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Considering Secularism

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

– *Owen Barfield*

FOR WANT OF JUDICIAL CONSIDERATION

In a recent decision the majority judges of the Supreme Court of Canada determined that the common usage of "secular" to indicate "non-religious" is, for the purposes of law, erroneous.[1] The court held that the secular sphere must not be deemed to exclude religion and must allow scope for consciences animated by religious conviction as well as those that are not.[2] Its

1 *Chamberlain v. Surrey School District No. 36* [2002] 4 S.C.R. 710 ("*Chamberlain*").

2 Various commentators have been critical of the approach to the definition of "secular" accepted by the Supreme Court of Canada and the British Columbia Court of Appeal. Two academics, in attempts to influence the former through articles put into argument before it, affirmed a religion-exclusive conception, arguing that this satisfied "justificatory neutrality." See Bruce MacDougall, "A Respectful Distance: Appellate Courts Consider Religious Motivation

reasoning in this decision is compatible with the following analytical framework: though the secular overlaps with the religious, the secular state does not have jurisdiction over the religions, just as the religions, though they are active in the public sphere, do not have jurisdiction over the state. In this sense, church and state are indeed separate, but that does not mean, as much anti-religious sentiment has it, that the state cannot cooperate with religions. Religious believers have as much right as anyone else to function in society according to their beliefs; likewise, religious institutions have as much right as non-religious institutions. Religious belief and identification ought not, on this reading, to function as a liability within a free and democratic society. Everyone has a belief system of some sort, and those who draw on religious sources should not be put at a disadvantage. Arguments based upon claims of neutrality, then, in so far as they amount to veiled attempts to exclude religious conceptions from public life, are no longer those that should dominate judicial interpretation.

These are the main implications of the reconceptualizing of the secular that occurred in the Supreme Court of Canada's *Chamberlain* decision. In coming to a religion-inclusive view of the secular, the court followed a unanimous panel of the British Columbia Court of Appeal, which had overturned a trial judge who had found that the term "secular principles" required that decisions made by elected school trustees, if based "even in part" on religious convictions, should be quashed. However, in what might be called *obiter* comments, the seven judges of the majority (in two separate sets of written reasons) stated that Canada is based on the principles of secularism. And that too is important to notice.

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of Public Figures in Homosexual Equality Discourse – The Cases of Chamberlain and Trinity Western University," *UBC Law Review* 35 (2002): 511–38; and John Russell, "How to Be Fair to Religious and Secular Ideals within the Liberal State," *The Advocate* 60, 3 (2002): 345–58. Neither were found persuasive by the court.

The *Chamberlain* case required the court to examine the phrase "strictly secular and non-sectarian" in the School Act of British Columbia. That act, however, did not use the term "secularism." While it was necessary to examine the term "secular," it was not necessary to discuss "secularism," and the definition of the latter was not argued before the court. What I want to argue here, with respect, is that the majority judges of the Supreme Court of Canada erred in their use of the term "secularism" because they did not stop to consider that the ideology of secularism (first articulated by G.J. Holyoake in mid-nineteenth-century England) is inconsistent with the court's own view of the secular. In equating "secular" with "secularism" the majority judges overlooked the fact that, at its historic origins, the intention of secularism was precisely to exclude religion from all public aspects of society – the very thing the court itself refused to do.

Simply put: the Supreme Court of Canada failed to recognize that the term "secularism" describes an ideology that is, and has been since its inception, anti-religious. As such, the ideology of secularism cannot be one of the principles upon which Canada, as a free and democratic country, is based. Both the judiciary and society at large need to come to clarity on this point, as I hope to show.

THE SECULARISM OF GEORGE JACOB HOLYOAKE

Consider the following definition of secularism from the *Encyclopaedia Brittanica*, eleventh edition:

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

Church, the abolition of the Second Chamber and other political and economic reforms.[3]

So matters stood, apparently, in 1911, when the above definition was published. Secularism was seen as a variety of the utilitarianism that had grown up alongside it rather than as something specifically anti-religious. But the *Oxford English Dictionary* informs us that the term was coined by Holyoake (c. 1851), and Holyoake's views warrant closer examination.

