerson 1847, 61).

After Ryerson took on the job of Superintendent of Education for Upper Canada, he went about the task of setting up the school system he envisioned in his report of 1847. His first attempt was a disaster as it was taken over by political events. Consistent conflict between politicians from Upper and Lower Canada about the educational issues and the rights of the minorities threatened to overshadow Ryerson's vision of how a truly modern educational system should function. The original education bill of 1849 was so flawed in its final version that Ryerson even threatened to resign if it was enacted. Taking his threat seriously, the government of Upper Canada did not enact the bill, and Ryerson came back with a new bill in 1850 which was passed. The bill included the provisions for religious education that had been in the system four years earlier in the School Act of 1846. These provisions included, but were not limited to, the exclusion of children from religious study where parents objected to the information being imparted. Also included in the School Act of 1850 was section 14, which stated, among other religious education standards,

that "...provided always, that within this limitation, pupils shall be allowed to receive such religious instruction as their parents and guardians shall desire, according to the general regulations which shall be provided according to law" (High Court of Justice, Divisional Court 1988, pp 88). Here it becomes clear to see that the religious education or exercises were to be determined by the parents of the pupils. Thus it can be seen that the foundation of religious education was connected to society and social norms, rather than the state.

It is also clear from a 1917 article that religious exercises were very common and widespread in the Ontario Public schools (Sheridan Feb/Dec 1917). In the Ontario government education report published previous to Sheridan's 1917 article, the Ontario government report stated that "45.87% of the schools used the authorized Scripture selections, 70.94% used the Bible and 94.61% were opened and closed with prayer" (Sheridan Feb/Dec 1917, 17). Ryerson's concerns over sectarian conflict in the schools were manifest by local tensions over the interpretation of scripture. Accordingly, to avoid the problems of sectarianism or schism, the readings were completed without comment on the part of the teacher (Sheridan Feb/Dec 1917, 17).[5] A series of books about Biblical stories had recently been made available to the schools, and just before Sheridan's article was published, books about the "Golden Rule" had been introduced to the schools (Sheridan Feb/Dec 1917, 18).

[5] This is very similar to the requirement of the Ethics and Religious Culture course in Québec which will be examined later in Chapter Four.

According to Sheridan, it was no accident or force of the government which imposed these rules on the people. The people wanted these rules in place to promote their religion. As Sheridan notes,

> the people of the province [Ontario] have made it evident that they wish that the spirit of the schools should be religious, and the government [Ontario provincial government] has made provision for the full expression of the will of the people (Sheridan Feb/Dec 1917, 19).

In 1924, section 13 of the General Regulations, Public and Separate Schools was announced. Section 13(3)(a)(i) of the regulations instructed schools boards to allow their buildings to be used for religious education. Such instruction, taught by clergy, would be either before or after the regular school day. This regulation regarding religious instruction was different than religious exercises, which were to be conducted as part of the opening and closing procedures of the school as found in Section 13(1). These religious exercises were to be conducted with an opt out clause however, to make sure that no student was forced to participate if they (being of legal age) or their parents objected as cited in the Elgin County judicial decision (High Court of Justice, Divisional Court 1988, pp 41-42).

The post war years brought changes to this setup. As Sweet notes,

> Both World Wars bolstered the impetus for religious education. People were appalled at the devastation wreaked by them. In fact, during the Second World War, there was a sense that instilling a moral purpose in the young was the only way to ensure a future. So, in 1944, a regulation was changed to make religious instruction part of the regular curriculum (Sweet 1997, 31).

In the new regulations, instead of clergy being allowed to come in and teach the students before or after school hours, teachers were to give two half periods of

religious education per week. Instead of teachers being the instructors, boards had the option of using local clergy instead (Hope Commission 1950, 124). This was a major change to the way religion was taught in the public schools. Now it was part of the regular curriculum, and of course the religious instruction was non-sectarian, yet Christian education.

The *Programme of Studies for Grades I to VI of the Public and Separate Schools 1941,* explicitly stated: "The schools of Ontario exist for the purpose of preparing children to live in a democratic society which bases its way of life upon the Christian ideal" (Hope Commission 1950, 124). The Hope Commission further noted that the *Programme of Studies for Grades VII and VIII of the Public and Separate Schools (1942),*

> contains the view that the social purposes of the school 'imply the existence of standards of behaviour, generally agreed upon and accepted by all, to which the conduct of the individual may be referred. Such standards do in fact exist; and in our society, they derive from the ethics of Christian religion and the principles of democratic living (Hope Commission 1950, 124).

Here the standards of Canadian society are viewed as a combination of Christianity and democratic living. Christian civic piety was strongly represented in the public schools as a reflection of social values.

As noted earlier, in 1944 the regulations changed to include religious education in Ontario elementary schools, not just religious exercises. The regulations brought into force in September 1944 were clear and unambiguous. This is not to say that there were no guidelines on how the new regulations were to be implemented. As the Hope Commission reported, "the programme of studies in

religious education for public elementary schools will be non-sectarian and undenominational" (Hope Commission 1950, 124). Specifically the Hope Commission noted that the regulation says the "Instruction in Religious Education shall be given by the teacher in accordance with the course of study authorized for that purpose by the Department, and issues of a controversial or sectarian nature shall be avoided" (Hope Commission 1950, 124). The standard exemption clause for any non-participating student was included in the new regulations as it had been since the introduction of the teaching of religious exercises. This time the teachers were also included in the exemption clause and other suitable arrangements would be found where teachers were unable or unwilling to provide the religious education component as required in the new regulations.

In cases where teachers were unsuitable for the provision of the religious education due to exemption, the local School Board had the option of invoking section 2(d) of the regulation, which read, "By resolution of the School Board, a clergyman or clergymen of any denomination or a lay person or lay persons selected by the clergyman or clergymen, shall have the right, subject to the regulations, to give Religious Instruction, in lieu of a teacher or teachers" (Hope Commission 1950, 125). Although there was general acceptance of the new regulations, there were already early objections from some quarters about the mixing of Church and state relations (Hope Commission 1950, 126). The Hope Commission was not deterred in its report. It recommended that religious exercises start and end each school day, and that religious instruction twice per week be continued in the public elementary schools. In fact the Commission went further and recommended that religious

education be expanded into the secondary schools and junior colleges as well. In the interests of non-denominationalism, it was recommended that no religious emblems of a denominational nature be allowed in the classrooms of public schools, either secondary or elementary. The only exception was to be in rooms used for clergy to teach their respective denominational students, and then only while those classes were in session.

On the matter of Contribution of School Subjects, the Hope Commission wrote about religious education. Specifically, the Commission noted that

> The moral and spiritual lessons of the Scriptures should deeply influence the conduct and behaviour of children in their daily lives. But their effect will be lost unless their applications to daily life are skillfully and effectively made, with full sincerity and faith on the part of the instructor. As in no other subject, the emphasis in teaching can be placed upon conscience, service to others, and responsibility (Hope Commission 1950, 166).

As the Hope Commission demonstrated, evidence for the prominence of Christian civic piety was abundant in the 1950s in Ontario.

The Christian civic piety expressed in Ontario public schools was by no means limited to one province. Across the country, but especially in the West, one can see the influence of Ontario and its social structures. The need to educate children in the general population was a movement that grew throughout Canada. The poor may have been unable to afford to educate their own children, but society generally felt a desire for all children to receive an education so as to make of them better citizens (Axelrod 1997, 27-28). Paying for the education of the poor was a contentious issue for some people. In response to one commentator who did not

want to pay for the 'brats' to be educated, Edgerton Ryerson had once replied "that educating 'brats' was the very purpose of his free school legislation. 'It proposed to compel selfish, rich men to do what they ought to do, but which they will not do voluntarily" (Axelrod 1997, 29).

C.E. Phillips outlines four stages of school development in Canada. While these four stages were the same across the country, they took place at different times in different geographical locations. The first stage is the infancy stage, where schools of all sorts are found. These were as a rule not funded or controlled by the state, but mainly churches and philanthropy or the rich for their own children (Phillips 1957, 179). The second stage was marked by strong government involvement in setting up and controlling the schools. The third stage 'had the characteristics of organized efficiency, such as provincial departments of education, etc. The fourth stage built on the third stage, but there was more centralized provincial government control over the school system. The other difference between the third and fourth stage was that attendance was required as schools were setup by the provincial authorities (Phillips 1957, 181-181).

As Titley and Miller note, one major factor in the growth in what was to become western Canada came from Ontario. Most of these immigrants were Anglophone Protestants, and the francophone population found in the West was soon outnumbered. The Anglophones were thus able to set up the new territory and then provinces in the format they were accustomed to, and "predictably enough, the institutional framework would be modelled closely on the familiar – Ontario" (Titley and Miller 1982, 18).

Anglophone protestants in Ontario saw themselves as true Canadians and wanted their influence felt as the country expanded. Titley and Miller write that "the English-Protestant dimensions of Canadian nationalism were most pronounced in Ontario. Ontarians viewed themselves as the real Canadians and looked on the West as their natural *Lebensraum"* (Titley and Miller 1982, 19). As far as education went, the 1870s saw a well-established school system. "This system was non-sectarian [except for the Catholic Schools], publicly supported and imposed with compulsory attendance laws and was an intrinsic part of the social fabric" (Titley and Miller 1982, 18-19). The Ontario school system was the model for the western schools, not only in form, but also in purpose. The Chief Executive of the Northwest Administration, Frederick Haultain, believed that the schools were there to assimilate all the non-Anglophone immigrants [prior to the establishment of Alberta and Saskatchewan] (Titley and Miller 1982, 21). The establishment of Alberta and Saskatchewan did provide for some separate minority education rights that exist to this day.

Despite this influence, the situation in British Columbia was somewhat different found in Ontario and the rest of the country. The successive British Columbian governments in the post confederation era maintained a purely secular education system, without religious education or exercises. In fact, British Columbia was the only province which did not provide for the use of bible readings in the schools (BC Civil Liberties Association 1969). This principle was deeply imbedded in the provincial education system as late as the 1930s. It was this secular educational system that inhibited the expansion of BC's borders: there was a

movement by BC Premier Duff Patullo to annex the Yukon Territory and make it a part of British Columbia. According to Coates and Morrison, the primary reason this expansion did not come to fruition is that there was a Catholic School in the Yukon which British Columbian politicians did not want to accept. The federal government, remembering the political controversy over past school questions, did not support the annexation and quietly let the proposal die (Coates and Morrison 2005, 215-216).

