“We educate, they indoctrinate”
Religion and the politics of togetherness in Ontario public education

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Table of Contents

Chapter One Introduction

1.1. Themes: Religion, Education and Citizenship

1.1.1. Theme #1 Religion

1.1.2. Theme #2 Education

1.1.3. Theme #3 Citizenship

1.1.4. The nexus of religion, education and citizenship

1.2. Organization of the thesis

1.3. Terms and definitions

Chapter Two Literature, Theory and Methodology

2.1. Literature

2.2. Theory

2.2.1. Social Constructionism

2.2.2. Discourse, knowledge and power

2.2.3. Historical narrative

2.2.4. Law and the social construction of religion

2.2.5. Liberal secularism and modernity

2.3. Methodology

2.3.1. Critical Discourse Analysis

a. Defining critical discourse analysis

b. My choices within critical discourse analysis

c. Application of critical discourse analysis in my research

c.(i). Chapter Three "The Election of 2007"

c.(ii). Chapter Five "Law"

c.(iii). Chapter Six "Education about Religion"

2.3.2. Method #2 Critical Genealogical Analysis

a. Defining Critical Genealogical Analysis

b. Application of critical genealogical analysis in my research.

2.3.3. Limitations

Chapter Three "The election of 2007 and the politics of togetherness"

3.1. Introduction

3.2. Theoretical and methodological issues

3.3. Election rhetoric and commentary

3.3.1. Politicians

3.3.2. Ontario voices

a. Voices opposing the Tory proposal

b. Voices supporting the Tory proposal

c. Commentary on the election of 2007

3.3.3. Review: Social constructionism and critical discourse analysis in the election of 2007

Chapter Four "Ontario's Legacy"

4.1. Introduction

4.1.1. Literature

4.1.2. Theoretical and methodological issues

4.1.3. Limitations

4.2. Hope Royal Commission 1950

4.2.1. Introduction

a. Origins of the Royal Commission

b. Historical background: Egerton Ryerson and the common school movement

4.2.2. Hope Commission majority report

4.2.3. Hope Commission minority report

4.2.4. Conclusions

4.3. Religion Information and Moral Development: "The Report of the Committee on Religious Education in the Public Schools of Ontario" or the Mackay Report (1969)

4.3.1. Introduction

4.3.2. Historical background: *Drew Regulation*, 1944; "Ryerson Legacy or Religion out of bounds?"

4.3.3. The 1960's, Mackay and a critical reassessment of Drew

4.3.4. Canadian Jewish Congress and Mackay

4.3.5. Mackay Report; "Listening to religious minorities in a new way? The Ontario legacy and religious minorities in the 1960's"

4.3.6. Reconsidering Mackay' reception of religious minorities

4.3.7. Reception of the Mackay Report

4.4. Conclusions on the Mackay Report

4.4.1. Dutch Calvinists; Resistance outside the bounds of toleration"

a. Historical background

b. Independent school movement

c. Dutch Calvinist social model

4.5. The Shapiro Commission 1985

4.5.1. Background and mandate

4.5.2. Shapiro Report

a. Introduction

b. Written briefs

b.(i). Public school boards

b.(ii). Separate school boards

b.(iii). Jewish schools

b.(iv). Protestant denominational schools

b.(v). Conference of Independent Schools.

b.(vi). Schools for special education

4.5.3. Dutch Calvinists and the Shapiro Commission
4.5.4. Shapiro Commission recommendations
4.5.5. Shapiro, independent schools and risk management
4.5.6. Conclusions
4.6. Ontario public education politics 1980's – 2000
4.6.1. Introduction
4.6.2. Social diversity
4.6.3. 1980 – 2000: Economics, stakeholder demand and control of public schools
4.6.4. Mike Harris and the commonsense revolution
4.7. Equity in Education Tax Credit (EETC)
4.7.1. Introduction
4.7.2. Three themes: Public and private schools and the delivery of public education, choice and the role of the state.
a. Public and private schools and the delivery of public education
b. Choice: Three issues
b.(i) Issue #1: "Choice in education as a source of harm"
b.(ii) Issue #2: "Capacity of parents to make good choices in education"
b.(iii) Issue #3: "Management of risk in educational choices"
b.(iv) Conclusions on "choice"
c. The role of the state
4.7.3. Effects of the EETC
Chapter Five "Law"
5.1. Introduction
5.1.1. Organization
5.1.2. Theoretical and methodological issues
5.2. Timeline
5.3. Constitutional framework: Constitution Acts of 1867 and 1982
5.4. Religious freedom and equality case law
5.4.1. *Big M* 1985 and the link between religion and coercion
5.4.2. *Zylberberg v. Sudbury Board of Education* 1988
a. Background
b. Defining religion
c. Defining religious freedom
d. Coercion
e. Recognizing coercion
f. Public and private forms of religion

5.4.3. *Canadian Civil Liberties Association v. Ontario (Minister of Education)* 1990
a. Background
b. Court of Appeal, religious instruction and indoctrination
c. "Education about religion" and the shaping of public religion
5.4.4. Effects of *Zylberberg* and *Elgin County*
5.4.5. Resistance to the effects of *Zylberberg* and *Elgin County*
a. Background to *Adler* and *Bal*
5.4.6. *Adler v. Ontario* 1992, 1994, 1996
5.4.7. *Bal v. Ontario* 1994, 1997
a. Introduction
b. *Bal, Memorandum 112* and public schools as secular spaces
5.4.8. *Adler*, religious minorities and the assessment of risk and harm
5.4.9. Conclusions
Chapter Six "Education about religion"
6.1. Introduction
6.2. Education about religion in the Ontario curriculum
6.3. Education about religion and the politics of togetherness
6.4. Education about religion and historical narrative as a political strategy
6.5. Epistemological issues in education about religion
6.6. Education about religion and critical thinking
6.6.1. Critical thought, indoctrination and the freedom to choose
6.6.2. Critical thought and religious neutrality
6.6.3. Critical thought in Ontario public education
6.6.4. Critical thought as a project in progress
6.6.5. Delivery of critical thought
6.6.6. Education about religion and critical thought: Conclusions
Chapter Seven Conclusions

Abstract

Religion has had an ambiguous role in Ontario public education, having provided both the common language for social cohesion and for resistance by religious groups to what they have perceived to be a dominant, exclusive and coercive ethos. In similar ways, religious freedom and diversity have been highly prized and protected in Ontario while at the same time being sources of anxiety and social disruption. Using critical discourse analysis and critical genealogical analysis I examine the conflicted role of religion in Ontario public education through competing discourses in political rhetoric, selected government documents formulating ways of conceptualizing the role of religion in public education from 1950 to 2003 and case law between 1985 and 1997. More precisely, I examine ways in which educational, social and political goals of education have been intertwined throughout the history of Ontario public education. I show that the public school system has been a state instrument privileged to deliver public education as a way to resolve the tension between social cohesion and social diversity by delivering common civic values. One result is that challenges to the public school system are often interpreted as attacks on public education and on Ontario society, particularly when those challenges are launched by religious groups. This has meant that debates about the role of religion in public education tend to be volatile making serious dialogue about this important social issue difficult to achieve while restricting the space for religious diversity in public education.

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Chapter One *Introduction*

> Education of our youth at the expense of the public in provincially controlled schools can be justified only on the ground that it materially improves the quality of citizenship. To devise ways of and means of providing training for better citizenship has been an aim in all our discussions ….. in our expressed desire to have the advantages of a sound cultural background made available to all children. (Hope Commission Report, 1950, Chapter VI, #131)

> …we hope it will be through true education and not through any kind of indoctrination, that he will be encouraged to choose the religious and moral values that will hold as good for his time as those which we ourselves prize so highly have held good in ours. (Mackay Committee Report, 1969)

> "We work and dream and build together. Always, always, always together." Dalton McGuinty (Montreal Gazette, October 14, 2007).

The late 20th century and the first decade of the 21st century have been very dynamic and interesting from a religious studies perspective. The attack on the Twin Towers in New York City in 2001, the Madrid bombings in 2004 and the London bombings in 2005 were only the most high profile violent political events in which the religious identity and motivations of the perpetrators were in the foreground of analysis and debate. In the meantime the religious right in the United States, reassertion of Christian national identity in Europe and the rise of Hindu nationalism in India added to a sense that religion and religious difference had emerged as political forces threatening liberal democracies around the world. Of course, the careful observer will know that religion had never gone away but there seemed to be widespread consensus that religion and religious people were out of control, acting outside the boundaries established for religion and threatening social order.

A number of events indicate that Canada has not been immune from the anxiety over religion sweeping the rest of the world.[1] It was in this atmosphere of anxiety over

[1] Canadian regulation of religion reflected increasing concern about religious diversity with the prosecution of Mormon polygamists in BC, the Hutterite Driver's Licence case in Alberta (2007), the shutting down of public discussion of sharia law in Ontario (2005) and the banning of the *kirpan* in Quebec's National Assembly (2011).

religion and religious diversity that the Ontario provincial election of 2007 unexpectedly became a highly charged referendum on religion when John Tory, leader of the Progressive Conservative Party, announced consideration of government funding of the non-Catholic faith based schools as a plank in his party's platform. The Liberals, led by incumbent Premier Dalton McGuinty, effectively turned Tory's decision to their advantage using religion as threat so that this single issue became the key to Liberal electoral success. The results were decisive in two ways. First, the Liberals won 71 out of possible 107 seats with the Progressive Conservatives winning 24 seats. Second, a less easily demonstrable result was the entrenchment of the representation of religion and religious communities as threats to the province's civic stability in general and to public education in particular.

Three factors relating to the role of public education in Ontario society contributed to the volatility of the reaction to John Tory's proposal. First, public education is a social practice designed to produce an educated citizenry equipped with the skills of critical and free thought considered essential for success in a modern, free and democratic society. Second, it is expected to create social harmony by inculcating common civic values so that critical and free thought does not lead to social disintegration. Third, public education is an important industry which creates many jobs with powerful professional organizations positioned to protect their interests. Public education in Ontario, therefore, carries a lot of freight with educational, political and social purposes and goals inextricably intertwined with one another.

On the other hand, the reaction to the proposal to extend recognition to non-Catholic faith based schools could be seen as surprising in three ways, particularly to anyone not familiar with the history of Ontario public education. First, the proposal could have been considered a logical extension of an already existing mechanism for funding faith-based schools, Ontario having funded Roman Catholic separate schools since the 1860's. Further, other jurisdictions in Canada and throughout the world include faith-based schools in their public funding policies with no clear evidence of harm to their societies or their citizens. Finally, the Ontario public school system is already very diverse, serving a huge geographical area with great regional differences. In response to demands for services to address learning, social and emotional needs, boards of education have created a wide range of programs,

among them religious alternatives.[2] Nevertheless, in 2007 the proposal was represented as a threat to Ontario public schools, public education, young people and civil society itself.

John Tory's proposal to consider government funding for non-Catholic faith based schools was represented as a threat in four ways. First, it was seen to create a diversion of public funds and encouraging "outflight" of students from a public school system already under pressures due to under-funding and excessive social and educational demands on its resources. Second, the expansion of recognition to the faith-based school sector was seen as a regressive step, threatening to undermine public education by re-introducing religious sectarianism into public education. The third threat was to young people who, by being subjected to sectarian indoctrination at government expense, would be denied the benefits of a common, secular education and access to common Canadian values while being subjected to dangerous or anachronistic ideas and modes of thought. Fourth, the proposal was seen as a threat to Ontario civil society since the public school system and public education are seen as essential to the creation of social harmony through the inculcation of shared values.

However, the idea that sectarian religion is a threat was not new in 2007, having been a feature of discourses about public education throughout Ontario education history. While Ontario prides itself on its social diversity, religion is a category of diversity which has consistently been the subject of scrutiny and regulation in Ontario public education, with debates involving religion in public education having a tendency to escalate into highly contentious dramas. As Robin Sears observes, "The story of religion in schools is as close as the province comes to passion in politics" (2007, p. 18). The provincial election of 2007 is only one in a long history of struggles over the role of religion in public education with religious groups contesting the boundaries around religion in public education but also debating the forms of religion and religious practices acceptable within those boundaries. So for anyone familiar with the longer history of Ontario public education, the reaction to the Tory announcement is not so surprising after all but rather one that fits an historical pattern.

[2] Some examples; besides the Roman Catholic separate school system, there is a Protestant separate school board operating one school (in Penetanguishene), Eden High School in Lincoln County, formerly operated by Mennonite groups as Eden Christian High School but which turned over control in exchange for funding to the Lincoln County Public Board and restrictions on its religious activities, and a First Nations school operating in Rideau High School in Ottawa in which First Nations spirituality is an important part of the program.

One curious feature of the debates over the role of religion in Ontario public education is that the dominant voices are not, in the first place, against religion in a general sense. Opposition to religion itself has been present in Ontario public education throughout its history but has always been one of a number of minority voices. Evidence from case law, Ministry of Education program and policy documents and skirmishes over a wide range school programs and practices suggest that religious groups compete with each other over, among other things, the role of prayer in schools, religious instruction, funding for faith based schools and distribution of religious literature. While Ontario public schools are, as the result of legal decisions and regulatory changes between 1985 and 1997, identified as "secular" learning spaces, they are also considered hospitable to all religions rather than hostile to religion. Although in 2007 Dalton McGuinty firmly positioned himself against funding for non-Catholic faith-based schools, describing them as segregationist ghettos, he had strong ties to the Roman Catholic separate school system. The issue in Ontario is not, in the first place, "religion or no religion" in public education; rather, the issue is what forms of religion are seen as partners in and which ones are seen as threats to public education and Ontario society.

There is also no unanimity among religious groups that funding for faith-based schools is a good idea with supporters of faith-based schools representing minorities, not only within the province but also within their own faith communities. The majority of Muslim, Christian, Jewish and Sikh parents enrol their children in Ontario public schools because of the cost of privately funded school fees but also out of opposition to the idea of faith-based schools for theological, social or political reasons. Faith-based schoolers and home schoolers are minorities within minorities suggesting that there is no easy way to predict the decision to opt out of the public school system on the basis of religious labels.

There are, then, a number of conundrums and ambiguities in how religion and religious diversity are represented in Ontario public education, not only in the election of 2007 but also more broadly in Ontario history. The research in this thesis is inspired by the effective use of religion as a wedge issue in the election of 2007, guided by three research questions. They are, "How was religion represented in the debates over the role of religion in public education during the election and in other historical moments?", "What effects have the representations of religion had in the state regulation of religion in public education?"

and, "What does examination of the representations and regulation of religion reveal about hegemonic power in Ontario public education?".

1.1. Themes: Religion, Education and Citizenship

Debates about religion in public schools feature people of different religious traditions aligned in shifting alliances with each other and with people who do not identify themselves as religious around a variety of issues but there is little evidence that a clear rejection of religion dominates the debates. However, what is clear is that certain forms religion and religious practice trigger strong reactions, particularly when religion intersects with the two social practices of education and citizenship. Examination of the election of 2007 and other historical moments in Ontario public education history reveals that debates at the nexus of religion, education and citizenship tend to escalate into particularly volatile social confrontations across fault lines which are normally not visible.

1.1.1. Theme #1 Religion

Religion has been an important feature in Ontario public education throughout its history with about one third of Ontario's students being educated in the publicly funded Roman Catholic separate schools. In addition, until 1990 the common ethos of public schools was defined within a Protestant Christian framework by law and in the *Education Act*. However, during the election of 2007, religion was represented in binary terms as an unbridgeable social fault line which threatened not only the Ontario public school system but also public education and the stability of Ontario society. Religion and religious difference suddenly became important in ways that they normally are not.

The purpose of this thesis is to examine the representations of religion in competing discourses over religion, education and citizenship in order to better understand why, on the one hand, the issue of religion in Ontario public education triggers such strong reactions while, on the other hand, religion is a ubiquitous feature of Ontario society and public education. In other words, why do religion and religious difference sometimes emerge as important while at other times, they are virtually invisible? If debates over religion are not driven, in the first place, by an anti-religious impulse, then why do Ontario citizens

periodically seem positioned against each other across this apparently unbridgeable fault line?

The question of why and how the issue of religion became a game changing wedge issue during the election of 2007 is an important one in the early 21st century for two reasons. First, the Ontario election of 2007 saw the deployment of rhetorical strategies which marginalized religious minorities by foregrounding religious difference in ways that seemed at odds with Ontario's protection of religious diversity and freedom. The election therefore, seemed to expose social patterns and discourses in public education and in Ontario society which are usually opaque but which were revealed in a contest over access to public resources and control of public space.

The second reason for the importance of the divisive use of religion as a wedge issue is that the strong reaction to the Tory proposal actually had the effect of making serious debate about the role of religion in public education more dangerous than it should be. This is unfortunate because, in a religiously diverse society, serious engagement among and with religious groups is essential to find just balances between religious diversity and social harmony. The marginalizing of religious minority voices in debates about public education reduces access to the wisdom they might have about living together in an environment of harmonious diversity. So, while the language of social harmony and togetherness is regularly deployed in expounding the virtues of public education, in fact, the election of 2007 was an event in which some religious groups were marginalized, their support for faith-based schools having been identified as harmful to Ontario society. However, closer examination of the data reveals that the marginalization of religious minorities is strategic, occurring when control over particular practices and institutions are contested.

In Ontario public education, the conflation of the public school system as an institution, public education as a social practice and the achievement of good citizenship is the basis for professional and state power which has dominated public education since the 19th Century. Therefore, challenges to the public school system tend to be equated with attacks on public education and on Ontario's social order. This is especially true when the challenges are launched by religious groups advocating for the idea that public education can be delivered on multiple non-state sites, contesting the state as the primary stakeholder in public education. In such contests, religious groups are often represented as outsiders who

introduce dangerous or un-Canadian ideas, values and practices harmful to Ontario society and Ontario citizens.

The struggle over religion in Ontario public education has its parallels in other jurisdictions over a variety of issues but since September, 2001 they seem to have taken on a new intensity. In a new climate of global fear and security concerns, religion and religious differences tend to become essentialized and over-simplified in ways that reduce safe space for debates about important matters of public interest. The Ontario election of 2007 is an example of a lost opportunity for serious debate about the role of religion in education and religious diversity in public education when a proposal to consider government funding for non-Catholic faith based schools was effectively represented as an attack on Ontario public schools, Ontario public education and Ontario society.

However, similar patterns in debates in which religion is foregrounded as a social fault line are at play throughout the world, one result of which is that religion has been the subject of increasing academic interest and official scrutiny. One way the role of religion has been problematized in liberal democracies is between the often conflicting values of religious freedom and protection of liberal values, one form of which involves questions of how liberal societies should manage the non-liberal religious practices of religious minorities who are protected by liberal values of religious freedom. Religious freedom has been a highly prized social value which has emerged as an important marker distinguishing liberal societies from other, non-liberal ones. Protection of religious freedom has been identified as an important foreign policy concern and a test of state legitimacy with liberal states establishing offices of religious freedom associated with foreign policy (Hurd, 2008).

However, while religious freedom is considered a marker of liberal democratic societies, interpretation of what that actually means for public policy is by no means a straightforward matter. Elizabeth Hurd argues that religious freedom has also become a state project in Western, liberal societies serving to rationalize domestic and foreign policy initiatives designed to regulate social diversity along religious fault lines for reasons that have little to do with religious freedom (2008, 2013, 2014). Regulation of religion does not necessarily arise out of hostility to religion but it does include a process of distinguishing between forms of religion tolerable in public spaces and those forms of religion identified as threats to social harmony (Sullivan, 2005). Jeff Spinner-Halev (2000), for example, assumes

that religious liberty must be protected by law but the distinction between "conservative" and "liberal" forms of religion is central to his thinking about religion in society. While the processes by which those boundaries are constructed and the sites on which they are contested are unique in each jurisdiction, they involve a process of distinguishing between forms of religion and religious groups that attract scrutiny and forms which seem "normal" (Beckford, 1985; Cavanaugh, 2009).

The foregrounding of religious difference and the identification of religious freedom as a policy concern can mask other social fault lines in which power is exercised. For example, the European "wars of religion" serve a particular historical narrative which reinforces the view that religion is essentially a negative force while masking the equally important and equally painful emergence of the nation state in Europe (Nisbet, 1976; Cavanaugh, 2009). In much the same way, in Ontario education history, the identification of landmark legal proceedings between 1985 and 1997 as "religious freedom and equality" cases foregrounded religion as the source of coercive indoctrination but masked the role of the state as the primary stakeholder in public education.

While the ostensible issue during the election of 2007 was about funding for non-Catholic faith based schools, closer examination of Ontario education history, case law and political contests suggests that the regulation of religion in public education has been an important way of constructing and maintaining social boundaries in Ontario. The language of "togetherness" in the 21st century and "common religion" in the 19th century suggest a discourse about the nature of Ontario society and the boundaries distinguishing "us" who are "together" from "them" who are outsiders. A commentator reflecting on the use of "togetherness" by Dalton McGuinty in 2007 said this:

> That's a fine sentiment but to some those are code words for not accommodating the immigrant Others and their difference in the new Canada. And so we have an Ontario election lost on unspoken fears of Islamic madrasses in Toronto the Good - not to mention a Quebec election hijacked by a soccer player wearing a head covering or wacky proposals about hijabs and yarmulkes on public employees. (Montreal Gazette, October 14, 2007)

Examination of the representations of religion in the Election of 2007 reveals multiple ways in which religion has been a category which defines both the space of "togetherness" and "otherness". The social fault lines over religion in public education are sometimes between religion and non-religion but they are more often between different forms of religion. Indeed,

the most important fault line has been between "right" and "wrong" religion or "good" and "bad" religion. In Ontario, while there are voices expressing outright hostility to religion and have been since the 19th century, they have been in the minority. The distinction between "religion" and the "secular" is not deployed to eliminate religion from public space, at least, not in the discourses of leading politicians, the law and Ministry of Education regulation. Rather, the regulation of religion is an attempt to define forms of religion which are tolerable in "common" or secular "public" so that religious diversity will not disrupt social harmony.

The identification of forms of religion as good or bad is situational and episodic as the election of 2007 suggests but such episodes reflect ways in which religion is more generally problematized in longer discourses over its role in public education and in society. The forms of religion considered appropriate in Ontario public education have changed but less so than is suggested by language describing dramatic transformation between 1985 and 1997. What has not changed is the state interest in the way in which religion and religious diversity are problematized and the ways boundaries between tolerable and intolerable forms of religion are constructed through the use of public education. There has consistently been a common or public ethos claiming to transcend sectarian forms of religion through the use of public education and the public school system as state instruments. However, the categories of public, common, sectarian and private applied to religion are themselves rhetorical constructions designed to marginalize those voices resisting the state and state actors defining and delivering a common religion through public education.

1.1.2. Theme #2 Education

Religion is normally not a category that attracts a great deal of attention in Ontario society where the Canadian values of tolerance of social diversity and protection of religious freedom are assumed. Protection of religious freedom and equality rights specified in *ss. 2* and *15* of the *Canadian Charter of Rights and Freedoms* in the *Ontario Human Rights Code* and other legislation are uncontroversial in Ontario and, while education is a matter of provincial jurisdiction, the legal framework within which religious freedom and equality issues are resolved is based on the national constitution. However, intensity of debates about religion and religious diversity tends to escalate in the context of public education where the

boundaries around religious freedom are carefully regulated because of the role of public education in Ontario society in delivering a common social ethos.

Public education is a social practice with an almost mythological status in Ontario linked with the achievement of the fully realized citizen in a modern, harmoniously diverse and free society. In the discourse around public education, public education has been represented in law and regulation and in public debates as an essential social practice to create civic loyalty around common values throughout Ontario history. Public education in Ontario is considered an achievement of a civilized society and as a social bulwark against social disorder, including the disorder created by non-standard religions.

Public education is a persuasive social practice, placed rhetorically in binary contrast to the coercive and indoctrinational practices in other, less developed societies including Ontario society at an earlier stage of its development or practiced by minority religious groups in their faith-based schools. Public education is seen as an achievement of modernity characterized by rational, critical thought that equips students to make free and rational choices about their lives, including religion. However, while freedom of choice is entrenched in law as one of the highest values in a modern, liberal society, choice also has negative implications for social order. Public education, as a persuasive practice, is designed to train students in the skills of free choice while also persuading them to make the right choices.

However, the social practice of public education is also conceptualized in Ontario in such a way that equates it with the public school system. The public school system is considered the one institution in Ontario uniquely able to deliver public education which means that attempts to reform it or to consider alternative strategies of delivery are often represented as attacks on public education itself. To raise the stakes even higher, challenges to the public school system are further represented by supporters of current public school organization as attacks on Ontario society itself and even on Western civilization. Therefore, while freedom of choice is protected in law, the freedom to choose educational alternatives is regulated to protect public education and the public school system.

The conflation of the institutional site of the public school system, the social practice of public education and social harmony constitutes the dominant discourse in Ontario public

education.[3] Control of the public school system in delivering public education is contested in a number of ways. Internally the stakeholders in public education often compete over who is its primary steward in bruising battles over teacher salaries, working conditions, program and distribution of resources among others. However, they present a unified front in response to challenges to the privileged role of the public school system in delivering public education. For example, professional teachers unions, the Ontario Public School Board Association and the Ministry of Education, which had been locked in serious disputes over a wide range of issues after 1970, were solidly allied in 2007 to oppose religious groups advocating for funding for non-Catholic faith based schools or any proposals which might have opened the door to consideration of alternative delivery systems in public education.

However, the issue of quality of education or instruction was rarely the subject of the debates during the election of 2007. The subject of the debates was the religious nature of the schools involved and their potential threat to Ontario represented as non-standard forms of religion and religious practice and as sources of un-Canadian values. Interwoven with concerns about the effects of faith-based schools on young Ontario citizens were concerns about the results for the public school system of any form of funding for competing educational institutions. The interests of the public school system were invariably linked with the delivery of public education and social harmony, making them important state concerns that went beyond the quality of educational services.

Examination of selected events in the history of Ontario public education, legal decisions establishing the role of religion in public education and Ministry of Education regulation relating to religion and religious diversity in public education shows that the election, while it was a unique historical moment, was not an isolated event. The competing discourses in 2007 bear remarkable similarity to those in the 2003 Equity in Education Tax Credit debate, the legal arguments in four landmark legal cases between 1985 and 1997, the debates over full funding for Roman Catholic separate schools in the mid-1980's, the majority and minority reports in the Hope Commission Report tabled in 1950 and the school debates in the 1850's and 1860's.

[3] I am using "social practice" as theorized by Norman Fairclough as "a more or less stabilized form of social activity" (Fairclough, 2001, p. 234).

Throughout the history of Ontario public education, religion has been represented in a variety of ways in response to changing social and political developments. What has remained consistent is the construction of public education as an essential social practice in delivering harmonious social diversity delivered by the public school system as a state instrument in the regulation of religion.

1.1.3. Theme 3 Citizenship

The use of a number of linked concepts and ideas in debates over the role of religion in public education suggest contours defining good citizenship in Ontario society. Ontario is, in the first place, identified as a "modern" society. While clear definition of modernity is elusive, it takes on additional meaning when placed in contrasting relationship to "tradition" and linked with "diversity". Ontario is represented as a modern, diverse society contrasted with the traditional and homogeneous society of an earlier historical period and in contrast with other, "non-Western" societies. Religion plays an ambiguous role in modern social diversity, some forms of religion having adapted to modernity living alongside and competing with forms linked to the earlier, traditional and homogeneous stages or non-liberal societies, some of which are considered out of step or even dangerous to Ontario modern diversity (Sullivan, 2005, p.7). Public education provides a mediating voice in the highly diverse religious landscape in Ontario society in order to both protect religious freedom but, at the same time, constructing boundaries around religion and religious diversity.

Public education is seen to play a critically important role in equipping citizens with skills and attitudes considered essential for successful living in a modern, diverse society. While it has its own unique regulatory framework, Ontario shares with much of the world a commitment to public education to create social harmony (Glenn, 1988, 2000, 2012; Jödicke, 2013). In addition, it shares with other liberal societies a fundamental commitment to the civic value of tolerance and the academic skill of critical thinking. The social role played by public education in Ontario depends to a large extent on the link between modernity, diversity, tolerance and critical thinking in the delivery of an educated citizenry in a modern, socially diverse and harmonious society.

Diversity, in the dominant discourse in public education, is a mark of modern, liberal societies of which Ontario is one. However, diversity has an ambiguous role in that, while it

is a mark of a modern society, is also a source of social disruption. Ontario is a modern jurisdiction hospitable to diversity but at the same time there is ongoing anxiety about the possible disruptions to social harmony by groups who do not respond appropriately to liberal hospitality. An inappropriate response is "intolerance" of diversity so that, among the primary civic values essential for a modern society is tolerance of diversity, achieved by the teaching of "critical thought". One of the characteristics of critical thought is the ability for citizens to take critical distance from their own loyalties and traditions in the interests of common values which transcend their own sectarian ones. Ontario public education is hospitable to diversity but at the same time it is a social practice designed to persuade citizens to live their diversity within socially prescribed limits and to teach them how to do so.

Another characteristic of a modern society is that it is secular. However, in Ontario, the idea of the secular is not an indication of hostility to religion but of an environment in which citizens keep religion in its place so that it does not cross into intolerance, thereby disrupting social harmony. Critical thinking in Ontario public education is an intellectual skill to be sure but it is foremost a social skill which allows citizens to be tolerant of diversity, including religious diversity. Critical thought is considered a secular skill associated with knowing how to keep religion in its private place. While religion, religious diversity and religious freedom are welcomed in Ontario, religion out of its place is a mark of questionable citizenship.

The civic virtue of tolerance and the social skill of critical thinking are marks of the mature or well-adjusted citizen. The value placed on Ontario citizens working and doing things "together" suggest that issues of collective civic values and harm to society generate a high level of interest among Ontarians. While protection of individual freedoms and diversity are central themes in the *Charter of Rights and Freedoms*, the *Ontario Human Rights Code* and in Ontario public education rhetoric, those freedoms are socially constructed within carefully prescribed boundaries captured in, among others, the term "Canadian values". A mark of mature citizenship includes knowledge of the boundaries and living within them. The most important social role of public education is to ensure a common understanding of what those boundaries are and a commitment to them, making public education a state strategy delivered by the public school system.

Election rhetoric in 2007 was marked by expressions of outrage and anger suggesting that the policy proposed by John Tory, more than a plank in an election platform, was an outright attack on public education and on Ontario society. The language deployed in reaction to supporters of funding for faith-based schools suggested that, while on the one hand, they might be soccer moms and dads, on the other hand, they were not quite trustworthy as citizens. They might have been tax paying, voting members of society but their educational choices somehow transgressed public-private boundaries in ways that triggered alarm. They might even have been educated and believed in the value of education but their understanding of the role of religion in education raised doubts, not only about the public and intellectual legitimacy of their educational vision and practices but also about their civic loyalty.

1.1.4. Nexus of religion, education and citizenship in 2007

While contests within public education are regular occurrences between various stakeholders over distribution of resources and labour conditions, religion seems to escalate the intensity of debates beyond education into contests over Ontario society itself. Religion generates strong reactions because religion can signal alternative loyalties which seem particularly resistant to common Canadian values. Terms such as "undermine" and "stealth attack" to describe the John Tory policy proposal suggest conflicted attitudes over religion and its role in public education and also more pervasive ambiguities over religion in Ontario society.

Religion has played an ambiguous role in civic values, critical thought and tolerance of social diversity and it is this ambiguity which adds to the anxiety over religion in public education. The early founders of the common school movement were Protestant Christian and for them Christianity was the unquestioned basis for Ontario society and, indeed, for western civilization in providing a common ethos to transcend sectarian differences. The common school movement of the 19th century was established during a period of nation building when the state emerged as the primary institution delivering the public good. Common schools were seen as the main state instrument to pass on the civic values essential for social harmony so the interests of the common school and the state were essentially the same. The language of common civic values providing the basis for the overlapping interests of the state and public schools was a form of Protestant Christianity, which was also seen as

the basis for Western civilization. It is therefore not surprising that religious organizations, including churches, were public partners in delivering social services, among them public education.