Among the governing ideas listed by the National Secular Society, founded by Holyoake in 1866, is this: "We assert that supernaturalism is based upon ignorance and is the historic enemy of progress."[4] Turning to his own major work, *English Secularism: A Confession of Belief*, we quickly discover the inaccuracy of *Brittanica*'s claim – lifted, though it was, directly from the book – that secularism "neither affirms nor denies the theistic premises of religion." Extolling the liberation of humanity by the exercise of reason, Holyoake writes: "Self-regarding criticism having discovered the insufficiency of theology for the guidance of man, next sought to ascertain what rules human reason may supply for the independent conduct of life, which is the object of Secularism." Secularists, he says, claim to have found truth, at least "so much as replaces the

3 P. 573.

4 Editor's note: The National Secular Society identifies Charles Bradlaugh (1833–1891) as its official founder, but its Web site contains the following remarks, quoting from one Ian G. Andrews (<www.secularism.org.uk>, 17 January 2003): "It would seem appropriate that any 'Heroes of Atheism' Poll should include the man who coined the term Secularism. He was George Jacob Holyoake, born in Birmingham in 1817. Although Charles Bradlaugh established the National Secular Society, Holyoake did the groundwork in the decade or so before 1866. Holyoake is the link between the old radicalism of Paine, Owen and the Chartists, and the Victorian Radicals, such as Bradlaugh."

chief errors and uncertainties of theology." In setting out the essential principles of secularism, he states that it is "a code of duty pertaining to this life, founded on considerations purely human, and intended mainly for those who find theology indefinite or inadequate, unreliable or unbelievable."[5]

His subtitle notwithstanding, Holyoake attempts to stake out a high ground that is "beyond speculation," which he says is the limitation of both the atheist and the theist.

> Though respecting the right of the atheist and theist to their theories of the origin of nature, the Secularist regards them as belonging to the debatable ground of speculation. Secularism neither asks nor gives any opinion upon them, confining itself to the entirely independent field of study – the order of the universe. Neither asserting nor denying theism or a future life, having no sufficient reason to give if called upon; the fact remains that material influences exist, vast and available for good, as men have the will and wit to employ them. Whatever may be the value of metaphysical or theological theories of morals, utility in conduct is a daily test of common sense, and is capable of deciding intelligently more questions of practical duty than any other rule. Considerations which pertain to the general welfare, operate without the machinery of theological creeds, and over masses of men in every land to whom Christian incentives are alien, or disregarded.[6]

For Holyoake the order of the universe is ascertainable by the unaided human reason and requires no reference to the God question or to the question of life after death. But this bold confession can hardly be made without at the same time denying that the universe is ordered by and to a Creator.

Whether or not the secularist's confession is beyond speculation, it is certainly not beyond assertion or denial where religion is concerned. Under the rubric "Rejected Tenets

5 Holyoake, *English Secularism*, 34f.

6 Ibid., 37.

Replaced by Better," Holyoake invites the reader to "suppose that criticism has established" the following:

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

Secularist truth, he insists, "should tread close upon the heels of theological error" so as to counteract and remedy it. Thus, for example, "for the providence of Scripture, Secularism directs men to the providence of science, which provides against peril, or brings deliverance when peril comes." Instead of "futile prayer," secularism proposes "self-help and the employment of all the resources of manliness and industry." Instead of belief in "original depravity," secularism aims to "promote the moralisation of this world which Christianity has proved ineffectual to accomplish."[7]

That Holyoake views secularism as a substitute for religion is clear enough. Secularism provides a superior ethical system for society, with a much broader appeal.