Within a few short years however, the question of religion in the schools would be raised by parents in British Columbia. By the 1940s, parents were successful in getting religious exercises included in the school day. This was in response to the perceived need for moral instruction in the school system. In the 1940s, parents pressed to have religious exercises, but not religious education observed in British Columbia schools. As a result, "all schools, however, are to open with scripture reading and the Lord's prayer; "...otherwise the schools shall be conducted on strictly secular and non-sectarian principles. The highest morality shall be inculcated but no religious dogma or creed shall be taught" (Lupul 1967, 157-158). Thus one can see that even in a province that originally endeavored to separate religious instruction from public education, Christian civic piety emerged from the dominant social values prevalent in Canadian society.

Québec was also an outlier to the system established in the rest of the country, but for different reasons than in British Columbia. In *Québec*, the educational system, and indeed most social services were the domain of the Roman Catholic Church. The people were beholden to the church for all types of services,

from social welfare to education to healthcare. As Titley and Miller note, "[The Roman Catholic Church] attempted to create a similar network [social network as offered in France], of operations in New France, with the same purpose in mind. It aimed to reproduce in the colony the social relations and cultural patterns that prevailed in France" (Titley and Miller 1982, 12).

From the time of colonization to well past confederation, the Catholic Church continued to dominate Québec society. They provided the social services usually provided by other means in the other colonies, whether by governments or other non-governmental actors. While most of the education was reserved for the elite in the French section of the country, there were some religious orders that provided educational (mainly vocational training) to the poor, and where there was one, the middle class. This control over education continued until the Quiet Revolution in the 1960s overtook Québec. Unlike other provinces, Québec had never bothered to establish a government structure to look after education. This was the domain of the Church. But this changed with the Quiet Revolution. In 1964 the Québec government established the first Ministry of Education (Titley and Miller 1982, 53). This ministry was tasked with holding the real power over education in *Québec*, although it was still delivered in a denominational setting. The Protestant and Catholic committees of the Council of Public Instruction were relegated to supervising religious matters instead of all educational issues (Titley and Miller 1982, 53).

As the Roman Catholic Church lost its influence over the people, issues such as language became much more powerful. Successive Québec governments

brought in legislation to enhance the use of the French language and limit who could attend English Schools (Titley and Miller 1982, 53-54).

They note that "the educational changes of the 1970s, then, were of a different nature. During that decade the school came to be seen not so much as an instrument of modernization, but one of cultural protection" (Titley and Miller 1982, 54). This movement has continued in Québec, and in the two cases to be discussed in Chapter Four that the schools are now being used to manage the culture movement in Québec by influencing the religious rights of parents and Institutions.

Thus it can been seen that throughout the first hundred years of Confederation, public schools in Canada largely embraced Christian civic piety. Both in terms of religious exercises and instruction, public schools reflected social norms and attempted to foster the moral values of society. Even in the province of British Columbia, where a secular school system emerged, societal pressures to encourage Christian civic piety overshadowed the exception. Earlier, I identified this type of civil religion that is driven by society as Durkheimian. I shall demonstrate in the next chapter that not only has this civil religion been eclipsed by a new democratic faith, but that this eclipse has occurred through a stronger reliance on the state.

## Chapter Four: Public Education and Democratic Faith

This chapter examines the emergence of a Rousseauian civil religion by focusing on religious curriculum and practice in education. It is at this intersection that I demonstrate the decline of Christian civic piety and its replacement by democratic faith. I examine six judicial rulings: three from Ontario, one from British Columbia, and two from the province of Québec. The first of the Ontario cases is *Zylberberg* (1988), which dealt with the issue of prayers in the public schools in Ontario. Some parents objected to the established practice and ultimately were successful in having the courts remove prayers from public schools. The second case is *Elgin County* also in 1988. This case centred on the issue of religious education as mandated by provincial government regulations. The third Ontario case is *Adler* in 1996, which dealt with the issue of funding for non-Catholic religious schools in Ontario. Parents of non-Catholic children demanded funding for non-Catholic schools on par with the Catholic system. In this case the courts rejected the arguments for equal treatment. The *Russow* case was similar to the *Zylberberg* case. This case was decided in 1989 and it centred on the attempt to remove Christian religious exercises from British Columbia schools. As in the *Zylberberg* case, individual parents were successful in petitioning the state to remove Christian religious exercises from the schools.

The two Québec cases are connected by a common thread linked to provincial public policy. In 2012, the case of *S.L. v. Commission Scolaire des Chênes* in Québec followed the provincial government's decision to introduce a new

"Ethics and Religious Culture (ERC) course. Some parents argued that this course was not religiously neutral, and believed the course was in conflict with the Christian, Roman Catholic values that the parents were attempting to instill in their children. The appeal to the Supreme Court of Canada was unsuccessful. The second Québec case was brought by the Principal and the Board of Governors of the private Loyola High School in Montreal in *Loyola vs. Courschesne*. The Principal and Board of Governors were similarly displeased with the introduction of the "Ethics and Religious Culture" course as they felt that it would be an intrusion on their autonomy over religious education provision. They felt that the course was not a neutral course and would conflict with the Roman Catholic values they were attempting to instill in their students.

These cases reflect tensions between Christian civic piety and the introduction of Canada's new democratic faith. The first four cases demonstrate the severing of previously established civil religious values from the Canadian education system. The two Québec cases reflect the assertion of the democratic faith rather than the erosion of Christian civic piety. I use these court cases as exemplars to show that civil religion has changed from a Christian basis to one based on principles of a democratic faith. These principles are centred on human rights rather than religious principles as they are commonly understood.

As I wrote in in Chapter Three, the Hope Commission made explicit reference to Christian values and the use of scripture in the public school curriculum. This declaration notwithstanding, controversy about religious education and exercises continued. In order to understand the full impact of the court cases that follow, it is

prudent to recognize the enduring disagreement about religious education in the public schools. In 1966, for example, the Ontario government established the Commission on Religious Education in the Public Schools of the Province of Ontario. The Commission looked at all aspects of religious exercises and education in Ontario at the time. The Commission found that "the present course of study in religious education in elementary schools should be discontinued, and that the aims as set out in the related legislation, programs of studies, regulations and guidebooks, should be abandoned" (MacKay Commission 1969, 27). The Commission believed that instead of providing children with only one view of religion, it was important for them to learn about world religions as a whole. While the difference might seem to be benign, the shift reflected a development away from religion as non-sectarian, moral instruction and towards a distanced, objective review of different creeds. As was later noted by the Divisional Court in the *Elgin County* case, the report of the Mackay Commission was not acted on by the government and the existing regulations stayed in place.

The 1982 enactment of the Canadian *Charter of Rights and Freedoms* ushered in a new era of challenges for religious education. The Charter's inclusion of religious and equality guarantees would sound the death knell of religious education in Ontario and in many ways was the culmination of the socio-political change underway since the 1960s. As Gidney and Millar wrote

> the centrality of Christian doctrine in Ontario's public schools, albeit in a nondenominational Protestant form, was alive and well in the mid-twentieth-century; still alive, though less well, as late as the mid-1960s; and, even in the last third of the century, finally ousted only through a prolonged, contested process (Gidney and Millar 2001, 275).

Less than a decade before the introduction of the Charter of Rights and Freedoms, the Ministry of Education in Ontario had tried to remove the purely Christian basis from a statement and expectation that required teachers to uphold and teach Christian morality. Public outrage followed this proposed minor change. In light of this social opposition, the Ministry of Education compromised and inserted Judeo-Christian morality instead of the more specific reference to Christian morality (Gidney and Millar 2001, 285).

**Zylberberg vs. Sudbury Board of Education (1988):** The Zylberberg case concerned religious exercises (prayer) in the schools, but not religious education. *Zylberberg* was a challenge to Ministry of Education Regulation 262, Section 28(1) which required religious exercises at the start and end of each school day in Ontario. These religious exercises included the Lord's Prayer and in some cases also included the singing of religious hymns during the start or closing exercises in public schools (Dickinson and Dolmage 1996, 368). This was the norm in public schools throughout Canada, even though students were not compelled to participate.

The Ontario Divisional Court, the lower court where the case was first tried, determined in a two-to-one decision that there was no infringement on freedoms. Writing for the majority, Justice O'Leary held that even if there were an infringement of section 2(a) of the Charter, such an infringement would be permissible under Section 1 of the Charter. It is useful here to quote directly from the Appeal Court summary of the Divisional Court Judgment

> In the Divisional Court, O'Leary J. Held that the religious exercises prescribed by s. 28(1) did not infringe the guarantee of freedom of

conscience and religion provided by s. 2(a) of the Charter. Alternatively, he held that, if the Charter freedom was infringed, the infringement was justifiable under s. 1 of the Charter which provides:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

He [Justice O'Leary] was of the view the inculcation of morality was a proper educational object and that morality and religion were intertwined. If this resulted in any infringement on minority religious beliefs, it was not substantial. He pointed out that the religious exercises did not have to be Christian and, except in the case of non-believers, could be consistent with the Charter which, in its preamble, recognizes "the supremacy of God and the rule of law" (Ontario Court of Appeal 1988, pp. 12).

At the Divisional Court, Justice Anderson, concurring with Justice O'Leary, held that there would be an infringement only if children at school were coerced into participating in the religious exercises. Anderson found that religious exercises in the schools did not coerce students and their parents because of the religious exemption already noted (Ontario Court of Appeal 1988, pp. 13). In his dissent at the Divisional Court, Justice Reid found that it was not acceptable to allow the religious exercises to take place. It is interesting to note, that in its submission to the court, the Board had originally agreed that the Regulation was in fact an infringement of Section 2(a) of the Charter, but argued that such infringement was permissible under section 1.

The Ontario Court of Appeal disagreed with the majority decision of the Divisional Court. The Ontario Court of Appeal employed the *Oakes* test and found that the infringement as acknowledged by the Board did not meet the requirements of *Oakes*, and thus it was impossible to save the infringement under Section 1 of the

Charter. For the significance of this finding and, as I shall refer to the *Oakes* test again, it is helpful to explain the *Oakes* test here. The *Oakes* test refers to the way Section (1) of the Canadian Charter of Rights and Freedoms is applied. Section (1) states

> (1)The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In order to limit defined rights and freedoms, the onus of responsibility is on the state to demonstrate justification. What followed was a four-fold test. The first test is whether such restriction is "logically connected to the accomplishment of some legitimate and significant government purpose. Second, the degree to which the right or freedom is infringed upon must be proportional to the importance of government purpose. Third, the law must limit the right or freedom as little as possible. Finally, it must be demonstrated that the same purpose cannot be achieved in some other way which would result in less infringement on the right or freedom (Dickinson and Dolmage 1996, 369).