However, religion has also provided the language of resistance for Roman Catholics and other religious groups for whom the church, family or other non-state actors are the primary stakeholders in the development of the child. Roman Catholics, along with other religious groups, have consistently rejected the idea that a common religion is desirable or even possible. They argue that the state project to impose a common religion through public education represents an exercise in coercive assimilation and that their religious practices, among them faith-based education, enrich public space. Since 1990, inclusive Protestant Christianity has been replaced by secular "Canadian values which transcend all other traditions and religions" (Ministry of Education *Policy Memorandum 112, 1991*) but the fault lines in debates over the role of religion in public education have remained remarkably consistent.

It is the tension between proponents of a common ethos which transcends religious differences in a state sponsored school system and resistance to that project which is the main story of religion in common schooling or public education in Ontario. While the tension between approaches to the delivery of education does not usually attract a great deal of attention, there are periodic highly visible conflicts which foreground religious difference as a threatening and unbridgeable fault line. In Ontario, these are relatively rare and, even more rare is the foregrounding of religious difference as a wedge issue in a provincial election.

While exaggerated claims and inflation of fear are typical of election campaigns, what made the election of 2007 unusual was the explicit use of religion to identify segments of the population as threats to Ontario society. However, examination of Ontario education history demonstrates that the 2007 election repeated a pattern going back to the 19th century in which common or public schools are portrayed simultaneously essential microcosms of Ontario society and highly vulnerable to threats from religious sectarianism. Groups challenging the public school system as the only institution able to deliver public education are represented as wanting to go back to an earlier, less inclusive, traditional past in which people were subjected to sectarian indoctrination. They are seen as wanting to roll back developments in critical thought, gender equality, racial inclusion and educational research.

As a result, debates about religion in education, while they may begin with issues of educational best practices, educational outcomes and organizational effectiveness, almost always escalate to suggest important struggles over Ontario society itself.

One key to identifying the discursive pattern linking debates over education to wider issues of social progress and civilizational survival is the use of rhetorical binaries deployed to create stark contrasts between the public school system and its competitors in delivering educational services. Stark binary contrasts are important rhetorical devices in times of social stress revealing fault lines which are usually not as visible. While language, race and ethnicity have as various times been identified as the threat to civic togetherness, religion has been the most persistent social fault line in the historical narrative of Ontario public education.

Rhetorical binaries in Ontario public education are used as the basis for a historical narrative which represents current organization of public schools and educational practices as the culmination of progressive modernity overcoming obstacles created by resistant groups. The Ontario public school system was established after 1850 largely through the efforts of Egerton Ryerson as a way of centralizing the decentralized system in existence at the time and bringing education under state control. However, largely out of political necessity, publicly funded "separate" school systems were also established to accommodate groups in conflict with two principles on which the common school system was based. The first of these was that the common school system was a social microcosm to establish common civic values, until 1990 expressed in terms of a form of Protestant Christianity. The second principle was that the common school system was a state instrument to deliver public education. There were three "separate" school systems in the 19th century; Roman Catholic, Protestant and "coloured", of which the Roman Catholic system has had the longest and greatest impact.[4] In addition, there has also been a category called "private" schools, currently serving about six percent of Ontario's students.

[4] "Coloured separate schools" were established out of the necessity created by racism, local populations in some districts refusing to let their children attend schools alongside racialized minorities. Unlike other separate schools, they were not expressions of voluntary choice. This is an important difference from the motivation of students enrolling in the publicly funded "Afro-centric" school in the Toronto Public School Board who do so on a voluntary basis.

Although the categories "public", "separate" and "private" are commonly accepted, they are more than convenient labels. Designation of schools as "public" is an extension of the original term "common" and the idea that the schools thus categorized represent educational interests which Ontarians hold in common. In contrast, "separate" is a designation which implies that these schools serve narrow sectarian interests while the schools categorized as "private" are thought to serve a clientele motivated by private rather than public interests. A confusing feature in Ontario public policy is that "separate schools" are publicly funded, existing alongside "public schools" as a parallel school system protected by *s.93* of the *Constitution Act of 1867*. Separate schools are, therefore, publicly funded faith-based schools. However, their constitutional protection and public funding exposes separate schools to questions by critics about their religious practices which reflect their sectarian purposes. Separate schools, therefore, exist in a socially ambiguous place in Ontario, most recently evident when their way of addressing the needs of their LGBT students have become a matter of public scrutiny. The issue of gender diversity has become more prominent as gender inclusivity is defined in liberal secular terms and religious language around gender and gender diversity become increasingly suspect.

The status of private schools is clearer, their designation making them ineligible for any form of public funding. However, their right to grant Ministry of Education academic credits leading to a high school diploma has long been recognized and they serve Ontario citizens alongside their separate and public school colleagues, preparing them for post-secondary institutions and the workplace. Their graduates demonstrate respect for commonly held values of respect for diversity, democratic institutions and processes and productive work, suggesting that the differences between public, separate and private schools, from the perspective of civic and academic outcomes, are actually not that great. Therefore, while the school categories used in Ontario suggest very clear and oppositional distinctions, the actual picture is much more nuanced. Nevertheless, the categories serve a very important role is establishing public recognition and access to public resources which are reinforced by historical narratives.

There are a number of ways in which the history of education is narrated in Ontario. From a public school perspective, historical narrative of public education constructed around binary opposites begins with the pre-Ryerson years of administrative and educational chaos,

continues with the Ryerson years and the establishment of the common schools providing increasingly efficient educational services equally accessible to all citizens and then culminating in legal decisions in 1988 and 1990 which created a secular school system no longer dominated by religion. The common schools of the 19th century are portrayed as a remedy to the educational and administrative chaos that preceded it with the reasonable common Protestant Christianity represented in contrast to the indoctrinational sectarianism of the Roman Catholic and other denominational schools. In a similar way, post-1990 public educational practice is narrated as the result of social and educational progress overcoming the coercive Protestant indoctrination that it replaced with a form of secularism. It has become common sense that education about religion as a way of conceptualizing and delivering religion in public education is qualitatively different from the religious instruction it replaced in 1990. Further, public schools are positioned in binary contrast to "private" schools, public schools being represented as serving the public good while "private" schools serve private interests. [5]

However, I question historical narratives which depend on binary contrasts, arguing that these binaries are less about historical accuracy and more about power in controlling a narrative which serves the purposes of the narrator (Foucault, 1978). Examination of counter-narratives can reveal flaws in historical accuracy and interpretation but the focus here is somewhat different. The focus in this thesis is not so much to enter the debate about the accuracy of the progressive historical narrative of Ontario public education although Charles Glenn argues that the accuracy of a similar progressive narrative in the United States has been effectively challenged (1988). The purpose is to examine the strategic and tactical uses of the binaries themselves in the deployment of and resistance to power. The tone of anxiety and outrage during the election of 2007 created a perception that Ontario public education and Ontario society were under siege by sectarian forces. However, there is little evidence supporting the idea that religious minorities engaging in advocacy for their schools are actually a threat to Ontario society or that students educated in these schools are

[5] In later chapters more detailed attention is given the history and the categorization of schools as "public", "separate" and "private", including examination of a Roman Catholic narrative of Ontario education and the role of Roman Catholic Separate Schools and the diversity of the private school sector, some of which self-identify as "independent" schools and advocate for public funding while others refuse to consider private funding preferring to remain outside the state regulatory system as much as possible.

less well-adjusted than their public school counter-parts. This suggests that use of binaries to construct an historical narrative are exercises in power deployed in a variety of strategies for the purposes of establishing and maintaining a hegemony in public education and in Ontario society since the 19th century.

However, hegemonic power and resistance to it are not static or easily predictable. The role of the key stakeholders, their relationship to each other, the voices of resistance and the assessment of risk and harm are dynamic, changing over time and in response to historical circumstances. For example, the role of professional associations emerged after the 1960's to the point where resolutions of conflict over the role of religion cannot be resolved without taking into account their interests. Within the public school system relations between the Ministry of Education and local boards are often characterized by tensions between forces of centralization and decentralization, particularly in the decades after the 1960's. The public school system has gone through huge organizational changes in administration and governance, funding and in programming, many of them accompanied by fierce conflict, including labour strife.

The separate school scene has also changed, with Roman Catholics winning key legal and constitutional battles over funding and access to taxation mechanisms but also in the way schools are staffed and professionally organized. For example, teachers in Roman Catholic separate schools are no longer members of clergy and many of them are organized under the Ontario English Catholic Teachers Association which is affiliated with the Ontario Teacher's Federation. The status of Roman Catholic separate schools in Ontario is an ongoing source of debate and, while there seems little appetite among leading politicians and political parties to challenge *s.93* of the *Constitution Act of 1867*, there has been and continues to be persistent calls for its abolition.[6] However, a recent Divisional Court decision allowing students in a Roman Catholic separate school to opt out of all religious activities (April, 2014) and other issues relating to the management of gender diversity highlight the challenges for faith-based schools of navigating the balance between public funding and the maintenance of religious identity in education.

[6] *Section 93* of the *Constitution Act of 1867* is the constitutional provision under which the Roman Catholic Separate School system is protected. I examine this further in the thesis.

The world of privately funded schools has been equally dynamic, serving a growing number of students, especially after the 1950's with schools being established in response to demands for unique educational services, among them new faith-based schools. Some, but by no means all of the new growth has come from immigrant groups for whom religious practice included education. Privately funded schools now serve about six percent of Ontario's students and their advocacy has resulted in recognition from government about the granting of academic credits, professional recognition and, on a local level, cooperation of various kinds with public and separate boards. However, their growing presence has triggered a backlash motivated by competition for students and resources but also ideological opposition to their very existence outside the common school system.

In addition to a dynamic political and legal landscape, the definition of the good citizen and the role of religion in that definition is ever changing. Changes in the legal and political contests are usually argued in terms of the achievement of civic values and citizenship but what those terms actually mean is not clear or fixed. Broadly speaking, there has been a shift in emphasis from the language of collective allegiances to individual choice but while these are nuanced changes they have had important legal effects, one of which is the April 2014 divisional court decision referred to above in which the protection of individual freedom of choice took precedence over protection of Roman Catholic identity of Notre Dame Secondary School in Brampton. However, the language of individual choice masks the boundaries around choice by state regulation in ways that shift loyalty to the state from non-state actors such as the family and religious organizations (Nisbet, 1976).

In summary, the world of Ontario public education is a dynamic one, with shifting power relations, changing alliances, emerging voices and voices which move to the background of public debate and influence. While there is a dominant discourse which represents the public school system as the state instrument to deliver public education in order to achieve social harmony based on common civic values, this is not a linear or uncontested narrative.

Most important in this thesis are changes and continuity in the way in which religion and its role in public education has been represented. The debate in 2007 saw the category of religion used in different ways, both foregrounded as an important social fault line and as a source of civic values, as a source of educational and social harm and as one among other

categories of social difference which makes little difference. There were shifting and conflicting representations of religion and their effects, most immediately in the election results but also in the ways acceptable and unacceptable forms of religion were constructed in relationship to the public school system, public education and common Canadian values. However, the election of 2007 provides insights into a longer story in which power and power relations shift and change as they compete, form alliances and adapt language and strategies. Throughout this longer story, religion has played an important role, albeit a shifting and contested one, in the identification of public education and the achievement of good citizenship.

1.2. Organization of the thesis

This thesis unfolds as follows: In Chapter Two I outline the theories, methods and literature chosen to gather and interpret data on the role of religion in Ontario public education. Social constructionism as theorized by James Beckford (2003) provides the main theoretical framework although Michel Foucault (1972, 1990), Carol Smart (1989), Winnifred Sullivan (2005), Lori Beaman (2008), Ben Berger (2010) and Dorothy Smith (1987) provide theoretical approaches used to examine more specific issues of power, historical narrative, law, harm and the privileging of rationalism in the western Enlightenment tradition. Critical discourse analysis and critical genealogical analysis are the two research methods used to analyze election rhetoric, government documents, reports of religion and education, case law and Ministry of Education regulatory documents.

In Chapter Three the Ontario provincial election of 2007 serves as an entry point into the wider social issues associated with the role and regulation of religion in Ontario public education. The election was a unique historical moment and, at the same time, it allows examination of patterns of thought and discourse in the ways religion is conceptualized in Ontario. The questions around which Chapter Three is organized are (1) "What story does the election tell about the conceptualization of religion in Ontario public education and society and (2) what does the election tell us about the ways in which the boundaries of religion are contested in public education and society?"

Chapter Four, "Ontario's legacy", is organized around question of whether the election of 2007 was a unique event or if it reflected similar patterns in other events and

periods in Ontario public education history. Was the use of religion as a wedge issue a one-time election strategy deployed by politicians trying to win an election or did it echo discourses with longer roots in Ontario history? Critical genealogical analysis is the method used to do three things; (1) to understand the contexts shaping representations of religion at different points in Ontario's public education history, (2) see if the patterns I identified in Chapter Three are repeated in other historical contexts in Ontario, (3) to trace the genealogy of the patterns of thought identified in Chapter Three.

In Chapter Five the focus is on the role of law in the regulation of religion in Ontario public education. The research questions in Chapter Five are "Is there evidence that the patterns of thought in law reflect those identified during the election of 2007 and in other periods in Ontario public education history?". Four cases contested and decided between 1985 and 1997 reveal patterns of discourse similar to the ones identified in Chapters Three and Four. Although law is a state instrument often imagined to be a neutral voice above the social fray, in this chapter law is seen as a social actor declaring itself on religion and on education and constructing boundaries between public and transgressive forms of religion. Analysis of law, therefore, provides insight into competing discourses and while the reasoning within law is precise and critical in legal terms, it is often also selectively critical, taking as a kind of unexamined common sense much of the dominant discourse about religion, public education, the public school system and their role in achieving a cohesive society.

In Chapter Six attention shifts to the phrase "education about religion" adopted by the Ontario Court of Appeal in *Elgin County* in 1990, the questions being, "Are the patterns of discourse examined in Chapters Three, Four and Five evident in the regulation of religion in education? Are the representations of religion, the public school system, public education and social harmony in the Election of 2007, other historical events and in law evident in Ministry of Education documents defining the role of religion in public education?". The three perspectives from which education about religion is analyzed are education about religion as an educational strategy to address social and political challenges associated with religious diversity, the epistemological assumptions on which education about religion is based, among which is education about religion as a form of critical thought and the delivery

of education about religion in public schools, with critical attention to the claim that education about religion can be delivered only in public schools.

Chapter Seven reviews the data and the arguments, offers conclusions and suggestions for further research on related issues related to but outside the scope of the thesis.

1.3. Terms and definitions

The terms "school", "public", "private", faith-based", "separate" and "independent" are used throughout the thesis, recognizing that the categories are problematic with important political implications.

"School" generally refers to any institution specifically designed to deliver an organized program of instruction. I use the qualifier "generally" because the Ontario *Education Act* defines "school" as those institutions operated by public or separate boards. In the *Education Act (1990)*, privately funded schools are actually not schools in a legal sense. This use of categories has important implications for public recognition and the distribution of resources but for convenience, I use school in the sense that it is usually used, except in those cases where the distinction is important for my argument.

"Public schools" refers to the provincially funded non-Catholic schools operated by public school boards. The comprehensive category of "the public school system" masks a great deal of diversity and change. In 1990 the dominant ethos in Ontario public schools changed from a form of Protestant Christianity to a form of secularism and since 1997 the system was organized by language under "English" and "French" public schools. While the public school system is expected to deliver a common school experience for all Ontario children, public boards of education have a great deal of latitude in further creating a wide range of alternative schools offering specialized programs responding to regional characteristics and the educational, social and emotional needs of the students and communities in their jurisdictions.

"Separate school" refers to the provincially funded schools that are not "public" schools. Practically speaking, this usually refers to the Roman Catholic separate schools although there have been others, including "coloured" separate schools, the last of which was closed in the late 19th century and Protestant separate schools, one of which is still operating in Penetanguishene.

"Private" is a general category including the schools not funded by the state (which are actually not designated as "schools" in the *Education Act* – see above) and is a highly diverse category including schools organized around a religious identity, educational philosophy or a defined student learning profile. Many private schools are inspected by the private schools branch of the Ministry of Education but there are also many that operate without government oversight. Inspection by the Ministry of Education is mandatory for those private schools offering a secondary program leading to the Ontario Secondary School Diploma or the Ontario Secondary School Certificate. An Ontario Secondary School Diploma is not a requirement for university entrance allowing students and families a number of ways to pursue their educational goals.

The term "independent" is used for (and by) those schools who want to distinguish themselves within the privately funded school sector from those private schools which have a long tradition of what is sometimes thought of as social and academic elitism and from those schools under the governance of another religious body such as a church. "Independent" means "independent of church and state", in terms of governance, funding and oversight.

"Faith-based" is used to include schools organized around a religious identity. I recognize that "faith-based" is a problematic term, suggesting that religion can be reduced to "faith", which is a "protestant" way to talk about religion. To further complicate the category, it could be argued on educational grounds, that all schools are "faith-based" given the fact that all schools operate on values and fundamental principles to which they are committed on the basis of which programs are accepted and boundaries are constructed. In addition, all schools operate on the faith that the educational and developmental process they organize will result in a more fully realized human being who will contribute positively to society. However, faith-based schools seem to accept the more narrow understanding of the category, using it themselves as a way to foreground the role of religion in their identities. Here the category "faith based" includes the publicly funded Roman Catholic schools and privately funded schools representing a wide range of religions, including Roman Catholic privately funded schools.

"Protestant" is used throughout the thesis to refer to a variety of forms of religion. I use a capitalized form of the term in reference to churches and religious groups who position

themselves in the tradition of the Protestant Reformation in distinction from (and often in opposition to) Roman Catholic and Orthodox traditions. There is a great deal of ethnic, national and theological diversity within Protestantism and, in the context of this thesis, different ways of formulating the role of religion in education. Ontario public education has seen competition among Protestant groups about religious instruction, prayer and other religious practices and funding for faith-based schools.

However, I also use a lower case form of "protestant" in reference to what Winnifred Sullivan has identified as those forms of religion which have adapted to "liberal theories and forms of governance" or those forms of religion which have been "remodeled to accommodate the new secular political order and new ideas of citizenship" (2005, p. 7). She observes that the "modern religio-political arrangement has been largely, although not exclusively, indebted to theologically and phenomenologically protestant reflection and culture" (2005, p. 7).

Elizabeth Hurd (2008) agrees, saying "Although sectors of Western society and culture have been partially removed from the domination of religious institutions and symbols…political order in the West remains firmly grounded in a common set of core values with their roots in Latin Christendom" (p.6). She links protestant forms of religion and secularism, identifying "Judeo-Christian" and "laïcist" forms of secularism, arguing that "secularism" has emerged out of particular religious traditions from which they cannot easily be distinguished.

Although Sullivan is examining the construction of religious freedom in the context of American law and Hurd is analyzing the role of secularism in international relations, their observations are relevant to the ways in which "secular", "Protestant" and "protestant" appear in this thesis. In Ontario public education, the three terms have been deployed in the construction of boundaries around public education and the public school system, "protestantism" appearing primarily in examination of social developments after 1950 and in legal and regulatory developments after 1990.

Chapter Two *Literature, Theory and Methodology*

2.1. Literature

There is a large body of literature on the topic of religion and education relevant to my research. Gerald Gutek (2004), while he does not deal specifically with religion and education, provides theoretical context for debates during and after the 1960's over educational theory and pedagogy which had, among other things, important effects on the ways religion was conceptualized. Intense debates over educational philosophy during that period coloured the political context which, by the 1980's, was highly charged with stakeholders on high alert to protect their interests. While debates over educational philosophy and pedagogical principles were only part of the debates at that time with budget constraints, financing and tension between centralization and decentralization of control being equally important, questions of what students needed for success in a modern world and how they could best achieve success were being debates in terms Gutek uses in his survey of philosophical and ideological approaches to education.

Charles Glenn provides extensive analysis of common schooling as a political instrument designed to serve nation building through the development of an educated citizenry during and after the 19th century (Glenn, 1988, 2000, 2011, 2012). Glenn compares and contrasts models of school governance in Europe and the United States and does not deal with the development of common schools in Canada. However, his examination of historical context in which common schools were contested and his analysis of competing discourses in those contests provide context for my examination of Egerton Ryerson and the Ontario's common schools in two ways. First, Egerton Ryerson was profoundly influenced by the Dutch and American models, particularly by the work of Horace Mann and second, his critical examination of the idea of common schooling closely parallels the counter-discourses developed by religious minorities in Ontario.

Veit Bader (2007) proposes an alternative political model to one which positions the state as the pre-eminent institution to deliver public services, suggesting an associative model of democratic governance to protect religious diversity in society and publicly funded education. He places schooling in the context of the dynamic intersection of the interests of parents, professional and religious associations and the state, but gives priority to the interests

of parents in promoting an "associational governance" model of religious diversity. Bader's associative model is similar to Robert Nisbet's theory of democracy in which "the State emerges as but one of the associations in man's existence" in contrast to what he calls "the unitary view of democracy" (1976, p. 251). The role of the state in the delivery of education emerges as a crucial fault line between those opposing and those supporting funding for faith-based schools. The idea of education being delivered by non-state actors identified as religious was a key point of contention during the election of 2007, triggering alarm in Ontario. However, while the issue of religion is foregrounded in the school funding debates in Ontario the focus on religion and religious difference serves as a distraction from the nexus of power in which the state is the key player.

The idea of indoctrination has been very important in Ontario public education, particularly to contrast the educational activities in faith-based schools with those in public schools. Educational harm is defined in terms of indoctrination and indoctrination is linked with religion, in contrast with true, secular education. However, James T. Richardson (1993, 1996, 2001) and James Beckford (1985) theorize that brainwashing and indoctrination are socially constructed concepts in specific historical contexts in the regulation of new religious movements. The distinction between "education" and "indoctrination" are very important in Ontario public education to distinguish the activities in public secular schools from those delivered by non-state actors, including Roman Catholic separate schools and privately funded faith-based schools. Therefore, while the distinction between education and indoctrination is actually much less clear than the regulatory language suggests, it is crucial in Ontario education funding policy.

Debates in Canada over education and over the role of religion in education have always occurred in a wider global context and while it is not the purpose of this thesis to precisely map the links between Canada and the rest of the world reference to global trends and debates is important for two reasons. The first is to see that Canadian debates over education have been affected by global events along with other jurisdictions around the world. For example, the emergence of religion has a source of political power in the late 20th and early 21st Centuries have triggered a great deal of interest in religion in western democracies but have done so in a way that links religion and religious diversity to security concerns. This is a global phenomenon but is also reflected in the debates over the funding

of faith-based schools during the Ontario election of 2007. The second reason is that although there are global trends and events affecting the global village, the resolutions to the conundrums associated with religion in modern, diverse societies are unique to the societies in which they occur. While resolutions are often treated as if they are the inevitable, common sense results of rational processes, they represent choices shaped by local social and political forces operating on their own logic.

Robert Jackson (1997, 2004, 2008) makes the link between wider global concerns, public policy and research on pedagogical strategies but he does so without the rigid language of secularism to achieve a "pluralistic religious education". His call for an interpretative and dialogic approach to religious education avoids the idea that education about religion can be delivered only in liberal secular schools, citing research of pedagogical models in effect in a wide variety of schools around the world. This is supported more generally by REDCo which includes research on pedagogy and pedagogical strategies based on student responses to religious education across Europe. The European research, in contrast with public policy in Ontario, includes models in which religious organizations are included in the delivery of public education.

However, while religiously based schools are supported by public funding, Ansgar Jödicke (2013) provides evidence that in Europe funding for faith-based schools is only partly motivated by a commitment to protect religious freedom in education and equally motivated by state interests in the regulation of religion and surveillance of religious minorities. This has important implications for the independence of faith-based schools who have to weigh the costs and benefits of public funding, something also noted by Veit Bader. In Ontario, this accounts for the ambivalence with which supporters of faith-based school communities view funding, especially given the ongoing pressures on Roman Catholic separate schools around issues of hiring professional staff, designing programs that comply with Ministry of Education requirements and issues relating to gender diversity. Faith-based schoolers in Ontario are, therefore, deeply divided over public funding. However, Jödicke, Jackson and REDco show that there are many different models of the nexus of state, religion and education which, while they have some common features, are also constructed in response to unique historical and political circumstances.

While Veit Bader and Robert Nisbet provide social models in which the state is only one among a variety of institutions and groups engaging in the public practice of education, Bruce Grelle (2000, 2013) and Jeff Spinner-Halev (2000) emphasise the importance of a common language around religion in the transmission of common civic values that finds a balance between respect for and protection of unique religious perspectives and social harmony. While I disagree with their contention that secularism is uniquely positioned to deliver a common language, they alert me to the value of a broadly based social consensus. They, along with James Beckford (2003), Winnifred Sullivan (2005, 2009), Amartya Sen (2006), Rajeev Bhargava (2008) and Rajeev Bhargava et al (2009), also show that the balance between a common language of civic values and the protection of religious particularities has conundrums which elude clear and final resolution. Religious diversity and common civic values in societies and in their school systems exist in a relationship of creative tension which invites an attitude of agonistic respect (Connolly, 2005) and a commitment to "deep equality" (Beaman, 2014) among all members of society as they engage each other over deeply held values and fears.

Hugh Oliver et al (1984), Douglas Lawr and Robert Gidney (1973) and E. Brian Titley and Peter J. Miller (1982) provide historical surveys on Canadian education which show that, throughout its history, public education and state interests have been inseparable in Canada. This is supported by Robert Stamp (1982, 1985) and R.D. Gidney (1999) in Ontario. Their work was not specifically devoted to the question of privately funded faith-based schools, except for Stamp's 1985 paper which was published as an appendix to the Shapiro Commission Report (1985) but they do deal with private schools in a wider context of other debates occurring in Ontario. While this thesis foregrounds the role of religion in Ontario public schools, Stamp and Gidney show that religion is only one theme among others in debates in public education. For example, the furore over the *Equity in Education Tax Credit (2001)* during and immediately following the Harris years occurred in the context of stress resulting from the amalgamation of school boards, labour strife over wages and working conditions, public school program re-organization and other public policy initiatives resulting in all stakeholders being alert for further threats to their interests. Awareness of the broader context reveals more clearly why usually religion and religious difference are usually not experienced as serious social fault lines while at other time they are represented as threats

to Ontario public education and Ontario society. While religion and religious difference are important aspects of social diversity, they often become the focus of more generalized anxiety which have less to do with religion and more to do with loss of influence and power.

Nevertheless, while Roman Catholic have been operating faith-based schools as long as Europeans have established themselves in North America, the strong reaction to religious minorities making claims for recognition in public education suggests that religion and religious diversity continue to be uncomfortable themes in Ontario society. This is particularly evident when religious minorities advocate for recognition of their faith-based schools, thereby challenging the privileged place of the public school system as a state instrument delivering public education in the achievement of social harmony. Some religious minorities, among them Muslim, Jewish and Dutch Calvinist, have long histories of delivering credible educational philosophies and school systems with sophisticated educational practices. Along with Roman Catholics, they challenge the common sense in Ontario public education that religious educational practice is necessarily indoctrination or that religion and education exist on opposite sides of the private public divide.

Jasmin Zine (2007, 2008) provides an Islamic perspective in her ethnographic study of Islamic schools in Toronto which includes consideration of the epistemological reasoning and educational principles on which these schools are based. Her work identifies the multiple roles played by Islamic schools, including support of recent immigrants as they navigate the challenging path of successful integration into their host society. While faith-based schools are often characterized as "religious ghettos" which isolate students, she argues that they can serve valuable safe sites from which students can engage the world in which they find themselves. Zine also argues that faith-based education provides a conceptual platform for critical thought, challenging the assumption in Ontario public education that critical thought can be delivered only in the language of liberal secularism in public schools.

Martin Sable (1998, 1999) provides a Jewish voice in his examination of Jewish resistance to Christian religious instruction and school opening exercises culminating in legal actions eventually decided in 1988 and 1990. His research is an invaluable source of information about strategies by dominant Christian groups and tactics by Jewish minorities in constructing boundaries and around religious minorities in a predominantly Protestant Christian public school environment. In addition, examination of Sable's analysis reveals

the implications of foregrounding religion which leaves unexamined the role of the state in the delivery of public education, a point he missed. Sable's account of Jewish resistance also opens up a darker window on a history of anti-Semitism in Canada which was layered on top of and woven into debates over religion in public education. Jews, like the Muslims in Zine's work, have been represented as an "other" which gave their advocacy for their own faith based schools an additional measure of threat to Ontario society.

Harold Van Brummelen (1977, 1986, 1994, 2002) and Doug Blomberg (1993, 2007) provide Dutch Calvinist voices on religion and education in the thesis. Their work ranges from historical surveys on the Dutch Calvinist school movement, articulation of educational theory, detailed modelling of curriculum planning and school culture issues. Dutch Calvinists are minorities within a Christian majority population representing a view of the roles of religious communities, the state and parents in education that conflicts with the dominant view they encountered on entering Canada. They provide a unique perspective on religion in education because in most of their adaptation as immigrants they assimilated, being European, familiar with democratic forms of government, religious diversity in modern societies, quickly adopting English as their language, committed to Canada due to their experience of being liberated by Canadian troops during the Second World War and enthusiastic participants in a free market economy. However, their assumption that religion is a comprehensive category which includes education as a religious practice and the principle that education is not, in the first place, a matter of state interest put them into conflict with the dominant view of education in Canada.

2.2. Theory

2.2.1. Social Constructionism

This thesis is informed by a number of theoretical influences, most heavily by James Beckford (2003) whose formulation of social constructionism provides insight into conflicting definitions of religion and secular and uses of both categories to construct boundaries that do not depend on clear definition at all. However, other theories provide ways to think more precisely about other issues relating to the organization of Ontario public school system. Michel Foucault's triad "discourse-knowledge-power" is useful in examining issues of power in the narration of the history of Ontario public education. Carol

Smart (1989), Winnifred Sullivan (2005), Lori Beaman (2008) and Ben Berger (2010) examine the role of law in the regulation of religion while Lori Beaman theorizes harm to examine the political uses and regulatory effects of the identification of harm and risk assessment. Dorothy Smith (1987), Talal Asad (2003), Asad, Wendy Brown, Judith Butler and Saba Mahmood (2009) and Elizabeth Hurd (2008) examine the privileging of Western rationalism and secularism as a way of knowing to examine the interpretation of critical thought as it is applied to "education about religion" in Ontario public education.

I chose social constructionism as the primary theoretical framework for two reasons. The first is that, although in debates over the role of religion in public education the categories of religion and the secular are deployed as if they are fixed entities, they actually have different meanings which depend on the context in which they are being used. In addition, the boundary between religion and the secular, while it has important regulatory effects in Ontario, is actually a shifting and dynamic construction in response to particular historical and political circumstances. This is equally true of other categories important to this thesis. The attempt to precisely define among others, the categories of religion, the secular, modernity and critical thought or to determine which definition is the "right one" is less important than the question of how they are used, in what context and for what purpose. In addition, the uses of terms and categories take on more significance when placed in binary opposition or linked to other terms, some examples of which are the secular linked to modernity, critical thought, public and individual placed in binary opposition to religion, tradition, indoctrination, private and collective. However, their uses are less about precise definition and more about the creation of an effect or a picture of Ontario as a modern society and the essential role of the public school system in achieving it. Beckford does two things; first, he takes religion seriously as a human way of knowing and interacting and; second, his formulation of the social construction of religion most closely and systematically describes the shifting uses of categories in the data on which this thesis is based.

Beckford says that he adopted a definition of social constructionism between more radical formulations based on the idea that "social reality consists of nothing but text and discourse", and a "more modest use of 'constructionism' (which imply) only that human beings create or construct meanings when they interact with each other". He seeks "to analyse the processes whereby the meaning of the category of religion is, in various

situations, intuited, asserted, doubted, challenged, rejected, substituted, re-cast, and so on." (2003, p. 3). He wants to avoid engaging in debates about whether or not religion exists as an ontological reality or to precisely map the boundaries between the religion and non-religious' Rather, he wants to "show how the boundary between these two categories is staked out, deployed attacked, smudged, re-defined, or even dissolved" (2003, p. 4).

In a similar way, Beckford theorizes that secularism and secularization are not fixed categories and processes but rather, are ways to think about the construction of religion. Rather than resolving the issue of what the secular is Beckford argues that "debates about secularisation are highly revealing about the underlying ways of constituting religion as an object for social scientific analysis" (2003, p. 8).