None of the earlier critics of Secularism, as has been said (and not many in the later years), realised that it was addressed, not to Christians, but to those who rejected Christianity, or who were indifferent to it, and were outside it. Christians cannot do anything to inspire *them* with ethical principles, since they do not believe in morality unless based on their supernatural tenets. They have to convert men to Theism, to miracles, prophecy, inspiration of the Scriptures, the Trinity, and other soul-wearying doctrines, before they can inculcate morality they can trust. We do not rush in where they fear to tread. Secularism moves where they do not tread at all.[8]

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7 Ibid., 71–3.
8 Ibid., 82 f. (emphasis in original).

The secularist policy is "to accept the purely moral teaching of the Bible, and to controvert its theology, in such respects as it contradicts and discourages ethical effort."[9] In this way, it may hope to wean the more sensible away from the errors of Christianity: "True respect would treat God as though at least he is a gentlemen [sic]. Christianity does not do this. No gentleman would accept thanks for benefits he had not conferred, nor would he exact thanks daily and hourly for gifts he had really made, nor have the vanity to covet perpetual thanksgivings. He who would respect God, or respect himself, must seek a faith apart from such Christianity."[10] Secularism's desire is to "convert churches and chapels into temples of instruction for the people ... to solicit priests to be teachers of useful knowledge."[11]

As if to highlight the nature of secularism as an alternative to religion, Holyoake ends his book with proposals for "secularist ceremonies" as he recognizes that ceremonies should be consistent with the opinions of those in whose names they take place. These include ceremonies for marriage, the naming of children, and the death of children; and a vocational admonition encouraging "a career of public usefulness." Supported by numerous Victorian quotations of the type "every man should do his duty in the face of life's vicissitudes," Holyoake approaches his final – empirically unverifiable – certainty, that "between the cradle and the grave is the whole existence of man."[12]

In sum, it would seem that secularism is not properly described as "neither affirming nor denying theism."[13] Holyoake himself denies theism root and branch, as we have seen. Yet this disingenuous description has been thoughtlessly and uncritically echoed, even by otherwise reliable sources like *Britannica*,

9 Ibid., 91.

10 Ibid., 103.

11 Ibid., 119.

12 Ibid., 141; see 126ff.

13 Ibid., 37.

down to the present time.[14] Today we might call it the claim to liberal neutrality. And in this way much of the language relating to the secular has quietly been steered in an anti-religious direction. Take the word "secularization," for example, which is commonly defined as "the process in which religious consciousness, activities and institutions lose social significance. It indicates that religion becomes marginal to the operation of the social system, and that the essential functions for the operation of society become rationalized, passing out of the control of agencies devoted to the supernatural."[15] Such a definition obscures the anti-religious dimension of secularism by describing its results without reference to their cause – for ideological secularism is indeed prominent among the causes of the process here indicated. Moreover, it falsely suggests that this process is both natural and inevitable.[16]

Not all secularism announces itself in Holyoake's stark terms. Yet it simply will not do to overlook the anti-religious aspects and associations of secularism.[17] With this in mind, let

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14 Compare, for example, the *Oxford English Reference Dictionary* (2nd rev. ed., 2002). See further my "The Secular: Hidden and Express Meanings," *Sacred Web* 9 (2002): 125–39; and "Notes Towards a (Re)Definition of the 'Secular'" *UBC Law Review* 33 (2000): 519–49. Christine L. Niles also challenges the epistemology of a "faith-free" notion of the secular in "Epistemological Nonsense? The Secular/Religious Distinction," *Notre Dame Journal of Law, Ethics and Public Policy* 17 (2003): 561–92.

15 B.R. Wilson, "Secularization," in Eliade, *The Encyclopedia of Religion*, 15: 160.

16 As John Finnis observes: "Neither the differentiating of the secular from the sacred, nor the social processes of secularization, entail the mind-set or cluster of ideologies we call 'secularism.'" See his "On the Practical Meaning of Secularism," *Notre Dame Law Review* 73 (1998): 492. In this light, see also Casanova, *Public Religions in the Modern World.*

17 Compare Kathleen Sullivan, "Religion and Liberal Democracy," *University of Chicago Law Review* 59 (1992): 197 (cited by Niles, "Epistemological Nonsense, 577, n. 62).

us return to the question of how the terms "secular" and "secularism" have been employed in recent decisions of the Canadian courts.