In the Ontario Court of Appeal's judgement in *Zylberberg*, the Court found that

> it follows from our analysis that s. 28(1) of the Regulations constitutes a prima facie infringement of the appellants' rights under s. 2(a) of the Charter. In a usual Charter case, the burden passes at this stage to the parties upholding the Charter infringement to show on a balance of probabilities that it is justifiable under s. 1 of the Charter: R. v. Oakes, supra. In this case, however, the appellants contended that, since the very purpose of s. 28 of the Regulations violated s. 2(a) of the Charter, it was incapable of justification under s. 1 (Ontario Court of Appeal 1988).

The court further understood from the pleadings before it that there was an historical element to this case, but decided that it was invalidated in light of the new *Charter* realities. The Court wrote

> The appellants contended that there was no saving secular purpose in s. 28(1). Its wording and, in the appellant's submission, its legislative background going back to the earliest times indicated that its purpose was religious and that, like the Lord's Day Act in Big M, it was incapable of justification under s. 1. The Attorney-General and the Board, on the other hand, asserted that s. 28(1) had paramount secular objectives, both educational and moral, and that the religious exercises served those purposes.
>
> In support of their arguments, counsel on both sides referred us to the reports of the Hope Commission, the Mackay Committee, and other historical materials.
>
> After a careful consideration of the Act, the Regulations, and other materials placed before us, we have concluded that the purpose of s. 28(1) is religious and that the exercises mandated by the Regulation were intended to be religious exercises. This is the only conclusion which can be drawn from the wording of the Act and the Regulations. This view is confirmed by the specific provision for exemption contained in s. 50(2) of the Act which for illustrative purposes we repeat:
>
> 50(2) No pupil in a public school shall be required to read or study in or from a religious book, or to join in an exercise of devotion or religion, objected to by his parent or guardian, or by the pupil, where he is an adult.
>
> It is clear that the exemption provision is included in the Act because the exercises were intended to serve religious and not secular purposes (Ontario Court of Appeal 1988).

It was in this context that the Ontario Court of Appeal found that the educational regulations and practices infringed on the freedoms of the plaintiffs in the *Zylberberg* case and the court process was used to remove established religious exercises from public schools. Although the removal of religious exercises had been recommended by the MacKay Commission, the government had not acted in light of the political

risk and perceived public response (Gidney and Millar 2001, 284). Change was not accomplished until the Canadian *Charter of Rights and Freedoms* was invoked to finalize this outcome. As there was no further appeal on the part of the School Board or the provincial government, this became the law in Ontario and religious exercises were excised from public schools.

This ruling was really just the start of the movement to remove religious exercises and religious education from the public school systems. As I will show in subsequent cases, further efforts were successfully expended to complete the removal of religious education from the public school systems. It should also be noted that this case had implications across the country as well, in that "reasoning used by the Ontario Court of Appeal in striking down religious opening exercises (*Zylberberg*) was adopted in its entirety by the British Columbia Supreme Court in a parallel case (*Russow v. British Columbia [Attorney General], 1989"* (Dickinson and Dolmage 1996, 367).

**Elgin County (1988):** In *Elgin County* the case was still about religion, but focused on the religious education regulations rather than religious exercises at the start and end of the school day. These religious education classes were conducted for half hour periods twice per week. The rule in question, Ministry of Education Regulation 262, section 18, subsection 4, read as follows:

> Two periods per week of one-half hour each, in addition to the time assigned to religious exercises at the opening or closing of a public school, shall by devoted to religious education (High Court of Justice, Divisional Court 1988, pp 20).

The standard opt out clause applied so that no student (being of legal age) or the parents of a minor child who objected was forced to attend, and there was also an iron clad opt out clause for teachers (Dickinson and Dolmage 1996, 369).

In the Elgin County School District, in the south eastern part of Ontario, it should be noted that until just before the start of the trial, religious education was exclusively Christian in nature. The Board justified this practice because despite multiple local religious denominations, "in excess of 90% of Elgin County's residents are of Christian background" (High Court of Justice, Divisional Court 1988, pp. 69). In order to understand the background to the issues at hand in the *Elgin County* case, it is important to understand some of the history of religious education in the county. I will use as a starting point 1974, which is where the court started its evaluation as well. As I have written in an earlier chapter, the 1960s and 1970s were a period of social, demographic, and political change.

The years 1974-1978 brought about some changes in the religious curriculum in the Elgin County School District. The new curriculum was prepared by the Religious Education Committee which included members of the local ministerial association and the Elgin County Bible Club, as well as elected members of the school board and school board staff members. This Religious Education Committee of the Elgin County School District set up a new curriculum which included bible stories for elementary school children to study. The new education curriculum was to be taught by teachers, ordained ministers or others, but according to the evidence it was mainly taught by lay volunteers with the Elgin County Bible Club starting at an early time under the new curriculum (High Court of Justice, Divisional Court 1988,

pp. 70). In 1983, there was a new revision to the curriculum guidelines for religious education in Elgin County. The recommendations for the new system were:

> The objective of the religious education program in the schools of Elgin County would be to provide pupils with a religious context, primarily Christian, in which to develop appropriate responses to life's situations.
>
> It should not be assumed by a statement of this objective that other religious bodies and even non-religious interests are to be ignored. Rather, it is hoped that moral, ethical and religious concerns which they hold in common with Christianity will be the primary content of any religious education program in the public schools. As such groups become more numerous in proportion to the population, this objective should be reviewed in light of their concerns (High Court of Justice, Divisional Court 1988, pp. 71).

Thus the curriculum was not a fixed constant across multiple generations and effort was being made to highlight moral education ahead of Christian religious doctrine. In 1985 a newly elected school board resolved to review religious education once again. By the next year, a new handbook had been devised and it is instructive here to quote directly from it to show how religious content in education reflected an enduring commitment to articulate and promote common moral values. Even as Christian civic piety remained at the core of religious education, significant efforts were made to adapt it to the realities of religious and social pluralism.

> To provide pupils with a religious context in which to develop an understanding of the moral and religious values of the local community.
>
> To foster an appreciation for the child's religious tradition and the traditions of others.
>
> To help the pupil become aware of the moral principle by which people act.
>
> To contribute to the development of reasoning which a person uses to reach moral decisions.

> While knowledge of the Old Testament is basic to the Judaeo-Christian tradition, the variety of denominational and ethnic backgrounds of school pupils requires that the lessons outlined be suitable and interesting to students with varied religious and philosophic orientations.
>
> Pupils, through the lessons provided will acquire general knowledge of other people's beliefs and cultures so that they can communicate and live as world citizens.
>
> The habit of critical examinations of both one's own and other's beliefs is crucial to understanding one's own values: Public School education *recognizes the freedom of the individual to interpret religious and moral* questions according to conscience. In the same vein, a child has a right to knowledge or a heritage supportive of home and community.
>
> Freedom of conscience is a fundamental right of the public schools. Provisions for exemption by reason of conscience is clearly set out in Regulation 262 for both pupil and teacher.
>
> ...
>
> Values and attitudes will be transmitted in the public school but commitment to theology of any religious body belongs to the home and the tradition of worship of the home.
>
> The religious education programme aims to create a caring, sharing atmosphere which recognizes each person's self-worth. The programme is intended to help a child begin to develop a personal value structure (High Court of Justice, Divisional Court 1988, pp. 75).

Clearly there was an attempt to maintain some core Christian components of the religious curriculum, but there was also a move to acknowledge other faiths in light of the socio-political developments in Canada at the time. The importance of this acknowledgement of other faiths was crucial to the application of the new rules. These developments, however, were not enough to stop the Corporation for Canadian Civil Liberties and a number of parents from suing the School Board to curtail religious education in the public schools.

I shall replicate some of the court's ruling here for clarity. The Ontario Court of Appeal noting that the Divisional Court had found there to be no infringement, stated that the Divisional Court ruled

> The majority of the Divisional Court (Watt and McKeown JJ.) held that neither the purpose nor the effects of the regulation infringed s. 2(a) of the Charter. In their opinion the regulation did not, either in purpose or effects, compel, coerce or constrain anyone because s. 28(10) clearly stated that no pupil, where there is an application for exemption, shall be required to take part in any religious exercise, or be subject to any instruction in religion. The purpose of religious education, said the majority, was to introduce a moral element into the education of public elementary school pupils whereby, together with intellectual instruction, they may become adequately equipped for the task of the work life. There was no sectarian purpose of religious indoctrination in majoritarian Christian precepts (Ontario Court of Appeal 1990, pp. 14).
>
> Nor was the majority persuaded that the effects of the section, viewed as a whole, were of such a nature or extent as to violate s. 2(a) of the Charter (Ontario Court of Appeal 1990, pp. 15).

In the case of Elgin County, the Court had to determine whether the rights of students were violated through the provision of religious education. To do that, they had to determine what the purpose of the impugned Regulations from the Ministry of Education was in the case at hand. The Court was trying balance between the effects and the purpose of the Regulations in question. The Court of Appeal in its Elgin County ruling quotes Justice Dickson in the R. v. Big Drug Mart Ltd. case. The court noted that Justice Dickson wrote

> [T]he legislation's purpose is the initial test of constitutional validity and its effects are to be considered when the law under review has passed or, at least, has purportedly passed the purpose test. ... [T]he effects test will only be necessary to defeat legislation with a valid purpose; effects can never be relied upon to save legislation with an invalid purpose (Ontario Court of Appeal 1990, pp. 37)

Dickson also noted that it is the original legislative intent that is relevant. He noted, again in Big Drug Mart

> Furthermore, in Big M, Dickson J. went on, at pp. 352-3, to assert that it is the original legislative purpose that is relevant; he explicitly rejected the American notion of a "shifting purpose", by which the purpose of the law could change with changing social conditions. He suggested that effects may change, but the purpose of legislation remains constant (Ontario Court of Appeal 1990, pp. 38).

Dickson was arguing that one must then ascertain what the purpose of the impugned Regulations is. The Ontario Court of Appeal ruled that the regulations did indeed violate the *Charter* rights of the students in question. The Court of Appeal noted

> The short answer is that it must. State-authorized religious indoctrination amounts to the imposition of majoritarian religious beliefs on minorities. Although s. 2(a) of the Charter is not infringed merely because education may be consistent with the religious beliefs of the majority of Canadians (see Edwards Books, supra, p. 35), teaching students Christian doctrine as if it were the exclusive means through which to develop moral thinking and behaviour amounts to religious coercion in the class-room. It creates a direct burden on religious minorities and non-believers who do not adhere to majoritarian beliefs. That this amounts to violation of s. 2(a) of the Charter, especially when viewed in the light of s. 27 of the Charter (Ontario Court of Appeal 1990, pp. 55)

The Court of Appeal in Elgin County did note that there was an attempt to include other religions in the version of the curriculum deployed at the time of the case. The difference between the teaching about for example Buddhism and Islam is that these exercises were only about the religions. According to the Court, the examples about Christianity were indoctrinational. The Court of Appeal noted that "[t]he treatment of other religions is, as one might expect, entirely non-indoctrinal (Ontario Court of Appeal 1990, pp. 115).