His aim, he says, is to "show that, far from being a fixed or unitary phenomenon, religion is a social construct that varies in meaning across time and place" (2003, p. 7). Further he observes that "Agreement on what counts as religion is never universal. Disagreements are sometimes violent and destructive" (2003, p. 7). This issue of "struggle" over definitions of religion and over the boundaries between religion and non-religion is an important theme in Beckford's use of social constructionism for two reasons. The first is that the social construction of religion and the boundaries between religion and non-religion occurs, "in some cases" in the context of "intentions, policies, strategies and campaigns" (2003, p. 8). Conflict over definitions of other concepts, for example, family, marriage, politics, and art are common, but religion is a category that seems to generate particular energy with religious groups engaging in intense struggles over truth claims and religious practices in public education. These struggles often involve the state and regulatory agencies which are drawn into disputes over what forms of religion qualify for public recognition and public space (2003, p. 13-14).

The second reason for the significance of conflict is that definitions of religion and "what counts as religion and where the boundary lies between acceptable and unacceptable forms of religion" (Beckford, 2003, p. 8) have important implications for public recognition, access to public space and resources. In other words, the outcomes of struggles over boundaries between religion and non-religion and between acceptable and unacceptable forms of religion have important regulatory effects.

Social constructionism in this thesis

Religion is the central theme of this research, at times serving as a highly important social fault line which generates strong reactions, while usually remaining a source of difference which does not make a great deal of social difference. Religion is not one thing but is used in diverse ways in different contexts and that conflict over religion occurs in historical moments which reveal social boundaries that are usually hidden. This is true of the academic literature but is equally true in political debate and legal processes on multiple levels.

Beckford's theoretical formulation of social constructionism avoids entering debates about definitive definitions of religion or defending any particular definition of religion. While I have my own biases about religion as a category of human knowing, the focus in this thesis is how religion is defined in particular social and historical contexts and how definitions are deployed to achieve a purpose. Further, the purpose here is to analyze the processes by which the boundaries between religion and non-religion or between acceptable and unacceptable forms of religion are constructed and defended.

Beckford argues that religion is constructed in the context of social processes, including political and legal processes, often in situations of conflict and contest over other things, particularly public recognition and the distribution of resources. Definitions of religion are sometimes explicit although usually implicit, generated in particular situations to establish legitimacy of some kind. His formulation of social constructionism represents religion as an "interpretive screen" through which some people construct meaning. However, religions are not homogeneous and there is no way to predict how people who claim a similar religious affiliation will interpret anything (2003, p. 24). Religions and religious groups are highly diverse and dynamic, constructing their religions as interpretive screens in different ways over time and place.

In this thesis the entry point into the regulation of religion in Ontario public education is the Ontario election of 2007 and particularly the intensity of the debate over the public role of religion. My initial conclusion was that this was one more example of a more general "anti-religion" trend loosely captured by the term "secularism". However, a closer reading of the election, of the history of Ontario public education, of the legal framework within which religion in public education is regulated and of Ministry of Education documents

suggests a more complex and nuanced picture. First, the election of 2007 was not an isolated event but was only one in a longer history of contention over the role of religion in public education, including the period from the 19th century to 1990 when the Ontario public school system was explicitly religious. Second, while there have always been explicitly "anti-religious" voices in the debates over the role of religion in public education, they have always been in the minority. The Ontario public school system has always proclaimed itself to be hospitable to all religions, welcoming religious diversity and priding itself on its inclusivity while contrasting itself to other school systems in the province which are labelled either "separate" or "private". Third, religious groups are not at all unified on the role of religion in public schools, being divided over the role of Muslim prayer space, the distribution of Gideon Bibles and public funding of faith based schools and the current regulatory space for religion in public schools. In addition, religious groups have been on opposing sides in key legal cases between 1985 and 1997, arguing for and against expanded space and public recognition for religion in public schools.

In other words, the story of changes in the role of religion in public schools is one of intense political and legal struggle but it is not a straightforward matter of religious groups against non-religious ones. Neither is it a straightforward story of religion losing ground against forces of secularism. One could argue that increased space for Muslim prayer space in the early 21st century or more sensitive treatment of Jews by the courts in the late 1980's could not have happened without the loss of Protestant Christian hegemony and its replacement by a form of liberal secularism. In other words, the struggle over religion in Ontario public education cuts across religious lines, with religious groups divided over the role of prayer, religious activities, religious instruction and other issues in which religious communities are invested, including the public funding of faith based schools.

However, secularism itself is a contested concept with variable meanings over time to which both religious and non-religious people subscribe and which they oppose. While in Ontario public policy, the adoption of the language of secularism is seen by many as the resolution of the conundrums associated with religious diversity in public education, ongoing resistance by religious groups and comparison with other jurisdictions suggests that secularism as interpreted in Ontario is only one way to construct boundaries around religion.

2.2.2. "Discourse, knowledge and power"

One of the recurring issues in the social construction of religion and education is power. Michel Foucault's analysis of power provides insight into the multiple ways in which power is deployed in the regulation of religion but also in the control of the representations of religion in historical narratives and in political contests. Foucault's theoretical triad of knowledge-power-discourse is particularly useful in tracing the representation of religion and the effects of representation in law and regulation.

The focus here is not as much on Foucault's more technical analysis of how discourse is structured but rather, in the idea of discourse as "consisting of groups of related statements which cohere in some way to produce both meanings and effects in the real world, i.e. the idea of discourse as having force, as being productive" (Carabine, 2001, p. 268). In other words, the idea of discourse and its link with knowledge and power reveals how key concepts which appear regularly in debates in Ontario public education are thought about and talked about and what effects those ways of thinking and talking have in the way religion is regulated in public education. The Foucauldian "knowledge-power-discourse" triad provides insights into the issues of power in the social construction of religion, the secular and the boundaries between them.

The link between discourse, knowledge and power is evident in case law, particularly in the way courts between 1985 and 1997 interpreted the social and historical trends of the time in which they were operating. The courts in *Zylberberg* and *Elgin County* seemed to assume they were doing something quite new in addressing the domination in Ontario public education of Protestant Christianity. They accepted a form of secularization narrative based on the idea that religion was going to have a decreasing public role, associating religion with a more traditional, less inclusive, indoctrinational time. They saw themselves as being on the side of history in doing two things; first restricting the role of religion and its harmful effects and second, by creating a new, more enlightened, secular and modern future.

However, their doing so depended on their uncritical acceptance of ways of thinking about religion and the secular, education and the learning process, public education and the role of religion and the state in public education. Although key concepts are highly contested and are used in a wide variety of ways around the world, the courts in Canada opted for particular definitions while rejecting other possibilities. The discourses adopted by the courts

then served as a screen or provide the basis on which they listened to some while rejecting other evidence to produce legal knowledge.

The courts were not operating in isolation and the assumptions on which they based their reasoning and their decisions are evident elsewhere, for example, the election of 2007 and other historical events in Ontario public education and in Ministry of Education program and policy documents. While there is some variation within the discourse, particularly around the issue of the identification of harm and risk assessment, there is also remarkable consistency, particularly around a progressive narrative linking the public school system with the delivery of public education in producing an enlightened, modern society as a kind of unassailable truth.

Theorizing an approach to deconstructing an imagined seamless historical narrative or discourse, Foucault identifies three purposes in the exercise of critical analysis which are applied here to Ontario public education. The first purpose is that "In fact, the systematic erasure of all given unities enables us first of all to restore to the statement the specificity of its occurrence and to show that discontinuity is one of those great accidents that create cracks not only in the geology of history, but also in the simple fact of the statement" (1972, p. 28). This allows consideration of the idea that the Ontario public school narrative is socially constructed in a specific historical and political context and that stories of resistance to that narrative provide "cracks" through which we can see it more clearly.

Foucault states his second purpose by saying, "But if we isolate, in relation to the language and to thought the occurrence of the statement/event, it is not in order to spread over everything a dust of facts. It is in order to be sure that this occurrence is not linked with synthesizing operations of a purely psychological kind …. and to be able to grasp other forms of regularity, other types of relations" (1972, p. 28). This second purpose takes analysis beyond debating the truth or untruth of the Ontario public school narrative on the basis of new facts or the psychological purposes of key players, such as Egerton Ryerson or Dalton McGuinty. Rather, Foucault's second purpose shifts the focus to the public school system and public education in the context of other institutions such as churches and the state and events such as nation building in the 19th century and the re-emergence of religion as a public force in the late 20th and early 21st centuries.

Foucault's "third purpose of such a description of the facts of discourse is that by freeing them of all the groupings that purport to be natural, immediate, universal unities, one is able to describe other unities, but this time by means of a group of controlled decisions"(1972, p.28, 29). In the examination of Ontario public education, widely accepted uses of key terms and concepts and the largely unexamined link between the public school system, public education and Ontario social harmony often distract from understanding them as "controlled decisions" rather than "natural, immediate universal entities". While there is a dominant discourse around public education, there has been an equally long history of resistance that represent "other unities". While my research started out with the purpose of trying to decide which of these voices represented the most accurate representation of history and the best way forward, Foucault's analytic approach focuses attention on multiple voices competing for recognition to produce particular effects.

2.2.3. "Historical narrative"

The issue of historical narrative emerged in the thesis as an important one for two reasons. The first is that there are ongoing appeals to history in the debates over the role of religion in public education, some of which are explicit but most of which are assumed. The second reason is that there are competing historical narratives which serve to explain a current state of affairs or to provide moral justification for a political position. In other words, while there are different approaches to the study of history, examination of historical narrative as social construction is the focus in this research rather than debates over the accuracy of the histories at play.

In case law, government reports and political rhetoric there is a persistent progressive historiography which does two things. The first is that a progressive narrative makes a current reality a kind of logical culmination of a historical development, but the second thing is that current realities are represented in contrast with earlier, less enlightened or orderly times. In addition, a progressive narrative represents competing narratives in terms of a kind of moral judgement as "unprogressive" or "disorderly". While the current narrative could be described as a form of secularization thesis, historical narrative has played a key role in Ontario public education since the 19th century, as an important strategy to marginalize competing narratives through a process of harm identification and risk assessment.

Two theoretical insights provided by Foucault focus on historical narrative, not in the first place on the issue of historical accuracy but rather, how narrative works in a strategic way. First, he describes as "conservative" the function of "cultural totalities", including histories, saying, "All the treasure of bygone days was crammed into the old citadel of this history; it was thought to be secure; it was sacralised" (1972, p. 14). Foucault's use of the word "sacralised" shifts attention to the privileged role of the Ontario public school system in delivering public education and the highly charged atmosphere created by any debates involving proposals to re-organize the public school system. In fact, the courts between 1985 and 1997 placed Ontario public schools out of legal and constitutional reach of religious minorities advocating for access to public funding and public recognition. The courts relied on historical narrative to rationalize their decisions, citing the role of Ontario public schools to deliver a more progressive and modern society.

A progressive historical narrative in Ontario public education provides the basis for defining key terms and concepts. So the question is, "What is public education?" is answered by "Public education is that which is delivered in the public school system in contrast with what was delivered before and what is delivered in competing school systems". This is irrespective of what is actually being delivered and there is evidence that what was delivered in the late 19th century as public education is quite different from what is delivered in the 21st century. Further, what is delivered in the highly diverse Ontario public school system is not one common public school experience but many different educational and social experiences. However, the idea of a common public school experience which forms the basis for common Canadian civic values as the culmination of progressive historical processes which can be delivered only in the public school system remains a powerful one in Ontario.

"Public education" is not one thing – rather it is a "discursive formation" (Foucault, 1972, p. 38) consisting of a "system of dispersion" between a number of statements, which define a regularity (an order, correlations, positions and functionings, transformations) between "objects, types of statement, concepts, or thematic choices". Foucault provides insight into how Ontario public education is seen as an ongoing, dynamic pattern of discourse in which public education and the public school system are represented as one seamless thing essential to the creation of Ontario's imagined community (Anderson, 2006).

The discourses which create Ontario public education involve a number of supporting concepts, including, among others, religion, the secular, modernity, civic values, Ontario's legacy, critical thought, coercion, education and indoctrination. While these are foundational to the representation of public education as an essential social practice and the public school system as the one institution able to deliver it, Foucault's analysis of discourse, knowledge and power opens up ways to think about how they are used in the discursive formation of public education. The question here, therefore, is what is meant by the key terms and what effects do those meanings have in law and regulation. The purpose of analysis of key concepts is to understand how they are constructed and how statements about them "depend upon one another, the way in which they interlock or exclude one another, the transformation that they undergo and the play of their location, arrangement and replacement" (Foucault, 1972, p. 33-34). However, inherent in historical narrative as an exercise in power is resistance in the form of counter-narratives. In Foucault's analysis, power and resistance to it are intermingled and power cannot be understood without consideration of resistance.

Stories of resistance and counter-discourses create alternative perspectives allowing analysis of the social construction of public education and the way power is deployed, not only in regulation and the distribution of public resources but also in the very way some definitions are privileged and others are marginalized. Resistance and counter-narratives take a number of forms, some within and some outside the publicly funded systems. The point here is not to determine which of the discourses is "right", either in a philosophical or educational sense, although I do have my own perspectives about the organization of the public school system and public education in Ontario. Rather, the counter-discourses serve to shed light on the dominant discourse and the deployment of power which establish and protect the organization of Ontario public education. There are persistent counter-discourses with their own discursive formations examination of which serve a critical analysis of power in the construction of boundaries around religion.

2.2.4. Law and the social construction of religion

The boundaries around religion have been constructed and contested in law throughout the history of Ontario public education. Regulatory and funding issues relating to the role of religion in public schools have been adjudicated by the courts to address

conflicts among stakeholders in the public school system and challenges by religious minorities trying to gain public recognition for their schools, including public funding. Contrary to what might be expected about the religious neutrality of the courts and law, analysis of case law contested and decided between 1985 and 1997[7] reveals that the courts and law made significant declarations about the nature of religion and its role in society and, more specifically, in public education.

Further, the courts quite uncritically adopted a progressive secularization narrative in which religion was represented as a marginal and private matter of individual choice in a modern society. They adopted a view of secularism which reinforced the idea that public education and, in particular, education about religion could be delivered only in the public school system in a secular voice. In other words, the courts adopted the dominant discourse of Ontario public education, engaging in a process of harm identification and risk assessment in which religious citizens engaging in educational enterprises outside the public school system were seen as potential sources of harm to the public school system, to public education and to Ontario citizens. In fact, while there was concern about the protection of religious minorities, the legal process also silenced some religious voices, in particular those who challenged the dominant narrative in Ontario in which the public school system is represented as the only institution able to deliver public education.

James Beckford's social constructionism provides the broad theoretical framework but Carol Smart (1989), working in feminist theory provides theoretical insights into law as a social actor while Winnifred Sullivan (2005), Lori Beaman (2008) and Benjamin Berger (2010) work more specifically with law and the legal process in the social construction of religion and the secular and the boundaries between them.

Carol Smart's research (1989) is "about how law exercises power and how it disqualifies women's experience/knowledge". Her goal is to see a "shift in focus away from documenting the wrongs of white women or of black women and men … to turning the focus on those who re the definers of knowledge and requiring them to adopt a different consciousness" (1989, p. 2). Building on Foucault's triad of knowledge, power and

[7] The cases most relevant to the thesis are *Big M (1985), Zylberberg (1988), Elgin County (1990), Bal (1996)* and *Adler (1997)* (see timeline in Chapter 5.2).

discourse she analyzes the way law generates a kind of legal knowledge which is hostile to women and women's voices. While she does not address the issues of religion or education, there is a similar pattern of hostility, not so much to religious diversity in the social environment created by public schools but to diverse religious imaginations in public education. This was true before 1990 when the dominant voice in public schools was Protestant Christian but equally true after 1990 when the dominant language changed to a form of liberal secularism.

Winnifred Sullivan's analysis of law and the regulation of religion challenges the identification of "secular law" as religious neutral and further, she notes that in religious freedom cases religion, rather than law and the sovereign state is identified as problematic. She says,

> There is a tendency to accept modern law's representation of itself as autonomous, universal and transparent. Such representation makes religious, not law, the problem. .. Modern secular law is not, however, indifferent to religion. Religion was seen as the problem. So, as a whole host of contemporary legal historians have explained, secular law only appears secular. In fact, it is replete with ideas and structures in religious traditions, crime, sin and so forth – ideas an structures that in many instances cannot be coherently defended using simply utilitarian forms of argument. Secular law implies a subordination and submersion of religion. (2005, p. 53) (italics in the original)

In Ontario public education history, law presents itself as secular and therefore religiously neutral and after 1990 the courts presented public education and the public school system in similarly. This was a key point of debate and the focus of legal and political challenges by minority religious groups unsuccessfully arguing for recognition of non-Catholic faith-based schools on the basis that secularism has its own religious biases.

Lori Beaman's examination of the case of Bethany Hughes focuses specifically on law and religion and the issue of harm and risk is determining medical interventions. Bethany Hughes was a seventeen year old woman who, with the support of her mother and against the wishes of her father, refused blood transfusions on the basis of her Jehovah's Witness religious faith. Beaman analyzes "Her story, and the web of power relations implicated in it (which) is an important one in that it offers a case study of the dynamic intersections of discourses in the governance of the religious citizen" (2008, p. 1). Beaman's work follows Beckford's social constructionism and Foucault's analysis of power in case law in Canada and although her subject is medical and judicial practice and not education, her

analysis applies to this thesis. Of particular significance is her examination of the legal process by which the courts assess risk and harm, adopting some medical expertise and not others, their assumption being that "deviant" forms of religion reduces agency and is a barrier to achieving responsible adulthood. In this thesis, research of case law reveals that educational harm and risk is directly related to the presence minority religious groups challenging the dominant view that education can be delivered only in a liberal secular voice. The all-important binary distinctions between education about religion and religious education and between education and indoctrination indicate a persistent representation of religion as a source of harm that must be carefully regulated.

Beaman situates the 2002 Bethany Hughes case in an historical moment "fraught with anxiety about the dangers posited by 'the other' who presents as the terrorist, the disease, the religious fanatic, the irresponsible citizen" (2008, p. 1). Her insight invites close attention to the historical moments in Ontario education history in which religion and religious difference emerged as an important social fault line. In a similar way, the election of 2007 was an intense, discrete historical moment providing insight into a nexus of discourse, knowledge and power in which religion played an important role. The language deployed during the election which represented religion as a source of educational and social harm finds its parallels in other controversies but takes on additional meaning when seen in the context of the early 21st century when acts of state and non-state political violence are being seen through the screen of religion.

Like medicine, public education is a social practice closely associated with the delivery of the most highly prized "Canadian values". The spectre of the religious fanatic violating student integrity through forms of religious indoctrination seems to generate strong reactions. Rather than being opportunities for debate about the best way to deliver public education to the greatest number of students in a diverse society, these historical moments become pitched battles over the survival of Ontario as a modern, enlightened society. Beaman, quoting James Beckford, observes that, "The fact that some people chose to abandon the path of 'normal' education or employment for the sake of non-conventional religious ideals is experienced by others as an affront to their conviction that modern individuals are free, rational decision-makers. In other words, modern living is both massified and pervaded by an ideological conviction that individual freedom of choice is

stronger than ever" (2008, p. 108). The language of "affront" pervades debates over the role of religion in public education, particularly when minority religious groups challenge the "sacralised" public school system, arguing for public recognition of their own visions of education.

Berger, examining the role of law in religious freedom, observes that the "scope and nature of religious freedom is a matter of aesthetics" which he describes as "an unexamined and yet elemental component of that which conditions and shapes religious freedom in contemporary liberal constitutional orders" (2010, p. 1). He understands "aesthetic" in the Kantian sense of "intuition" which forms the "indispensable groundwork" to which "all thought points" (2010, p. 2). Drawing on Kant, Berger argues that "As distinct from our *empirical intuitions*, which arise from our sensation of phenomena, *pure intuition* is that set of sensibilities that exist in advance of our perception of a given object, providing the basic framing of our perception of the world and thereby, serving as what Kant called 'principles of knowledge *a priori*.'" (2010, p. 3). Berger observes that law and legal arguments reflect an "aesthetic" or a set of largely unexamined presuppositions about religion which shape decisions.

Berger's insights apply to the cases between 1985 and 1997 in which the dominant ethos in Ontario public education changed from a form of Protestant Christianity to a form of liberal secularism. Judicial decisions that accepted some and reject other evidence reveal that, while the courts saw themselves protecting religious freedom, they were assuming particular forms of religion and religious practice which did and forms which did not qualify for constitutional and legal protection. Beyond law, however, Berger's ideas are also applicable to analysis of selected policy and program documents where a similar aesthetic about religion and public education is evident.

2.2.5. Secularism and modernity

In education, the identification of harm takes the form of "indoctrination" and while the term "brainwashing" is rarely used, the concept is rarely absent. Indoctrination or brainwashing are a source of alarm precisely because training students in the skills of critical thought and "individual freedom of choice" has, since the 1960's, become a defining goal of Ontario public education. Academic skills, including critical thought, and social skills are

represented as serving the priority of equipping students to exercise their freedom of choice is their choice of profession, life style and religion. The point of "world religions" and other ways in which "education about religion" is delivered is to equip students to make their own decisions about religion but also to engender tolerance and respect for the freedoms of others to do the same thing.

This is not an argument against education about religion or against the value of respect for religious diversity. In the context of this thesis, these are non-controversial educational strategies to equip students to navigate a religiously diverse world. However, what is questionable is the assumption that only public schools speaking in a liberal, secular voice are uniquely able to deliver critical thought or its variant, education about religion or to equip students' attitudes of respect for differences. Critical examination of the legal cases and of Ministry of Education policy and program documents suggests a prevailing assumption that religious voices or religious imaginations delivered in faith-based schools are actually harmful to critical consideration of religion. The point of this thesis is to question that assumption, partly on the basis of my own professional experience in education but also on a more theoretical stance which invites (respectful) skepticism of truth claims by any religion or non-religion.

Dorothy Smith (1987), Talal Asad (2003) and Asad et al (2009) provide a theoretical framework for such skepticism. Smith describes her work as a project to develop a "sociology for women" to address the "intellectual, cultural and political world, from whose making we had been almost entirely excluded and in which we had been recognized as no more than marginal voices" (1987, p. 1). The sociological world from which she says women have been excluded "is a systematically developed consciousness of society and social relations". She says about that world that it "claims objectivity not on the basis of its capacity to speak truthfully, but in terms of its specific capacity to exclude the presence and experience of particular subjectivities" (1987, p. 2).

Her analysis is of a social and sociological "aesthetic" which privileges some ways of knowing while silencing others, something also observed by Smart in in her feminist critique of law and by Beaman in her analysis of the regulation of religion in medical interventions. In particular, Smith challenges the tradition of thought which represents Enlightenment rationalism as linear, rational and, most important, public, as opposed to

emotion and intuition which are considered "private" (1987, p. 5). However, the overall effect is that women's voices and multiple ways of knowing have been silenced in public institutions, including in education.

Smith and Smart are writing from a feminist perspective in sociology and law while my focus is religion in public education. However, Smith foregrounds the privileging of ways of knowing and the process by which other ways of knowing are marginalized and even silenced through a variety of ways. "Knowing" is at the heart of education and in Ontario public education the distinction between acceptable and unacceptable ways of knowing are important matters of state interest. While religious diversity in a social sense is welcomed and protected, in an educational sense religious diversity in the educational models and the actual delivery of educational services is highly regulated and limited. In fact, education models rooted in religious tradition, drawing on revelation, sacred texts and prayer (among others) as the basis for knowledge about the world are explicitly characterized as "private" ways of knowing for family and religious institutions, including "private" or "separate" schools. "Critical thought" is interpreted in quite specific ways reminiscent of Smith's (along with Smart and Beaman) analysis of the Enlightenment rationalist tradition which has marginalized religion as a private and sectarian matter quite separate from and even opposed to linear and critical thought. However, as Ben Berger points out in his analysis of the "aesthetic" out of which law emerges and of which it is an expression and the representation of linear, rational thought as "objective" is often oblivious to its own dependence on "intuition" which provides its own *a priori* screen for what constitutes legitimate and public ways of knowing.

Talal Asad (2003) and Elizabeth Hurd (2008, 2012, 2013, 2014) analyze secularism as a modernist project (Asad, 2003, p. 13) and as a "form of productive power" (Hurd, 2008, p.1) in which secularism is represented as a superior and more advanced way of framing knowledge and religious freedom. They argue that the privileging of secularism provides a rationale for the marginalizing of other ways of knowing with important implications for social and foreign policy and for the distribution of resources (Hurd, 2012, 2013, 2014). Asad argues that liberal secularism presents itself as the basis for an objective and critical epistemology against which other ways of knowing are judged to be religious or other forms of indoctrination (Asad et al. 2009). Its lack of critical self-awareness of its own biases and

blind spots serve a political purpose but also lead to misunderstanding of alternative epistemologies.

In Ontario public education public schools and liberal secular thought are seen as inclusive, non-coercive deliverers of critical education as opposed to its competitors which are represented as engaging in social harm in the form of indoctrination. However, selected literature on religion, education and the state provides evidence that the privileging of secularism serves political purposes and narrows the social space for religious diversity in education.

2.3. Method and methodology

I have chosen two research methods to address my research question about the representation and regulation of religion in Ontario public education; critical discourse analysis and critical genealogical analysis. Critical discourse analysis is used in Chapter Three to examine political platform proposals, letters to editors, newspaper reports, editorials, opinion pieces, written submissions, statements by lobby organizations drawn from a variety of newspapers, magazines and websites in the election of 2007. Critical genealogical analysis is used in Chapter Four where the primary sources are five reports on education commissioned by the government of Ontario between 1950 and 2003. In Chapter Five critical discourse analysis is used to examine four legal cases. They are *Zylberberg v Sudbury Board of Education (1988), Canadian Civil Liberties Association v Ontario Minister of Education (1990), Adler v Ontario (1992, 1994, 1996) and Bal v Ontario (1994, 1997).* The research method in Chapter Six is critical discourse analysis to examine selections from the *Education Act* in 1980 and in 1990, selected policy and program documents issued by the Ministry of Education, the Roman Catholic Separate School Board of Eastern Ontario and from a variety of privately funded faith-based school organizations.

2.3.1. Critical Discourse Analysis

a. Defining critical discourse analysis

Critical discourse analysis has been widely accepted as a research method in the social sciences and increasingly in religious studies, but its precise definition is elusive and contested (Hall, 1997; Wetherell et al, 2001; Wijsen, 2013; Moberg, 2013; Tairu, 2013).

Precise definition of critical discourse analysis is not the focus of this thesis and I use a relatively short working definition of critical discourse analysis as "the close study of language in use", accepting the idea that language is historically situated, dynamic and constitutive (Taylor, 2001, p. 5). Therefore I use what Marcus Moberg identified as second and third level discourse analytic approaches and avoid the "meta-theoretical reflections" associated with first level analysis (2013).

Discourse, in Foucauldian terms, is "a group of statements which provide a language for talking about or a way of representing the knowledge about a particular topic at a particular moment" (Hall, 1997, p. 44) or "systems of knowledge" (Fairclough, 2001, p.233). The use of language is situated in a particular historical moment and is used by differently positioned actors who see and represent social life in different ways (Fairclough, 2001, p.235). Marcus Moberg, quoting Stuart Hall, says, "Discourses are ways of referring to or constructing knowledge about a particular topic of practice; a cluster (or formation) of ideas, images and practices which provide ways of talking about, forms of knowledge and conduct associated with a particular topic, social activity or institutional site in society" (2013, p. 9).

Critical discourse analysis seeks to discern connection between language and other elements in social life which are often opaque (Fairclough, 2001, p. 230). It is particularly attentive to issues of power and the ways in which a kind of common sense is created in a "web of power relations" (Beaman, 2008, p.1). K. Granholm says, "critical discourse analysis includes an explicit focus on the construction and maintenance of ideology and power relations" (2013, p. 49). Discourses are dynamic and language is reshaped around new meanings and in new contexts simultaneously responding to and creating social change (Fairclough, 2001, p. 231). Critical discourse analysis focuses on the uses of language and the representations of religion, education and citizenship which entrench both hegemonic power and resistances in counter-discourses in competing narratives accounting for the role of religion in Ontario public education.

b. My choices within critical discourse analysis

I have made a number of choices which more precisely position me as a researcher using critical discourse analysis. I chose critical discourse analysis because it provides me

the best method to examine competing discourses in the themes of religion, education and citizenship in election rhetoric, government reports, law and policy and program statements.

The election of 2007 was one historical moment in a much longer story in which the language deployed has both striking similarities and significant development with that used in debates over the role of religion in public education throughout the history of public education in Ontario. Therefore, while the entry point into the thesis is the election of 2007, the research has gone further into broader questions relating to the representations of religion, its social role of religion and its role in the formation of students as free thinking agents and as citizens. Since education and its delivery mechanisms reflect the closely held values and fault lines of the societies in which they occur, examination of disputes over school funding, programs and school culture provide insight into broader social issues.

This is an examination of a conceptual rather than a practical issue. Its purpose is not to offer specific policy alternatives or advice to education professionals. Rather, it examines competing discourses in religion, education and citizenship in shaping legal arguments and the formal regulation of religion in public education. Regulation and the establishment of boundaries around religion in education is by no means a one way process, each step being contested by education professionals, school boards, religious groups, families, privately funded faith based schools, citizens and the state. However, while the point of the thesis is conceptual rather than practical, there are repeated references to the practical effects of discourses on the regulatory framework within which religion in public education is conceptualized and positioned.

Use of critical discourse analysis here is based on a post-structuralist or social constructionist theoretical framework. While there may be religious truth, an ideal educational theory and pedagogical practice or an optimum social organization in an essentialized or absolute sense, the purpose is not to discover or advocate for it. Rather, the focus is on contests over representations of religion as socially constructed, the privileging of some representations of religion and marginalizing of others and their effects in public policy.

The thesis assumes that narratives and representations are always historically and socially situated, that the social world is dynamic and complex, and that social processes elude predictability. Any actor, including the researcher, has a perspective limited by a

number of factors and therefore, social reality is not a single thing captured by any truth claim. Further, although truth claims often represent themselves as descriptive, a social constructionist theoretical framework suggests that they are constitutive of what they purport to describe (Taylor, 2001, p. 12; Beckford, 2003). In other words, they are productive as much as they are descriptive. Therefore an important theme is the ways in which the actors position themselves along particular fault lines to produce an effect in response to other positions. Other related themes are the construction of the fault lines themselves and the analysis of the power relations in the privileging of some positions and the marginalizing of others along those fault lines.

As a result, the research focus is on the use of language, particularly in the use of rhetorical binaries to establish the boundaries between what forms of religion are and are not considered appropriate in public spaces, particularly public education. Binaries such as "religious–secular", "public-private", "common-sectarian" and the all-important binary "education about religion-religious education" serve to establish a largely unexamined "common sense" which serves to provide remarkable discursive consistency among a wide variety of textual genres. The concept of intertexuality (Fairclough, 2001, p. 233) provides insight into a common sense at work in law, Ministry of Education documents and election rhetoric deployed by professional educators, government officials, the courts, politicians and in various media in the form of editorials, letters to editors and news reports. In the heated environment of the provincial election, rhetorical binaries served to identify a threatening other and harm to Ontario's most important public institutions, in this case, public education. However, the same binaries are evident in the more sober language of government reports and law presented as objective and scientific. Social fault lines which are usually opaque in the language of objectivity and science are revealed in the extreme language typical of the unique environment created by contests over resources.

This thesis does not include a technical analysis of "variation and imperfection of language as a system" or of the "activity of language …. as a process". Rather, the point is to analyze the patterns of language deployed in the themes of religion, education and citizenship to achieve a particular kind of society and a particular student (Taylor, 2001, p. 9). Language is seen here as a resource to analyze social processes and power relations in the conceptualization of the role of religion in education as it is deployed by various players.

Therefore, I work within the framework of reference of the actors in order to understand what they understand themselves to be saying and what they are trying to create, using what Taylor identifies as an "emic" analysis (Taylor, 2001, p. 16). The actors in the court cases were creating or were seeking to create an imagined society in which religion, education and citizenship were constructed to play particular roles. There were both overlapping values to which they appealed but differences in interpretation of those values and an emic analysis reveals the positionality of the actors and their often unexamined assumptions about the role of religion in society. The connection between court decisions and the aesthetic of which they were an expression can be shown through examination of particular statements by judges about religion, education and citizenship and further, their effects are clear in subsequent Ministry of Education policy and program documents (Smart, 1989; Sullivan, 2005; Beaman, 2008; Moon, 2008; Berger, 2010).

