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A time to fight

Christians need to get behind TWU's law school

by André Schutten

Trinity Western University (TWU) in Langley, British Columbia, is a private, faith-based Christian college. In June 2012, they submitted a proposal to establish a School of Law. The university already has a Business School, Teachers College and Nursing School, so a School of Law seemed a natural next step.

However TWU's proposal was met with an outpouring of angry diatribes against the very idea of a Christian law school. This raging debate has seen many law professors, deans and students coming out against the school with only a few backing it.

One particularly shrill screed against TWU's proposal was written by lawyers Clayton Ruby and Gerald Chan and published in the *National Post*. Their column was an interesting opinion piece to say the least, and was certainly reflective of the arguments against the Christian law school. But it wasn't an accurate representation of Canadian constitutional law. There were so many errors, instances of wishful thinking or misleading statements in the piece, it is hard to know where to begin a critique.

Strangers to Christianity

In their first point, Ruby and Chan suggest, "Few Christians accept that homosexuality is a moral evil."

In fact, most Christians who exercise their faith in religious community with others are more likely than not to have traditional or orthodox views on marriage and sexuality. But whether or not a Christian community holds that marriage is between one man and one woman is none of Ruby and Chan's business, nor is it the business of the government or the courts. The Supreme Court made it quite clear (in a case called *Amselem*, 2005) that to pry into the sincerely held religious beliefs of citizens is inappropriate for courts or government decision makers.

Ironically inclined

In the 1990s the British Columbia College of Teachers (BCCT) refused to certify TWU-trained teachers. They claimed that the school's requirement that all students sign a

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"community covenant" was discriminatory to homosexuals, because the covenant included the promise to avoid "sexual intimacy that violates the sacredness of marriage between a man and a woman." TWU took them to court and in 2001 the Supreme Court ruled 8-1 in the university's favor, ordering the BCCT to give accreditation to TWU.

In their *National Post* article Ruby and Chan quote from the 2001 Trinity Western Supreme Court ruling. "Heed these words!" they say,

> *The Court said, "The proper place to draw the line in cases like the one at bar is generally between belief and conduct… The freedom to hold beliefs is broader than the freedom to act on them."*

"You see," they continue, "barring students from a law school is action, not mere belief."

What Ruby and Chan ignore is that, in the decision they cite, *the Supreme Court allowed TWU to continue the "action" of barring active homosexuals from their teaching program* (and anyone else violating the covenant). Did the Court misapply its own rules in the very case it was deciding at that moment? Obviously not.

Don't know much about history

Ruby and Chan try valiantly to avoid the absurdity of their position by suggesting that, in law, a Teachers College and a Law School are two incomparable institutions. Apparently, teachers can be religious but lawyers must strictly separate their faith from their profession. "The legal system," they say, "has no history of religious affiliation. Instead, our legal tradition has always emphasized a strict separation of Church and State."

Well, no. It hasn't. The strict separation of Church and State is an American concept that only really begins to appear in Canadian jurisprudence post-1982. In Canada, there is a rich history of religious affiliation in the legal profession and it's a pretty direct (though at times symbolic) link. It is plastered all over the *Magna Carta* of 1215 and it is found in Canada's Head of State, the queen, who also happens to be… the head of the Anglican Church.

From first-year law school, lawyers are informed about *Blackstone's Commentaries*. The *Commentaries* were long regarded as the leading work on the development of English law and played a role in the development of the Canadian and American legal systems. And they are also one of the most complete, consistent, authored expositions of the Judeo-Christian worldview of law ever written.

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In addition, lawyers would have studied Tort Law, with the foundational case of *Donoghue v. Stevenson* [1932], where Lord Atkin stated,

> *The rule that you are to love your neighbor becomes in law, you must not injure your neighbor; and the lawyer's question, "Who is my neighbor?" receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor.*

This is still the law in Canada. And if there were any confusion about where the reference to "loving your neighbor" comes from, the text book, if it were *Linden on Torts*, would have obligingly included the passage (with reference) to the Parable of the Good Samaritan, Luke 10:29-37.

Also, up until 1985, Canada had something called *The Lord's Day Act*. And there are many more examples of a strong connection between church and state in Canadian law. Mr. Ruby and many lawyers like him may not like the Judeo-Christian origins of our laws, but to say they never existed is not true.

Got it backwards

But the connection between church and state aside, and more fundamentally, the doctrine of the separation of church and state was created to protect the church *from* the state. So, for secularists to argue that a religiously informed institution must be forced to violate it's own religious beliefs or else be cut off from engaging in the public square suggests that these people see this "separation of church and state" as a one-way street.

They also fail to understand what a secular state actually is. The Supreme Court has been clear (*Chamberlain*, 2002) that secularism is an inclusive, not an exclusive, concept. That is, our public square is supposed to be a welcoming one, where people and institutions informed by various faiths and worldviews come together and interact together. The fact that some of them hold themselves to a certain moral code should not be grounds for discrimination against them, for barring them from the public square.

The Supreme Court also said in the 2001 TWU case that, "freedom of religion is not accommodated if the consequence of its exercise is the denial of the right of full participation in society." This is the point that is missed by so many critics: by banning Christians from participating in society on an equal playing field, they violate the separation of Church and State by using the State to restrict the Church's access to the public square.

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Resorting to name calling

Finally, Ruby and Chan (and others like them) argue that TWU's policy targets not just homosexual behavior, but homosexual people, citing as authority the recent hate speech case from the Supreme Court, *Saskatchewan (Human Rights Commission) v. Whatcott*. They explain that characterizing the issue as one of behavior rather than identity is "an old trick that bigots have long used to mask their views."