To summarize its judgement, it is best to quote from the Court of Appeal judgement directly. The Court of Appeal wrote

> In Zylberberg, supra, a majority of this court held that if the true purpose of the legislation was to compel religious observance, it could not be justified under s. 1. Similarly, in this case, where we have found that the true purpose of the impugned regulation is to indoctrinate children in the Christian faith, we do not believe that the infringement can be justified under s. 1 (Ontario Court of Appeal 1990, pp. 129).

The problem, as determined by the Court of Appeal, was that the purpose of the Section 28(4) of Regulation 262 was indoctrination. The mere instruction of religious knowledge may have been permissible. The court found, however, that even if the intended purposes of the regulation were found not to be indoctrination, the regulation would still be a violation of the constitution because it was indoctrination in effect.

This determination led the regulation to be considered a violation of Section 2(a) of the *Charter of Rights and Freedoms of Canada,* which guarantees freedom of religion and conscience (Dickinson and Dolmage 1996, 370). The court also looked at whether the impugned section of Ministry of Education Regulation 262 might be salvaged under Section 1 of the Charter using the *Oakes* test as outlined earlier. The Court of Appeal found that the *Oakes* test could not save the regulation and as such the Elgin County Board of Education was ordered to stop their religious education curriculum education in all their schools.

As this was a ruling from the highest court in Ontario, it applied to all the other public Boards of Education in Ontario as well. As a result, the Ontario government sent out *Memorandum 112/1991.* This Memorandum, in accordance with the Court

of Appeal ruling in *Elgin County,* stated that public schools in Ontario were to immediately stop all education which might be construed as religious education and indoctrination. Regulation 262 was replaced with Regulation 298, and sections 28 and 29 allowed schools to offer "education about religion", but not religious education (Dickinson and Dolmage 1996, 370). The difference is more than semantics: religious education was now considered to be indoctrinational in purpose, even if not intent. 'Education about religion' on the other hand would allow for the information of many different religions to be communicated to students in Ontario public schools.

Unlike the *Zylberberg* case, which focused on religious exercises, the *Elgin County* case was specifically about religious education. At the time of the law suit, the law in Ontario stated that there should be religious exercises in the public schools. In the Elgin County School district religious education was Christian in nature. The court found this religious education to be incompatible with the Canadian *Charter of Rights and Freedoms* and the School District and the Ontario provincial government did not appeal. This ruling meant that religious education of the nature found in the Elgin County School District was no longer permitted anywhere in Ontario. Despite the fact that religious education had a long history in the public schools and had been approved (and encouraged) by locally elected school boards, the practice was suddenly terminated as a result of the Court's decision.

**Russow vs. British Columbia (Attorney General) (1989):** In British Columbia, public education had been non-denominational since its inception. Despite the

secular foundation, however, religious exercises were introduced due to public pressure in 1944. This was in response to pressure from parents who felt that the need to inculcate the morals and values of the dominant society was not just a matter for the home, but for the schools as well.

In 1989 some parents challenged the religious exercise components of the British Columbia education system in *Russow vs. British Columbia (Attorney General)*. It is helpful to trace the introduction of religious exercises into the British Columbia school system in order to understand their significance.

In 1876, just after British Columbia joined Confederation, British Columbia enacted section 40 included in *An Act to amend and Consolidate the Public Schools Acts*. Section 40 in 1876 read as follows:

> All public schools established under the provisions of this Act shall be conducted upon strictly secular and non-sectarian principles. The highest morality shall be inculcated, but no religious dogmas or creed shall be taught. All Judges, clergymen, members of the Legislature, and others interested in education, shall be school visitors (Supreme Court of British Columbia 1989, pp. 20).

In light of practice in public schools elsewhere, the law was amended in 1936 to add the Lord's Prayer, after which section 160 of the Public Schools Act read as follows:

> 160. (1) Subject to subsection (2), all public schools shall be free and shall be conducted on strictly secular and non-sectarian principles. The highest morality shall be inculcated, but no religious dogma nor creed shall be taught. The Lord's Prayer may be used in opening or closing school (Supreme Court of British Columbia 1989, pp. 21).

The key word in the new section was that the Lord's Prayer *may* be used in opening and closing exercises. When I compare section 160 to the original section 40, the

addition of permission to use the Lord's Prayer constitutes a significant change. This addition paralleled similar public concerns in other provinces.

In 1944 there was another amendment to the Public School Act in British Columbia regarding religious exercises. These amendments introduced additional religious exercises to include the reading of scripture. Section 160 was revised to read:

> Subject to subsection (2), all public schools shall be free. They shall be opened by the reading, without explanation or comment, of a passage of scripture to be selected from readings prescribed or approved by the Council of Public Instruction. The reading of the passage of scripture shall be followed by the recitation of the Lord's Prayer, but otherwise the schools shall be conducted on strictly secular and non-sectarian principles. The highest morality shall be inculcated but no religious dogma or creed shall be taught (Supreme Court of British Columbia 1989, pp. 22).

This section of the Act was affirmed when the Act was amended in 1979. This section, which was contested in *Russow vs. British Columbia,* was now section 164. This section read as follows:

> 164. All public schools shall be opened by the reading, without explanation or comment of a passage of Scripture to be selected from readings prescribed or approved by the Lieutenant Governor in Council. The reading of the passage of Scripture shall be followed by the recitation of the Lord's Prayer, but otherwise the schools shall be conducted on strictly secular non-sectarian principles. The highest morality shall be inculcated, but no religious dogma or creed shall be taught (Supreme Court of British Columbia 1989, pp. 23).

It should be noted that, as in the Ontario cases, there was an exemption for parents or students who were not willing to be part of the opening and closing religious exercises in British Columbia public schools.

The court ruled that the religious exercises then deployed in British Columbia schools were an infringement against section 2(*a)* of the Canadian *Charter of Rights and Freedoms* (Supreme Court of British Columbia 1989, pp14). The court did not elaborate detailed reasons as the judgement was based on the *Zylberberg* case in Ontario. In the original case report, Justice Hollinrake simply attached the rulings from the *Zylberberg* case to his judgement (Supreme Court of British Columbia 1989, pp13).

*Russow* was similar to the *Zylberberg* case in that both dealt with religious exercises in schools as opposed to religious education. The case of *Russow* dealt with the religious exercises in British Columbia schools. The case was similar to *Zylberberg* in that the students were offered an exemption from the exercises if they (being of legal age) or their parents wanted them to be excused. This was deemed insufficient protection by the court. This case was not appealed by Provincial government and thus became the law in British Columbia. The case of *Russow* was, as with the *Zylberberg* and *Elgin County* cases an example of how the courts were used to remove the privileged place of religion from schools across Canada. All these examples of religious exercises and religious education in Ontario and British Columbia which were removed by the courts are examples of the effects of the original Christian Civic Piety upon which Canada was founded. These cases were only possible after the adoption of the Canadian *Charter of Rights and Freedoms.*

**Adler vs. Ontario (1996):** Unlike cases which sought to remove the influence of religion in education, such as *Zylberberg, Elgin County* and *Russow,* the *Adler* case

dealt with a challenge concerning how independent, religious schools in Ontario were funded. The parents of Jewish and Christian Reformed students challenged the fact that in Ontario, Roman Catholic schools received public funding while other faith schools did not.

The refusal of the province of Ontario to fund non-Roman Catholic religious schools in that province was found to be constitutional. Parents who felt disadvantaged by Ontario policy had challenged the government on two grounds, namely that their rights under Sections 2(a) and 15 of the Charter of Rights and Freedoms were violated. The Divisional Court, the Ontario Court of Appeal and the Canadian Supreme Court all disagreed with the parents and denied their application.

As the Supreme Court is the final court of appeal, I will focus on their ruling. As mentioned earlier, the public schools of Ontario were envisioned by Ryerson and others to be agents of Christian morality and socialization. Since Roman Catholics were to have their own schools, the public schools were infused with Protestant, non-denominational values (Gidney and Millar 2001, 275). The Supreme Court noted that

> public schools are contemplated in the terms of s. 93, as it applies to Ontario, the Court, is in my opinion not looking to the historical nature of this system. In order to claim the protection of s. 93, it must be shown that there was a right or privilege with respect to denominational schooling which was enjoyed by a class of persons by law at the time of union (Supreme Court of Canada 1996).

In the ruling at the Ontario Court (General Division), Justice Anderson found that the lack of funding was an infringement on the rights of the plaintiffs. He also found

however, that based on the Oakes test as outlined earlier, the infringement was justified. The Supreme Court ruling quotes from his judgement as follows

> However, Anderson J. concluded that the legislation in question was saved by s.1 of the Charter. In his view, the legislative objectives, including the provision of tuition-free, secular, universally accessible public education, and the establishment of a public education system fostering and promoting the values of a pluralistic, democratic society, were of sufficient importance to warrant overriding a constitutionally protected right or freedom. He found there to be a rational connection between those objectives and the means chosen to achieve them. He held that the "degree of impairment" of the appellants' rights was "within permissible limits." Finally, he held that the benefits of the legislation were proportionate to its adverse effects on the appellants (Supreme Court of Canada 1996, pp. 13).

The Ontario Court of Appeal did not agree with Justice Anderson, however, and ruled even further against the parents. For the majority, Justice Dubin wrote that

> Anderson J. had erred in finding a s. 2(a) violation. In his view, s. 2(a) did not provide a positive entitlement to state support for the exercise of one's religion. A breach can only consist in state action which denies or limits religious practice" (Supreme Court of Canada 1996, pp. 14).

The Supreme Court in *Adler* further noted that it is not possible to hold one section of the Constitution to violate another one. The majority noted that Section 93 of the Constitution Act only applies to those groups which held special status at the time of Confederation. It does not apply to other groups that are now trying to claim these same rights. It is helpful to quote here directly from the ruling

> the appellants' attempt to use s. 2(a) in combination with s. 15(1) to expand on s. 93's religious educational guarantees. Thus, just as s. 23 is a comprehensive code with respect to minority language education rights, s. 93 is a comprehensive code with respect to denominational school rights. As a result, s. 2(a) of the Charter cannot be used to enlarge this comprehensive code. Given that the appellants cannot bring themselves within the terms of s. 93's guarantees, they have no claim to public funding for their schools. To emphasize, in Ontario, s.