The issue of positionality raises questions of my own various identities which shape my research interests, concerns and perspectives. I have been a professional educator in Calvinist day schools associated with the Ontario Alliance of Christian Schools from 1973 to my retirement in 2010 and have a long commitment to their role in the rich diversity of religion in Ontario society and Ontario education. My professional life has included teaching, working as a school principal, contributing to a variety of curriculum development projects, leadership and community development, fund raising, interaction with the Ministry of Education and political advocacy, particularly between 1995 and 1999 and again in 2007. I have been a student in both privately funded faith-based schools and public schools and my children received their elementary, high school and some of their post-secondary education in privately funded faith-based schools. I am an adjunct faculty member in the education department at Redeemer University College, a privately funded, publicly accredited post-secondary liberal arts institution self-identified in the neo-Kuyperian Calvinism that characterized much of the Dutch immigration to Canada during the 1950's. Consequently I have been deeply immersed in the world of privately funded faith-based schooling, which raises important questions about my ability to be even handed in my examination of the role of religion in Ontario education.

I have addressed the issue of my role as a researcher in a number of ways. Since my retirement as an educator in 2010, I have had minimal professional contact with faith-based

schools, including my work for Redeemer University College which has been reduced to occasional teacher supervision for the purposes of professional qualifications. Minimal contact with a former professional life is an inevitable result of retirement but I have also made decisions which have allowed me to create conceptual and emotional distance essential for critical reflection and analysis. Second, I am working in a respectful and supportive academic environment where no one shares my history, commitments and my assumptions. Presentation of papers in academic conferences, workshops and seminars, engagement with readings and ideas in my classes and my research have put me in a position where I have had to critically examine and reformulate my own presuppositions. Third, at the University of Ottawa and in an expanding global network of scholars I have friends and colleagues who are respectfully skeptical of my point of view and have provided me a context in which I could see the role of religion in education from new perspectives. Fourth, my academic superiors and experienced scholars in the Religious Studies Department at the University of Ottawa know me and have been alert to the identities which emerge periodically in my talk and in my writing.

While I have been sensitized to the ways in which faith-schoolers have their own assumptions about the moral imperative of their projects and their preconceptions about the moral dangers of public education, I remain committed to the idea that education based on a religious framework can be a public good and that education as religious practice can enrich public space. Having found myself and my religious practices characterized as dangerous to Ontario public education and Ontario social cohesion, I have also experienced the confusing effects of religious othering in political contests when I usually pass as a normal Ontario citizen. My work is a contribution to a conversation about public education as a more inclusive umbrella in which religion can be a valued public partner in Ontario public education rather than an uneasy presence which must be tolerated.

c. Application of critical discourse analysis in my research

c. (i) Chapter Three "The Election of 2007"

As indicated above, the election of 2007 provides an entry point into wider issues relating to the regulation of religion and religious diversity in Ontario public education and Ontario society. I have chosen to answer my questions about the patterns of thought and

discourse by examining the language in four genres which serve as my primary sources in Chapter Three. They are (1) political rhetoric, (2) letters to editors of newspapers and magazines, (3) statements by organizations and representatives of organizations with an interest in the outcome of the election or in a particular resolution of the question of the role of religion in public education and (4) commentary on and analysis of the election.

I read first of all to get a broad overview of the material, at first seeing a somewhat simple pattern of writers being "for" or "against" the Tory proposal. However, subsequent readings suggested a more nuanced picture which led me to identify and code the language which revealed patterns of word usage that were significant in two ways. The first was the meanings given the words themselves (for example, "diverse", "modern" and "secular") and the second was the way in which words appeared in context, linked to other words (for example, "modern, diverse, secular society"). What also emerged were the words that did not appear or linkages that were not made (for example, the writers supporting funding for faith based schools tended to not emphasis "religion"). Another kind of linkage which emerged was a pattern of binaries in which certain words were linked as opposites (for example, "religion" and "secular" or "private" and "public").

A further reading revealed a usage of words and concepts that linked the election to wider social and historical discourses and their effects on the regulation of religion in public education. The persistent linkage in the dominant discourse was between public schools as an institutional site, public education, social harmony, Canada's social progress and Western civilization. My research revealed that this linkage formed a kind of orthodoxy protected by strong public reaction on multiple social levels to the policy proposal by John Tory.

Finally, I read for evidence for continuities and discontinuities between the society imagined by the politicians and other interveners and the role of religion and education in that society. Critical discourse analysis of the language deployed in a wide variety of literature provided clues to what they thought they were contributing to the creation of something, either by identifying sources of harm or by stating what they thought is a good society. Many of the linkages in their contributions were not conceptually linear but they did create an emotional picture of hope for and harm to what they held dear.

I did not analyze the data in order to establish how representative the letters, political rhetoric and commentary were of the general population of Ontario or how other issues such

as health care, the economy and political integrity influenced the outcome of the election. My focus was on the role of religion in public education and my purpose was to trace patterns of discourse in the representation of religion in selected sources that referred specifically to religion.

c. (ii) Chapter Five "Law"

Critical discourse analysis was also used in the examination of case law. I chose to examine case law for three reasons. The first is that case law between 1985 and 1997 established the current legal framework for religion in public schools. The second reason is that evidence in the cases traces the transition from the 19th century to 1990 when the language of common civic values changed from a form of Protestant Christianity to a form of liberal secularism. The third reason is that the cases are contested between the dominant and counter-discourses evident throughout the history of Ontario public education.

The current legal framework for religion in Ontario public education was established in four religious freedom and equality cases between 1985 and 1997. They are *Zylberberg v Sudbury Board of Education (1988)*, (hereafter *Zylberberg*), *Canadian Civil Liberties Association v Ontario Minister of Education (1990),* (hereafter *Elgin County*), *Adler v Ontario (1992, 1994, 1996)*, (hereafter *Adler*) *and Bal v Ontario (1994, 1997)*, (hereafter *Bal)*. Religious minorities were successful in *Zylberberg* and *Elgin County* while in *Bal* and *Adler* they were unsuccessful, the focus of the analysis being on the difference between the two outcomes.

Case law has a way of crystallizing or clarifying discourses and power relations which are normally opaque or not easily accessible. While discussions of the religious and the secular and the role of religion in education tend to be more nuanced in government reports, they are unambiguously stated in the legal cases, identified and defined in clear terms in order to provide the basis for regulation. Examination of the cases demonstrates that law is not neutral but reflects hegemonic power, producing religion and education by defining the religion and education most appropriate in the production of democratic citizenship (Smart, 1989; Sullivan, 2005; Beaman, 2008; Moon, 2008). I did not read the cases as a legal scholar. Rather, I read them through the theoretical lens of social constructionism to see how religion and its role in public education was represented and the effects of those representations in

the reasoning and decisions of the courts. My examination of law was closely modelled on Beaman's critical socio-legal analysis of the Bethany Hughes case to identify the way law creates new social realities and boundaries (Beaman, 2008, p. 3).

I read the four cases in chronological order and colour coded (using coloured pencils) key words and phrases. On the basis of this reading, I coded the cases categorizing the key words under recurring themes. A further reading revealed that particular terms were linked in ways later adopted by subsequent courts and in Ministry of Education regulation. One very important link made in *Zylberberg* between "religion" and "coercion" and in *Elgin County* between "religion" and "indoctrination" has had important long term effects on the discourse about the role of religion in public education.

I then converted the texts of *Zylberberg*, *Bal* and *Adler* to Word which has a software program allowing me to find key words. *Elgin County* was not retrievable in that form so I continued to work with a paper copy. I re-read the cases, this time starting with *Adler* to test the patterns I had found in *Zylberberg*, *Elgin County* and *Bal*. Re-reading all the cases, I could count the key words in each case, find out when key words began to be used and, using the "find" function could identify the changing contexts in which they were used.

My next step was to analyze the cases for changes and continuity in the use of terms and categories which had emerged as significant from the coding exercise which provided me the basis for preliminary conclusions about the nature of the ground being contested in 2007. This led me to re-read the cases to further test and refine my conclusions. For example, while I had started out thinking about the legal cases as an exercise in secularization motivated by an anti-religious impulse, further analysis lead me to nuance that conclusion. A more accurate reading is that secularization is a malleable term and used primarily to identify a process by which the role of religion in public education has been redefined to create a learning environment more hospitable to all religions. At the same time, challenges by faith groups provide evidence that the courts were also engaged in a process of defining religion itself, establishing particular forms of religion as appropriate for public spaces in modern society in ways that further marginalized some citizens and some forms of religion.

My next step was to read sources around the court cases which provided context. The dominant role of Christianity was being challenged in Western societies, including Canada, in the second half of the 20th century. A growing number of religious freedom cases and a

great deal of literature on secularization, modernity, diversity suggest that the role of religion in society was a widespread concern in the global village. However, what has been equally significant is that secularization as it is understood in Ontario public education has striking similarities to the Protestant Christianity it is thought to have replaced, supporting the conclusion that the regulation is not designed to eliminate religion as much as it is to control and shape it so that it supports rather than challenges a dominant discourse. Particular discourses about religion, of modernity and secularization are evident in the thinking of the courts with important effects on the way they came to envision the role of religion in Ontario public education. However, developments in Ontario, while they have features unique to this province, reflect patterns and concerns recognizable in debates and developments around the world. Examination of context establishes the cases as part of a larger story of social, intellectual and legal developments which clarify the ground which was being contested in 2007 and lead me to my second research method.

c. (iii) Chapter Six "Education about Religion"

In Chapter Six I focused critical discourse analysis of the effects of the legal cases on the regulation of religion by the Ministry of Education in which the phrase "education about religion" plays a critically important role. My primary sources were *Policy Memorandum 108* (1988) issued immediately after the *Zylberberg* decision, *Policy Memorandum 112 (1991)* issued after the Elgin County decision and the 1994 program document *Education about religion in Ontario public elementary schools*. This allowed me to see the interpretation by the Ministry of Education of key concepts, language and assumptions in *Zylberberg* and *Elgin County*. In addition, I examined selected Ministry of Education program documents which summarize expectations for student learning in high school courses and programs and selections from publications issued by the Literacy and Numeracy Secretariat. In other words, I followed the discourses from the political arena through the legal process and into the world of education itself. I also examined selected documents emerging out of different faith schools as a way of identifying traces of counter-discourses going back to the 19th century. They allowed me to trace the continuity in counter-discourses

but they also provided alternative perspectives which shed further light on the Ministry of Education documents and the dominant discourse.

2.3.2. Method #2 "Critical Genealogical Analysis"

a. Defining critical genealogical analysis

The theoretical framework of social constructionism and the research method of critical discourse analysis are based on the principles that people construct their social realities through the use of socially situated and historically contingent use of language. Construction of social realities is most clearly evident in social controversies in which the differences between dominant and counter-discourses are foregrounded. Research on the use of religion as a wedge issue during the election of 2007 inspired further questions about the use of words and phrases linked to produce meanings which competed for public recognition, not only in this historical moment but in other historical moments and in other contexts. For example, the link between religion and indoctrination adopted by the Court of Appeal in *Elgin County* court led to its adopting "education about religion" as a resolution to the harm done by religious instruction. This phrase has become the basis for regulation of religion in public education in Ontario and was part of the "common sense" in 2007 in which public schools were represented in binary opposition to faith-based schools. However, although education about religion is positioned in binary contrast to the religious education it replaced, there is actually more continuity than difference between the two concepts.

Stephanie Taylor, expanding on the principles underlying genealogical analysis, says, "Controversy is basic to this form of discourse analysis because it involves the study of power and resistance, contests and struggles. The basic assumption here is that the language available to people enables and constrains not only their expression of certain ideas but also what they do." Further, she says, "the language user is not a detached communicator sending out and receiving information but is always located." This insight "has given rise to historical studies, known as genealogies." Genealogical analysis "draws attention to the social nature and historical origins of the world 'out there' which is generally taken for granted" (Taylor, 2001, p. 9).

Jean Carabine says, "genealogy is concerned with describing the procedures, practices, apparatuses and institutions involved in the production of discourses and

knowledges and their power effects" (2001, p. 276). Therefore, using genealogical analysis I examine shifts in the ways key concepts have been conceptualized and constructed and the nexus of power relations within which those conceptualizations and constructions have occurred.

Central to genealogical analysis are the links between discourse, knowledge and power and the exercise of power through the use of normalization. Jean Carabine says, "Therefore, normalization establishes the measure by which all are judged and deemed to conform or not. This normalization process produces homogeneity through processes of comparison and differentiation" (2001, p. 278). Discourses are "historically variable ways of speaking, writing and talking about, as well as practices around an issue. They have outcomes/identifiable effects which specify what is morally, social and legally un/acceptable at any given moment in a culture". They are powerful because "they specify what is and what is not." and they are "historically variable ways of specifying knowledges and truths, whereby knowledges are socially constructed and produced by effects of power and spoken of in terms of 'truths' (2001, p. 275).

There is both change and continuity in the public school narrative but one of the consistent characteristics is the use of binaries which suggest a progressive historiography based on a form of secularization thesis. Foucauldian analysis provides a useful theoretical framework to examine the use of binaries which serve to represent current realities in contrast with the past. Key to a progressive historiography is the idea that power in previous periods of history was exercised in essentially negative ways, repressing individual freedoms of thought and practice. The language of freedom of thought is expressed in educational terms in the binary between "indoctrination and critical thought", indoctrination being associated with a past Ontario public education has behind as people began to think more critically. However, Foucault directs attention to the fact that power is dynamic and tends to mask itself. One way in which power is masked in Ontario public education is that indoctrination and coercion are linked to religion in a progressive historiography which foregrounds the changes in regulation to religion in public education. However, what the foregrounding of religion masks is the role of the state in public education and the role of public schools as an instrument in nation-building. The focus on religious indoctrination and coercion allows other forms of power to remain opaque. Foucault's analysis exposes a historiography which,

by foregrounding religion, portrays a new secular age of freedom from the collective coercion, indoctrination and intolerance of an earlier time but that, in doing so, masks other forms of power experienced by religious minorities as equally coercive and indoctrinational (Foucault, 1990).

b. Application of critical genealogical analysis in my research

It is not the purpose of this thesis to reconstruct an accurate history of the role of religion in Ontario education or to challenge the accuracy of the histories to which the government reports tabled between 1950 and 1990 appeal. Rather, critical genealogical analysis traces the discourses in the themes of religion, education and citizenship in Ontario public education as a way to more clearly understand the politics of school funding in 2007 in the wider context of the regulation of religion in public education.

I followed up references in my four cases to Ontario government reports on education, particularly references to the *Hope Commission Report* (1950) and the *Mackay Report* (1969) on which the courts relied as reference points or authoritative sources. This led to three more government reports on education tabled between 1950 and 1990 for a total of five reports which serve as my primary sources for my genealogical analysis. The reports include the *Report of the Royal Commission on Education (1950)* or the *Hope Commission Report, Living and Learning (1968)* or the *Hall-Dennis Report, Religious Information and Moral Development (1969)* or the *MacKay Report, the Report on Private Schools (1985)* or the *Shapiro Report* and the *Report of the Ministerial Inquiry on Religious Education in Ontario Public Elementary Schools,* or *the Watson Report (1990).* In addition I used the transcript of proceedings of the "Standing committee on finance and economic affairs" June 19, 2001 recorded in *Hansard* to examine the debates about the "Equity in Education Tax Credit" in 2003.

Of the five, the *Hope, Mackay, Shapiro* reports and the Standing Committee proceedings are the most important for my argument with the others providing further context and nuance in the debates over the role of religion in education.

Examination of the reports revealed that changes in the role of religion in education were by no means a straightforward process of secularization. Instead, it was a contested and nuanced conversation largely among educators which reveal ambivalence about leaving

Protestant Christianity on the margins of public education. Therefore the reports provide a good summary of a number of discourses on religion, education and citizenship, bridging a transition between 1950 and 1990 in the conceptualization of religion in public education and providing a way of seeing both changes and points of continuity between the 19th century common school movement and Ontario public schooling in the late 20th century.

Hope, *Mackay* and *Shapiro* were used in the case law as straightforward reference points or educational authorities in a process of secularization on which the courts relied for their judgements. My question was, what did the reports actually say and in what context did they say it? Further, I wondered if the *Mackay Report* tabled in 1969 represented the radical change from the 1950 *Hope Report* suggested by the courts or if there were points of continuity between them and if so, what they were. Critical genealogical analysis revealed evidence of what the authors saw themselves doing, what their concerns were and what new thing they were trying to create in response to their concerns. The authors of the reports were highly aware of the wider social and political context within which they were writing which accounts for the differences between them. However, the similarities between them indicated a dominant discourse which has had important implications for the role of religion and the boundaries of religious diversity in public education.

I read the reports closely, taking handwritten notes on each section. Themes began to emerge, sometimes quickly and obviously, as they did in *Hope* and in *Shapiro* which are clearly organized with headings, subheadings and further subheadings. The reports contain policy recommendations which served to operationalize the social concerns, ideals and conceptions to achieve improvements in school organization, funding, teacher education, supervision and support and for program innovation. They were written in response to perceived provincial, national and global forces of change and the belief that Ontario needed to position itself in relationship to those changes while maintaining fundamental values. However, they were also written in response to groups presenting briefs hoping to influence public policy in their interests.

A conceptual screen or aesthetic provided a mechanism through which the commissions and committees interpreted the briefs of the groups trying to influence the final reports and the recommendations which would be tabled with the government. There was often sensitive and concerned listening in a process organized by the government but it was

also selective listening. The selection of what counted and what did not count as evidence and how evidence was reshaped and interpreted provided insight into the aesthetic which served as a relatively unexamined basis for boundary construction between acceptable and unacceptable forms of religion in public education.

My method was to read the reports, tracing the ways in which the commissions and committees framed the problems they were mandated to address and to trace the process by which they came to their recommendations. However, my critical analysis was equally informed by minority voices attempting to speak to the government to bring into clearer view the way power was perceived by minorities. The minority voice in *Hope* came in the form of an extensive minority report written from a Roman Catholic perspective while the minority voice in *Mackay* came in the form of a brief submitted by the Canadian Jewish Congress. From among the groups submitting briefs to the Shapiro Commission I selected one written by the Ontario Alliance of Christian Schools representing a network of Calvinist day schools.

I looked for inter-relationships between themes and discourses in relationship to the effectiveness of public education in responding to perceived domestic and global changes. Some themes were more and some less directly related to the themes of religion, education and citizenship. Religion was treated directly as a meta-theme relating to the identity of Western Civilization, Canadian national identity and Ontario public education but also as a specific topic relating to school program and school culture. Debates about religion were also indirectly affected by other issues, among them the tension between centralized and local control of Ontario public education, education funding, program design and delivery and the professional status of teachers. While these themes were not obviously related to the regulation of religion in education, they played an important role in shaping the organizational and conceptual contexts and the politics within which religion in education was being debated. The theme of curriculum organization interacted with teacher education and professional training which, while not directly addressing the role of religion, had important implications for the way in which religion was positioned and delivered in both educational programs and school practice.

My analysis included identification of the discursive strategies and techniques deployed in creating, promoting and defending perspectives, goals and strategies. Attention to discursive strategies and techniques revealed, in more detail, the discourses and counter-

discourses in the debates over religion, education and citizenship. Of particular significance was the use of rhetorical binaries to clarify difference and to establish legitimacy in opposition to an "other". The binaries used in the election of 2007 were evident in the case law and in the government reports to establish boundaries, historical continuity and visions for the future.

I also looked for counter-discourses and evidence of resistance arising both within public education and from outside voices. Although election rhetoric portrayed religion and religious difference in stark binary terms, the evidence revealed by genealogical discourse analysis suggested nuanced and contested social processes by which the role of religion in public education was defined. While there was a dominant discourse in defining the role of religion in education and citizenship, there were equally consistent resistances and counter-discourses. These were explicit in the *Hope Commission Report* which included minority reports and in the *Mackay* and *Shapiro Reports* which drew on briefs submitted by the Canadian Jewish Congress and the Ontario Alliance of Christian Schools. There was a high degree of consistency in the counter-discourses in the fierce debates over common schooling in the 1850 to 1870 period, the minority report written by Roman Catholics in *Hope* and in the advocacy for non-Catholic faith based schools since the 1950's, the debates over the *Equity in Education Tax Credit* in 2001 and the election of 2007.

In my next step of analysis I identified the effects of the discourses in *Hope, Mackay, Hall-Dennis* and *Shapiro*. The effects were not immediately evident in the reports since their purpose was to provide advice which governments were free to adopt in whole or in part or to shelve. What was significant was which parts of the reports were adopted, which were ignored and in what context those decisions were made. For example, the recommendation in the *Hope Report* that funding for Roman Catholic separate schools (which in 1950 included Grade 10) be rolled back to the terms of an 1863 agreement which specified funding to Grade 8 was not adopted and in this instance the Roman Catholic minority recommendation for full funding prevailed, although not until 1985. The *Mackay Report*, tabled in 1969, was shelved but then reappeared as an authoritative educational expert in the 1985 – 1997 court cases changing the role of Christianity in public education. To examine the effects I had to look for interaction between the reports but also to go outside them to the court cases and to Ministry of Education program and policy documents. For example,

Mackay (1969) explicitly used *Hope's* endorsement of the 1944 *Drew Regulation* as an example of a past beyond which Ontario public education should move. *Mackay* was itself a report designed to supplement the *Hall-Dennis Report* tabled in 1968 with research on and recommendations about changes in the religious instruction program, since *Hall-Dennis* did not deal with the role of religion in education. However, while the *Hall-Dennis Report* had an almost immediate, if controversial, effect on education policy and practice, the *Mackay Report* was tabled with effects not seen until *Zylberberg* in 1988.

The government reports written between 1950 and 1990 provided historical background to the discourses at play in the court cases. For example, in *Zylberberg* the Court of Appeal drew on *Mackay* for its educational expertise, adopting *Mackay's* problematizing of religion as the source of coercion and indoctrination. *Elgin County* adopted the link made in *Zylberberg* between religion, indoctrination and coercion and *Mackay's* formulation of "education about religion" as the resolution for the complaints of the religious minorities that they were being subjected to religious indoctrination by religious instruction mandated in 1944. In *Adler* the courts explicitly stated that they were not prepared to re-examine the conclusions in the "triad" which included the *Mackay Report*, *Zylberberg* and *Elgin County* on which it based its rejection of the arguments of the religious minorities that they were experiencing coercion in a liberal secular environment. The foregrounding of religion as the source of coercion and indoctrination has been a powerful theme in the dominant discourse with the effect of masking other forms of power in public education which religious minorities have been unsuccessful in bringing into public view.

Critical genealogical analysis includes examination of networks of power and knowledge in professional organizations, religious groups, law, regulation, media and politics in the period in which the reports were written and received. While examination of the reports provided valuable historical background to the case law and the election of 2007, thinking about their effects through the lens of power/knowledge networks provided further insight into the politics in 2007.

2.3.3. Limitations

While the focus in the thesis is on religion and its representation as it relates to education and citizenship, this is a limited research screen. Sometimes discussions and

debates about the role of religion in public education take unexpected turns because they occur in the context of lively debates within public education about centralization and decentralization of administration, education theory, job security of teachers, funding mechanisms and allocations for school boards and global events directly or tangentially related to religion. Resistance to particular forms of religion in public education emerges out of impulses other than those directly related to religion. For example parents choosing faith-based schools are motivated by quality of instruction, a desire for more parent involvement in the schooling of their children and a perception of more positive social environments in smaller schools. This project refers to some of these factors but does not engage in detailed analysis of their role in the discourses in religion, education and citizenship.

My research method is limited in another sense. I concentrated on language recorded in a variety of written forms and did not use field work and interviews with education professionals, regulators, politicians, parents, students or any other players or on questions about how they navigate the formally established boundaries around religion in education. My reasons were both practical and theoretical. This is a project on the establishment of boundaries and spaces for religion created in law, regulation and political contests and not on the ways people navigate them. Some voices come through in interventions in political contests, briefs to committees and commissions and court cases but my purpose in referring to them is to further clarify boundary construction through their role in resistance. Practically I found that including field work would have made the thesis unworkable and diffuse. However, I am considering field work as a post-doctoral project to address some of the very interesting questions which have arisen out of the analysis of boundary construction in Ontario public education.

A third limitation concerns the use of the election of 2007 as a unique historical moment providing a window on religion as a social fault line in competing discourses on public education. First, religion is not always an important social fault line in public schools or in public education but it becomes important under particular circumstances. Second, the periodic focus on religion sometimes masks other, non-religious issues. For example, the focus on religion and the religious other as a threat to public education during the election was interpreted by some as a cynical political strategy by the Liberals to distract voters from their legislative record between 2003 and 2007. Religion as a source of social harm was seen

by some commentators as a way for professional organizations and other stakeholders to marginalize competition for jobs and access to public resources. The election is a window on the role of religion in public education but it is only one theme among others in Ontario public education.

Chapter Three *Ontario Election of 2007 and the politics of togetherness*

3.1. *Introduction*

Ontario provincial elections normally occur every four years, fixed by the *Election Statute Law Amendment Act (2005)* and the previous election having been in 2003 the 2007 election came as no surprise or as the result of a particular political crisis or development. On February 7 the date for the election was set for October 10 with the official election call coming on September 10, 2007. The strategy of the Liberal incumbents led by Premier Dalton McGuinty was to run on their record of governance, there not being a compelling issue to give the contest a clear focus. Popular support for the Liberals and Progressive Conservatives, the official opposition party led by John Tory, was relatively close as measured by an Environics poll on January 5 which put the Liberals at 39% and the PC's at 37%. An Ipsos-Reid poll on February 24 put the Liberals at 38% with the PC's at 33%. The period from March through May shows polls indicating fluctuating popular support for both parties including periods when the PC's were ahead of the Liberals.

However, this changed in early June when John Tory announced that he would consider the extension of provincial funding for non-Catholic faith based schools as part of his party's election platform. The Liberal strategy changed from running on their record which was proving to be counter-productive and to concentrating on the Tory proposal in two ways. First, the Liberals re-interpreted the proposal as an attack on the Ontario public school system by draining resources from an already underfunded public system to private schools and, second, they represented faith-based schools as religious isolationist enterprises representing a threat to Ontario's social cohesiveness or "togetherness". Both by both accident and design religion became a volatile wedge issue which changed the course of the Election and, incidentally, John Tory's political fortunes but the strategy and subsequent debates also exposed religion as an important social fault line in both Ontario public education and in Ontario society.

The results of the election were decisive with trends indicating a Liberal majority through September and October, a Harris-Decima poll on October 9 indicating the Liberals at 42% and the PC's at 31%. The results for the Ontario legislature on October 10 were that the Liberals won 71 seats, the Progressive Conservatives won 24 seats and the New

Democratic Party won 10 seats. John Tory lost the contest in the riding where he had chosen to run against Liberal Education Minister Kathleen Wynne, eventually resigning as leader of his party.

The purpose of this chapter is to retell the story of the election through the lens of religion and how it was represented, in order to examine religion as a social fault line in Ontario public education and in Ontario society. The story told here uses the words of a variety of Ontarians with a focus on the issue of religion as it intersects with education and citizenship. On one level, this was a political contest for public office but, on another level, it was a referendum on the role of religion in public education and, more broadly, in public life. It became one because, although the intent of the Tory proposal was to address an issue of inequality in school funding policy, its focus on "faith-based schools" had unintended consequences, one of which was to highlight religion as a social fault line and a category of social diversity which is particularly problematic and requiring attention.

The Ontario election of 2007 provides insight into a longer story of religion which has features unique to Ontario while, at the same time, sharing patterns of discourse with jurisdictions around the world. Religion has emerged throughout the world as a category of high interest as states try to cope with increasing diversity and assertive religious voices which claim public space in society. Much of the discourse involving religion problematizes it as a security issue which marginalizes citizens whose primary language of engagement is religious. The identification of religion and religious diversity as threats to social harmony and national security creates social fault lines around religion which decrease the possibility for safe public dialogue and debate.

The longer story of religion in Ontario public education has held in creative tension two themes. The first is that religious diversity is a fact of Ontario social life which must be incorporated into public education and the second is that religion, while it is an important social and personal fact of life, is seen as potentially disruptive to social harmony and personal identity in a modern, progressive society. Religion, therefore, has an ambiguous role in Ontario society, usually not attracting public attention and then periodically bursting onto the public stage in fierce conflicts. These moments tend to happen in times of heightened anxiety over national security and social cohesion with rhetoric suggesting that Ontario society is under attack by sectarian forces.

Besides being a debate about religion, the election was also a contest over the role of the public school system in the delivery of public education in Ontario. Public education is considered a key state strategy to create social harmony in a diverse society and the public school system is represented as the one institution capable of delivering public education. Therefore, challenges to the privileged role of the public school system are interpreted as attacks on public education and on social harmony. Normally this social construction of public education remains opaque but emerges into public view when it is challenged. The election was an historical moment when the curtain on a nexus of discourse, knowledge and power in public education was lifted, triggered by the issue of religion but going beyond religion to reveal deeply and widely held commitments to the public school system and public education.

3.2. Theoretical and methodological issues.

The data in this chapter is taken from election rhetoric, letters and opinion pieces printed in news outlets from 2000 to 2007, the application of critical discourse analysis identifying language patterns and subthemes themes in the themes of religion, education and citizenship. The concerns expressed in the sober, official language of government reports, law and regulation bear significant similarities to those expressed in more extreme language in the heat of electoral politics. While election rhetoric tends to exaggerate threats to society in the interests of winning the contest, the rhetoric about the role of religion was not just generated by politicians and other interested parties; rather it reflected sentiments more widely shared throughout Ontario society. Examination of the data sources suggests that fears about certain kinds of religion, while they may have been used to gain political advantage, run deep among Ontario citizens.

This examination of the election of 2007 does not address wider political issues at play. For example, neither the process by which John Tory came to the decision to make funding of non-Catholic faith-based schools a part of his election platform nor all the factors leading to the eventual outcome of the election are the subjects under investigation here. In addition, while the issue of funding for non-Catholic was the wedge issue which was crucial to Liberal electoral success, there were other issues, among them health care, energy supply

and management, provincial economic strategy and housing which do not receive attention in this analysis.

Neither do the roles of the professional teacher federations and the Ontario public school board association receive specific attention, although there is evidence that their support for the Liberals was an important factor in the outcome of the election. While examination of the politics at this level could provide insight into the way power is exercised in shaping the discourses around public education and school funding, the focus of this thesis is on the representation of religion in relationship to education and not on the actors contesting the representations in achieving political results.

The debates and the rhetoric during the election bore striking parallels with school debates throughout the history of Ontario education about the role of religion in public education at the limits of tolerance of diversity. There were a number of reasons why Tory's proposal, which focussed the debate on the role of religion in public education, generated strong reactions. The immediate historical context was a key factor, Tory's proposal being seen as one more attack on Ontario public schooling after a number of bruising battles since the 1970's among various stakeholders over a variety of issues, among them teacher salaries, working conditions and budget reductions resulting in changes to the delivery of school programs. As a result of the conflicts of the 1970's through the 1990's, stakeholders in public education were on edge and well positioned to protect their interests.

3.3. Election rhetoric and commentary

The topic in this section is the language deployed by politicians as they engaged the issue of funding for non-Catholic faith-based schools. In subsequent sections the focus is on Ontario voices opposing and supporting the Tory proposal and professional commentators taking a more global and analytical view of the Election.

3.3.1. Politicians

In June, 2007, the Progressive Conservative Party issued a statement introducing John Tory's intention to re-visit the issue of the provincial policy which restricts funding of faith-based schools in Ontario to the Roman Catholic separate school system. Funding for non-Catholic faith-based schools had been the subject of political lobbying starting in the

1950's and had been the subject of court challenges in the 1990's. While the courts had ruled that the government was under no legal obligation to fund non-Catholic faith based schools, the Supreme Court of Canada in *Adler* had also noted that there was no legal impediment to Ontario doing so. After the 1996 *Adler* decision advocacy efforts shifted away from the courts and returned to the political arena.