DEVELOPING A MORE INCLUSIVE VIEW OF THE SECULAR

Chief Justice Lamer began his dissent in the *Rodriguez* case, in which the Criminal Code prohibition of physician-assisted suicide was upheld by a five to four majority, by noting that the Charter "has established the essentially secular nature of Canadian society and the central place of freedom of conscience in the operation of our institutions."[18] The grounds for such a statement are not clear. But what, in any case, does it mean for a country to have an essentially secular nature? The passage suggests only that an affirmation of the secular nature of the country is necessary to preserve "the central place of freedom of conscience in the operation of our institutions." And this in turn is linked to questions of religious freedom. Chief Justice Lamer here cites his predecessor, Chief Justice Dickson, in the seminal case, *R. v. Big M Drug Mart*: "The essence of the concept of freedom of religion is 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."[19] Freedom of religion also means that the state cannot coerce an individual to affirm a specific religious belief or to manifest a specific religious practice. Thus in the *Big M* decision

18 *Rodriguez v. British Columbia (AG)* [1993] 107 D.L.R. (4th) 342, p. 366. A review of the preamble to the Charter, and of the court's affirmation of "religious tradition" as one of the interpretive aspects of a proper contextual approach in Charter cases (this by the majority judges in *Egan* 1995), already raises doubts about the validity of this claim.

19 *R. v. Big M Drug Mart Ltd.* [1985] 1 S.C.R. 295 ("Big M"), p. 336.

against Sunday-closing legislation, it was fatal that the legislation had a religiously based purpose and could therefore be seen as coercive of those who were not religious. When later legislation was challenged, it survived on the basis that its purpose had become "secular."[20]

This was the state of play prior to December 2002, when the Supreme Court issued its reasons in *Chamberlain.* Until that point it had not defined "secular" with any precision or clarity, but it was now faced with an examination of the phrase "strictly secular and non-sectarian." The particulars of the case merit our attention: three books showing same-sex parents were the subject of an application for approval as classroom resource materials in a public school. The matter came for approval before the locally elected trustees of the school district. The school board trustees refused to approve the books, and various people, including members of a gay advocacy group, petitioned the court to set aside the trustees' decision. Madam Justice Saunders, at the trial of the matter, held that the trustees' resolution breached a requirement of the School Act which provides that all schools "shall be conducted on strictly secular and non-sectarian principles."[21] She held that the school board had breached this statutory requirement because "the words 'conducted on strictly secular principles' preclude a decision *significantly influenced by religious considerations.*"[22] For this judge, then, the requirement

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20 Any effect on Saturday-observing consumers, say, could thus survive a sec. 1 analysis, which allows infringements of rights to be upheld as long as they represent "such reasonable limits, prescribed by law, as can be demonstrably justified in a free and democratic society."

21 The section reads: "Conduct 76.(1) All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles; (2) The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school."

22 Ibid., 330 (emphasis added).

that a public body function on secular principles meant that no concerns in education may be influenced by or based upon religious belief.

When the case went to the British Columbia Court of Appeal, it was argued that Madam Justice Saunders' interpretation of the term "secular principles" was erroneous since it placed the beliefs of religious citizens at a disadvantage vis-à-vis the beliefs of non-religious citizens. The argument was successful. Writing for the unanimous panel of the Court of Appeal, Justice McKenzie analyzed the term "secular" in a manner that, for the first time, looked behind the term and considered the results of alternative interpretations. In doing so, the court adopted an approach to the secular that includes, rather than excludes, religion: "A religiously informed conscience should not be accorded any privilege, *but neither should it be placed under a disability.* In a truly free society moral positions advance or retreat in their influence on law and public policy through decisions of public officials who are not required to pass a religious litmus test."[23]