> 93(1) entrenches certain rights with respect to public funding of religious education. However, these rights are limited to those which were enjoyed at the time of Confederation. To decide otherwise by accepting the appellants' claim that s. 2(a) requires public funding of their religious schools would be to hold one section of the Constitution violative of another (Supreme Court of Canada 1996).

The other issue for the court to deal with was the claim on the part of the plaintiffs that while separate schools might be unique in their situation in Ontario due to the Confederation Compromise; the public school system is not. The Supreme Court notes that the parents argued

> The appellants advanced a further argument which was that, even assuming that Roman Catholic separate schools are given a privileged place in our constitutional scheme, public schools are given no such protection. According to this argument, the fact that the government funds public schools but not private religious schools is analogous to the government funding, for example, private Christian schools but not private Islamic schools. As the reasoning goes, public schools are not a part of the scheme envisioned by s. 93 and are, thus, open to Charter challenge.
>
> In my view, this argument is mistaken in supposing that public schools are not contemplated by the terms of s. 93, as it applies to Ontario. On the contrary, the public school system is an integral part of the s. 93 scheme. When the province funds public schools, it is, in the words of Wilson J. in Reference Re Bill 30, at p. 1198, legislating "pursuant to the plenary power in relation to education granted to the provincial legislatures as part of the Confederation compromise." A closer examination of s. 93, in particular s. 93(1), as it applies to the province of Ontario, will help to illustrate that the public school system is impliedly, but nonetheless clearly, contemplated by the terms of that section (Supreme Court of Canada 1996, pp. 40-41).

The public schools in Ontario at the time of Confederation were to be protestant in form, although clearly non-denominational. This was what was to differentiate them from the Separate Catholic School system (Gidney and Millar 2001, 275).

The Supreme Court further stated that "in order to claim the protection of s. 93, it must be shown that there was a right or privilege with respect to

denominational schooling which was enjoyed by a class of persons, by law, at the time of union" (Supreme Court of Canada 1996, pp. 42). The Supreme Court further noted that

> An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools, S. Prov. C. 1863, c. 5 (Scott Act), was the last piece of legislation relating to denominational schools in Upper Canada enacted before Confederation. In essence, what this legislation did was to define the rights and privileges of Roman Catholic separate schools in terms of the rights and privileges of the province's common schools. The preamble reads:
>
> > **WHEREAS it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to separate Schools, and to bring the provisions of the Law respecting Separate Schools more in harmony with the provisions of the Law respecting Common Schools.** . . . [Emphasis added.]
>
> This close linkage between the separate and public schools was made most clearly through s. 7 which gave the separate school trustees "all the powers in respect of Separate Schools, that the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools" and through s. 9 which gave the separate school trustees all "the same duties . . . as Trustees of Common Schools." Section 20 of the Scott Act required that separate schools receive a proportionate share of the funds annually granted by the legislature to support the common schools. Even the qualification of separate school teachers was to be determined according to the same standards used in the public schools (Supreme Court of Canada 1996, pp. 43).

As I have shown earlier in this thesis, the public school system in Upper Canada (now Ontario) was to be resolutely Christian based in order to inculcate good morals and strong citizens. This was the way Ryerson established the system. Perhaps the Supreme Court was correct in dismissing the case against the province brought by the Jewish appellants for this reason, but it is my opinion that they were incorrect in dismissing the appeal from the Christian parents for this reason. As I have shown

from the writing of Gidney and Millar, the Christian domination of the public school system was well entrenched in law through the 1980s, until the use of the *Charter and Rights and Freedoms* was used to excise it from the public school system in Ontario.

This ruling might be considered to be a narrow interpretation of the meaning of the Confederation compromise. The Confederation compromise as it refers to education is not really complicated. The Fathers of Confederation wanted a deal, but when they met in London for the final sessions, the issue of minority education rights was a thorn in their discussions. In the end, what the Fathers of Confederation resolved was to protect the rights of the school systems as they existed at the time they entered Confederation; and even though education was to be a provincial responsibility under the British North America Act which created the union, there would be the possibility of an appeal to the federal government if these rights were abused.[6]

It is interesting to note that dissatisfaction with the Supreme Court decision led to the *Adler* argument being brought to the United Nations Human Rights Commission. In *Grant Tadman v. Canada* (1997), appellants successfully argued against the inequality of public funding for Catholic religious schools without comparable support for other faiths or non-faiths. While the UNHRC disagreed with the Supreme Court of Canada, the Commission lacked any authority to compel compliance, and referred the matter to the Federal Government, which used the

[6] For more on the debates surrounding the educational rights in the new Canada, please see Creighton Donald, 1964. *The Road to Confederation, The Emergence of Canada: 1863-1867.* Toronto. MacMillan of Canada

established position of the Confederation Compromise to defend the status quo. In other words, although the UNHRC considered public funding only for Catholic schools a violation of equal practice, the Canadian government relied on the constitutional division of powers and the 120 year old compromise in order to inhibit any requirement to renegotiate funding for religious education. The political compromise between English and French and the estimated financial cost to extend funding to other faith-based schools were considered to be reasonable justification to ignore the decision by the United Nations Human Rights Commission.

*Adler* is important in that it shows the Court was willing to defend certain established practices and historical aspects of the Confederation Compromise regarding education (Supreme Court of Canada 1996, pp. 29). In the Confederation Compromise regarding education in Upper Canada, there were to be two school systems in Ontario, the Catholic system and the public system, and both were to be infused with Christian values. In the Supreme Court's ruling on *Adler*, the court ignored this Christian sentiment and only focused on the role of the Catholic system and the public system, and at best implied that the public system at Confederation was secular. This was not the case. The original educational system stemming from the Confederation Compromise was Christian by nature; it was simply split into Catholic and protestant streams, with the protestant stream adopting all the children from all non-Catholic faiths even if they were not Christian. This was the point which the Supreme Court expressly ignored in the *Adler* judgment.

The four cases examined so far are examples of the move from the original Canadian Christian civic piety to a new democratic faith. While three of the cases

dealt with the issues of religious exercises and religious education, the fourth dealt with the funding of education based on religious principles. This principle of funding schools in Ontario based on faith principles was a basic concept of the Confederation Compromise. The Supreme Court of Canada decided not to accept this perspective.

All four cases do have a commonality in that they deal with the role of religion in education. This is in keeping with the principles of the original civil religion in Canada, namely Christian civic piety. With the outcomes of these cases, I shall demonstrate examples of the emergence of a new civil religion in Canada, namely democratic faith. The democratic faith civil religion arises because the new value structure for the education system is not to have any historical religious references to it anymore. The values are those laid out by the state and accepted and asserted by various parent groups or governments through the courts. The cases examined so far have a common thread in that they all served to work toward the elimination of Christian civic piety from one of the most important sectors of society; namely education.

The next two cases are different in that they speak to the rise of democratic faith civil religion in Canada. In the first four cases, the Courts were used as shields against the action of the state. In the following two cases, the Courts are used by the state as a sword to enforce its will on the populace. What I say here is not to impugn the integrity of the Courts, but rather to outline what has happened.

The first four cases all saw something that had existed for a long time removed from the school system, namely Christianity. The courts were used to enforce the Canadian *Charter of Rights and Freedoms* claims of the parents involved in each case. The shield reference is simply meant to state that the plaintiffs in each of these cases used the courts to further their own ends and that the courts were able to be used to defend them from actions of the state. In the reference to the last two cases, and the reference to the sword, I am referring to the action of the state being imposed on people, and the courts not supporting the people by giving a victory to the government so far in both cases. The Loyola High School case is, however, on appeal to the Supreme Court of Canada.

**S.L. v. Commission scolaire des Chênes (2012):** In 2012 comes the case of *S.L. v. Commission scolaire des Chênes* in Québec. This case dealt not with funding but with the new Ethics and Religious Culture ("ERC") Course which had been made mandatory by the provincial ministry in all Québec private and public schools. This case concerned a pair of Drummondville Catholic Québec parents who objected to having their children taught the new Ethics and Religious Culture course at their school. Parents were concerned that their children would suffer harm as a result of being taught information which the parents felt was significantly different from the principles they were being taught at home and in their church. The goal of the Ethics and Religious Culture course was to teach about various religious realities in a neutral way, including Aboriginal Spirituality and various approaches to ethics. The parents in question felt that this neutrality would be at odds with their beliefs and the right to pass on their beliefs to their children because the mandated course

promoted all religious beliefs as being equal. They requested an exemption under section 222 of the Québec Education Act. Section 222 states:

> 222. Every school board shall ensure that the basic school regulation established by the Government is implemented in accordance with the gradual implementation procedure established by the Minister under section 459.
>
> **For humanitarian reasons or to avoid serious harm to a student, the school board may, following a request, with reasons, made by the parents of the student, by the student, if of full age, or by the school principal, exempt the student from the application of a provision of the basic school regulation.** In the case of an exemption from the rules governing certification of studies referred to in section 460, the school board must apply therefor to the Minister.
>
> The school board may also, subject to the rules governing certification of studies prescribed by the basic school regulation, permit a departure from a provision of the basic school regulation so that a special school project applicable to a group of students may be carried out. However, a departure from the list of subjects may only be permitted in the cases and on the conditions determined by a regulation of the Minister made under section 457.2 or with the authorization of the Minister given in accordance with section 459.
>
> 1988, c. 84, s. 222; 1990, c. 78, s. 54; 1997, c. 96, s. 60; 2004, c. 38, s. 3.
>
> 222.1. Every school board shall ensure that the programs of studies established by the Minister under section 461 are implemented.
>
> However, a school board may, at the request of a school principal, after consulting with the student's parents and subject to the rules governing certification of studies prescribed by the basic school regulation, exempt a student who needs special support services in the language of instruction, second language or mathematics program from a subject prescribed by the basic school regulation; no exemption may be granted, however, in respect of those programs.
>
> **As well, a school board may, with the authorization of and subject to the conditions determined by the Minister, allow a school to replace a program of studies established by the Minister by a local program of studies designed for a student or a category of students who are unable to benefit from the programs of studies established by the Minister. Every such local program of studies**

> **must be submitted by the school board to the Minister for approval** (Ministry of Education 2012).[7]

The parents lost their court battle to exempt their children from the ERC class and also lost all subsequent appeals.

Originally, the Québec school system was setup on denominational grounds, with the separation being Catholic and Protestant. In 1997, the Québec and Canadian federal governments revised the Canadian Constitution, namely (Section 93) to add an additional Section 93(a) which removed the denominational aspect of Québec schooling and replaced it with a linguistic separation of schools (Supreme Court of Canada 2012, pp. 12).