As a result, there had been intense lobbying with privately funded faith-schoolers taking encouragement from the opinion that legal obstacles had been cleared away. However, in 2007, their efforts encountered the realities of Ontario education politics when John Tory decided to include this issue during his political campaign during the Election of 2007. It began with the following statement issued by the Progressive Conservatives;

> Take action to bring faith based schools into the public system.
> This is a question of fairness. John Tory and the PC Party believe that we need to achieve more effective integration of Ontario's increasingly diverse student population into the mainstream of our province. That's why we are committed to creating an opportunity for non-Catholic, faith based schools to choose to join our publicly funded education system the same way Catholic schools have already done. Our policy will apply only to faith-based schools and we believe that the best results would be achieved through direct funding rather than through tax credits.
> With this direct public funding will come strict criteria and accountability requirements. These criteria will include the expectation that participating schools:
> - Fully incorporate the complete requirements of Ontario's common curriculum, just as in the Catholic system;
> - Participate in Ontario's standardized testing program and agree to published results;
> - Appropriately address teacher credentialing.

Tory's proposal was not a definite commitment to fund non-Catholic faith-based schools but was presented as an idea for consideration based on three principles. The first was fairness, the proposal being presented as an extension of a long standing public policy which includes one faith-based school in the form of the Roman Catholic separate school system. In Tory's view it was time to extend the same recognition to other faith groups whose religious practice included education. A second principle was inclusivity. The proposal was presented as a remedy to the fact that a significant number of Ontario families and their children are excluded from the benefits of Ontario's public education funding policies. The point was to bring them under the broad tent of public education so that they would be fully integrated

into Ontario society. A third principle was public surveillance of private schools, one objective of the proposal being to bring privately funded faith-based schools under state scrutiny, oversight and accountability.

The proposal was carefully crafted to include foundational values in Ontario public education, citing "fairness", concern for equal access, "effective integration of Ontario's increasingly diverse student population into the mainstream of our province" and commitments to the common curriculum. The statement included a commitment to increased funding for public education and to increased accountability for quality of instruction delivered in privately funded faith-based schools, opening them up to a higher level of public scrutiny. There was commitment to both religious diversity and to the Ontario common curriculum which, throughout its many iterations in the history of the common school movement, is designed to deliver a common understanding of Canadian values to Ontario students.

While he quickly lost control of his narrative, Tory was actually being consistent with a trend in Ontario public education which had seen expansion of the public education tent since the 1980's. Full funding had been extended to Roman Catholic separate schools in 1986, French language boards had been created in 1997 (Gidney, 1999; Anderson and Jaafar, 2003) and a growing variety of "alternative" schools were providing education and social services in a number of boards across the province to address the needs of at risk students and special interests. All of these developments had been accompanied by more or less controversy but all were the result of long political processes that had received the endorsement of all the major political parties in Ontario.

Further, Tory was addressing the international embarrassment to Canada and Ontario created by a judgement rendered by the *United Nations Human Rights Commission*. In responding to an appeal by Arieh Waldman and the Canadian Jewish Congress, the UNHRC had identified Ontario's education funding policies as discriminatory in a judgement rendered in 1997, and proposing two possible remedies; the elimination of funding for Roman Catholic separate schools or some kind of public funding for the schools of other faith groups (UNHRC Communication # 694, 1999; Bayefsky and Waldman, 2007).

Finally, Tory could point to jurisdictions in Canada and around the world where funding for a wide variety of faith-based schools had been in effect, in many cases for

decades. In Canada, the Western provinces and Quebec had developed a variety of funding and accountability mechanisms for faith-based schools, while throughout Europe, the UK, Asia, Central and South America and Africa faith communities had provided educational services as part of public policy in a wide range of political and social contexts.

The point is that Tory may have made a serious error in political judgment but he was not out of step with either Ontario public policy or with public policy in many other jurisdictions. However, elections are all about appeals to hopes and fears in the pursuit of political office with reasoned debate giving way to more passionate and often raw rhetoric. In the context of election fever, the proposal to consider the extension of public funding for non-Catholic faith-based schools took on a life of its own. The events of the election are a matter of record and the purpose here is not to reconstruct an exhaustive history. The point is analysis of the effective use of religion in public education as a wedge issue in determining its outcome.

While Tory's proposal was consistent with a longer trend which had seen an expanding tent of public education, the opposition to his proposal was also an expression of an equally long story of contestation at the boundaries of that tent. The issue of religious diversity in Ontario public education has never been uncomplicated and while usually religion and religious difference are not important, there are times when religion emerges as a persistent and particularly volatile fault line. There is widespread commitment to religious diversity In Ontario but, at the same time, religious diversity in Ontario public education is carefully regulated. The constitutionally protected funding of Roman Catholic separate schools continues to be the subject of political agitation and lobbying and debates about funding for non-Catholic faith-based schools invariably re-ignite questions about funding for separate schools. While John Tory and others understood his proposal to be part of a trend of an ever expanding inclusion of religious difference, what he misunderstood is that Ontario's funding of separate schools has always been a controversial arrangement arising out of political necessity, and continues as an expression of tolerance (Stewart, 2008, p.46-47). As Wendy Brown points out, tolerance is evidence of a power imbalance in which the privilege is extended or withheld at the pleasure of those in the power position (2006). There tends to be strong reactions when the dominant group feels threatened by the minority group

it has been tolerating or when the minority group asserts its rights rather than abiding by the restrictions inherent in tolerance.

Further, by restricting the benefits of his proposal to faith-based schools, John Tory was addressing the issue of discrimination identified by the United Nations but he was also placing religion in the spotlight as a long standing fault line. Whatever Dalton McGuinty's personal commitments may have been, John Tory handed him an issue which, from its potential as a strategic wedge issue, must have seemed impossible to resist. By foregrounding the issue of religious diversity in public education, the Tory proposal became the focus for an effective Liberal counter-strategy which represented it as an attack on Ontario public education and, by extension, as a threat to Ontario's social harmony and inclusivity.

Three themes in the Liberal counter-strategy linked religion, education and citizenship. The first theme was to represent the proposal as a threat to public education, exemplified in the following press release;

> The Conservatives have released their latest scheme to take money out of public education to support private schools. The Conservative scheme would fund 53,000 students enrolled in private schools. At $9432 per student, funding those 53000 students with public dollars comes with a $500 million price tag, at the very least.
>
> Taking $500 million will have a massive impact on students in the classroom. It would mean cuts to any of the following areas:

- Bigger classes - firing 6300 teachers
- Less student support - firing 3800 specialist teachers
- Less school support - firing 8500 support staff
- $7 million slashed from each school board
- $102,000 cut from every school in Ontario.

This press release did not refer to religion as the threat to social harmony. However, the Tory proposal, which focussed attention exclusively on faith-based schools to be included in the extension of funding, made the issue of religion in public education almost inevitable. The foregrounding of religion delivered in privately funded religiously based schools triggered fears about the threat of sectarian forms of religion, not only to public schools and public education but more broadly, to Ontario's social stability.

Kathleen Wynne, then Ontario Minister of Education and current premier, made links not explicitly stated in the Liberal statement when she described herself as "philosophically

opposed" to education tax credits for tuitions to faith-based private schools, saying that they "segregate" people of different beliefs, adding that "I don't believe that we can afford to fracture our society like that". (Simcoe Reformer, June 22, 2007). Later in the campaign she repeated her position, describing the Tory campaign proposal as a "a terrible idea", adding,

> "(Ontarians) do not want to see our society divided. They do not want to see kids segregated from one another," Wynne said. "We need an inclusive system in this province that allows kids to learn together, be together and understand each other."
> The move would strip $500 million of badly needed funding from the existing public system that serves 95 per cent of Ontario's students, she said. (Toronto Star, July 24, 2007)

Her statements indicate a seamless link of ideas between the Ontario public school system as an "inclusive system" uniquely positioned to deliver social "togetherness" and the threat represented by faith-based schools creating segregation.

Dalton McGuinty referred explicitly to the threat to social cohesion but expanded the concern, identifying funding for faith based schools as a threat to social improvement and progress when he said in an interview on CTV August 22,

> I don't think that Ontarians believe that improvement or progress is defined as inviting children of different faiths to leave the publicly funded system and go to their own schools. I think that's regressive. I think that takes us backwards. I think our responsibility is to continue to improve the publicly funded system of education … An important part of our foundation for social cohesion is a publicly funded education system where we invite children of all backgrounds and faiths, economic circumstances to come together to learn from each other and to grow together. It's one of those issues where I'm hoping to grab Ontarians by the earlobes and say it's not just another election, it's about the kind of Ontario you want. (Equal Marriage for same sex couples September 28, 2007)

By using the terms "segregation" and "fracture" as the purpose and effects of faith-based schools, Wynne made the direct link with social cohesion while her use of the possessive "our" in "our society" created an "us" who are in a position to protect "our society" against faith-based schools described as a non-Ontario "other". The McGuinty statement repeated the Wynne sentiments, making explicit the link between public schools and social cohesion but he went further to position the funding of faith-based schools in a larger historical context captured by the descriptors "regressive" and "backwards". The narrative background here is one in which public schools embody "progress" in contrast with regressive faith-based schools. This theme receives more treatment later in the thesis, the purpose here being to

identify an important part of the Liberal strategy which was to place the Tory proposal and faith-based schools on the wrong side of history. McGuinty's rhetorical strategy was to place public schools in binary opposition to non-Catholic faith-based schools, representing the public school system as the one institution able to create progressive togetherness and non-Catholic faith-based schools as exclusive, regressive, and socially divisive. As had Wynne, his use of the pronouns "us" and "ours" in opposition to "theirs" suggests faith-based schools and their supporters as an alien and threatening presence in an otherwise cohesive society.

A third theme in the Liberal counter-strategy went beyond concerns about threats to public education and social cohesion to include education and religion as a source of ideas dangerous to Ontario's children and Ontario society This took the announcement into places where John Tory and the Progressive Conservatives may not have expected it to go and for which they were clearly unprepared. When asked if the proposal included schools which taught creationism as opposed to science, he said

> They (faith-schools) teach evolution in the Ontario curriculum but they also could teach the fact to the children that there are other theories that people have out there that are part of some Christian belief. (CBC News, September 5, 2007)

This statement immediately generated questions about science and religion and more broadly, about the education offered in faith-based schools. It also raised issues of accountability and quality control of the schools included in his policy proposal. Statements attempting to clarify his position reinforced the image of the education offered in faith-based schools as something potentially dangerous and even against provincial regulations and the law. In response to the controversy over creationism, a party spokesperson said, "If there are schools that teach creationism in science class they would not be eligible to be funded as part of this proposal." (Ingrid Thompson, PC party spokeswoman, clarifying earlier statements by John Tory. CBC News, September 5, 2007). However, this did not satisfy his critics. Picking up on the theme of creationism, Education Minister Kathleen Wynne told the Canadian Press that teaching creationism is allowed in Ontario schools but only in religion classes since teaching creationism in science class would violate the Ontario curriculum. (CBC News September 5, 2007).

The role of religion in education was represented as inherently problematic, but the issue of creationism was a particularly effective way of suggesting that religion and education are in some way opposed to one another. Creationism is only one theory attempting to

explain biological diversity with its own history and is controversial among Christians as well as in the wider world of science and education (Numbers, 1992). It has a dubious reputation as the basis for science and, particularly in American public discourse it is emblematic of fault lines constructed in the "culture wars". For some conservative Christian groups creationism represents a return to a Christian intellectual heritage while for others it is a stark example of religious intellectual myopia which privileges ideology over critical investigation. There is no consensus over creationism among Christians but, during the election of 2007 it served to polarize and oversimplify the role of religion in education as an essential harmful presence.

In Wynne's opinion, the teaching of creationism is permissible in "religion classes" but not in science classes, Ontario public education having committed itself to the theory of evolution as the scientific basis for understanding biological diversity and origins. This is not an argument supporting creationism as a scientific theory and, in fact, I part company with creationist Christians here on a number of theological and philosophical grounds. The point is that the intersection of religion and education is complex and contested among religious communities and educators and, rather than adding clarity, the over-simplified reduction under the term "creationism" served an important political purpose of marginalizing religious voices in Ontario public education. The politicians were quite clearly out of their depth in discussing the complex and nuanced intersection of religion and education. In the context of the election the complexities and nuances had to be simplified so they could be expressed in sound bites and could achieve short term political goals. However, one longer term effect of the over-simplification was to marginalize religion and religious citizens as outsiders in the delivery of Ontario public education.

3.3.2. Ontario voices

In the preceding section the focus was on the debate among politicians competing for political office. This section examines the questions of whether there was evidence that the statements of the politicians reflect wider impulses in Ontario society and if there were

Ontario voices reflecting concerns and opinions similar to those expressed by politicians about the public school system, public education and social harmony.

One of the goals of Ontario public education throughout its history has been the development of good citizens unified by a commitment to common civic values. Until 1990 common civic values were framed in the language of a form of Protestant Christianity and after 1990 in the language of a form of liberal secularism. However, both before and after 1990, religion has had ambiguous and even contradictory roles in public education, religious diversity and freedom being represented as both markers of and threats to a modern liberal society. The Wynne and McGuinty statements reflect ambiguities about the role of religion in the framing of common civic values, some forms of religion considered legitimate contributors to Ontario's good citizenship profile while other forms of religion are seen as disruptive forces. In 2007, those forms of religion which invite "children of different faiths to leave the publicly funded system and go to their own schools" were identified as threats to the achievement of good citizenship. They were represented as "regressive", taking us "backwards" by segregating people of different faiths. Examination of letters and commentary published in various media shows that the link between harmful religion and faith-based education was widely shared in Ontario, going beyond the politicians competing for political office.

a. Voices opposing the Tory proposal

In an October 4, 2007 letter to the Toronto Star, James Morton wrote,

> One of the things that holds Canada together is the shared experiences of its people. Canada is a diverse and various nation but our public education system is of the things that brings us together as a people. And that's why faith based funding has been such a significant issue. The people of Ontario see that segregating students by religion is a bad idea. Our strength is diversity brought together in the public school system.

Morton's comments indicated a flow of thought from the wider context of Canada as a diverse nation held together by shared experience to the Tory proposal which represent a "bad idea". The public education system was identified as the instrument for bringing Canadians together and segregation by religion was identified as the threat to Canadian unity. More precisely, funding for faith-based schools was identified as giving power and permission to religious groups to engage in activities designed to segregate Canadians on the

basis of religion. The use of "our" and "the people of Ontario" suggested an authoritative tone creating a kind of common front against those in Ontario who would want to segregate students. Morton's letter reflected an assumption that he and his readers knew who "we" are and that "we" have a shared experience created in a particular way through the public school system.

What his assumption missed is that public education is not one thing and does not create one shared experience. In Ontario there is huge geographical and socio-economic diversity in "the public system" and public boards have created a variety of specialized options in order to meet student learning, social and emotional needs. However, his sentiments reflected the first two themes in the political rhetoric of Kathleen Wynne and Dalton McGuinty which suggested that there is one public school system and that it delivers a common experience based on commonly held Canadian values.

On October 3, 2007 a letter by Louise Blazik to the Toronto Star repeated Morton's concerns, saying,

> If our youth are truly the future of Canada's work place and society, they need to learn to interact and play in a blended environment. History has demonstrated segregation isolates and creates an attitude of either superiority or inferiority and moves society back and not forward.

Blazik's reference to a "blended environment" reflected sentiments expressed by Morton about preserving the public school system as the one institution to create a "shared experience" but she added an additional concern for the future of Canadian society and the economy if funding is extended to faith-based schools. Her use of the word "If" suggested that her concerns might be contested but then she went on to show by appealing to history that segregation represented by faith-based schools isolates Canadians. In a way reminiscent of Morton's claim she added concerns about "isolation" as a threat to the important Canadian value of equality and a commitment to social progress. In a way similar to the statement by Dalton McGuinty, her letter positioned the issue of funding for non-Catholic faith-based schools in a wider historical narrative of progress which was under threat by forces of segregation. Blazik, like McGuinty, expressed confidence in knowing what history demonstrates, stating her belief in a way that contributed to a kind of shared common sense about the trajectory of history and the role of the public school system in delivering a preferred future.

Both the Morton and Blazik letters made the link between public education and social cohesion, while casting funding for faith-based schools as examples of segregation which threaten a sense of social equality among Ontarians. Morton equated the interest of Canadian national unity with the Ontario school system, suggesting Ontario's importance in the Canadian Confederation with the current model of school funding in Ontario being the instrument protecting Canada. For both Morton and Blazik, faith-based schools were a threat to Canadian unity and the fortunes of Ontario with Blazik making the additional identification of faith based schools as threats to progress.

In a letter to the *Barrie Examiner*, May 29, 2007, Simcoe County District School Board trustee Brad Saunders wrote,

> If the decision of the government of the day is to go forward *and fragment the education of our children* (emphasis added) by creating additional boards, that, obviously, is going to split the educational pie into smaller pieces; that is not necessarily in the best interests of the English public school boards.

Saunders' use of "If" to begin his letter suggested that, in his mind, there was a real contest in which the government could go either way with the decision to fund non-Catholic faith based schools. However, he identified the harmful effects of funding of non-Catholic faith based schools on the educational experience of children as "fragmentation" and was explicit about the interests of the English public school boards. His use of the pronoun "our" suggested protectiveness against threats (of fragmentation) represented by the funding of other, additional boards. Written in 2007, this letter by an English public school board trustee reflected concerns about enormous changes after the 1970's in the administration and funding of Ontario public education which included the creation of French and English boards, full funding to Roman Catholic separate schools, struggles between school boards and successive provincial governments over governance and funding in addition to an ever growing militancy of professional organizations ever alert to protect their own interests and declining student demographics. Public school trustees had been under enormous pressure to ensure uninterrupted delivery of educational services under often very difficult circumstances and, from his point of view the John Tory proposal would potentially split the pie into even smaller pieces.

However, his letter also made the link between the interests of the English public boards and the "education of our children". A consistent theme in the opposition to funding

for non-Catholic faith-based schools was the conflation of the public school system as an institutional site, public education as a social practice and Ontario's social togetherness. Saunders referred to concerns about the fragmentation of the education of our children, suggesting a collective "us" whose interests are best protected by the English public school boards. The funding of other schools was represented as a force of fragmentation to compound erosion of an already fragile school system due to funding for non-English school boards.

One way in which faith-based schools were seen as forces of fragmentation was in the education they offer which, based on religion, was understood to be inherently harmful to children. The role of religion in education was an explicit theme during the Election with fears of indoctrination and the creation of an imagination out of step with modern, scientific thought. The following letter made explicit reference to the link between education and religion as a threat to Ontario as a modern society, saying.

> Public funding should not go to institutions that push any form of religion. A school such as Ottawa Christian School which states in its literature that a "Biblical perspective is the foundation of all learning" does not provide a sound basis for education in a pluralistic, tolerant society in the 21st Century. With "creation museums" showing humans walking hand in hand with dinosaurs, one can imagine what kind of science will be taught in a "relevant Bible curriculum". (Ottawa Citizen, September 12, 2007)

The letter started by making a clear assertion that religion has no claim on public funding, suggesting that religion is primarily a private matter. The idea that religion is a private matter is pervasive throughout public education discourse, with the "secular" being deployed as a way of limiting the reach of religion into public spaces to which it does not have a legitimate claim.

However, a binary construction of public and private is also adopted by some religious groups whose form of religion is defined in opposition to other forms of religion and to the secular world. In fact, some level of suspicion and even hostility serves two purposes, the first being that it energizes moral purpose and task and the second being that it reinforces group solidarity (Ammerman, 1987). Charles Glenn, analysing common school movements, observes that one of the points of contention between Roman Catholic schools and the common school movement in the United States is that Roman Catholic schools are explicitly "sectarian", a label Catholics see as accurately describing their intentional

separation from American mainstream society (Glenn, 1988). The Roman Catholic authors of the minority report in the Hope Commission Report (1950) referred without apology to Roman Catholic schools as "sectarian" (p. 788, # 21) and, argued for local community and family control of schools "without which the growing child becomes a selfish and self-centred individualist" (Hope, p. 783, #10). The point is that while the boundaries between private and public spaces and between the religious and non-religious are porous and contested, the distinction is sometimes adopted by religious groups for their own purposes and not just imposed by secular outsiders.

However, a crucial difference between them is that "sectarian" is seen by some as a threat to social cohesiveness. In this context, sectarian is an ideological term suggesting binary opposition to "togetherness" while religious insiders tend to use the term to establish identity. Jews, Muslims, Dutch Calvinists and Roman Catholics engaging public education in Ontario seem matter of fact about religious difference, arguing that it should be recognized in public policy while for others, religious difference represents the potential for civic disloyalty. Robert Nisbet (1976) analyzes the anxiety about religious difference in terms of the claims of the nation-state to the ultimate loyalty of citizens, arguing that public policy in a unitary state is designed to undermine non-state actors. He argues for public policy which diffuses power among multiple state and non-state actors in a way that allows "sectarianism" to flourish as a balance to state power. Much of the opposition to faith-based schools is based on what Nisbet describes as a unitary view of the state in which religion represents a particularly persistent source of alternative loyalties.

In addition to concerns about violations of the private-public boundaries, the above letter also expressed concerns about the nature of the education offered in faith-based schools which raise educational issues more directly related to the role of religion in education. The first of these can be seen in the use of the verb "push" associated with religion while the second educational issue is the basis for education. "Push" suggested indoctrination as opposed to true education, indoctrination being considered more typical of religion. "Indoctrination" and "education" are positioned in binary opposition in law and regulation of religion in Ontario public education with very important implications for public recognition and access to public resources. Given that binary, the writer rejected the idea that a "Biblical perspective" can provide a sound basis for education or the possibility that

such a perspective can have a legitimate public role in "a pluralistic, tolerant society of the 21st Century".

The second issue can be seen in the reference to "creation museums". Creation museums challenge the dominant role played by the theory of evolution in the sciences in museums by retelling the story of the universe and human history from a creationist perspective. While they occur most often in the United States, there are two in Alberta and one in Manitoba. They are primarily projects of the American Christian Right and are generally understood in the context of the American "culture wars". Creationism has its own history and is an intellectual flashpoint which can trigger strong reactions, one of which is that it challenges a dominant cultural paradigm. However, it is equally controversial within the Christian world, being only one of a number of ways in which Christians think about the sciences, about origins, biological and geological change and human development. The reference in the letter gave no indication that creationism is contested among Christians and, by making the link with the science program offered in one Ontario Christian school, it served to bring into question the educational legitimacy of faith-based schools. The implication was that education is offered in public schools while religious indoctrination is what characterizes the activity in faith-based schools.

"Creationism" as a way of characterizing the education offered in faith-based schools is also a way of foregrounding and essentializing their religious identities, while backgrounding their role in delivering education. In this letter, as in previous ones, religion was seen in opposition to education, with the writer suggesting that his readers "imagine" the consequences for education designed to inflate the sense of risk without having to provide actual evidence.

The nature of religion and its role in society was a theme during the election. In a letter to the Toronto Star, January 31, 2007, Glenn Anderson responded to an earlier letter by Ira Walfish[8], saying,

> Ira Walfish calls for more faith based funding for schools. He doesn't seem to realize that faith based schools must never be funded with tax payers dollars. Religious belief is personal and any funding should be provided solely by practitioners of that faith. This is particularly so with the current funding

[8] Ira Walfish was chair of the Ontario's Multifaith Coalition for Equal Funding of Faith Based Schools and an outspoken critic of Ontario's current funding policy as regards faith based schools.

> problems that so many boards face. As well, separate schools result in segregation which is intolerable in a multicultural society.

The letter by Anderson connected three issues which, while they were repeated in the election, have been important throughout the history of Ontario public education, in law and in the regulation of religion in public education. The first is about the nature of religion, the second is about the role of religion in society while the third is about public schooling as an institution. Religion, Anderson unequivocally stated, is personal but he also equated religion with "belief" in his assertion that "religious belief is personal". For Anderson, religion can be restricted to "personal" and private belief which is a more typically Western Christian and Protestant view of religion. While he used it here in the context of the election, it is also the way religion was characterized in the case law about the role of religion in Ontario public education between 1985 and 1997. Given that view, Anderson concluded that religious activities, by their nature, must never be funded by taxpayer dollars. He repeated the theme that religion practiced outside its boundaries in "separate schools" is harmful to society by promoting segregation which goes beyond the limits of what can be tolerated in a multicultural society.

In addition, he represented public schools as underfunded and under threat. Given the role of the public school system in delivering a common experience unifying Ontario citizens, the underfunding of public schools becomes a threat to Ontario society itself. Thus faith-based schools represent a threat to Ontario society in two ways; they segregate students but, in addition, their advocacy for state funding drains resources from the public school system which is represented as the social instrument to promote togetherness.

The line between public and private seem clearly defined along religious lines, suggested by Anderson's use of the term "separate schools" as a broad category to include all faith-based schools. "Separate schools" has a more precise technical meaning in the regulation of religious diversity in Ontario and is a category protected by law and in the Canadian constitution. However, his use of the category indicated a more general negative reaction to religion in education which includes the Roman Catholic separate schools, since, in his view, religion inherently has the effect of separating students.

Anderson's view that religion is a private matter and distinct from education which is represented as matter of public interest is reflected in the following letter which said,

> Please keep religion in the church and the home. Our schools should be funded to teach our children how (to) live successful lives in the world of academics, business, health, etc. (Ottawa Citizen, September 12, 2007)

This was repeated in the following with some suggestions about how religion could be incorporated into public education.

> Faith should be left at church and at home. There's not enough money to fund what we have right now. I think offering optional classes based on various religions could be an alternative. We need to pool our money into one public school and offer our children the best education we can to everyone. If parents want something else that is what private school is about. …. Since we don't have enough money for one school (public) then no religions should be funded. (Ottawa Citizen, September 12, 2007)

There were four themes in this letter; the nature of religion; underfunding of public schools; religion in public education and; Ontario's current funding policies. The writer equated religion with "faith" in much the way a letter quoted earlier equated religion with "belief". Second, the reference to the underfunding of public schools reflected a pervasive anxiety in Ontario about the viability of the current system and to the effectiveness of strategies by various stakeholders in campaigns to protecting their own interests. The third theme was educational strategy for dealing with religion expressed in "optional classes based on various religions" which, in Ontario public schools, is delivered in an optional world religions class at the Grade 11 level. The fourth theme was the controversial funding of Roman Catholic separate schools in Ontario, contained in the references to "one public school" as the preferred model for Ontario.

The phrasing in the last sentence of the letter reinforced the foregrounding of religion by referring to the Tory proposal as a proposal to fund "religion" rather than a proposal to fund "schools". The foregrounding of "religion" emphasised faith-based schools as radically other, offering "something else" from the "education" offered in public schools. Religion reduced to "belief" suggested that religion is something that exists as separate from and even in opposition to education. It did not admit the possibility that religion can be the source of educational ideas or that education theory and practice can be a religious practice as argued by Parker Palmer (1983), Charles Glenn (1988), Jasmine Zine (2007, 2008) and Doug Blomberg (2007) or that religion can provide a positive public voice in social policy (Casanova, 1994; Mooney, 2009).

A view of religion as a matter of private belief which should be restricted to home and church is the dominant one in debates about the role of religion in education among both religious and secular voices. The idea that education can be religious practice is contested among religious communities, with religious voices aligning themselves on both sides of the debates over faith-based schools (Glenn, 1988, 2000, 2011; Sable, 1999). However, the idea that religion should be restricted to the supposedly private spheres of church and family could be seen as arbitrary. For example, there is evidence from public policy that family is an important public concern in Ontario and that religious organizations have been engaged in the delivery of social services, including the delivery of education, throughout the history of Ontario and in other jurisdictions (Berger, Davie and Fokas, 2008; Dinham, 2013).

However, the idea of religion transgressing its boundaries generates strong emotion as indicated in the following letter written by James Knott, in a letter to the Toronto Star, January 31, 2007, when he said,

> The thought of public funding for religious-based schools sends shivers up my spine. Religion has no place in the education system. Unfairness would end immediately if Catholic schools were no longer funded by public dollars.
> Do we really want to spend our dollars on more school boards? There isn't enough money going into the present system, so parents and students fundraise to fill the gap. Do we really want to water down the pot even further? One system for all - what a novel idea.

Knott's letter suggested a number of sources for his strong emotional reaction, including the encroachment of religion into education and the perceived underfunding of public education being addressed by non-state fundraising. While the reference to "watering down the pot" is not completely clear, what is clear is that the idea of funding for faith- based schools generates fear among some Ontario citizens. Advocacy for a one school movement has a long history in Ontario going back to the 19th century and, while the political risks of actually dismantling Roman Catholic separate school system has given the major political parties pause, it is part of the party platform of the Green Party.

The following letter made the link between religion and race as two categories which can be the basis for segregation and social inequality, both of which were seen as violations of deeply held values of equality and equal access in Ontario (and Nova Scotia). By linking faith-based schools with racial segregation in the United States, it also suggested that faith-based schools are based on alien principles which funding would encourage in a way that

would reverse social progress. In the Toronto Star, November 8, 2007, Michael Broadway commenting on the initiative to open an Afrocentric school in Toronto, wrote,

> The latest election results show that Ontarians oppose faith based schools. Dividing students by ethnicity or race is even worse. Every day black teacher capably instruct all of the children in their classes on African centred subject matter.
> We don't need to look to the U.S. for examples of racial segregation in education. Repeal of the Ontario and Nova Scotia statutes authorizing racial segregation in education did not occur until the mid-1960's. The last segregated school in Ontario was closed down in 1965. Let's not bring it back.

In Ontario, the language around "togetherness" and equality suggests they are matters of public morality so that outrage is triggered by evidence of segregation, exclusion and inequality. While the specific triggers for reactions of outrage are not always predictable, issues of gender, race and religion tend to attract a high degree of scrutiny. In Ontario the common or public school system is represented as the ultimate social institution providing equal access of opportunity and as the way to deliver the essential civic value of tolerance. While there are many ways in which access to public schools is actually restricted on a number of levels, the prevailing discourse is that they are open to all on an equal basis in contrast with schools based on race and religion.[9] The implication is that citizens who participate in faith-based schools are violating the values most deeply held in Ontario in ways that do not happen in public schools.

Mr. Broadway failed to distinguish between enforced racial segregation and the freedom of Canadians of African descent to choose the school which most suits their children. In fact, the irony is that his solution is seen by some minorities as another form of coercion. His comment concerning the teaching of "African centred subject matter" reflected the distinction between "teaching about religion" and "religious teaching" made by the Ministry of Education. For him, "African centred subject matter" was primarily a matter of cognitive information which can be taught by anyone in any situation. He completely missed the issues of identity and the impact of racism inherent in a situation in which "African centred subject matter" might well be taught by someone who is racist. It is because of issues of race as well

[9] Restrictions to public schools include catchment boundaries which mean that students cannot (without overcoming administrative hurdles) attend schools outside their zones, publicly funded alternative schools which have their own admissions procedures and standards.

as religion encountered by minority students in public schools that Jasmin Zine argues in favour of faith-based schools in which staff and teachers can serve to safely integrate students into the wider society without violation of their racial and religious identities (Zine, 2007, 2008).

However, Broadway's using the issue of faith-based schools as a starting point suggested a more general anxiety about "difference" and the implications for educational governance in Ontario. In a letter titled "Catholic school's days should be numbered", Robert Walker said, "Now that voters have rejected faith based schools, I expect to see a campaigning to end funding for Catholic schools. After all, in Dalton McGuinty's own words, these religious schools segregate. We wouldn't want that, would we?" (Toronto Star, October 11, 2007). This was a rhetorical question which provided its own answer but it also demonstrated the smooth transition from race to religion as categories of difference which can be overcome only by the common civic experience delivered by the public school system.

A sense of regret for historical realities was evident in the following letter although the writer seemed resigned to the legislative protection of funding for separate schools which, while not ideal, should not be repeated by acceptance of the Tory proposal.