When the appeal from this decision went to the Supreme Court of Canada, one of the arguments advanced by counsel for the appellant was that the approach to the "secular" taken by the Court of Appeal was itself misguided. The Supreme Court disagreed, as we have already seen. Though it overturned the British Columbia Court of Appeal in the result (remitting the matter back to the school trustees for reconsideration), it left untouched that court's finding on the religion-inclusive secular. All nine justices upheld the Court of Appeal with respect to "religious considerations" being valid aspects

23 *Chamberlain v. Surrey School Board* (2000), 80 B.C.L.R. (3d) 181 (C.A.), *per* McKenzie J.A. (par. 28, emphasis added); reversing (1998) 60 B.C.L.R. (3d) 311 (S.C.). A more detailed analysis of this decision, written by Brad Miller and myself, can be found on *LexView* (<www.centreforrenewal.ca>).

of a determination under the rubric "secular" in the School Act of British Columbia.[24]

What then are we to make of the fact that the same court that accepted the religion-inclusive use of "secular" failed to reckon with the ideological nature of "secularism"? Prior to *Chamberlain*, judges often used "secular" in its common but philosophically unsound sense, without considering alternative interpretations. Will they now continue to do so with respect to the term "secularism"? With what effects? The manner in which the majority judges analyzed the case suggests that real confusion persists and that it is not confined to the level of semantics but, rather, touches on core issues of religious freedom, the nature of

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24 Since the chief justice expressly agreed with the manner in which the dissenting judges addressed the question of the secular, their approach can be said to be the opinion of the court on the question. In his dissent Gonthier J. writes at par. 137: "In my view, Saunders J. below erred in her assumption that 'secular' effectively meant 'non-religious.' This is incorrect since nothing in the *Charter*, political or democratic theory, or a proper understanding of pluralism demands that atheistically based moral positions trump religiously based moral positions on matters of public policy. I note that the preamble to the *Charter* itself establishes that '... Canada is founded upon principles that recognize the supremacy of God and the rule of law.' According to the reasoning espoused by Saunders J., if one's moral view manifests from a religiously grounded faith, it is not to be heard in the public square, but if it does not, then it is publicly acceptable. The problem with this approach is that everyone has 'belief' or 'faith' in something, be it atheistic, agnostic or religious. To construe the 'secular' as the realm of the 'unbelief' is therefore erroneous. Given this, why, then, should the religiously informed conscience be placed at a public disadvantage or disqualification? To do so would be to distort liberal principles in an illiberal fashion and would provide only a feeble notion of pluralism. The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism."

pluralism, and the principles that govern public policy. Their own analysis shows more than one persistent trace of ideologically exclusive secularism, not least where it implies that the religious views of parents must be subordinated to the overriding liberal values of "tolerance" and "diversity."[25]

A NEW LIBERALISM?

In a perceptive article entitled "Secular Fundamentalism," Paul Campos observes that many secularists appear blind to the way in which their conception of liberal principles and values poses a threat to genuine diversity. Referring to the prevailing Rawlsian vision of liberalism, Campos writes:

> The irony, of course, is that in this triumphalistic incarnation liberalism can begin to resemble the very dogmatic systems that it once rebelled against. Despite its highly abstract endorsement of moral and religious pluralism, [John Rawls's] *Political Liberalism* is ultimately a paean to a secular creed that has within it the potential to become every bit as monistic, compulsory, and intolerant of any significant deviation from social verities as the traditional modes of belief it derided and displaced.[26]

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25 The majority view is summarized by McLachlin C.J. at par. 25: "In summary, the Act's requirement of strict secularism [*sic*] means that the Board must conduct its deliberations on all matters, including the approval of supplementary resources, in a manner that respects the views of all members of the school community. It cannot prefer the religious views of some people in its district to the views of other segments of the community. *Nor can it appeal to views that deny the equal validity of the lawful lifestyles of some in the school community.* The Board must act in a way that promotes respect and tolerance for all the diverse groups that it represents and serves" (emphasis added).

26 Paul F. Campos, "Secular Fundamentalism," *Columbia Law Review* 94 (1994): 1825. (Thanks to Professor Ian Leigh of the Department of Law, Durham University, for bringing this article to my attention.)