With this change, the entire structure of education in Québec changed. This change, according to the Minister of Education, meant that every child would be able to feel comfortable in the schools they attended and not be pressured by the religious nature of the previous system. The Minister in 1997 stated, "Public Schools must respect the free choice or the free refusal of religion" (Supreme Court of Canada 2012, pp. 13). This was what the parents in *S. L. v. Des Chênes* were testing when they wanted to exempt their children from the curriculum adopted by the provincial government in 2012.

In 1997, the Québec Minister of Education had announced the establishment of a task force to study what the new educational system in Québec should encompass. The Commission, in its 1999 report entitled "Religion in Secular Schools: A New Perspective for Québec", declared that the system should include

[7] [Emphasis added]

moral education, and also that religions should be studied from a cultural perspective (Supreme Court of Canada 2012, pp. 15). In 2005, the Ethics and Religious Culture course was introduced, but it did not become mandatory until the 2008/2009 school year.

In paragraph 22 of the *S.L. v. Commission scolaire des Chênes* ruling, the majority noted that in the case of *Amselem*, it was not necessary to prove a sincere belief that was held by *all the others*[8] of a religion, but that the belief in question must "hav[e] a nexus with religion." Simply put, this means that not all people need to have a common approach to their religion, even within the same denomination. In such a case, the court is then "limited to assessing the sincerity of the person's belief." This is at odds with a later statement in the ruling in paragraph 24, where the majority ruling states "It follows that when considering an infringement of freedom of religion, the question is not whether the person sincerely believes that a religious practice or belief has been infringed, but whether a religious practice or belief exists that has been infringed." The majority in the same paragraph later states "to decide otherwise would allow persons to conclude for themselves that their rights had been infringed and thus to supplant the courts in this role."

This tension seems to be the crux of the matter for the majority, and both avoids and confuses the issue before the Supreme Court of Canada. The parents of the school age children were not asking for their specific religion to be taught. They were seeking an exemption from the Ethics and Religious Culture course as designed by the government. This request for exemption was no less reasonable,

[8] Emphasis added

and even more so than any demands made in *Zylberberg, Russow* or previous cases reviewed here. Clearly the question was not about whether they felt their religion should be given a paramount place over any other, and just as clear is that they simply wanted their children to be able to get the education they as parents desired. In its ruling, the majority of the Court went a long way in supplanting the rights and role of the parents in the educational role of their children, and assumed a position that philosophically was at odds with the jurisprudence of *Zylberberg, Elgin County* and *Russow*. Stated another way, these earlier cases had determined that voluntary self-exclusion was not sufficient protection against the promotion or indoctrination of Christian civic piety. Now, however, the request to be excluded from a relativistic curriculum of religion was being rejected by the Courts as at odds with the promotion or indoctrination of the Ethics and Religious Culture course.

To say that the Ethics and Religious Culture course did not have the potential to confuse the children is to ignore the evidence before the Court, even though that is what Justice J. Dubois of the Superior Court seems to have done. In paragraph 36 of the Supreme Court of Canada ruling, the ruling of the Superior Court of Québec is quoted

> Under the new program, the school will present the range of different religions and get children to talk about self-recognition and the common good. Subsequently, therefore, the additional work that must be done for religious practice is up to the parents and pastors of the Church to which the parents and children belong.

'Self-recognition and the common good' are I believe major tenets of religions that I am familiar with. Self-recognition and common good ideas are self-identified values that people have. The children could get conflicting messages as to the value of

their and their parents beliefs depending on the information presented as part of the Ethics and Religions Course. How are the parents and pastors expected to teach their children their religious interpretations of these topics in the home and church environment if they are receiving different information from the secular school system? If these are not part of the tenets covered by most if not all major religions, there is very little left of these religions.

In a further confusion by the majority, in paragraph 37 the Supreme Court of Canada ruling states "After reviewing the record, I see no error in the trial judge's assessment. Having adopted a policy of neutrality, the Québec government cannot set up an education system that favours or hinders any one religion or a particular vision of religion." This is absolutely correct. It is an unnecessary segue in this case however. The parents in *S.L. v. Commission Scolaire des Chênes* were not looking for the government to give up the concept of neutrality. In fact, the crux of the parents' argument was that the system that was being proposed was not in fact neutral, but promoted a system of religious relativism which was not acceptable to them as parents, and they felt it would cause harm and would confuse their children.

For all of its ruling, the Court could have saved time and simply gone to their last point, as this is what seemed to be the driving factor in their opinion. In paragraph 40 of the majority ruling, the court stated

> Parents are free to pass their personal beliefs on to their children if they so wish. However, the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society. The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian

> society and ignores the Québec government's obligations with regard to public education. Although such exposure can be a source of friction, it does not itself constitute an infringement of s. 2(a) of the *Canadian Charter* and s. 3 of the *Québec Charter.*

This section seems to be the crux of the majority argument in this case, but it is an opinion that might invite some concern for religious freedom. In this case, the majority of the Supreme Court of Canada determined that it is more important to promote modern realities than to accept the parental wishes to exempt their children from the Ethics and Religious Culture course in Québec, As I shall show later, it is interesting that the majority decision here refers to the needs of the Québec public education system, as the next case I look at deals with a private religious institution and their fight with the order to implement the Ethics and Religious Culture course as designed by the Québec government. Before I get to that case however, I will spend some time looking at the minority opinion in the *S.L. v. Commission des Chênes* case.

The minority ruling in the *S.L. v. Commission des Chênes* case is a concurring opinion, but differs significantly from the majority. Unlike the majority opinion, the concurring opinion found that there was not enough evidence on the record to 'uphold the constitutional validity of the Ethics and Religious Culture program.' It still ruled against the parents because they had not proven their case of harm as shall be shown here. To quote Justice LeBel,

> However, I do not thereby intend to conclusively uphold the ERC Program's constitutional validity or, above all, its specific application in the everyday workings of the education system. I will therefore make some comments on this subject in the reasons that follow" (Supreme Court of Canada 2012, pp. 44).

Justice LeBel notes that in the S.L. v. Commission des Chênes case,

> the allegation that freedom of religion was violated concerned a specific aspect of such freedom, namely the obligations of parents relating to the religious upbringing of their children and the passing on of their faith. The rights of parents to bring up their children in their faith is part of the freedom of religion guaranteed by the *Canadian Charter* (Supreme Court of Canada 2012, pp. 51).

In Justice LeBel's opinion, the Superior Court, where the case was first heard, did not handle the manner correctly because the judge there did not apply the correct law as determined by the Supreme Court in earlier rulings. Justice LeBel notes that

> The Superior Court turned this matter into a debate about the incorrect nature of the parents' belief. The trial judge acknowledged that the parents were Catholics and that they believed they had an obligation to pass on their faith to their children. Having gotten to that stage, he did not consider the program's content or is impact on the alleged belief (Supreme Court of Canada 2012, pp. 51).

According to Justice LeBel's reading of the Superior Court ruling, the trial judge relied on the expert testimony offered by the respondent's expert as to the nature of the course material in question. This opinion of Justice LeBel is at odds with the majority finding which found that the material on the record was sufficient for them to rule that the government was not infringing on the religious rights of the parents and children in question. Justice LeBel goes on to note that "[T]he trial judge should have endeavoured to consider in more concrete terms the program's content and the impact claimed, correctly or not, by the appellants on the fulfillment of their religious obligations" (Supreme Court of Canada 2012, pp. 52).

As supportive of the appellants as Justice LeBel was, he does reach the conclusion that "[d]espite being sincerely held, their opinion that basic moral relativism was the program's essential characteristic was not sufficient to establish a violation of the Canadian *Charter* or the Québec *Charter.*"

Justice LeBel then turned the question around on both parties. He examined whether the course is really a problem for the parents or if the government claims of neutrality are correct. While the following quote is extensive, it is pertinent to this case and the subsequent case I shall address. Justice LeBel declared,

> This brings us to one of the problems that arise in this matter in determining whether the ERC Program is consistent with Quebec's constitutional obligations relating to freedom of religion. First, a finding of a violation of the two Charters cannot be based solely on a subjective perception of the program's impact. Moreover, the Program's design and the content of the educational and administrative framework do not make it easy to assess the program's concrete impact in the everyday workings of Quebec's public school system. In other words, is it a program that will provide all students with better knowledge of society's diversity and teach them to be open to differences? Or is it an education tool designed to get religion out of children's heads by taking an essentially agnostic or atheistic approach that denies any theoretical validity to the religious experience and religious values? Is the program consistent with the notion of secularism that has gradually been developed in constitutional cases, particularly in the field of education? The state of the record makes it impossible to answer these questions with confidence.

Justice LeBel writes that the evidence which was filed in the case does not permit the Court to find that the parents have proven their case. He states that the evidence presented by the parents, including the actual Ethics and Religious Culture course material and a textbook do not allow the Court to bring down a judgment of religious interference in violation of the *Canadian* and *Québec Charters.* He noted that the program information which was filed as evidence by the parents "determines neither the content of the textbooks or educational materials to be used, nor their approach to religious facts or to the relationship between religious values and the ethical choices open to students" (Supreme Court of Canada 2012, pp. 56).

The potential for future parents to be successful in challenging the ERC comes at the end of the concurring minority opinion, where Justice LeBel states

> As a result of the state of the record, however, I am unable to conclude that the program and its implementation could not, in the future, possibly infringe the rights granted to the appellants and persons in the same situation. In this regard, the single textbook filed in the record may cause some confusion in terms of the way it presents the connection between the programs' religious content and its ethical content. For example, does the content on the Christmas-related exercises for six-year-old students encourage the transformation of an experience and tradition into a form of folklore consisting merely of stories about mice or surprising neighbours? These are some potential questions and concerns. The record before this Court does not make it possible to respond to them. However, the legal situation could change during the existence of the ERC Program (Supreme Court of Canada 2012, pp. 58).

The case of *S.L vs. Commission Scolaire Des Chênes* deals with the request of parents to have their children exempted from a particular course in the Québec schools system. Their complaint centred around their belief that this course would indoctrinate their children with values that were at odds with what the children were being taught at home and in church. It is important to note here that unlike the cases in Ontario and British Columbia, the parents were not asking that a particular action or course be removed from the school system because of their personal beliefs: they were asking that their minor children be exempted from the classes. This is a far less onerous task than was found in *Zylberberg, Elgin County* or *Russow,* all of which led to decisions that impacted the whole of education policy. That the Court's decision went in a different direction suggests an entirely different dynamic: it was not enough for petitioners to be exempted from religious instruction. The entire curriculum for religious instruction was removed from the schools, despite efforts to be non-denominational and broad. Yet 24 years later, a mere request to be

exempted from the curriculum on religion was rejected. The exemption was denied first by the Ministry of Education and then by the Courts. The denial was because the Ministry of Education and the Courts did not feel that it was detrimental to the students to attend this course (and, indeed, determined that the new course was of value). Unlike the Ministry of Education and the Courts however, the parents did feel that it would be detrimental to their children's development to have to attend the ECR course in the public school.