> Very clearly, the status quo is historically embedded in the legislation. While this may not be the most ideal situation let's not compound a small error by multiplying it into a very big error. Faith-based schools emphasize precisely what separates us, otherwise they wouldn't exist and parents would strive for common ground to build a cohesive society. (Ottawa Citizen, September 12, 2007)

The writer explicitly identified faith-based schools as instruments of what separates "us" from "them" based on school choice. The letter was explicit about a society divided between those of "us" who want common ground and a cohesive society and those "others" who want precisely that which divides us. Religion is, by implication, in the category of that which divides us. Fears of social fragmentation as an effect of funding for faith-based schools were explicit and linked to the perceived key role of public education as an instrument to create social harmony. Hugh Segal, in a statement to the Toronto Star, October 20, 2006 said,

> When education is threatened so is our future together ... it is one of the only remaining instruments we have for building the civility and finding the common cause to make diversity work ... We would be surrendering to the forces of fragmentation if we let that go.

Hugh Segal is one of Ontario's political elite in the national and provincial Progressive Conservative parties, currently a Canadian senator and political strategist who was chief of staff to Ontario Premier William Davis and Canadian Prime Minister Brian Mulroney. His letter is included here to show that the concerns about social cohesion generated by the idea of funding for faith-based schools is expressed by people at a variety of levels of political engagement and across the political spectrum. There was genuine sense that faith-based schools represent a real threat to social togetherness.

Social fragmentation was specifically linked to immigration in the following letter which said,

> Social fragmentation was specifically linked to immigration in the following letter. Funding more faith-based school will further undermine the public education system – a process that was sped up by the Harris Tories (many of whom no doubt play a key role in the Tory Tories). …. To allow funding for all religious schools would ghettoize Canadians further – and undermine efforts to encourage immigrants to integrate into mainstream Canadian society. (Ottawa Citizen, September 12, 2007)

This letter repeated concerns about the viability of the public education system, linking the Tory proposal to previous Progressive Conservative governments whose reforms were perceived by some stakeholders as threats to public education itself. The term "ghettoize" implied the destructive effects of funding for faith-based schools but also suggested a clear distinction between "mainstream Canadian society" and citizens advocating for or engaged in faith-based schools. Here public education was identified with "mainstream" society while faith-based education was identified with immigration and as marginal to the mainstream.

The sentiment that Ontario would be better served through one public school system in delivering the value of equality was reflected in the following letter which also made the link with the achievement of successful multicultural harmony. This writer said,

> If we truly want equality for all, we should have one public school system. Years ago setting up a separate faith based program was a mistake, one we shouldn't compound with further systems. Religion has been, is, and always will be divisive and controversial. To base public education on faith-based programs is extremely unwise….. True equality, true multicultural harmony can come about only from a common integrated educational system. (Ottawa Citizen, September 12, 2007)

Critical discourse analysis of this letter reveals three themes; equality to be achieved through one school system; religion as a force disruptive to social equality and; Ontario's funding of Roman Catholic separate schools as an historical mistake which should be amended rather than repeated. While the nature of equality was not specified, the public school system was seen to play an important role as a "social mobility ladder" to which all citizens have equal access. Equal access to education and through education to social and economic opportunity has been an important value in Ontario common or public schooling since the 19th century. In the dominant discourse in Ontario public education, equal access to public schools and their programs has been one of the markers distinguishing the public school system from "private" schooling and is one of the reasons some "private" schoolers prefer the descriptor "independent". However, the assumption that equal access to social mobility can be achieved only through the public school system is contested by Jasmin Zine (2007, 2008) and others who argue that religious and ethnic minorities can be disadvantaged in a common, secular school system in which they experience conflict between their primary language for engaging the world and the language of the majority.

Religion is seen as a potentially disruptive social force precisely because religion and religious organizations are characterized as "exclusive" and "sectarian" in the same way that non-Protestant forms of religion were before 1990. While the language has changed since the 19th century, non-standard forms of religion have been seen as "divisive and controversial" threats to true equality and social harmony. The regret expressed by the writer for the creation of the constitutionally protected separate schools reflected a more generally held opinion that Ontario's imagined togetherness is threatened by forms of religion competing with the dominant ethos. The letter then concluded that harmony and true equality can come about only through a common education system, repeating the more general conviction that the public school system, public education and social harmony are indivisible. In this link, multiculturalism has been interpreted by some who intervened in the election as a development in Canada which opens the door to social fragmentation.

The theme of multiculturalism was included in the following opinion piece in which the writer interpreted the election results in quite a different way from the sentiments expressed in the previous letter. While during the election campaign opinion polls had indicated that that the electorate was ready to "throw out" the incumbent Liberals, effective

use of faith-based schools and religion as a wedge issue had turned the tide in their favour. John Martin interpreted the results as a referendum on Canada's policy of multiculturalism saying, in the (Vancouver) Province, October 17, 2007,

> Stick a fork in multiculturalism. It's done. The legislation will still be on the books and a few diehards will cling to yesterday. A series of unrelated, yet nearly simultaneous events across the country show Canadians have turned their backs on the failed, albeit well intentioned, concept of multiculturalism. People in Ontario were ready to throw out a tired, dishonest administration last week. But when the Conservatives made public funding for faith based schools for various religious groups the central plank of the campaign, voters opted for a resounding liberal majority.

Martin went on to refer to the Bouchard-Taylor Commission and the attempts to define reasonable accommodation in the province of Quebec, concluding that there was clear evidence of a backlash across the country against immigrants and other groups advocating for changes in public space to include recognition of their identities**.** In Martin's opinion, the people of Ontario and Quebec had spoken clearly, saying that the policy of multiculturalism had opened the door to unreasonable demands by minorities for recognition and accommodation, going beyond the limits of what could be tolerated by the majority of Canadians.

There is evidence that he was accurately reading attitudes about multiculturalism and accommodations for religious minorities. For example, in 2010 in a move reminiscent of political trends in France, the Quebec government tabled legislation to ban the wearing of the *niqab* for any woman requiring or giving public services. The language used to explain the action linked "equality" and "secularism" in this report, saying, "Premier Charest told a news conference that the province is drawing a line in the sand in defence of two principles: gender equality and secular public institutions" (Canadian Press, March 24, 2010). Using language reminiscent of Dalton McGuinty's "common ground" and "togetherness", Charest said, "This is not about making our home less welcome but about stressing the values that unite us." Given the tiny number of women who actually wear the *niqab* and given the fact that other jurisdictions have successfully accommodated women who do so, a number of questions present themselves, especially about the nature of the threat to the "values" that unite Quebecers. Religious symbols of other groups, particularly Roman Catholic, are ubiquitous in Quebec, not surprising given its Roman Catholic history, but they do not seem

to be considered threats to Quebec values in the same way. This suggests that the interpretation of secularism in Quebec, as in Ontario public education, is not against religion or religious symbols as much as it is *particular forms* of religion and religious symbols.

However, the attitudes about immigrants as a threat to Canada's multicultural harmony seem widespread throughout Canada. The *Calgary Herald* entered the debate over the wearing of the *niqab*, enthusiastically endorsing the Quebec Human Rights Tribunal by saying, on March 20, 2010,

> On Tuesday a remarkable thing happened. A human rights commission actually made a good decision.....This is Canada and we have our own customs, laws and traditions that include gender equality. Most Canadians don't want our country to emulate Muslim countries which, according to human rights NGO's like Freedom House and Amnesty International are among the most repressive in the world, especially to women.

What is not clear from Martin's letter if he was referring to multiculturalism as a public policy, a concept or a description of Canada's cultural diversity. Will Kymlicka describes multiculturalism in a global context as a "political discourse" involving a "set of ideas about the importance of accommodating diversity (which) is being circulated by international networks" and as "the codification of multiculturalism in certain legal (or quasi-legal) norms, embodied in declarations of minority rights" (2007, p. 3-4). In Canada multiculturalism could be seen as a matter of social fact, given the ethnic and cultural diversity due to successive waves of immigration but after 1970 it was also seen as a way of describing the harmoniously diverse model society Canada could become among the family of nations. In 1988 multiculturalism was adopted as a formal policy as a way to celebrate diversity under a common set of values while avoiding the colonial stance of assimilation. However, as Phil Ryan observes, multiculturalism is also an "ideology" which can mean either, a "well articulated doctrine" or a "jumble of ideas and sentiments" including a "mix of relativism, rigid anti-racism, hatred for 'The West' and so on" (2010, p. 7). Multiculturalism has been seen as a signal Canadian social achievement but it has also triggered negative reactions, opposed by some Canadians who have felt that it would fragment Canadian identity due to immigrants who would use the idea to retain their own identities instead of adopting the Canadian values essential to national unity (Ryan, 2010).

Anxiety about immigration is nothing new in Canada, characterizing reactions to newcomers throughout Canadian history, including in the early 21st century amid a rise in

the awareness of global tensions and non-state armed conflict or terrorism when immigrants are primarily non-European. Suspicion of immigration is expressed in a variety of ways, including public policies such as the internment of Japanese, German and Italian Canadians during World War II and restrictions on immigration of South Asians, Chinese, Jews and other groups. Heightened security concerns in the early 21st century have meant increased scrutiny of Muslims while the election of 2007 suggested that the widespread public support of Ontario education funding policy is based, in part at least, on the belief that the purpose of a common public education is to mitigate the harm done by religion and immigration. The Martin letter suggested that John Tory's proposal, by proposing funding to faith-based schools, was an expression of multiculturalism not shared by most Canadians since it was official encouragement of religious minorities and immigrants to resist assimilation.

In summary, critical discourse analysis of the letters opposing the Tory proposal reveals three themes. The first is that the public school system is a highly valued institution in Ontario designed to deliver public education which is seen as an essential social practice to protect Canadian values and create social cohesion; the second is that religion has an ambiguous place in Canadian values, providing both the language for Canadian values but is also seen as the source of harm to Ontario's social unity; third, challenges to the public school system and its role in delivering public education are interpreted as attacks on Ontario society, while those doing the challenging are seen as threatening outsiders.

b. Voices supporting the Tory proposal

However, while John Tory triggered a strong reaction from a wide cross-section of Ontario society, there were voices challenging the majority opinion, doing so for a variety of reasons. Ontario citizens engaging in faith-based schooling were often shocked by the ways they were represented by politicians and by their fellow citizens. Rabbi Bulka (then co-president of the Canadian Jewish Congress) said the following in the National Post, August 29, 2007,

> How is it that most western democracies fund their faith based schools and Ontario does not? How can it be that Quebec and every province west of Ontario have found ways to provide significant funding to a variety of faith based schools and Ontario has not? Sadly, my friend (Premier Dalton McGuinty) took the road of divisiveness instead of the road of inclusion. Premier McGuinty believes funding faith based schools would negatively affect Ontario's "social cohesion".

> The Premier said, If you want the kind of Ontario where we invite children of different faiths to leave the publicly funded system and become sequestered and segregated in their own private schools then they should vote for Tory. If they continue to believe that we should bring our kids together so that they grow together and learn from one another, then you should vote for me.
>
> I am stunned to hear this coming from the Premier. Most troubling is the suggestion that funding my faith based school could lead to problems with social cohesion. The Premier that I know cannot argue that children who attend publicly funded Catholic schools contribute to social unrest. So why does he argue that other faith communities, who have thus far been denied the opportunity to participate in the public system would be any less able to contribute to the peace and security, happiness and prosperity, justice and freedom that abide in Ontario, especially when their tax dollars help pay for the current system?

Bulka's statement takes on extra meaning when considered in light of McGuinty's statement to the Canadian Jewish Congress in 1997 in which he agreed that the non-funding of faith-based schools was an unresolved issue that needed to be addressed. Bulka's main objection was to the argument that faith-based schools are a threat to Ontario society, which, in his view, is ironic given the fact that McGuinty and his wife taught at and his children attended Roman Catholic separate schools. His comment pointed out that jurisdictions throughout Canada and the world provide funding to faith-based schools through a wide variety of mechanisms with no evidence that their graduates were less well integrated into society or that they were a threat to social cohesion. Members of faith communities have been good citizens, contributing to the "peace and security, happiness and prosperity, justice and freedom that abide in Ontario". While McGuinty and others used the language of togetherness and inclusion, Bulka's comments suggested that it was the election strategy deployed by the Liberals which was divisive, exclusionary and hurtful.

The Ontario Alliance of Christian Schools outlined its response to the Liberal strategy on April 17, 2007 which included the following;

> Expanding education in the public interest would be good for Ontario -- the OACS points to principles found in the 1984 Shapiro Commission Report and practices underway in other provinces as the foundations for a new education policy which would include government support for school choice. …. OACS has long taken the position that choice in education is a public good. This is demonstrated in six other provinces, over forty American states and most of the countries in the western world where governments maintain a strong commitment to the state system of public schools alongside support for school choice.

> A new education policy should also deal with the black cloud of discrimination that continues to blanket the province. Ontario must deal with the decision of the United Nations that the current funding system violates the human rights of non-Catholic parents who choose faith-based schools for their children. (The Mission for Educational Justice in Ontario, 2007, p. 37)

The OACS news release did not refer to religion directly nor its role in society or in education, although the policy statement in which it appeared clearly identified the Christian identity of the organization (p. 2). Rather, the news release and the wider policy statement emphasised the public good represented by a public policy change that would increase access to a wider range of educational choices for parents and students as a "human right". It referred to the *Shapiro Commission Report* which, in the mid 1980's, had recommended the inclusion of faith-based schools as alternatives within the public school system and to the United Nations Human Rights Commission statements about Ontario's funding policy for religious schools.

Both the OACS and the Bulka statement represented the Liberal strategy as unfair, discriminatory and outside the public policy mainstream in both Canada and throughout the Western world. However, there were no universal statements about what religion is or does in society, the implication being that faith-based schools and the people who use their services are good citizens who contribute to the public good and that religious diversity is not a threat to social harmony.

Sentiments emphasizing the issue of fairness in light of Ontario's funding one faith-based school system were repeated in other places, including the following;

> Let's be real! Everyone knows that Mr. McGuinty's religion's faith based schools are constitutionally protected and will always be funded. In light of that, the only fair solution is to fund the same for all religions. Other provinces already do that. (Ottawa Citizen, September 12, 2007)

The letter pointed out that "McGuinty's religion's faith based schools" (Roman Catholic separate schools) are included in the provincial funding policy which is protected under s. *93* of the *Constitution Act of 1867*. This and other commentary had suggested hypocrisy and political expediency as the motivation for McGuinty's political position, pointing out that other provinces had found successful ways to fund faith-based schools. Like previous comments, the letter suggested that Ontario public policy and not the religious minorities challenging it, represented a minority position in Canada and in the world.

The issue of fairness was evident in the following letter specifically identifying the financial burden incurred by parents for whom their religious practice includes education or who choose non Catholic faith-based schools for other reasons. It said,

> It's time to end the discrimination against parents who send their children to a faith-based school. These parents are being double taxed. Let their education tax dollar on their own properties go to the school of their choice. Competition in schools doesn't hurt, it enhances and you will be surprised at how fast public schools will end their wasteful spending. I've seen it first hand. (Ottawa Citizen, September 12, 2007)

Another observation in this letter was that the risks to public education are due to government policy which limits the freedom of educational choice for parents rather than to the choices themselves. The language of competition is controversial in Canada, particularly when applied to those institutions designed to deliver services on the basis of equal access. For supporters of one public school system, the language of competition suggests a free market model which puts the poor and the vulnerable at risk, threatens to widen the socio-economic disparities in society and entrenches social enclaves using school choice to avoid interaction with fellow citizens whose presence is distasteful for reasons of race, religious difference or ethnicity. The "common" Canadian experience provided by a common school system is designed to overcome those self-serving impulses in the interests of a sense of common national identity and purpose.

However, those using the language of choice and competition do so on the principle that any organization exclusively privileged to deliver a service runs risks associated with any monopoly. These risks increase when the services being rendered are cast in moral terms or in terms relating to the national interest. Dissent and opposition then is framed less in terms of the effectiveness of the services being delivered and more in terms of the morality of the resistance itself and in terms of threats to the national interest. This has the effect of placing the institutional site in question out of reach of serious public scrutiny and of diverting attention away from critique by calling into question the morality of the critique and the loyalty to the nation and national values of those engaged in the critique.

However, Ontarians on both sides of the debates over faith-based schools share common Canadian values relating to freedom of choice, respect for diversity and a thriving public education system. While some voices opposing the extension of funding to non-Catholic faith-based schools suggest that isolation from mainstream society and hostility to

public education are the impulses driving such schools, there are other voices which, like Rabbi Bulka and the OACS, assert that they want to be included as partners in the delivery of public education and that Ontario's funding policies, while promoting togetherness, actually exclude them.

Despite the tendency to represent supporters and opponents of the Tory proposal as being on opposing sides of an unbridgeable social fault line, examination of the language suggests more common ground, as indicated in the following letter.

> Ontario's legacy has been one of inclusion. We have always welcomed persons from all backgrounds to join us and participate in this patchwork quilt of cultures and faiths. The backing on the quilt – the democratic ideals of freedom, diversity and choice – are what keeps us together. The premier's unstatesmanlike fearmongering about social unrest and division is truly bottom feeding for votes and greatly offensive to that great number of responsible citizens who send children to faith-based schools. (Ottawa Citizen, September 12, 2007)

In other words, social fault lines represented in stark oppositional terms are actually a construct deployed for political purposes. The letter identified people participating in faith based schools as responsible citizens and the Liberals' use of religion and religious difference as a political wedge issue which is not consistent with "Ontario's legacy".

Despite the foregrounding of religion and religious difference by opponents, faith schoolers themselves and supporters of the John Tory proposal actually placed less emphasis on the nature of religion, its social role, religious difference and the role of religion in education. Rather, they tended to emphasize the shared values of social inclusion, fairness in public recognition, the equitable distribution of resources, human rights and freedom of choice. They tended not to base their arguments on the religious identity of the schools and or on an assertion of their schools as somehow more legitimate than other schools in the province.

There are probably at least two reasons for this pattern. The first is that emphasizing religious difference would be self-defeating from the standpoint of political strategy since it would alienate others rather than build the bridges religious minorities need to further their political aims. This could be seen as evidence of political awareness and maturity and tactical adaptation to the political discourses in the wider society. Religious groups do adapt their language in tactical responses to the dominant discourses in which they find themselves (Woodhead, 2012). The second reason is that Ontario

citizens who choose faith-based schooling or who advocate for their inclusion in the public funding mechanisms do not see religion in the same way as do those opposing such a change in public policy. While religion is seen as an essential social fault line by some in Ontario leading to exclusion and ghettoization, faith-schoolers tend to see religion as an identity marker which can contribute to the public good. Although religion is an important identity marker, religious difference does not actually make a great deal of civic difference to religious groups, particularly those engaging in debates over public education.

c. Commentary on the Election of 2007

The results of the election were a clear political victory for the Liberal party of Ontario, but they also demonstrated affirmation of a much longer and widely held commitment to a common school system as the primary institutional site to deliver public education in creating harmonious social diversity. The boundaries of the common school system are dynamic with changing ideas of what can and what cannot be included in the common space. However, the overall policy trend in Ontario has been to include increasing diversity of educational options, particularly within the larger boards of education. School options or alternatives have been based on race, pedagogical approaches, social needs, learning disabilities, subject specialties and language. Many alternative programs are included in larger public school settings but many are also offered in dedicated schools.

The election of 2007, however, showed that religion seems to exist at the boundary of what can be tolerated in school diversity, particularly when religion and religious practice in education take shape in institutions challenging the privileged role of the public school system. While there are publicly funded schools and publicly funded programs within schools based on religion they are considered anomalies existing under either constitutional protection based on political necessity or under carefully prescribed local conditions. As a result, John Tory was stepping into risky political territory with his proposal.

A number of factors besides religion contributed to the success of the Liberal counter strategy. Among them was the historical context which, since the 1970's, included dramatic and bruising contests over the funding of public education, teacher job security, educational philosophy, centralization and decentralization of control between local boards and the provincial government which had left all the stakeholders defensive, suspicious and well

prepared to protect their interests (Gidney, 2002). For example, John Tory's announcement was linked with the policies of former Premier William Davis who had initiated full funding for Roman Catholic separate schools in the mid 1980's and with those of former Premier Mike Harris, whose "common sense revolution" in the 1990's had included highly controversial reforms to public education. Tory, Davis and Harris were linked and identified as enemies of public education whose policies represented threats to a public school system represented variously as underfunded and the one public institution specifically charged with creating social harmony.

Another factor was that religious groups were not at all unified over the role of religion in education and, specifically, about faith-based schooling. Faith-schoolers themselves, the ostensible beneficiaries of the Tory proposal, responded for a variety of reasons with mixed reactions ranging from outright opposition to caution. In the meantime, the Roman Catholic separate school establishment was, for its own reasons, careful to avoid engaging in the debate beyond some statements issued by the Roman Catholic hierarchy. As a result, privately funded faith-based schools have never represented a powerful political force in Ontario.

However, the point of my examination of the election of 2007 is not to analyze the Liberal success or the failure of the John Tory proposal from a political perspective. Rather, the issue is the success of the strategy to use religion as a wedge issue in a province otherwise committed to religious freedom and the protection of religious diversity. The focus in this section is on selected opinion pieces written by professional commentators reflecting on the election in the context of wider issues of social and religious diversity in Canada. The political rhetoric and the comments retrieved from various news media provide insight into the discourses at play during the election but one of their limitations is that they are often the expressions of people who have a vested interest in the outcome, either in terms of achieving public office or in terms of seeing the success of a policy proposal. Therefore, selections from commentators provide another perspective on the election, on religion and religious diversity in Ontario public education and Ontario society since, as observers to the political process, are less invested in its outcomes.

The following appeared in the Toronto Star on October 13, identifying the strategic uses of funding for faith-based schools as a wedge issue by the Liberals.

> For months the Liberals had been searching for some way to make education the focal point of the campaign but they couldn't get the media interested. Then along came Tory with his proposal to provide public funding for the faith based schools. "It was like throwing a belt high fast ball to a fastball hitter," says one key Liberal strategist. The Liberals hit it out of the park. "I'm hoping to grab Ontarians by the earlobes and say it's not just another election", said Premier Dalton McGuinty, in one memorable statement. "It's about the kind of Ontario you want. If you want the kind of Ontario where we invite children of different faiths to leave the publicly funded system and become sequestered and segregated in their own private schools, then they should vote for Mr. Tory. If you continue to believe that we should bring our kids together so that they grow together and learn from one another, then you should vote for me".

In this piece, the politics of togetherness was assessed through the lens of political strategy in the election of 2007, an understandable conclusion given the fact that this was a contest for political office. The essentializing of the religious other, the binary opposites between "public inclusivity" and "private, religious exclusivity" and the linking of a particular model of educational governance with social cohesion were included in the political appeal of a skillfully crafted political strategy.

Political strategy provides one level of analysis but the focus here is the effectiveness of the strategy and what it reveals about wider issues of how religion and religious diversity are represented in Ontario. What do religion and religious diversity mean and how do the realities of religious diversity enter public discourse? On a certain level, John Tory was speaking to a social reality when he observed that a significant number of children were being educated in social and educational in-between spaces largely invisible to state mechanisms. His proposal was intended to address a gap in social policy which, in his view, increased the possibility that these children would be exposed to educational processes potentially harmful to them and to Ontario society. School funding is a strategy adopted by jurisdictions around the world to encourage minority groups to submit to state scrutiny and regulation, often couched in the language of religious freedom and choice. State funding is, therefore, controversial among those very groups it is intended to reach (Glenn, 1988, 2000, 2011; Bader, 2007; Jödicke, 2012). While he used the language of inclusion and fairness, Tory's proposal reflected concerns about religious diversity in the delivery of education shared by his detractors. Religion and religious diversity were, in his view, a problem to be managed in Ontario through a school funding mechanism. While there was general support for this

purpose of public funding mechanisms, there was disagreement about which might be the most effective policies to manage religious diversity.

Jeffrey Simpson, reflecting on the election from the perspective of Ontario's construction of multiculturalism, identified the prevailing ambivalence about diversity when he said,

> The fatal Tory education promise reflected a misunderstanding of the province's attitude to diversity. Multiculturalism is Ontario's creed, integration is Ontario's practice.
>
> When political (or administrative or judicial) decisions are deemed to thwart integration, the public will react against them. In the private spheres of family and religion or even in their own communities people can practice their own creeds and even exercise their own cultural preferences. Bring these into the public domain and insist that it be changed and the reaction will be overwhelmingly negative, in large part because there is so much diversity that no one would know where the changes would end. (Globe and Mail, October 12, 2007)

Simpson's analysis included the assumption that religion is a private sphere which people can exercise in their own communities; however, transgression by religion into "the public domain" is met by strong negative reaction. He suggested a "slippery slope" argument around religious diversity reflective of the limits of tolerance or reasonable accommodation although he did not make clear who establishes those limits and on what basis they are established. It is also not clear why religion and family are considered private and, beyond religion and family, where the boundary between the private and public is located.

His comments reflected a particular construction of religion in the public square, suggesting a separation between public and private which is at least questionable. However, more importantly, there was an assumed ownership of the "public domain" by a majority which allows recognition of some voices while excluding others, especially those who represent a religious other. What Simpson ignored is the fact that Protestant religious language and liberal assumptions permeate Ontario's political culture in general and its public education establishment in particular. Symbolic Protestant presence is so normal in Ontario so it does not attract the scrutiny triggered by *kirpans* and *niqabs,* suggesting that Simpson's objections were not so much against religion in public space as they were against forms of religion that "thwart integration". Simpson's essential point was found in the issue being identified as the struggle over the "public domain" and public education as a social practice

of “integration”. His closing sentence reflected "slippery slope" fears, with his comment that "no one would know where the changes would end" suggesting that gatekeepers in Ontario needed to remain vigilant in protecting harmonious common space.Margaret Wente, commenting in a similar vein in the Globe and Mail, October 11, 2007, said this,

> .....the issue hit a giant collective nerve. It tapped into a widespread sense of unease about increasing social fragmentation. We're a city of increasingly segregated religious and ethnic ghettos. And so the funding issue turned into a sort of referendum on what kind of province we want to live in. Guess what. We don't want to be a mosaic after all. As it turns out, a pretty accurate barometer of mainstream opinion is Bruce Allen, the Vancouver radio commentator who was denounced as a racist for saying immigrants should either fit in or leave. Most Canadians feel that way.

She referred to opinion polls indicating that 59% of Canadians and 77% of Quebecers supported the statement that immigrants should become like "us" or “go home to their countries of origin”. These statistics supported her conclusion that "we" in Toronto, and, by her implication, in Ontario and in Canada, “don’t want to be a mosaic after all” while her language of social fragmentation and "ethnic ghettos" reflected deep anxieties over Ontario society being threatened by the religious, ethnic and immigrant other. Her unexamined link between Toronto, the province of Ontario and Canada, covering all of them under the pronoun "we" although who was included in her use of “we” was not entirely clear.

However, while there was a persistent tone of anxiety over the management of religious diversity, there was an equally persistent discourse identifying that very anxiety as a threat to Canadian value with some commentators raising concerns over the undertones of racism and the strategies of assimilation evident in the election. For example, the following appeared in the Montreal Gazette, October 14, 2007;

> Finally, a bit worryingly, the whole election turned on Conservative leader John Tory's pledge to support faith based schools with public funds. The promise turned out to be political suicide. McGuinty seized the issue and ran with it, summing things up in his victory speech Wednesday night, "We work and dream and build together. Always, always, always together."
>
> That's a fine sentiment but to some those are code words for not accommodating the immigrant Others and their difference in the new Canada. And so we have an Ontario election lost on unspoken fears of Islamic madrasses in Toronto the Good - not to mention a Quebec election hijacked by a soccer player wearing a head covering or wacky proposals about hijabs and yarmulkes on public employees.

There was concern that the language of togetherness could easily be manipulated through the foregrounding of difference as a threat to social harmony, particularly when the particular source of threat resonated with longer and deeper fears and prejudices.

The theme of racism was just below the surface in other public statements, something identified by Dan Gardner in the Ottawa Citizen, October 12, 07. Commenting on the darker side of Ontario's construction of multiculturalism, he referred to a canvasser who had gone door to door on behalf of a Progressive Conservative candidate during the election campaign. Reflecting on his experience, the canvasser referred to his "loss of faith" in humanity and said,

> Making the rounds in Ottawa it was the surprising number of people who openly and vocally opposed the policy because they didn't want those _____ getting our money or the many other disgusting comments that rocked me to the core. Which groups filled the blank varied from door to door he wrote, but it tended to be Muslims or Jews. Today's "negro" is the neighbourhood Muslim or Jew.

Gardner's observations suggested boundary construction on multiple levels in Ontario in response to perceived fault lines along race, religion and culture. Debates about religion in education tend to escalate into contentious dramas and, as a result, reveal social fault lines which are usually not so obvious. Examination of border disputes at the intersection of religion, education and citizenship provide insight into the construction of social boundaries in Ontario public education and Ontario society.

3.3.3. Conclusion: Social constructionism and critical discourse analysis in the Election of 2007

The rhetoric and commentary in 2007 featured different and contested meanings attached to religion. They included religion as an essentially private mode of human experience and irrelevant to public space, religion as a mode of human experience more typical of traditional societies in conflict with modernity, religion as a mode of human experience which reduces the capacity for critical thought and agency, religion as a source of ideas harmful to the process of individual self-realization and religion as a collective identity category providing the basis for sectarian interests in conflict with common or public interests. On the other hand, religion was also seen as a normal mode of human experience in the sense that the people supporting the John Tory proposal and advocating for recognition

of faith-based schools did not foreground it as an important fault line. Rabbi Bulka's statement, for example, suggested a kind of bafflement about the way he and his faith community were portrayed.

However, religion was only rarely defined in a precise way or expressed in a clear, linear fashion, taking on shifting meanings and purposes in which precise definitions were less important than the purposes they served in the debate over religion in public education. The election was of course, a contest for political office but the foregrounding of religion in the proposal to consider funding for non-Catholic faith-based schools revealed patterns of discourse that go beyond this one event. It is clear that this was one more border skirmish in a much longer story in which religion has played a central role.

The language deployed during the election suggests the presence of discourses in which the speakers appealed to ways of thinking about religion, public education, the public school system and society forming a kind of common sense or commonly accepted patterns of thought. There was an assumed knowledge base about religion which permeated the rhetoric, most of which was unexamined. Precise use of key terms such as religion, the secular, public and private was not the point for the speakers. Rather, the point was to create an effect to either portray religion as a normal mode of human interaction or as an anachronism dangerous to modern, secular diversity.

This election was, like all elections, a bruising battle for political office but one that was also, in the words of Dalton McGuinty, "not just another election". While his words could be accepted as one more example of inflated language, the letters, commentary and election results suggest that a significant number of Ontarians agreed with him. The commentary and the letters went far beyond debate about a proposal to expand Ontario's public education tent to include observations about multiculturalism, immigration, social diversity, creationism and evolution, race and racism, the underfunding of public schools and threats to Western civilization in language reflecting a high degree of concern about the future of Ontario society.

John Tory's proposal was linked to the policies and policy proposals of the Mike Harris government which had, by 2007, taken on mythological significance in debates over Ontario public education and, more broadly, over Ontario's social values and the most effective ways to achieve them. However, it was also linked to other threats to Ontario's

most valued public institutions, in this case, "the public school system". The threat to the Ontario public school system was linked to the common ethos it is intended to deliver, something Dalton McGuinty and the Liberals so effectively identified in their language of "togetherness.

There were many references in the election rhetoric to a "common experience" delivered by the public school system as an essential basis for social togetherness. However, the public school system is not one experience but many in a huge system spanning an astonishing range of geographical and socio-economic diversity. It incorporates a great array of pedagogical approaches in response to student learning, social and emotional needs, ethnicities and religious practices. The idea of a common experience delivered by one public school system is largely a mythology but one which plays an important role in the dominant discourse in Ontario public education. The delivery of a common experience is seen as a way of bridging the creative tension social diversity and social cohesion, the idea being that a common social experience in public schools will create the basis for common social bonds which will transcend particular or sectarian identities. The educational component of the project of creating a common ethos is an educational program designed to deliver a way of thinking which encourages students to take critical distance from their own religions and traditions. Therefore the distinctions between public and private, common and sectarian are loaded with meaning, not in terms of their precise definitions but in the role they play in imagining a common Ontario ethos under threat from a variety of sources, including religious particularities which are imagined to be in binary opposition to common or public interests.