What is the remedy to this new dogmatism, which preaches tolerance but practises intolerance? Which regards itself as liberal but is too often illiberal?

The British philosopher John Gray, who also cautions us to beware the monistic counterfeits of tolerance and diversity, argues that authentic liberalism must eschew all approaches that foresee a common end point to societal evolution.[27] According to Gray, if we are to do justice to our actual diversity, then we will need a different sort of liberal philosophy than the one to which we are accustomed. Liberalism, he says, may take two forms:

> In one, toleration is justified as a means to truth. In this view toleration is an instrument of rational consensus, and a diversity of ways of life is endured in the faith that it is destined to disappear. In the other, toleration is valued as a condition of peace, and divergent ways of living are welcomed as marks of diversity in the good life. The first conception supports an ideal of ultimate convergence on values, the latter an ideal of *modus vivendi.* Liberalism's future lies in turning its face away from the ideal of rational consensus and looking instead to *modus vivendi.*[28]

Gray, I think, is largely right. The good news for Canada is that some of the seeds for the new liberalism, that is, for the modus vivendi envisioned by Gray, can be found in the refiguring of

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27 Recall here the National Secular Society's principle: "We assert that supernaturalism is based upon ignorance and is the historic enemy of progress."

28 Gray, *Two Faces of Liberalism,* 105, continues: "The predominant liberal view of toleration sees it as a means to a universal civilization. If we give up this view, and welcome a world that contains many ways of life and regimes, we will have to think afresh about human rights and democratic government. We will refashion these inheritances to serve a different liberal philosophy. We will come to think of human rights as convenient articles of peace, whereby individuals and communities with conflicting values and interests may consent to coexist." (I am indebted to Peter Lauwers for introducing me to Gray's important work.)

"the secular" that occurred in the *Chamberlain* decision. But these seeds will be nurtured into fruition if, and only if, the monistic tendencies of the older liberalism, influenced as it is by a history of anti-religious secularism, are still more decisively abandoned.

Can our judges and politicians extricate law and public policy from the rocky soil of that secularism and from the terrain of a liberalism that is inhospitable to genuine tolerance and diversity? Certainly the early decades of Charter jurisprudence suggest that extrication will not be an easy task. So does the *Chamberlain* case itself. Its confusion about secularism led to practical results that did not so much uphold diversity as undermine it. Contrary to the court's own principles, the *Chamberlain* decision produced a rank-ordering of rights in which the sexual dogma of same-sex advocates effectively trumped all challengers, including those of parents with religious convictions about their children's education.[29] That,

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29 In *Dagenais v. Canadian Broadcasting Corporation* [1994] 3 S.C.R. 835, we read at par. 31: "When the protected rights of two individuals come into conflict ... *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights." Only the dissenting judges refer to *Dagenais*, however. In the two sets of reasons given for the majority opinion, the thought process is quite different. Both the chief justice and Justice LeBel rely on the general concept of Charter values rather than any particular Charter right; that is why words like "diversity" and "tolerance" are elevated to near constitutional significance. Moreover, when they deal with the equality rights provision, they fail to draw attention to the fact that religion is actually listed there, unlike the judicially "embodied" protection for sexual orientation. (Though the latter was deliberately left out of sec. 15 – see the Proceedings of the Joint Committee of the Senate and House of Commons [1981] 48, 33f. – it was later found to be analogous to the listed terms, and in 1995 was read in by the Supreme Court in *Egan and Nesbit.*) So we are not altogether surprised when sexual orientation is somehow found to be a weightier concern than religion. But that contravenes both the court's own proscription against rank-ordering of Charter rights and the language of the provision itself.

of course, is a sign of the old secularism – or should we say, with Graham Good, "the new sectarianism"? – at work.[30] It cannot be denied that, at the moment, the Supreme Court of Canada's endorsement of secularism as a Canadian constitutional principle is in stark contradiction to its religion-inclusive use of the word "secular."

30 Compare Graham, *Humanism Betrayed,* chap. 2.