The next case I will examine is also from Québec and also deals with the Ethics and Religious Culture course as designed by the Québec government. This case is out of chronological order from the rest of the cases presented in this chapter, but that is because it deals with different issues. Unlike in the *S.L. v. Commission des Chênes* case, it is not a public school in question, but a private Catholic educational institution. Also, it is not parents suing the government but the institution itself. In this case, the judge found in favour of the plaintiff, Loyola High School. It was overturned on appeal.

**Loyola High School v. Courschesne (2010):** In this case, Loyola High School was seeking an exemption from the Ethics and Religious Culture program. The school and the judge both made an important differentiation between the program and course. The school was not looking to be exempted from teaching the course; they just did not feel that with their Catholic mandate they could teach the course using the program of the Ethics and Religious Culture course as mandated by the Government of Québec. There are a number of reasons for this, but the key one is that the school felt, and the judge at the lower court agreed, that the program was

too secular and relativist. The school wanted to teach the same material but from a Catholic perspective. As the judge in the case wrote,

> According to Loyola, the incompatibility of the ERC program established by the Minister stems from the fact that it inculcates a relativistic philosophy, commonly known as 'normative pluralism'. The basic principles of that philosophy trivialize and, for all practical purposes, negate religious experience and belief" (Quebec Superior Court 2010, pp. 32).

As the judge notes in paragraph 42 of the judgment, "The ERC program is, for all practical purposes, the culmination of the process of secularization of public schools undertaken by the Québec government." The ruling goes on to state

> ...[H]owever, most private schools still have a denominational character. Loyola's denominational character is still recognized by the Quebec government, even though it is no longer guaranteed by the *Constitution Act, 1867.* Thus, the Ethics and Religious Culture course is in keeping with this secularization process in that it secularizes the teaching of ethics and religious culture (Quebec Superior Court 2010, pp. 47-48).

Douglas Farrow was an expert witness for the plaintiffs and as part of his testimony stated

> ... first, that the Ethics and Religious Culture (ERC) program represents a significant transfer of power from civil society to the state; second, that its ambitious goals belie any claim to neutrality; third, that the ERC program is intended to provide formation (i.e., to cultivate a world view and a way of thinking and acting consistent with that world view) and not merely information, and that the formation it hopes to provide is at points incompatible with a Catholic formation; fourth, that the imposition of this curriculum (with its compulsory pedagogy) on Catholic schools constitutes, from the perspective of the Catholic Church, a breach of fundamental rights as well as a defeat for certain of the program's own objectives in recognizing diversity (Quebec Superior Court 2010, pp. 25).

The other plaintiff in the case was John Zucchi, a parent of a child attending Loyola who wanted the Catholic version of the program of the Ethics and Religious Culture course taught at the school.

There were two 'Legal Aspects' that were addressed in this case. One was Administrative Law, the other Constitutional law. I shall list them both, but for the purposes of this thesis only the constitutional law will be addressed in detail. As listed in the ruling, I replicate the questions directly:

**Administrative law aspect**

> [80] Loyola argued that it is entitled to be exempt from the ERC program of studies established by the Minister for the teaching of the ERC course in the first and second cycle of secondary education.
>
> [81] It contended that the Minister exceeded her jurisdiction in denying the exemption sought under the first paragraph of section 22 of the Regulation. To rule on this issue, the Court must answer the following two questions:
>
> (a) What is the standard of review?
>
> (b) Should the Minister's decision be quashed, considering the appropriate standard of review?
>
> **Constitutional law aspect**
>
> (a) Does the Minister's decision interfere with freedom of religion as guaranteed by section 2(*a*) of the Canadian Charter or section 3 of the Québec Charter? If so, can the interference be justified by the application of the first section of the Canadian Charter or section 9.1 of the Québec Charter?

On the Administrative law questions, the judge found that on a technical basis the Minister has overstepped her bounds and Loyola was victorious on this point. In the decision, the Court wrote

> Moreover, it is patently true that if the Minister's November 13, 2008 decision in and of itself or through its effect, interferes with Loyola's

> freedom of religion it, must be considered unreasonable and, therefore, be quashed, according to the applicable principles of administrative justice (Quebec Superior Court 2010, pp. 204).

We shall now turn to the constitutional questions raised in this case, namely whether the Minister's decision was an infringement on the Section 2 rights of the Canadian *Charter* or Section 3 of the Québec *Charter*. While Section 2 of the Canadian *Charter* has been listed elsewhere, I feel it would be helpful to reproduce Section 3 of the Québec *Charter* here as well. This section states "Every **person** is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association" (Québec 2008)[9].

The Québec Superior Court found that it could not rule on the Canadian *Charter* question because the Supreme Court of Canada has not ruled yet whether a 'Legal Person' has religious freedom protection. In paragraphs 207-209 of the judgment the Court found that it was also not able to make this determination at this time because of a lack of guidance from the Supreme Court. As to the question of religious freedom, the Court noted that

> [I]n any event, freedom of religion and freedom of religious expression are an integral part of the founding principles of the rule of law. The principle of the rule of law is of benefit to all and is not limited solely to human beings (Quebec Superior Court 2010, pp. 220).

This finding makes the next determination so important and helped the judge make his ruling clear. In the preamble and sections 1 and 2 of the Québec *Charter,* the drafters of the Québec *Charter* used the term human beings. In section 3, the drafters used the term Persons (Quebec Superior Court 2010, pp. 222). This is an

[9] Emphasis added

important distinction, as the Québec government has defined person to include natural and legal persons, "unless that is inconsistent with the law or with specific circumstances of the case."

As further noted by the judge in paragraph 246

> The fundamental freedom of religion has been interpreted broadly and includes "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination" (Quebec Superior Court 2010, pp. 246).

The point that should be stressed again is that this is a private institution and the case does not affect the public school system. In fact, parents in Québec are guaranteed the right to provide the education they want for their children by section 41 of the *Québec Charter* which states

> [P]arents or the persons acting in their stead have a right to give their children a religious and moral education in keeping with their convictions and with proper regard for their children's rights and interests (Québec 2008).

The constitutional issues in this case are settled quite clearly by the judge at this court level in the following two paragraphs, with reference to the Supreme Court.

> In *Amselem*, the Supreme Court ruled that, to demonstrate the existence of interference with his freedom of religion, the plaintiff had to establish (a) that he sincerely believed in a practice or belief that had a nexus with religion and (b) that the third-party conduct alleged by him was detrimental in a more than trivial or insubstantial way to his capacity to comply with the practice or belief.
>
> In the present case, the evidence is clear and uncontradicted. Loyola and its members, including Principal Donovan and President Fr. Brennan, are sincerely convinced that, to accomplish their mission as a Catholic educational institution, Loyola must teach ERC with its own program and according to the precepts of the Catholic religion.

> The testimony of Loyola's principal, Mr. Donovan, was unequivocal. The ten principles explained in the booklet "What makes a Jesuit High School Jesuit?" are present in all the activities of the school and in the teaching of all the courses, not only the religion course. The precepts of the Catholic religion are omnipresent at Loyola (Quebec Superior Court 2010, pp. 264-266).

The Court also found that the actions of the Minister could not be saved under section 9.1 of the *Québec Charter.* Section 9.1 is similar to Section 1 of the Canadian *Charter of Rights and Freedoms* in that it limits the rights and freedoms outlined.

> In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec. In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law (Québec 2008).

In the Epilogue to his ruling, Justice Dugré is quite firm in his judgment. He is not willing to accept the actions of the Minister in denying Loyola High School an exemption. He notes that in the Act establishing the position and authority of the Minister, one of the whereas clauses states "parents have the right to chose*(sic)* the institutions which, according to their convictions, ensure the greatest respect for the rights of their children."

Justice Dugré could not be clearer in his ruling on this matter. In summation of his ruling, he went further than might have been expected. If his ruling is upheld all the way by the Supreme Court of Canada on appeal, it may have lasting consequences for other private schools in Canada facing the same dilemma. Justice Dugré stated,

> To paraphrase Beetz J.'s comments in Slaight Communications Inc.—comments that pertain to freedom of expression but are just as

> relevant to freedom of religious expression—**the obligation imposed on Loyola to teach the ERC course in a secular manner is totalitarian in nature and essentially tantamount to the command given to Galileo by the Inquisition to abjure the cosmology of Copernicus.**[10]
>
> In short, the Court is of the opinion, firstly, that the Minister cannot dictate to Loyola, a private Catholic college, the approach to teaching the compulsory ERC course to its students and, secondly, that Loyola is entitled to the exemption sought because its program for teaching ERC is equivalent to that established by the Minister (Quebec Superior Court 2010, pp. 331-332).

By making such a deliberate and strong judgment, it is likely that the Justice hoped to avoid being overturned on appeal. It remains to be seen what the outcome will be on appeal, but it is possible that if upheld by the Supreme Court of Canada, other private schools in Canada may also want to have an exemption to the material they are required to teach as part of a standard curriculum. Whether this will be a good development for society or not remains to be seen.

The Québec Court of Appeal overturned the lower court ruling in December of 2012. As Douglas Farrow notes, Justice Fournier writing for the Court of Appeal declared the infringement on Loyola to be "a very minor and justifiable one." As Farrow also notes, this is not about simply making a community desist from taking certain action, or denying them a right if they do not subscribe to certain activities. The example he uses is pictures for driver's licenses. If you don't want a picture you cannot drive. This, as Farrow notes, is altogether different. Here the government is forcing a religious community to *do* something that goes against their beliefs.

[10] [Emphasis added]

The trial judge in *Loyola High School v. Courschesne* found that the Loyola petitioners *sincerely* believed that their religious liberty was being infringed by the action of the Québec government due to the Minister's failure to grant an exemption to the programme of the ERC. As noted in the Court of Appeal judgement the case, person must "establish that he sincerely believes in a practice or belief that has a nexus with his religion" (Quebec Court of Appeal 2012, pp. 165). The Court of Appeal argue that the trial judge has made an error in that he argues that "in short, established by the Minister, the Loyola ERC program requires a pedagogy that is contrary to the teachings of the Catholic Church" (Quebec Court of Appeal 2012, pp. 170).