In Ontario, the dominant discourse in public education makes critically important links between the public school system as an institution and public education as a social practice which are seen as essential for the delivery of a preferred social order. In the election rhetoric and a wide range of interventions this linkage was largely unexamined, serving as common sense. The terms "public education" and the "public school system" were used interchangeably, uncritically linked to the national interest of social order and harmony.

The social order imagined in the rhetoric and in the commentary was not defined in precise ways but it included the ideas of diversity, freedom and equality as both descriptors and as moral qualities or ideals to be achieved. Ontario was represented as a modern progressive society, examination of the rhetoric revealing a progressive historiography.

Religion, in the election rhetoric, was placed in opposition to common interest of the preferred social order because it was associated with sectarian loyalties, private interests and outmoded ways of thought anachronistic to modernity. Religion was represented in the dominant discourse about public education as something Ontario had behind, or at least, something that had been confined to the private areas of life so that it can no longer be a threat to social togetherness.

Debates about religion in education become particularly volatile because, while religion is seen as a persistent, if anachronistic mode of human knowing, faith-based education is seen to perpetuate that anachronism as an intentional project. In other words, an alien presence is seen to intrude into the heart of the social enterprise at the centre of Ontario society. This is interpreted as dangerous for two reasons, the first of which is that it does harm to children who are imagined as its victims but also, it does harm to society by encouraging and legitimizing sectarian loyalties. The language during the election included more and less direct references to immigration and to the religiously dangerous other, a particularly potent image in the early 21st century after the terrorist attacks in the United States.

4. Chapter Four *"Ontario's legacy"*

4.1. Introduction

The purpose in Chapter Four is to do three things. They are to trace the representation of religion in selected historical events and periods in Ontario public education, to test the patterns of discourse to see if the patterns identified in Chapter Three are repeated in other historical contexts and, to trace the genealogy of the patterns of thought identified in Chapter Three to identify both change and continuity in the representation of religion and its role in public education.

The title of this chapter is taken from one of the letters quoted in Chapter Three which appealed to "Ontario's legacy" supporting John Tory's proposal by saying,

> Ontario's legacy has been one of inclusion. We have always welcomed persons from all backgrounds to join us and participate in this patchwork quilt of cultures and faiths. The backing on the quilt – the democratic ideals of freedom, diversity and choice – are what keeps us together. (Ottawa Citizen, September 12, 2007)

Both supporters and opponents of the John Tory proposal appealed to Ontario's legacy to support their arguments. However, Ontario's legacy was interpreted in different, often conflicting ways and so this chapter is organized around four questions. First, "What is Ontario's legacy of religion and religious diversity in public education?", second, "Do the patterns of discourse identified in the examination of the election of 2007 suggest a 'legacy' that goes beyond this one historical moment?", third, "How are the roles of religion, public education and the public school system represented in the values of inclusion and togetherness? and fourth, "Is there a dominant discourse which shapes the Ontario legacy in public education in a way that marginalizes minority voices?".

Public education in Ontario has carried a great deal of significance as a social practice the purpose of which is to produce an educated citizenry prepared for life in a democratic and diverse society. Freedom of religion and respect for social diversity have been highly prized values associated with democracy in Ontario as they have been in all Western societies (Hurd, 2008). However, social and religious diversity have also been sources of anxiety over social order and cohesion. This was true up to the 1960's, when most immigrants to Canada were Christian, originating in Europe and was equally so after the 1960's when an increasing percentage of immigrants were from Africa, Asia and South America, representing a wider

variety of religions. Public education has been the primary social practice and the public school system has been the primary institutional mechanism designed to create a unified society out of Ontario's astonishing social diversity.

4.1.1. Literature

The primary data sources in this chapter are *The Report of the Royal Commission on Education in Ontario (1950)* (or the *Hope Commission Report*), *Religious Information and Moral Development: The Report of the Committee on Religious Education in the Public Schools of the Province of Ontario (1969)* (or the *Mackay Report*), *The Report of the Commission on Private Schools in Ontario (1985)* (or the *Shapiro Commission Report*) and the proceedings of the "Standing committee on finance and economic affairs" June 19, 2001 recorded in *Hansard*.

The *Hall-Dennis Report*, titled *Living and Learning* (tabled in 1968) is important in its effect on public education practice in but, since it does not deal directly with religion, it provides context for the *Mackay Report*. In the same way, the *Report of the Ministerial Inquiry on Religious Education in Ontario Public Elementary Schools*, or the *Watson Report* (1990) had less effect on the regulation of religion in public schools for a variety of reasons so its role in this analysis is less significant.

4.1.2. Theoretical and Methodological issues

In this chapter critical genealogical analysis reveals that representations of religion are, in part, responses to specific historical contexts, but second that they are also linked by discourses. While representations of religion occur in unique historical moments they are, at the same time, embedded in or expressions of a longer story of Ontario public education. Further, while there is a demonstrable "Ontario legacy" with its own unique features and history, the debates in Ontario over the role of religion in public education have significant similarities to patterns of thought in other jurisdictions in Canada and throughout the world.

4.1.3. Limitations

The purpose of this chapter is not to reconstruct an accurate history of the role of religion in Ontario education or to challenge the accuracy of the histories to which the reports appeal. Rather, critical genealogical analysis reveals discourses in the themes of religion, education and citizenship in Ontario public education in a way that provides insight into the politics of school funding in 2007 against a wider historical background.

4.2. Hope Royal Commission 1950

4.2.1. Introduction

a. Origins of the Royal Commission

The Royal Commission on Education was established in 1945 by the Conservative government of George Drew to

> Inquire into and report upon the provincial education system, and without derogating from the generality thereof, including course of study, text books, examinations, financing, and the general system and scheme of elementary and secondary school involving public schools, separate schools, continuation schools, high schools, collegiate institutes, separate schools, schools for the training of teachers and all other schools under the jurisdiction of the Department of Education, as well as the selection and training of teachers, inspectors, and other officials of such schools, and the system of provincial and local school administration. (1950, p. vi)

The *Hope Commission Report*, submitted in 1950, included a review of the principles underlying Ontario public education, its historical roots, the current state of educational affairs and many recommendations designed to reform the system. It was both an apology for the common school movement in Ontario and a blueprint to bring public school organization, educational programs and practices, funding and teacher training into line with the latest educational research in order to better position the public school system in the modern world. Above all the Hope Commission saw the public school system as an essential state instrument to deliver a unified democratic society.

Although it was an apology for the common school movement, the *Hope Commission Report* included two minority reports and four minority memoranda offering alternative interpretations, recommendations and opposition to the majority report. The most important of these was an extensive one written by four commissioners representing a Roman Catholic counter-narrative, challenging the majority report on a number of key points. The *Hope Commission Report* was remarkable for a number of things, among them its comprehensive

scope, but one of the most significant features was the space allowed for dissenting voices. The *Report*, therefore, provides access to the dominant and counter-narratives contesting the Egerton Ryerson legacy in the mid-20th century, both of them articulate, lively and detailed, making the *Report* a good starting point for an examination of the Ontario legacy of public education.

b. Historical background: Egerton Ryerson and the common school movement

Any discussion about Ontario's legacy of public schooling must begin with Egerton Ryerson, widely regarded as the architect of the common schools and formative administrator of a comprehensive common school system in Ontario. Egerton Ryerson (1803 - 1882) was born in Norfolk County in Upper Canada into an Anglican family. He converted to Methodism when he was eighteen years of age triggering a breach with his Tory Anglican father and signalling his life-long commitment to reform politics which found expression in, among other things, a commitment to the common school movement. He founded what was later to become Victoria College in Cobourg, Ontario which continues as a college of the University of Toronto. He made his lasting mark on Ontario's educational model as Chief Superintendent for Education in Upper Canada, a post he held from 1844 to 1876. His great project of establishing a common, non-sectarian school system operating as a state institution has continued to the present day, albeit in modified form.

Ryerson is often portrayed in opposition to Anglican Bishop John Strachan, a representative of the Upper Canadian social and political elite known as the Family Compact, the target of reform politics in the Canadas of the mid-19th century. In Ontario public school narrative, John Strachan plays the role as representative of an elite, exclusive past and Egerton Ryerson represents the progressive, inclusive future (Stamp, 1982; Wilson in Titley and Miller, 1982). The point here, however, is not to create an accurate or an extensive reconstruction of Egerton Ryerson's personal life and motivations or his professional contribution to Ontario public education. Neither is the purpose to argue in favour of or against the Ryerson and Strachan visions of Canada and the role of education in delivering an ideal society. Rather, the purpose is examination of discourses competing over Ontario's legacy of inclusive common schooling established by Egerton Ryerson and, more specifically, the role of religion in those discourses. The *Hope Commission Report* is one

episode in a long argument but it is unique in that it provides a bridge between Ryerson and debates over the role of religion in public education after 1950.

Ryerson was not a "liberal" in the 21st century senses of that term. His interest in common schooling accessible to all citizens was motivated by more conservative impulses to address growing sympathy for American style republicanism at play in the Rebellions of 1837. Sympathy for republicanism was an expression of the class conflict between the ruling elites and a growing population of disenfranchised lower socio-economic class. In addition, there was growing concern about the social impact of urbanization, industrialization and immigration which indicated to Ryerson and others the effects of ineffective socialization (Titley and Miller, 1982, p.15). Social tensions created by religion, class and race were very much on the minds of the reformers of the day and Ryerson became the chief advocate for addressing those concerns through the establishment of a common school movement as an instrument of socialization. The essentially conservative motivation which drove education reform in Ontario had its parallels in the European models of school reform influencing Ryerson (Titley and Miller, 1982; Glenn, 2011) and reflects youth movements, including the Boy Scouts, in the late 19th and early 20th Centuries (Rosenthal, 1986; MacDonald, 1993; Sica, 2007).

Ryerson's concerns about socialization are evident in his work on residential schools for First Nations children. While the residential schools policy and practice have has received much needed critical scrutiny resulting in official apologies and exposure in Canada's Truth and Reconciliation Commission, the impulse for it was a response to the practical problems associated with assimilation of difference into a cohesive society. There was agreement among Ryerson and his contemporaries that the solution to the problems experienced by First Nations peoples in their encounters with Canada was that they be "civilized" in a European sense of the term. However, his rationale for religious instruction displayed a conservative sense of social mobility when he said in 1847,

> It is a fact established by numerous experiments, that the North American Indian cannot be civilized or preserved in a state of civilization (including habits of industry and sobriety) except in connection with, if not by the influence of, not only religious instruction and sentiment but of religious feelings. (Ryerson University's Aboriginal Council, August, 2010)

A statement issued by Ryerson University's Aboriginal Council in 2010 suggested that Ryerson's involvement in the residential schools program was an anomaly and a contrast to

his pioneering work in designing the Ontario common school system. It described his "progressive stand in advocating for the separation of Church and State within education", quoting his opinion about the Separate Schools Act of 1843 in which he states his opposition to "denominational schools".[10] The statement then said, "However, when it came to education for Aboriginal children, Egerton Ryerson held a different position", focussing on Ryerson's Christianity as the source of difference. In this telling, there were two Ryersons, the one regressive Christian Ryerson and the other progressive, secular Ryerson.

The recent re-consideration of the First Nations residential schools project has been an important endeavour to address historic injustice and the evidence of abuses of power are persuasive, both in principle as a colonial strategy of assimilation and in the implementation of the policy on the school level. However, the interpretation of the policy by the Aboriginal Council suggested that it was an expression of the religious Ryerson who was fundamentally different from the progressive Ryerson. I argue that there was one Ryerson whose form of Protestant Christianity created a framework to see First Nations children needing to be civilized and incorporated into the Canadian mainstream along with the children of immigrants and "lower classes". Many of these immigrant groups adhered to other Christianities who, like many of the First Nations, resisted the common school movement and the establishment of a common religion in service of inclusion and togetherness.

The Ryerson Aboriginal Council's construction of the story, by focusing on religion as the regressive impulse at odds with modern sensibilities, missed an important point. Religion was and continues to be an important feature in the story but not in the way the statement suggests. The issue is not religion but power which, in Ryerson's case, was framed and rationalized by a particular form of Christianity dominating the social and political discourse of the 19th century. Charles Glenn observes a similar pattern of power deployed to maintain a social order in common school movements in Europe which explicitly prevented education which might motivate members of "lower classes" to change their social status or introduce ideas of social reform (2011, p. 23). Glenn argues that the common school movement in Europe and the United States were projects of the social elites motivated

[10] The reference to "church and state" is an anachronism in the Canadian context, being an American formulation of the role of government in regulating religion but it appears regularly in Canadian discussions about the role of religion in public education. See also Sable, 1999)

by what they saw as lower class and immigrant unruliness which needed to be domesticated (1988, 2012). While there was genuine interest in ensuring wide access to education, concerns for socially disadvantaged recipients of education were inseparable from interests in social control through a process of assimilation. Ryerson was heavily influenced by the common school movements in Europe and the United States, reflecting similar humanitarian and socially conservative concerns. The point is that although much of the current public school rhetoric emphasises its role on the cutting edge of social reform, from its earliest beginnings the common school system has had an important conservative and integrative role designed to maintain a social order under a common ethos.

What is undeniable is Ryerson's commitment to non-sectarian Christianity as the basis for the school system and, more broadly, the basis for civilization, something noted by J. Donald Wilson when he says, "Education for Ryerson was to be Christian, universal, free and compulsory. ... For Ryerson, the schools were proper vehicles for the dissemination of Christian principles; these Christian principles were, however, virtually synonymous with Protestant values. …Education is a public good, ignorance is a public evil", and therefore, every child, rich or poor should receive an education sufficient to overcome "the evils of want and poverty", and to "fit him to be an honest and useful member of the community" (Titley and Miller, 1982, p. 62).

Ryerson was not doing or thinking something particularly original in designing the common school system, something of which he was quite aware. He was familiar with similar reforms taking place elsewhere, having travelled throughout Europe in the mid 1840's on a fourteen month trip to examine school systems of a number of countries. His research informed his drafting of the Common School Act of 1846 which became the basis for Ontario public schooling. Its highly centralized organization with the primacy of the state, its goals of social inclusivity, its funding based on local property tax and the uniformity of curriculum were "borrowed shamelessly" from Prussia, France, the Netherlands and the United States among others (Titley and Miller, 1982, p. 17). The common school project in Ontario had its counterparts throughout Europe and the United States with a number of commonly held characteristics about pedagogy and the public role of education (Glenn, 1988, 2011).

Education reforms after 1850 in North America and in Europe coincided with the growth of free market capitalism, urbanization, nationalism and democracy so that

accessibility to education served a number of purposes. In Germany, for example, educators were considered officers of the state, symbolized by their wearing military-style uniforms. Developments in Germany served as a model for educators in North America (such as Horace Mann in the United States and Egerton Ryerson in Ontario) so the state's interest in the control of education cannot be ignored. J. Donald Miller said, "Like his American counterparts, Ryerson looked on the school as a vehicle for inculcating loyalty and patriotism, fostering social cohesion and self-reliance, and insuring domestic tranquility" (Titley and Miller, 1982, p 62). Ryerson's common school project shared four characteristics common to the educational reform movements throughout Western Europe and North America. They were social comprehensiveness, total commitment to education, linking of education with technological and social change and heavy reliance upon action by the state, as opposed to "non-official activity" (Titley and Miller, 1982, 62). These characteristics continue to be the basis for Ontario public schooling and can be found in the letters and opinion pieces opposing funding for faith-based schools.

Ryerson's assumptions about the role of Christianity as the basis for civilization, the role of the state in providing a forum for accessible, egalitarian education and the role of the schools as instruments of the government for provide education as a public good were completely consistent with the predominant reformist views emerging in the middle of the 19th century. Rather than being an original thinker, he represented a prevailing model for public education as a state strategy to deliver harmonious social diversity. He was a highly effective administrator in executing plans for a common school system, a tireless promoter and also, by all accounts, a decent human being. His role in designing the Residential Schools policy emerged out of a concern for "Indians" among whom he had lived and worked as a Methodist pastor, and he would, without doubt, have been horrified by the abuses of power which have come to light in the last number of decades. First Nations were being overwhelmed by the expansion of the nation of Canada and the concern of reformers like Ryerson was that they not be left completely behind in developments seen as the more or less inevitable march of progress.

The goal here is not to deny the Ryerson's pioneering work and his important contribution to Ontario education. There is evidence that he was a tireless reformer of education challenging opponents who objected to the idea that First Nations children or lower

class “brats” should be educated at all and certainly not at public expense (Titley and Miller, 1982, p. 70). He challenged the power and privilege of the Family Compact and established a legacy of widely accessible publicly funded education of which Ontario is justifiably proud. However, he was a man of his time who could not imagine civilized social moral order outside the framework of a particular version of non-sectarian Christianity operating as the energizing and unifying ethos of the modern state. Along with the prevailing thought of the time, he saw the state as an institution with the power to overcome sectarian and class differences, ushering in a new progressive social order (Nisbet, 1976). For him, the primary purpose of a common education system as a state instrument to achieve the assimilation of a diverse citizenry into that order.

Although since 1990 Ontario public education has, been characterized as secular, claiming to have moved past Ryerson’s Christianity, examination of the language of togetherness deployed during the election of 2007 suggests that the legacy of public schooling as a state instrument of assimilation remains. This is not lost on those who find themselves outside the public school system and its civilized order. Resistance to the common school movement has been a consistent feature of Ontario education history, largely by the Roman Catholic Church which has vigorously protected its status as a publicly funded, if separate, school system but also from other minority religious groups. There are differences between the contours of educational diversity in 2007 and in the 19th century but the voices of resistance, like the voices in the dominant discourses, have been remarkably consistent.

4.2.2. Hope Commission majority report

The Hope Commission majority report included a great deal of fascinating detail about the delivery of education and the operation of schools in the 1940’s. Not surprisingly, it did so within its own interpretation of the Ryerson and Ontario public school legacy and its own interpretation of the legal and constitutional framework governing religion and religious diversity in public education. While its mandate did not include specific references to religion and its role in education, consideration of religion was present throughout the report. Religion was particularly present in establishing the ultimate purposes of education and for social harmony; however, religion was also an important factor in its consideration

of harm to Ontario society resulting from the funding of Roman Catholic separate schools, based on *s.93* of the Constitution Act of 1867. In view of the majority report, the effects of *s.93* on public schools, public education and Ontario society were evident in the persistent survival of the Roman Catholic separate schools practicing harmful sectarian educational and religious practices.

The *Hope Commission Report* was unapologetic about its Protestant Christian bias and about its support for the *Drew Regulation* which had mandated Christian religious instruction in 1944. The *Drew Regulation* had triggered strong resistance, although not from the Roman Catholics who assumed that religious instruction was an integral part of education and who depended on protection of their right to deliver it in their own schools. Rather, it was the Jewish community who most strongly spoke against the inclusion of Christian religious instruction, including a brief to the Hope Commission where it had little impact. Hope's support of the *Drew Regulation* would eventually receive effective critical attention in the *Mackay Report* in 1969 and in *Elgin County* in 1990 but in 1950 Protestant Christianity was clearly the dominant religious presence in Ontario public education. The *Report* said,

> There are two virtues about which there can be no question – honesty and Christian love. They reflect the intellectual and religious heritage of Western Civilization. Honesty means truthfulness and fair dealing, which are the very foundations of freedom.

However, Christianity was not represented as hostile to other religions. Rather, the majority report represented Christianity as the religion providing a universal language for all religions, saying,

> Christian love means kindness and consideration for others, which are mandatory by the Golden Rule. Honesty and love must be taught by precept and even more by example, as absolute rights or eternal verities, which everyone must accept, defend and strive to practise. To insist on their acceptance will do no violence to the conscience of any child or parent. No earnest Christian or Jew or sincere adherent of any other enduring faith or philosophy of intelligence and good will, could have conscientious scruples regarding these two virtues. They may be taught whole-heartedly and without reservation. (1950, p. 27-28 # 15)

The report claimed that Christianity provided the "absolute" basis for Canadian democracy. In doing so, it created a seamless link between Canadian values and Protestant Christianity by saying,

> Honesty and Christian love are the absolutes of a free society. They may therefore be taught by the strongest means at the school's command – an explicit acceptance that they are right. If this be indoctrination we accept the stricture. (1950, p. 29, #19)

The apology for indoctrination is important because indoctrination, along with coercion, would be identified as educational harm linked with religion in the *Mackay Report* (1969) and in *Zylberberg* and *Elgin County* in 1988 and 1990. The phrasing in *Hope* suggests a defensiveness based on an awareness that some might find indoctrination offensive and, in fact, this was central to the critical comments offered by the Canadian Jewish Congress in its brief to the Commission. However, in 1950 the Commission identified indoctrination as a legitimate educational approach in achieving the values considered absolutely essential for Canada's free society.

The link between Christianity and democracy was in the development of character through the inculcation of civic values, particularly honest and fair dealing.[11] Reflecting concerns about the disastrous consequences of a world detached from these values the *Report* said that,

> Without honesty, society disintegrates. Fair dealing is the indispensable basis of community life. Truthfulness and respect for truth, no less than free access to truth, are essential to the operation of democracy and to the safeguarding of democracy against false doctrines which may threaten to overthrow it. Without love of our fellow-men life is not worth living. There is need for more consideration toward those with whom we come into immediate contact, and need for more consideration toward those who will be affected less directly but no less surely by our beliefs and our practices. There is a warning to the world in the recent spread of ideologies under which kindness is weakness and pity is evidence of guilt. For the preservation of our society the school must teach honesty and Christian love. (p. 28, # 16)

The reference to the "recent spread of ideologies" situates *Hope* in a wider geopolitical context. Canada was one of the liberal democracies claiming claimed victory over the totalitarian regimes of Nazi Germany and imperial Japan after horrendous effort and cost. The commissioners were of a generation shaped by very recent confrontation with totalitarian regimes energized by values diametrically opposed to western Christian civilization. They

[11] There are similar patterns of thought in Ryerson and in Robert Baden-Powell, founder of the Boy Scout movement, which he called "the character factory", nicely combining concepts of industrial efficiency, social cohesion and Christian virtues.

were also facing a new challenge in the form of a cold war with Communist regimes so their outlook as they reconsidered public education going into the modern world was shaped both by alarm but also by a renewed enthusiasm for the moral superiority of Protestant Christianity. This was evident in the social implications of public education which, while clearly embedded in a Christian theory of society, was also expected to have practical effects. The *Report* said,

> But the school must not be content with theory. It must teach honest and love in practice, and thus educate for service to one's fellow-men to one's country and to God. As the pupil recognizes the obligation to be honest, he must give value to his work and in every transaction. Because he recognizes the obligation of love, he must seek to translate it into action. Whether in relation to one other person, to several persons or to all, whether at home, at school, in business or as a citizen he must fulfil this dual obligation to the best of his ability. In his education, the school must help him not only to understand and to accept these obligations, but also to acquire the disposition, the will, and the ability, to live daily by the application of this divine precept. (p. 28, # 17)

The theory of society in the *Hope Commission Report* included the idea of the public school system embedded in a network of social institutions delivering the absolute values essential to a free and democratic society. In 1950, the home and church were seen as public partners along with the public school system in defeating the "ubiquitous demon named selfishness". Together, this network of social institutions would form an "educative agency" to deliver good character which was an essential cornerstone of democracy. The *Report* said,

> In teaching these universal values the school cannot work alone. The enemy of honesty and love in action is the ubiquitous demon named selfishness. The church, in particular, must build and continuously strengthen the spiritual foundations of the basic virtues. The home must provide security for their growth in understanding and practice. School, home and church should stand together to counteract more effectively those influences in society which offer rewards for selfishness. Gradually, the whole social environment of future generations may them perceptibly improve as an educative agency. (p. 28 #18)

The Commission recognized that the development of good character had been a social goal for a long time and that its achievement continued to be elusive. However, the *Report* warned against over specialization and the loss of the ancient wisdom which held that "everything in the community is a teacher", saying,

> A century ago, when formal education for all boys and girls was about to become a reality, there were optimistic predictions that the gaols would be empty when the schools were filled. If progress to date has been slow, the lessons to be

> learned are that the school has partly failed in this regard, that it is not the only instrument of education, and that it cannot achieve its high purpose without assistance. In an age of specialization it is easy to forget a truism of the ancients that everything in the life of the community is a teacher. The school must seek every ally if it is to prove that falsehood and deceit, selfishness and violence, are wrong; that truthfulness, fair dealing, and love are right; and that what is sometimes called self-sacrifice is voluntary service by those who understand the obligations of freedom. (p. 28 – 29, #18)

The Commission was working out of an organic vision of society in which students are embedded in a coherent community, their characters shaped by positive, commonly shared values.

However, although the Commission asserted the virtues of coherent communities, it was actually speaking to a society undergoing enormous changes. The Second World War had seen the dramatic growth of centralized state power which superseded communities, industrialization which had overtaken farming as a source of employment and urbanization which was depopulating rural areas. In addition, a post war wave of immigration was creating new challenges for social cohesion as social institutions struggled to assimilate new arrivals into Canadian society. The world in which the *Hope Report* was written was in flux and its tone and emphases reflect concerns about the effectiveness of social institutions in maintaining the "absolutes" on which Canadian society was based and the "immutable values" which framed its social harmony. The *Report* said,

> We reiterate that the two essential allies of the school in this regard are the home and the church. By precept and by example gifted teachers can engender in their pupils certain immutable values accepted and indeed won by mankind as the expression of his highest ideals in terms of beauty, truth and goodness. Mankind has found in the practice of these ideals the deepest satisfaction as he seeks to serve his fellow-men, his country and his God. The importance of the individual and the significance of his obligations, which form part of our spiritual heritage, are the foundations of our democratic society. The meaning of life is made manifest in adherence and obedience to ideals that lie outside oneself and that transcend one's personal interests. Inspiration and aspiration are never self-centred. Without proclaiming any creed or doctrine we know that in our democracy the Christian ideals as personified and exemplified by Jesus have an appeal to all persons of good will and are the surest common ground for an educational programme related to the pupil as a person. The attitude of Jesus toward children, His understanding of human nature and behaviour, His charity and loving kindness toward all men, form a perfect model for a true democracy in the classroom, the community and the nation. (p. 36 #41)

Besides the fact that their imagined ideal moral community was out of step with the historical reality in which they were living there was another problem. The problem, of course, was that there were Canadians who shared the Commission's love of Canada and who saw themselves as good citizens but who were not Protestant Christian or even Christian. The message to them was that while their values might resemble the ones based on Christianity the foundations of those values were questionable. They were citizens but, since they lived on the margins of moral and religious legitimacy, their citizenship was questionable and their presence was alien in Ontario's community as defined by the majority group with the power to shape public discourse and public space.

The religious minorities who found themselves marginalized in the *Hope Commission Report* were not quiet about it. Their voices were evident in the list of community groups presenting briefs to the Commission and in the extensive minority report written by the Roman Catholic commissioners. However, the majority report dealt with them in a somewhat summary fashion, saying about the reactions to the *Drew Regulation*,

> The prescribed course of study for religious education has met with general acceptance, although strong objections were raised by certain Presbyterian ministers, certain Baptist ministers, and some members of the Jewish faith. The objections, in the main, centred around the possibility of interference by the state in matters of conscience. (p. 125 #8)

In other words, the Commission acknowledged the presence of other voices and their objections but did not actually hear them. The Hope Commission saw itself standing in the Ryerson legacy although it also saw the need to adapt that legacy to address social, economic and demographic realities of the mid-20th century. What it retained however, was a commitment to a highly centralized public school structure with the state at the top of a bureaucratic and political hierarchy, the central role of Protestant Christianity in providing the unifying ethos for civilized society and public schooling as the key instrument in delivering a cohesive society. Quoting the *Programme of Studies for Grades I to IV of the Public and Separate Schools, 1941*, it said, "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". In addition, the "school must seek to lead the child to choose and accept as his own those ideals of conduct and endeavour which a Christian and democratic society approves" (p. 124 #3).

However, like Ryerson, the Hope Commission had in mind a particular view of Christianity in which education, religion and citizenship form the basis for social harmony which can be "realized only through the co-operative efforts of the home, the school and the church" (p.162 #129). The Commission did not specify which church it had in mind but its reflections on the denominationalism of Roman Catholicism and advocacy for Roman Catholic separate schools as an ideological principle (p. 468 #26) suggest that the Roman Catholic church was at best on the margins of being included as a public partner in delivering good Christian citizenship. The control of education by the Roman Catholic church and its ongoing advocacy for extension of funding for the whole Kindergarten through Grade 12 program represented, in the view of the majority report, a threat to its ideal of one school system, saying it "savours of discrimination on the one hand, or special privilege on the other" (p. 493 #4).

The majority report included an opinion written in 1852 by Ryerson, in which he expressed his expectation that Roman Catholic separate schools would eventually disappear, "not by force of legislative enactment but under the influence of increasingly enlightened and enlarged views of Christian relations, rights and duties between different classes of the community … I believe that the legal provision for Separate Schools has been and is seriously injurious, rather than beneficial, to the Roman Catholic portion of the community…." . The majority report then went on to observe that most Ontario citizens, including most Roman Catholics, "strongly uphold the principle of non-sectarian public schools for all the children of all the people, and hence regard with disfavour the principle of a system of publicly supported denominational schools" (p. 501, #17). Its recommendation that public support be rolled back to the provisions of the 1863 Scott legislation suggests that recognition of Roman Catholic schooling in the form of full funding was tenuous in 1950 and dependent on the majority for tolerance of religious diversity in society.[12]

In the opinion of the majority report the "interests of the public schools is, and must continue to be, of prime and paramount importance in this province" (p. 740 #9). In this

[12] The Scott legislation of 1863 provided funding for Roman Catholic separate schools which, at that time, included Grades 1 through 8. However, by 1950, funding had been extended to include Grade 10, on the assumption that the 1863 legislation was not intended to limit the funding to the levels which were, at the time it was adopted, considered a complete education for most citizens. However, this assumption was contested, including by the Hope Commission which interpreted 1863 to be restrictive in principle.

view, public education was the norm while all other forms of education and educational delivery were always subject to the tolerance of the majority. The moral rationale for the dominance of public schooling was that it is "free and open to all" in contrast to separate schools which are "a type of voluntary denominational elementary school which receives not all Roman Catholic children, but only the children of those Roman Catholic ratepayers who have elected or chosen to separate from the public schools" (p. 741 #12). In 1950, as in the 19th century and later in the 21st century, the issues of inclusion and exclusion were the grounds for establishing moral legitimacy.

In response to advocacy by Roman Catholics for the extension of funding to cover the full cost of secondary education in separate schools, the majority report said that, "…one fact became abundantly clear; that a public school system without separate schools would, and must be, less costly, particularly to the Provincial Treasury, than a dual or separated system with its many duplications of buildings, administration, services and the like" (p. 742 #13). Review of the opinions expressed during the election of 2007 indicates that concerns about threats to the province's finances and to public education have been a feature of discussions about religious diversity in public education. Comparative examination of education funding in other jurisdictions calls this into question, but the point here is to establish continuity in the discourses about public education from the 19th into the 21st Centuries.

4.2.3. Hope Commission minority report

The biases and prejudices of the majority report did not go unnoticed by the Roman Catholic commissioners. First, however, it is worthwhile to remember that, in contrast to the *Mackay Report* tabled in 1969, the *Hope Commission Report* was remarkable for including an extensive minority report written by Roman Catholic commissioners offering critical analysis on the fundamental premises on which the majority report was based. The minority report offered its own interpretation of the Ryerson and Ontario public school legacy and of the legal and constitutional framework within which separate schools were operating. It presented evidence of harm to Roman Catholic children and communities, but also to Ontario society as a result of the Ryerson legacy in educational and religious practice in public

schools. It presented evidence of widespread and persistent resistance to the Ryerson legacy and includes policy and program alternatives to the common school.

The minority report, then, provided a counter-discourse on religion, education and citizenship. It told a different story of the Egerton Ryerson legacy, not objecting to the role of religion in education, but resisting the imposition of a common religion as a state project through the use of public schools. Its language was remarkably similar to the opinions in 2007 written in support of funding for non-Catholic faith based schools and to the language of resistance to the common school project in the 19th century. At the same time, it provided evidence to suggest that the Egerton Ryerson legacy was more complex and nuanced with more sympathy for Roman Catholic separate schools than suggested by the majority report.

