

Varieties of Religious Establishments
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Workshop Report

Tera Bradford
Leo Van Arragon

The workshop, "Varieties of Religious Establishments," funded by The Religion and Diversity Project, St. Thomas University, the Atlantic Human Rights Centre, and the Social Sciences and Humanities Research Council of Canada brought together scholars from Australia, the United States and Canada to examine the role of governments in the establishment of religion. While assertions of religious neutrality or secularism are common to states throughout the world, it is clear that they, through a variety of mechanisms and practices, privilege some types of religious expression while marginalizing others. This workshop examined the informal and formal ways in which states engage in religious establishment and regulation.

Benjamin Berger (University of Victoria), in his paper, "The Aesthetics of Religious Freedom" suggested that regulation of religion goes beyond law, arising out of an aesthetic. He referred to the work of Immanuel Kant and Ernst Cassirer in exploring the aesthetic as the imagination of time and space out of which law and regulation emerge. Using a number of Canadian religious freedom legal cases, he demonstrated that time and space are not determinative but, equally, they are never absent, creating the field within which regulation takes place. Robert Yelle (University of Memphis), in "What did Religious Freedom mean in Ancient India?" made a case for the incorporation of "transcendence" into law and regulation as a way of getting beyond the sacred - secular paradigm. He suggested that all legal and regulatory frameworks, including those who claim to be "secular," are based in some form of transcendence and pointed to ancient India as a comparative reference in considering the increasingly bureaucratic and technical formulations of law today.

In Session II, Mark McGowan (University of Toronto) presented a history of religious broadcasting in Canada from 1918 - 2008 in his paper titled "Church of the Air: Roman Catholics, Religious Programming and Regulation in Canadian Broadcasting, 1918 - 2008." He examined the creative tension between government regulation of access to airtime in order to achieve balance and fairness and the strategies adopted by religious groups to resist and adjust to regulation while achieving their own objectives. While there is no formal separation of church and state in Canada, his account demonstrated that separation between state and religion has been an informal working principle in Canadian regulation of broadcasting. James Richardson (University of Nevada Reno) summarized a number of his papers in his presentation titled "Research on Legal Pluralism: Approaches to Examining Shari'a in Western Societies." Citing research which demonstrates the widespread application of legal pluralism throughout the globe and history, he noted that the issue has become more urgent in response to the perceived spread of Islam. There are many different models which create legal room for Shari'a law, the choice of model occurring in a matrix of factors which he examined.

In Session III, Malika Zeghal (Harvard University) presented "What is a Muslim State? Illiberal Secularity in the Young Tunisian Republic" to examine the presidency of Habib Bourguiba (1957 - 1987) and the ambiguous role of religion in a republican state. Tunisia engaged in a variety of practices designed to harness Islam to serve the purposes of the state in a relationship which reshaped the religious practices and imagination. Greg Johnson (University of Colorado at Boulder) presented his research into the emergence of indigenous resistance in Hawaii in a paper titled "Contesting Stewardship of the Dead and the Making of Tradition." The context of his research is that, while there is comprehensive legislation in Hawaii to protect indigenous burial sites, significant decrease in state funding has resulted in inconsistent and ineffective enforcement. The pressure created by housing and

tourist development has triggered sophisticated grassroots action in the form of demonstrations and blockades but, equally important, in the courts. As a consequence, there has been a resurgence in indigenous Hawaiian identity, including religious practices, which had lain dormant for considerable time.

During the public session, Peter Beyer (University of Ottawa), in a paper titled "Privileging Religion in a 'Post Westphalian' State: Shadow Establishment, Organization, Spirituality and Freedom in Canada," suggested that, while it is clear that we are experiencing major global changes in the public role of religion, there is much less consensus on how to describe what we are experiencing. Linking religious establishment to the Treaty of Westphalia he proposed that we are moving into a post-Westphalian world characterized by global religious migration, fluid boundaries and competing centres of religious authenticity and authority. He concluded with the question, "Are we seeing a shift away from religion as foundation toward instrumental or 'useful religion.'"

Peter Danchin ((University of Maryland) followed with a paper titled "Freedom of Religion and the Claims of Religious Minorities in South Africa" in which he examined the challenge represented by Muslim family law claims to a religious secular distinction. He questioned the objective meaning of "rights" suggesting that the state cannot be secular and neutral in the definition of rights and the public space created for religion, demonstrated by the marginalization of Muslims in South Africa.

In Session IV, Charlotte Baines (Monash University) presented "The Constitutional and Legal Framework for Freedom of Religion and Belief in Australia in the 21st Century," in which she examined developments in the Australian constitutional regulation of religion. Her research is taking place in the context of questions about the roles of the legislature and the judiciary in religious freedom questions and of the questions emerging out of the transition from the use of religion as a civilizing force in Australia's early European history to a more ambiguous role of religion in a differentiated, secular society. She identified key constitutional and legal developments which illustrate tensions as a traditional Christian legal establishment tries to create room for and to regulate non Christian religious expressions and practices. Cathy Holtmann (University of New Brunswick) presented a paper jointly written with Nancy Nason-Clark (University of New Brunswick) titled "Enlarging the Sand Box: Thinking about Cooperation and Collaboration between Diverse Religious and Secular Community Responses to Domestic Violence" to explain an internet based project designed to mobilize community resources in response to domestic violence. She identified the reluctance on the part of social services agencies to partner with religious leaders to address domestic crises which misses critically important partnership opportunities. People in domestic violence situations are often members of religious communities, trust religious leaders and express themselves in language of religion. At the same time, religious leaders and communities often lack the expertise to respond appropriately and they are, for a variety of reasons, reluctant to be open about what is happening in families. Her project is designed to make the issues of domestic violence and resources accessible across religious and demographic lines.

The workshop concluded with a conversation titled "Neighbo(u)rly Misreadings and Misconstruals: A Cross Border Conversation" between Lori Beaman (University of Ottawa) and Winnifred Sullivan (SUNY-Buffalo Law School) about some of the differences in religious freedom discussions between Canada and the United States. Beaman reflected on the papers presented during the workshop, relating the issues raised to a shift in Canadian courts from protection of religious freedom to protection of national security. Sullivan identified a shift in the interpretation of the establishment clause of the First Amendment to the U.S. Constitution away from separationism and toward open incorporation and regulation of religion in the work of the government.