The court of appeal makes their final ruling very clear in that they are not sympathetic to the respondents (Loyola and Zucchi) in this case. The court summarized their ruling by noting

> [ 175 ] In summary, I think the judge errs in basing its judgment on expert opinion Farrow. There is no real effect or, at least, it is not significant.
>
> [ 176 ] Even supposing that infringement been has reached, I am of the opinion that such infringement is justified (Quebec Court of Appeal 2012, pp. 175-176).

It is also useful to quote one of the last sections of the Conclusion of the ruling, where the Justice gives his final arguments. Here he notes that the Minister was fully justified in making the decision outlined earlier to deny Loyola High School an exemption to the programme of the ERC. The Justice stated

> [ 185 ] The power of the Minister is discretionary in nature and has not been exercised for purposes other than those prescribed by law and regulations. The decision of the Minister is reasonable and does not affect a protected right (Quebec Court of Appeal 2012, pp. 185).

This shows that the Québec Court of Appeal recognized that this choice was optional on the part of the Minister, and not one of statutory or regulatory requirement. Thus the decision of the Minister is yet another example of the movement away from the dominant Christian Civic Piety and the adoption of the democratic faith form of civil religion across Canada.

The Loyola case is about the right of a religious group to be able to practice their faith in the manner they deem appropriate. In this case however, the government, supported by the Court of Appeal in Québec, is using the power of the state to force a religious community to follow the dictates of the state. While it is permissible for the state to require certain activities from all members, such requirements are not to violate fundamental rights and freedoms. The state in the Loyola case is trying to force a group to do something against its principles. The state claims that the ERC course is neutral on its face, but the trial judge found this not to be the case. It is important to remember, as the Supreme Court noted in *Big M Drug Mart,* that freedom of religion also means freedom from religion. Yet religion, broadly defined, might also include those dogmatic truths that are both religious and secular. The actions of the Québec government are an example of the new democratic faith civil religion in Canada.

In the exemplars from Québec, we see part of the full effect of the Quiet Revolution on display. One of the major reforms of the Quiet Revolution was the

increased influence and control by the state. As I have shown, the Quiet Revolution was not just a period of increased Francophone nationalism, but was also a time of increased secularization in the province of Québec. With the introduction of the Ethics and Religion Course which forbade even the religious private schools of using their own programmes to teach the material, the state in Québec can now be said to be one step closer to being fully secular.

These actions are examples of the democratic faith in Canada because they are designed to further secularize society. They indeed to do this by even extending the ERC course, an admirable course in itself, to the religious schools that feel they cannot teach this course due to their faith. As was noted in paragraph 42 of the initial trial judgment, "The ERC program is, for all practical purposes, the culmination of the process of secularization of public schools undertaken by the Québec government." That the Québec government refused to grant Loyola High School's request to be given an exemption to the programme content but not the course itself shows that it is more than just the public schools the government is trying to influence. This is the democratic faith showing through, when the government moves from not just influencing the public domain, but also seeks to influence the private domain of society.

In this chapter I have reviewed six cases. Not all the changes were welcomed by all the people over time, but there is now, in Ontario at least, a situation where the matter of religion in the public schools is settled. The funding question of private schools is also settled as a constitutional issue. That being said, there is nothing

legally stopping a future Ontario government from extending public funding to private religious schools if it so chooses.

In the Québec cases I have looked at, it seems that the public school question of the Ethic and Religious Culture course is settled for now, although if Justices LeBel and Fish are correct, it could become an issue there again as well. As to how the issue of the Ethics and Religious Culture course and programme in Québec private schools is to be settled that will be decided on the forthcoming appeal to the Supreme Court of Canada.

The metamorphosis of the civil religion I have written about has not reached an endpoint. This tension will likely continue for some time as different value systems compete for the lifeblood of support that is Canadian opinion.

## Conclusion

This thesis stems from an enduring interest I have had in religion, politics and society, which all intersect in this study. The purpose of this thesis has been to investigate civil religion in the Canadian context. This thesis asserts that Canada cultivated a civil religion, albeit with disparate strains, which I have identified as Christian civic piety. This civil religion was more than a collection of symbols and rituals, and both animated and impacted public policy, especially in the realm of education. Of particular relevance in the contemporary period, is the metamorphosis of this Christian civic piety to a new democratic faith. The purpose of this concluding chapter is to provide a summary of the research conducted and provide some concluding remarks about the relevance of this study.

First, I examined whether Canada has a civil religion. The answer in this thesis is that Canada has and always has had a civil religion. There were originally two, based on the Roman Catholics found mostly in *Québec*, and the protestants found mostly in the rest of the country. These civil religions were based on Christian civic piety as outlined in the thesis. This civic piety has changed to be based on a new democratic faith as outlined in thesis. The Christian civic piety civil religion was based on a more Durkheimian nature, where the values were derived from the people and society, whereas the new democratic faith is more Rousseauian and has more state involvement.

In the first chapter, this thesis outlined the concept of what civil religion is and what it is not and whether or not Canada has a civil religion. In the words of Bellah,

civil religion is a "set of beliefs, symbols and rituals" (R. N. Bellah, Civil Religion in America 1967, 4). But it is also more than that. Civil religion also animates and influences public policy. I have shown, for example, how Christian civic piety was commonly promoted and practiced throughout the public education systems of Canada. The second question this thesis sought to address is, "what happened to the traditional Christian civic piety in Canada?" As such, I followed a descriptive as opposed to a normative approach. A normative approach would have led to a conclusion about what should have been, whereas this thesis sought to answer what was, what changed and what the situation is now. This descriptive approach started out with a discussion about the nature of civil religion, and then moved on to how this applied to Canada. Early manifestations of civil religion were based on the faith of the Canadian people. The new civil religion, especially in the post Canadian *Charter of Rights and Freedoms* era, is more state centric in imputing values to Canadians. This change is what von Heyking and others have called the "democratic faith" form of civil religion. This "democratic faith" form of civil religion now dominates public policy in the realm of public education. Tocqueville wrote that religious institutions are important training grounds for democracy as they teach people how to function in a collective group. This, I would argue, also applies to religious training and education. It is important to note, however, that the purpose of this education and training reflect Ryerson's desire, to create better citizens, and not just for the betterment or growth of the religion itself.

The Durkheimian form of civil religion emanates from society and the social norms of the given society in question. As the society in question is derived from the

people, the people have more of a say in what the social norms and values will reflect. The Rousseauian civil religion, or the democratic faith von Heyking speaks of, is more state oriented and derives more of its values in a top down fashion from the state to the people. This is a significant difference in that the new civil religion represents a different relationship between state and society.

One of the changes I have shown in how the different educational cases were handled is the exemption provision in law. The Ontario cases all provided for exemptions for the students who were not willing to sit through religious education or exercises. These exemptions were not considered sufficient to protect these students. Now, in the Québec Drummondville case, I have shown that exemption is considered too much of a burden on the goals of the state.

The new democratic faith civil religion is more Rousseauian in nature than the traditional Christian civic piety which was Durkheimian in tradition. This difference relates to the influence the state and the society had on the people. In the Rousseauian democratic faith, the state is much more willing to add its influence directly on the people to pursue its own goals. In the Durkheimian tradition, the people who make up the society are the ones who influence the norms and values of the state. In the role of education, I have shown that the state is now more engaged in influencing the religious values of the people and that there is less room for the people to influence the outcome. If the Loyola plaintiffs are successful in their appeal to the Supreme Court of Canada, that success will be one small victory for society as it will have national implications for the role of religious freedom and education in Canada. If they are unsuccessful, it may still have a national influence,

but this time it will be more of a Rousseauian influence, and the role of religion will be relegated to the private sphere even more.

As demonstrated in the thesis, Canada's civil religion started to change in the 1960s when the role of the churches and religion in general started to wane parallel to the emerging role of the state. This did not mean that the churches and religion in general were completely out of the picture, as demonstrated by the debate about the proposed Canadian Bill of Rights. At first, the role of a deity was not referenced in the Bill, but this changed to include an explicit reference to God. Note this was not a reference to Christianity or Christ specifically, but just to a general 'Judeo-Christian' God.

This shift in civil religion leads to the title of this thesis, *From God to Mammon: The Metamorphosis of Civil Religion in Canada*. This title accurately captures what the thesis presents as it starts with Christian civic piety and transforms Canada into a secular based state, where man is in control of events without reliance on a Christian deity. This shift to the reliance on the temporal (with some poetic license to expand on the material focus of the term Mammon) reflects a fundamental shift to the democratic faith form of civil religion. The original state of affairs in Canada saw a country with a strong Christian basis, both in Québec and the rest of Canada. This state of affairs was reflected in society and in institutions of the state and society. This included the churches and the schools. The schools are the main focus of this thesis as that is where the exemplars in Chapter Four come from. The exemplars come from British Columbia, Ontario and Québec.

The role of religion in the schools in Ontario also increased in the 20th century where religious exercises were expanded. The first half of the 20th century also saw the inclusion of religious education in the school system in Ontario. These religious exercises were given two half hour periods weekly and were introduced in 1944. This is the same year that religious education was introduced in British Columbia and shows the rising role of religion in Canadian society at the time, as governments were merely responding to the wishes of society with the introduction of these courses. In Québec it was different, as the school system was fully denominational at this time, and it can be presumed that religion was central to the instructional material being offered in Québec.

The role of the state has evolved considerably since the foundation of Canada in 1867. This Confederation of the four colonies to create Canada was completed only with considerable negotiation and compromise. One of the greatest compromises concerned education, particularly concerning to Lower Canada (Québec) and Upper Canadian (Ontario) Fathers of Confederation. This compromise allowed for the establishment of religious education in Ontario and Québec. In Ontario, the system was separated into the public Catholic system and a Christian, non-sectarian public system. It is worth repeating here the words of Gidney and Millar

> the centrality of Christian doctrine in Ontario's public schools, albeit in a nondenominational Protestant form, was alive and well in the mid-twentieth-century; still alive, though less well, as late as the mid-1960s; and, even in the last third of the century, finally ousted only through a prolonged, contested process. (Gidney and Millar 2001, 275)

This quote demonstrates that the public system in Ontario was infused with Protestant ethic throughout its history. As discussed in Chapter four, the Supreme Court seems to have ignored this history in its ruling on the *Adler* case. This case centered on the funding of non-Roman Catholic religious private schools. The court said there was no discrimination because the system was set up that way in the Confederation compromise.

This thesis ends with the case of *Loyola vs. Courschesne.* This case is out of chronological order to the others, but it provides a good ending point for the thesis. While the plaintiff, Loyola High School was successful at the Divisional Court this ruling was overturned by the *Québec* Court of Appeal. As the Loyola case is now before the Supreme Court of Canada, it will be interesting to see if the court overturns the Québec Court of Appeal and reinstates the trial judge's ruling.

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