However, Ruby and Chan are selective in their quoting of the Supreme Court. In the paragraph before the one to which they refer, Justice Rothstein states, "I agree that sexual orientation and sexual behavior can be differentiated for certain purposes." Does that make Justice Rothstein and the five Supreme Court justices who signed their name to his judgment "bigots" who are just "masking their views"? I doubt it.

Furthermore, the evidence does not back up Ruby and Chan's claim. If, in fact, TWU's policy is subversively targeting homosexual people, then it follows that there would be no gays who attend TWU. But that's not the case. There are, in fact, a number of homosexual men and women who attend that university and, according to some anecdotal evidence, even do so because they find it to be a safer and more welcoming place than some other universities!

Just plain wrong

Herein lies the false assumptions made by Ruby and Chan and the vast majority of those who echo their clap-trap: All assume that it is the school *imposing* the community covenant on the students, a large institution discriminating against small individuals, a Goliath beating up on a bunch of little Davids. But that's not the way a covenant works and it is a very narrow view of what a religious institution is. A lifestyle covenant is something that an individual willingly takes on for himself or herself.

Consider this: I certainly hope that Ruby and Chan would not object to any individual Canadian governing his or her lifestyle according to a certain moral code. If I, as an individual Canadian, gay or straight, decided to govern myself according to a set code, and a friend down the street saw value in that code and decided to govern himself according to the same code, and a neighbor heard of it and she decided to govern herself by the same code, then what in Canadian law is stopping us from coming together and, while honoring that code together, we embark in a corporate enterprise together? Nothing! In fact, there's a specific protection for that very thing: it's called freedom of association (section 2(d) of the *Charter*, a *fundamental* freedom for all Canadians). And that freedom, to be clear, includes an absolute protection of the constitutional rights of individuals when they are exercised in common with others.

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That's what TWU is: a group of some 4,000+ individuals who see value in governing themselves according to a certain code that happens to be religiously informed. And these individuals have decided to engage in a corporate enterprise together, learning different professions together (teaching, nursing, and hopefully, law). There is no harm in that. To give accreditation to a university that is producing high calibre professionals and good citizens who are informed by a particular worldview, a worldview that has shaped the modern Western world and our modern legal system, is a step forward towards an inclusive, pluralistic society that sees value in more than just the narrow, anti-religious worldview of Clayton Ruby and Gerald Chan.

Covenant replacers

Really, what this comes down to is the enforcing of a secular-humanist orthodoxy on same-sex marriage as a moral and public good. This orthodoxy is ubiquitous in Canadian society such that religious communities who uphold the sacredness of marriage as between one man and one woman to the exclusion of all others, as Professor Bradley Miller states, face "significant barriers to participation in public life."

Professor Miller, a Christian law professor at Western University, explains that if the objection to a Christian law school is pragmatic, i.e., that TWU law grads pose a threat to society due to their discriminatory beliefs about marriage, then the logical result must be that *any* Christian who shares those beliefs, whether or not they attend a Christian university, ought to be barred from the public square: Christian students should be expelled, Christian faculty should be fired and Christian lawyers should be disbarred. As Miller notes, the "campaign against TWU's community covenant logically ends, ironically, in the enforcement of their own community covenant."

Conclusion

So, even if you don't care about a fight over a law school, this case really matters. If a Christian worldview means we can't offer a law degree, it isn't long before the argument is made that a Christian worldview means we can't offer a high school diploma either. We can already see something coming quite close to this in Québec. There the province is requiring all schools (including independent Christian schools) to teach a religious subject from a secular perspective – the State is determining not only *what* to teach, but *how* to teach it. We have to take a stand for freedom while we still have it. And we have to stand with those whose freedom is threatened.

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Chief Justice Dickson, back in 1985, once said,

> *A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms.*

To argue that Christians may not enjoy their freedom of association, freedom of religion and freedom of expression as a community and as a publicly engaging institution *means we are no longer living in a truly free society*. I'm afraid of where this might take us if this case fails.

So what can be done? What can an individual Christian do on an issue that seems only to engage the lawyers and politicians of this country?

1. First of all, we need to help reshape the common misunderstanding of what a religious institution is. Through regular interaction with our neighbors, co-workers and friends and through social media and mainstream media (think letters to the editor!) we need to make the point repeatedly and emphatically that moral codes should not be seen as discriminatory impositions of big institutions (churches, schools, and charities), but as willingly adopted lifestyles of an association of individuals.
2. The second thing we can do is pray for God's blessing on all Christian educational institutions and, in particular, for the success of TWU's law school proposal. This case is the strongest evidence yet that Canada needs alternative educational institutions. The study of law has been stripped of a solid worldview for too long and it shows!
3. The third thing we can do is to engage our leaders. This is especially true in British Columbia, where the province has some clout in determining whether or not the law school receives accreditation. But more fundamentally, across the country, we need all of our politicians to respect the autonomy and corresponding value that these religious institutions bring to society. Ask your MP and MLA/MPP what their views are on the value of religious institutions. And when they tell you that they have great respect for religious communities (as that is the politically correct thing to say) then ask them to prove it by protecting our freedom of association and freedom of religion.

Together we can take a stand. Together we can show Canada its hypocrisy. And together, in our fight for freedom, we can perhaps improve the ability of Christians to shine their light effectively in this land.

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André Schutten is a lawyer with the Association for Reformed Political Action (ARPA) Canada. He completed his Master of Laws (LL.M.) degree in Constitutional Law this summer. The focus of his research was on the intersection of the freedom of religion and the freedom of association. A much shorter version of this article was published in the National Post *titled, "Even the faithful are citizens."*