The minority report identified a number of objections to a common religion and control of education centralized in the provincial government, both of which represented threats to the unique character of Roman Catholic separate schools. In its opinion centralization in the form of the Central Advisory Council recommended in the majority report weakened the principles of responsible government by establishing a new and powerful level of bureaucracy of unelected professionals between parents and elected representatives (p. 783 #11). Further it argued that "the majority report shows evidence of a striving after uniformity for the sake of uniformity…." with "little consideration" having "been shown to for the necessity of adaptation to meet local needs and situations" (p. 781 #8). The minority report expressed suspicion on the reliance for child development expertise in the majority report on "the work of psychologists for its justification" of recommendations about the divisions within schools (p. 781 #9). The standardization of curriculum recommended in the majority report "may well mean an averaging, perhaps the bringing of all to the level of mediocrity, not the encouragement of initiative, or experimentation, and of local improvement and adaptation" (p. 781 #8). It expressed concerns about school centralization recommended in the majority report for the sake of efficiency, saying that "a central school will remove the child from the family circle and its influence" (p. 783 #10).

Fundamentally, however, the minority report identified the hostility toward Roman Catholicism and Roman Catholic separate schools evident throughout the observations, the conclusions and the recommendations in the majority report. The authors were well aware that Roman Catholic separate schools were viewed as a "problem" (identified so explicitly

in Chapter XIX of the majority report) which had a history going back to Egerton Ryerson. The minority report called for a different interpretation of the *Constitution Act of 1867, s.93*, suggesting it to be an expression of trust and recognition of the public good done by separate schools, rather than an unfortunate political necessity arising out of the political realities of the 1860's. It challenged the idea that the interests of public schools are paramount and that the existence of Roman Catholic separate schools depended on the tolerance of the majority, "only if there can be no possible adverse reaction upon the public school" (p. 787 #17). The minority report refuted the idea that Roman Catholic separate schools existed to protect a vulnerable minority from "insult and oppression", asserting that they exist as an expression of "traditional Catholic views as to education" (p. 788 #20) which were a legitimate public good (p. 787 #17) and "a part of a public system of education." (p. 797 #41)

The minority report included "A History of the Roman Catholic Separate School Controversy" which presented a historical account of the common and separate school systems challenging the one presented in the majority report. It is clear from the outset that the purpose of this history was to address what they thought were misconceptions and biased interpretations of key events which had been largely ignored in other histories which either seek 'a basis to damn "divisive sectarian" schools or 'defend and edify by eulogies of the pioneer Catholic clergy and laity' (p. 803 #1). This history emphasized the continuous legacy of Roman Catholic education, asserting that advocacy for it arose out of a legitimate view of education, and "not occasioned by novel educational views of a foreign incumbent." as Ryerson had suggested in the 19th century (p. 804 #6 {5}). Advocacy for Roman Catholic separate schools had never been motivated "by a wish to destroy the common school system", a consistent misrepresentation in the history of Ontario education (p. 804 #6 {6}).

The minority report identified the long history of hostility to Roman Catholicism in Ontario, referring to Anglican Archdeacon John Strachan who asserted the necessity of the delivery of education by Anglican clergy 'to support the Church of England as a bulwark against "sectaries" and the "Romish church" (p. 808 #10). It then interpreted the "wish for a purely secular system of education" promoted in 1830 by the "friends of religious liberty" under the chairmanship of Robert Baldwin (p. 808 #11) as not being motivated by "an objection to religion in the schools; the annoyance was the contention that that the Church of England was to be regarded as the sole established church in Upper Canada"(p. 808 #12). In

fact, "the evil of a purely secular education" was, in the view of Dr. Duncombe, a Reformer commissioned to submit a report to the House of Assembly, to be avoided at all costs. Although he was a firm supporter of a common school to establish a common religion, Duncombe had supported the existence of Catholic schools on the basis that, while they disagreed with the idea of a common religion, they agreed on the dangers of secularism.

The risk of a "government monopoly" in education was identified in the minority report, referring to John Strachan's advocacy for church controlled schools (p. 818 #5) and to D.B. Vigner of Richelieu who warned against the "educational monopolies of the governments of Germany and France" which, in his view, had been attended with the "greatest abuses". Vigner had appealed to the principle that "all classes should be equal in the eye of the law as regards civil and religious liberty" (p. 819 # 10). As a result of the recognition that civil harmony could be maintained if the principles of equality and religious liberty were respected, the "1841 educational Act … established separate schools as part of the common school system", not as a an act of tolerant extension of a privilege but as recognition of a right. The minority report turned to the 1843 *Education Act* for evidence that "Protestant and Catholic separate schools were considered part of the common school system" (p. 821 #17). In its view the "1840's, therefore, see the real origins of Ontario's common school system" integral to which is a recognition by legislators of the day that a common religion was not achievable or even desirable (p. 822 #18). In this view, a common religion was not essential to a common school system, nor is a state monopoly on education a necessary precondition for social and educational harmony.

The history of Ontario education presented in the minority report found the origins of the common school movement, not in Egerton Ryerson as assumed in by the majority but in an earlier tradition of political wisdom and compromise based on principles of equality and religious liberty. Its history positioned Egerton Ryerson and his interpretation of the common school idea as a "new idea", which, for a variety of reasons, insisted on the idea of a common religion as an essential basis for common schooling. Ryerson, in this account, was the architect of a centralized system controlled by the state which marginalized religious groups and families in the education process. There was a Ryerson legacy but, in the view of the minority commissioners, "it would be worthwhile to examine Ryerson's attitude with care" on a number of key issues (p. 828 #12).

The first of these was that Ryerson bypassed the key role of the parents in the raising of children. Although he argued that he understood and wanted to protect the key role of parents, he said in 1857, "The state, therefore, so far from having nothing to do with children, constitutes their collective parent and is bound to protect them against any unnatural neglect or cruel treatment, on the part of the individual parent to secure to them all that will qualify them to become useful citizens of the State" (p. 829 # 13). For the minority commissioners this was a radical and dangerous departure from earlier ideas in which the state played an important role in education but one balanced with other groups and interests in civil society.

The second issue was Ryerson's attitude toward Roman Catholics. While he regretted the existence of Roman Catholic schools, believing them to be the result of "foreign ecclesiastics" who "wished to inflict clerical control on an unwilling Catholic people", Ryerson did not actually oppose them directly. However, his commitment to the "common faith of Protestantism" mentioned specifically in 1841 as the basis for a common school system told another story (p. 829 #16). While he recognized the need to protect the rights of those who disagreed with the idea of a "common faith", Ryerson was unwavering in his commitment to the dominance of a common Protestantism in the common schools. For the minority commissioners this represented a second radical and dangerous departure from the legislation of 1841 and 1843. In discussion about his draft of the 1846 School Act, Ryerson linked the constitutional basis of the state and of public education in a common religion when he said "I assume, also, that Christianity – the Christianity of the Bible – regardless of the peculiarities of Sects or Parties, is to be the basis of our System of Public Instruction, as it is of our Civil Constitution" (p. 829, # 16).

In the history constructed by the minority commissioners Ryerson saw separate schools as a threat to the public school system that would "harm the children of the separatists" (p. 832 #26) and stated that that such schools exist as "an indulgence or favour, not a right", since "no Religious Sect has a constitutional claim to more than equal and impartial protection in the enjoyment of access to the Public Institutions of the Country" (p. 833 #27). However, they questioned Ryerson's ability to assess "equal and impartial protection" from harm, saying

> In reading Ryerson's attacks on "foreign ecclesiastics", his proposals for religious instruction in the common schools and his defence of Victoria College,

> one see Ryerson in the dual role of Methodist minister and public education official." (p. 833 #29)

The minority report used contradictions in Ryerson's thinking to challenge the majority report which interpreted his legacy as more clearly hostile to religious diversity than it actually was. For example, while he insisted that the common school system be kept free of sectarian influences, Ryerson advocated for government funding for denominational colleges, among them Victoria College.

According to the minority account, Ryerson rationalized government funding for denominational colleges, saying that students living away from home and the influence of their parents in residential schools (including First Nations residential schools), secondary schools and colleges, needed religious instruction which could be delivered most effectively by the founding churches. On occasion he attacked as "despotic" the idea of a unitary national system of education, arguing that diversity rather than an "ossified uniformity" was the ideal and that his common school common Christianity encouraged diversity through local funds and locally elected school boards. Ryerson explained his unsuccessful attempt in 1862 to draft a bill to create denominational schools for vagrant children, saying that despite the fact that the religious instruction delivered by churches and groups was sectarian, it served the greater public good of inculcating religious values and principles in children on the margins of society. At times, particularly after the intense debates of the 1850's he became more tolerant of Catholic schools when he came to see that they did not represent the threat to common schools that he had earlier believed.

Nevertheless, in the view of the minority report, religious instruction was a contentious educational practice and one about which Ryerson was pragmatic rather than ideological. His basic principle seemed to be that religious instruction would reflect the majority religion in the district where it was delivered but that children of minority religions could be protected by withdrawing from classes to which they objected. However, the minority commissioners asked questions about whether Ryerson's excusal provisions were adequate protections of the rights of the Roman Catholic minority which would prove to be important in the landmark court cases in the 1980's. It would not be until the 1980's that this question would be answered in the negative when opting out clauses were identified as evidence of coercion. However, what the minority commissioners were trying to

demonstrate in the 1950 *Report* was that Ryerson's view of education and its delivery in the education system was actually more nuanced and less ideologically consistent than it appeared in the majority report. There was more room for religious diversity, not only in the social life of the public school system but also in the educational practices available to religious minorities.

The point here is not to establish who had the most accurate interpretation of the Ryerson legacy. Rather, the disagreement between the majority and minority reports provides insight into what the commissioners were trying to establish going forward. The majority report established the basis for an increasingly centralized public school system as an instrument of the state in the education of citizens intelligently committed to a Christian liberal democracy. Its interpretation of Ryerson downplayed the contradictions and darker sides of his legacy, treating resistant religious minorities as recalcitrant sectarians trying to undermine a progressive democracy. Its tone of urgency is understandable, given the global geo-political context and the great changes occurring in Ontario society. However, urgency also served a strategic purpose, primarily to represent resistant minorities as a threat to the survival of the nation and thus to treat suppression of diversity as normal under the circumstances, whatever those circumstances might be. The minority commissioners understood the implications of the majority report for Roman Catholics and the separate school system and they saw themselves in a tradition of resistance going back to the mid-19th century in Canada and beyond that to struggles in Europe. They interpreted Ryerson in their own way in order to both question his mythological status by suggesting that he was actually not the founder of the common school movement and to challenge the narrative which used him to as an unambiguous basis to achieve increasing centralized state control of public education under one common religion.

It was in the minority report's account of the fierce debates of the 1850's and 1860's where the competing discourses over the role of religion in public education and citizenship stood out most clearly. The protagonists in the story were Bishop Charbonnel of Toronto and Egerton Ryerson. In this account, the Bishop reported to his superiors in 1852 'that he had commenced an "open war" against the (common) school system only after the failure of many private representations' (p. 844 #3). However, the account also said that the "Ciceronian eloquence" of the Bishop was no match for the "cold logic" of Ryerson in the

debates, but that, "when the principles of the two parties are examined - Charbonnel emerges as the victor" (p. 844 #2). In other words, the Bishop, while he may have been defeated in debate, was the victor due to the moral superiority of his principles.

The difference between them, irreconcilable as it turned out, was over their understandings of why separate schools existed in the first place. In Ryerson's view, they existed to provide "protection from insult" to a vulnerable religious minority (p. 846 #11) and that their reason for existence would disappear if "religious differences and divisions" could be "healed rather than inflamed" through the offices of a "wise and beneficent Government" (p. 844 #5). Ryerson did not object to the existence of separate schools as long as protection of vulnerable minorities was necessary. However, in his view they were temporary necessities in response to specific conditions and should not be considered integral to common schooling. For him, the term "separate" had more ideological implications, one of which was that separate schools were outside the common space and that no provision should be made to consider their long term legitimacy. Their existence was a matter of tolerance by the majority but they should, in no way, be allowed to interfere with public schooling which, in Ryerson's view, was the social norm. Charbonnel served as speaker for the view that Roman Catholic separate schools exist, not in the first place as "protection from insult" but as expressions of a legitimate educational tradition which contributes to the public good. Legal protection for separate schools is not a matter of tolerance but a right, given the legitimacy of the Roman Catholic educational traditions. For Charbonnel the term "separate" had a different meaning than it did for Ryerson, suggesting religious difference but without the implications of social and educational marginalization.

The minority commissioners disagreed with Ryerson's assertion that Charbonnel had introduced a new theme to Roman Catholic advocacy resulting in agitation in previously harmonious co-existence in which Roman Catholics had accepted the status of their schools as "protection from insult". About Charbonnel's predecessors, Ryerson wrote in 1851, "The necessity of a Separate School they lamented as a misfortune, instead of advocating it as a principle. In this feeling I entirely sympathize" (p. 846 #11). He described Bishop Power as "virtually a Canadian, being a native of Nova Scotia" and said that he (Power) had a "particular desire to see elevate the Roman Catholic population of the Country and believed that that would be best effected by their children being educated with the children of other

classes …" (p. 845 #9). The minority commissioners re-interpreted the same predecessors, pointing to their long and strenuous advocacy for the establishment and protection of Catholic schools and "the attitude of these men that Catholic schools were an automatic right for Catholic children, not a mere 'protection from insult' in exceptional cases" adding, "That there was a certain amount of insult is historically true, but this was not advanced as the reason for separate Catholic schools" (p. 846 #12).

Another difference between the majority and minority reports is in the interpretation of the legal and constitutional history of Roman Catholic separate schools. Their legal and constitutional protection is entrenched in *s. 93* of the *Constitution Act of 1867* and in legal and regulatory decisions leading to the 1867 agreements. However, the question in ongoing debates about the role of religion in public education is the status of those decisions. A narrow interpretation of *s. 93* is that protection of Roman Catholic separate schools is the result of specific historical and political necessity, offering "protection from insult" to a vulnerable minority. The implication of this interpretation is that debates about religious diversity are over whether or not a minority is vulnerable and if their vulnerability warrants further legal protection. However, this avoids consideration of educational models based on religion or recognition that education can be a legitimate religious practice contributing to the public good. As a result, advocacy for religious diversity in education based on religious freedom claims have traction in these debates only if a case can be made that religious freedoms have been infringed. The resolution depends on two things to be decided by the majority; first, if infringement of religious freedoms or a breach of fairness is justified in light of other considerations and the second is an assessment of harm or risk to the majority in any remedy to a breach of fairness. Appeals to fairness by religious minorities advocating for recognition for non-Catholic faith-based schools have failed to convince the majority that they have been unfairly treated or that remedies will contribute to the social good rather than harm it. In Ontario, therefore, the right of religious minorities to engage in publicly recognized alternative educational practices has always been restricted to isolated cases or to the politically formidable Roman Catholic minority.

A narrow interpretation of *s. 93* is rooted in tolerance of religious difference with ongoing assessment by the dominant group of harm to religious minorities and to its own interests. While the treatment of minorities may be "liberal" at times, the dominant group is

always in a position to withdraw privilege, something Bishop Charbonnel expressed in 1851 when he observed that, 'Lord Elgin, the Governor General and his government were "sincerely liberal" toward the Catholics -- but not all the Legislators felt the same way (Page 849 #22). In a later communication in 1851 he 'told (Inspector General Francis) Hincks that attempts to obtain justice from the Toronto trustees were "of a very sad description for a true liberal mind" (p. 849 #24).

The limits of tolerance are evident in Ryerson's assertion in 1852 that

> The school law provides for the equal protection of the peculiar religious rights and scruples of all religious persuasions; but if the members of any religious denomination in a municipality are not satisfied with the enjoyment of equal privileges with the members of other religious persuasions of their fellow citizens but insist on a school exclusively devoted to their own denominational interest, they cannot ask, upon any ground of constitutional right or justice between man and man, that public money, municipal authority and property, shall be employed to build up denominational interest as to promote interests which are common to all classes of citizens without regard to sect or party. (p. 851 #29)

Ryerson's comment represented the matter of sectarian schools as a private matter outside the inclusive mainstream, the costs of which must be borne by those making the choices. By the mid-19th century, Catholics were becoming increasingly aware that the political climate was changing in favour of a common school model which positioned them on the social and educational margins and for which they would have to pay by diversion of their taxes to a system which marginalized them. The minority commissioners observed that "Ryerson saw no injustice in this and that in the long run the common system would benefit the Catholic body without prejudicing their religion". However, to the Catholics this enforced inclusivity was experienced, in the words of Bishop Charbonnel as "cruel persecution" (p. 851 #30). Ryerson denied there was any persecution in the common school system pointing to exemption provisions for any child whose parents objected to religious teaching in common schools.

However, the authors of the minority report were not so sanguine, pointing to Ryerson's view that the advocacy by Bishop Charbonnel and other Roman Catholics was "ominous of evil" and that Ryerson clearly expected separate schools to disappear. While Roman Catholics were, in 1853, exempted from having their taxes directed to common or "mixed" schools, the minority commissioners identified other strategies by common school boards such as hiring Roman Catholic teachers, thereby undercutting the legal reason for the

existence of separate schools. This led to further political action which removed the authority of supervision of separate schools from local common school boards. However, provisions in an 1855 separate school act included provisions that could make Catholics in districts without separate schools liable for tax support of common schools, even if separate schools were later established in their districts. The minority report thus, provided a history of Roman Catholics having to be tactically alert at all times to the strategic moves by a dominant power (Woodhead, 2012).

Some of the tactics deployed by the Roman Catholics had unexpected consequences which did not serve them well (Hope, 1950, p. 856 #49 – 51). Those tactics also indicate that power is not a one way matter and that groups that consider themselves in a minority position deploy power for their own purposes. Charbonnel's Lenten Pastoral shows that, among some of the Catholic hierarchy, the political agenda was not in a general sense about freedom of religious choice in education but about the preservation of Roman Catholic interests. This pattern is repeated in the election of 2007 when in the rough and tumble of election politics the Roman Catholic voice was muted at best in regard to the extension of funding to non-Catholic faith based schools. In fact, the Roman Catholics had achieved their goals through long political struggle but persistent calls for the elimination of separate schools in favour of one public school system are a constant reminder that the position of Catholic schools continues to exist at the pleasure of the majority. Constitutional changes are always possible although the political risks of doing so make it unlikely that this will happen anytime soon. However, their continued protection depends on two things, one of which is *s. 93* and the other is acceptance by the majority, however grudging, that Roman Catholic schools can be tolerated. Such acceptance is tenuous and, as a result, Roman Catholic separate schools continue to exist on the margins of tolerance along with other faith-based schools.

Despite the attention given to Egerton Ryerson, he was actually not the target of the minority commissioners' concerns. They acknowledged his significance but their primary concern was the interpretation of the common school tradition by the majority. In the majority report separate schools were identified as a problem to be contained in the interests of protecting a public school system and a society imagined to be threatened by religious diversity. Its historical account emphasised a particular reading of Ontario history from that

perspective, seeing the common school tradition in a progressive narrative that undermined the legal, constitutional and moral legitimacy of Roman Catholic separate schools. In this view, separate schools exist on the margins of Ontario education, not as a right but as an act of tolerance out of political necessity.

The goal of the Roman Catholic commissioners in writing the minority report was to present a counter-discourse positioning Roman Catholic separate schools as integral parts of a public school tradition protected in law and constitution. In this discourse, constitutional and legal protection is not an act of tolerance but is based on the recognition that Ontario's tradition of recognizing religious diversity in education is not as a problem but a contribution to the public good.

4.2.4. Conclusions

The purpose of this analysis is not to make a judgement of historical accuracy but rather, to demonstrate that the debates in 2007 followed the same contours around the politics of togetherness. The extensive reference to the Ryerson legacy through the competing narratives of the majority and minority reports in *Hope* places the election of 2007 in a longer historical narrative in which the role of religion in public education has been debated. In 1950 the debate was between which forms of religion were eligible for public recognition, the normal form of religion being Protestant Christianity against which all other forms of religion were judged. By the late 1960's, the question was still over which forms of religion should receive public recognition in Ontario's imagined community but there were signs that the standards of normal religion were changing. The language of secularism, which had been a minority voice throughout the history of public education, would emerge and remove Protestant Christianity from its privileged position. To examine that trend, the focus now turns to the *Mackay Report* tabled in 1969.

4.3. Religious Information and Moral Development: "The Report of the Committee on Religious Education in the Public Schools of Ontario" or the *Mackay Report (1969)*

4.3.1. Introduction

The next formal examination of the role of religion in public education by the Ontario government and the Ministry of Education was titled *Religious Information and Moral Development* (hereafter the *Mackay Report*) tabled in 1969 by the "Committee on Religious Education in the Public schools of the Province of Ontario" chaired by the Honourable J. Keiller Mackay. The Committee was established in 1966 by an order-in-council issued by the Executive Council Office. The Executive Council summarized the grounds for the Committee's mandate by saying, in part,

> Whereas a program of religious education in the Public Schools of Ontario was established in 1944;
> AND WHEREAS there has been from time to time representations made for changes in the program;
> AND WHEREAS there is a need for evaluation of this program in the light of the experience with it and the requirements of the present day;
> The Honourable the Minister of Education therefore recommends that a Committee on Religious Education in the Public Schools be appointed to examine and evaluate the present program;…….to study means by which character building, ethics, social attitudes and moral values and principles may best be instilled in the young; to consider the responsibility of the Public Schools in these matters. (1969, p. vii)

The mandate identified problems to be addressed by the Committee, the most important of which was the means by which character building, ethics, social attitudes and moral values could best be instilled in the young. However, the Executive Council saw two other problems associated with the first, the word "principles" suggesting that the principles on which a successful civic life were based also needed reconsideration. In addition, the Committee identified a program in effect since 1944 which had attracted attention as a problem and in need of evaluation due to "representations for changes". So there seemed to be a problem both with the program of religious instruction relating to the transmission of civic virtues and the principles on which it was based. Further however, the mandate for the Committee restricted the search for answers to questions of how the program was to be delivered by identifying public schools as the institutional focus of its attention.

The preface to the Report described the Committee's research methods, one of which was to invite submissions from interested groups and which generated 141 briefs from groups speaking on behalf of a wide variety of issues and interests (p. xiii). Because the grounds for the Committee's mandate specifically identified religious instruction as the issue of concern,

my analysis of the *Mackay Report* begins with the *Drew Regulation* (1944) on which the problematic programs were based. The entry point into the *Mackay Report* is the brief to the Mackay Committee by the Canadian Jewish Congress in which the 1944 regulation was identified as a critical turning point for Jews as a minority religious group in the public school system.

Four primary sources provide the basis of this analysis; *Religious Information and Moral Development: The Report of the Committee on Religious Education in the Public Schools of Ontario, 1969*; the Canadian Jewish Congress Brief to the Mackay Committee in 1967; "Drew and the Rabbis", by Martin Sable, 1997; and Sable's doctoral thesis submitted in 1999 "Keeping the faith: The Jewish response to compulsory religious education in Ontario's public schools 1944-1990". Jewish voices provide a minority perspective in ways similar to that provided by the Hope Commission minority report. Both are voices of resistance with their own unique characteristics but with similar concerns and patterns of thought arising from their vulnerable minority status in a predominantly Protestant Christian society.

4.3.2. Historical Background: Drew Regulation, 1944 – Ryerson Legacy or Religion out of Bounds?

If the Roman Catholic account of Ontario public education found its narrative crisis in the Ryerson common school project, the Jewish community's history of Ontario public education saw its crisis point in the 1944 regulation which mandated religious instruction as an integral part of the education program. Martin Sable says that

> In 1944, Ontario Premier George Drew's Conservative government revised Regulation 13 of the General Regulations, Public and Separate Schools, to read as follows:
> 3.2 a) Subject to the Regulation, two periods per week of one-half hour each, in addition to the time assigned to religious exercises at the opening of school, shall be devoted to religious education.
> b) Religious Education shall be given immediately after the opening of school or immediately before the closing of school in either the morning or the afternoon session.
> c) Instruction in Religious Education shall be given by the teacher in accordance with the course of study authorised for that purpose by the Department [of Education], and issues of a controversial or sectarian nature shall be avoided.
> d) 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.' (1999, p.2)

In keeping with long standing Ontario government policy the Drew government was politically sensitive to the potential for offence to the various religious groups represented in schools, hence the injunction in (c) above saying that "issues of a controversial or sectarian nature shall be avoided". While in some interpretations its motivation was to more firmly establish the Protestant Christian hegemony in Ontario, the Drew government also wanted to position itself in the Ryerson legacy of creating an inclusive, non-sectarian public school system.

Drew's desire to maintain Protestant domination in the school system is suggested by Martin Sable's description of a by-election in 1936 in which Drew's strategy to defeat his Liberal opponent included race and religion as wedge issues. Mitch Hepburn had introduced legislation to address complaints by Roman Catholics about the inequitable distribution of tax revenues. In a strategy not unlike Dalton McGuinty's in 2007, Drew represented the Hepburn legislation as a threat to public education and to Ontario society by having tax money redirected to Roman Catholics. Sable says,

> The Catholic community knew George Drew as the organiser of the Conservative Party's 1936 by-election campaign in East Hastings. For that by-election, fought on the Catholic Schools issue and, specifically, Liberal Premier Mitchell Hepburn's decision to allocate a larger share of the tax dollar to the Catholic schools, Drew engineered "one of the strongest electoral appeals to racial prejudice in modern Canadian history. East Hasting, a Protestant stronghold and "very Orange," was a perfect forum for such strategy. (1999, p. 69)

There is other evidence that Drew was hostile to Roman Catholics, including the fact that he was a leading member of the Orange Order firmly committed to entrenching Ontario as a Protestant Christian society of European origin. While in 1936 it was the Roman Catholics who suffered collateral damage from Drew's political goals, one effect on the Jews was to make them suspicious of his advice that "controversial and sectarian issues" be avoided in the implementation of the regulation. Nowhere did the regulation specify the content of the program or what the controversial issues to be avoided might be, leaving school boards, administrators and teachers to navigate the social, political and educational minefield into

which previous governments had steadfastly refused to travel.[13] Until 1944 religious instruction had been offered in public schools outside school hours by community leaders, usually pastors and any attempt to introduce religious instruction had consistently met with strong resistance (Canadian Jewish Congress, 1967). Besides the desire to avoid the political risks of introducing religious instruction as part of the academic program however, there was little perceived need to include such a program since the assumption had been that most children in Ontario were receiving Christian religious instruction in their homes and churches (Sable, 1999, P. 6-7). Therefore, not only would such regulation reveal religious differences, it was unnecessary in achieving the desired social ethos.

However, in 1944, the confluence of a number of factors led to the success of its being adopted as law by which Christian religious instruction became a formal part of the academic program in Ontario public schools. They included concerns that an increasing number of children were growing up without effective Christian influences in their lives, the feeling among a number of churches, clergy and politicians that Ontario needed to strengthen its Christian identity as a bulwark against totalitarianism and the influence of Premier George Drew who spearheaded the political process by which it was passed (Sable, 1999; Michel, 2003). In this context, the *Drew Regulation* was responding to a sense that World War II and the Cold War were spiritual as well as political struggles for which Canada was poorly equipped. Declining church and Sunday school attendance and other evidence suggested that Canada was not as unified under Protestant Christianity as some leaders might have imagined.

In response, a number of school boards had already introduced religious instruction in violation of the pre-1944 regulations so the tide was turning in favour of strengthening the Protestant presence in public schools (Sable, 1999, P. 10). Drew provided the political leadership required to successfully introduce a program of religious instruction into the formal program but he was doing so on the basis of a social trend already taking place. While there is the possibility that he was motivated by political expediency, there is evidence that

[13] There was one exception between 1871 and 1874 when a subject called "Christian Morals" was introduced by Egerton Ryerson partly as an experiment but also as an educational expression of "inclusive Christianity". It generated widespread negative comment and was dropped after three years. (CJC 1967, P.4-5; Sable, 1999 P. 4)

he was ideologically committed to the change in legislation and educational practice he introduced and guided through to its adoption as law (Sable, 1999).

Besides the vague assertion that "issues of a controversial or sectarian nature shall be avoided", religious minorities had the option to have their children exempt themselves from classes to which they objected. While Sable refers to opting out provisions as a "sop", suggesting it was introduced in 1944 to quiet the Jewish protests in response to the *Drew Regulation* (1998, p. 28), exemption clauses had been in effect since the 1840's. Opting out was designed as a mechanism to address concerns of religious groups in a religiously diverse society being served by a common school. However, there is evidence in case law between 1985 and 1997 to support his inference that the "conscience" or exemption clauses have been used strategically to address concerns of religious minorities throughout the history of Ontario public education.[14]

In any case, for the Jewish citizens of Ontario the introduction of religious instruction as a formal part of the curriculum put their children and their communities squarely into the path of what they saw as a state sponsored program of Christian assimilation through the use of law (Sable, 1999; Michel, 2003). Sable says,

> The wholesale implementation of the Drew Regulation throughout Ontario's public school system went beyond the need to balance the evil of war with the goodness of faith. Over time it became clear that the Regulation's benign terms which prescribed no specific religious preference was being used for decidedly doctrinal Protestant purposes. When predominantly Protestant Ontario issued little protest, by default, the task of opposing the Drew Regulation fell to the Jewish community. (1999, p. i)

The brief submitted by the Canadian Jewish Congress to the Mackay Committee was only one in a long series of complaints, submissions and arguments making the case that the *Drew Regulation* was harmful to the Jewish interests, an anomaly in Ontario history and socially divisive. While there had been lively debates within the Jewish community (and between

[14] I am referring to the change in the assessment of the exemption clauses from case law in *Zylberberg* and *Elgin County* to *Bal* and Adler which suggest a strategic shifting of meaning designed to avoid the questions and challenges some of the questions raised by the plaintiffs in *Bal* and *Adler*. The point here is that Sable's use of "sop" to suggest a political strategy in the use of exemption clauses is defensible but he is wrong in suggesting it was an innovation in 1944.

Jewish communities) over political strategy relating to public education, they were unified in their opposition to the *Drew Regulation*.

The *Drew Regulation*, in the Jewish account, had a larger social purpose for Ontario going beyond an educational reform. Sable suggests that from a Jewish perspective the crisis of World War II created an opportunity to advance the entrenchment of Protestant Christianity as the dominant ethos in public education and Ontario society. There had been a growing sense, at least among Drew and his supporters, that Protestant Christianity was losing its role as the dominant cultural influence and the *Drew Regulation* was an attempt to redress that trend. However, from a Jewish perspective, the introduction of Christian religious instruction emphasised religion as a social fault line which put the Jewish community in a vulnerable social position.

Since 1944, Christian religious instruction had been a point of contention for the Jewish community and the Canadian Jewish Congress had submitted a brief to the Hope Commission describing the Jewish reaction to the 1944 regulations, saying, "We have been greatly troubled and concerned over this matter in the years since 1944; it has been given high priority on our day-to-day agenda of vexing community and inter-community questions" (1967, p iii). However, the Hope Commission (1950) affirmed the *Drew Regulation* as the way forward in Ontario, saying

> Evidence submitted to us has demonstrated that, if our aims in education are to be achieved, religious education should be included as a subject of study in the curriculum of the proposed public elementary schools. The present regulations *(i.e., the Drew Regulation of 1944, note added)* seem to be eminently satisfactory. (1950, p. 126 # 11)

The Hope Commission recommended that the practice of including religious education as a part of the elementary school and the regulations mandating the practice be continued. It included a reference to Jewish concerns, saying that, "…. in any revision of the guide books in religious education careful consideration be given to specific items raised by the Canadian Jewish Congress" (p. 127 #11c). The *Hope Commission Report* did not specify what changes might represent careful consideration of Jewish concerns. The overall effect was that Jewish concerns, along with other voices expressing opposition, did not have much effect in the *Hope Report*, indicating that the more aggressive Protestant Christian presence represented by *Drew Regulation* was securely entrenched.

4.3.3. The 1960's, Mackay and a critical reassessment of Drew

However, in 1967, the Canadian Jewish Congress engaged another opportunity to specify their concerns along with recommendations about how those concerns could be addressed. This time they found a more sympathetic reception in the Mackay Committee. While previous efforts at being heard had been unsuccessful, Jewish arguments opposing the *Drew Regulation* has markedly greater effect on the Mackay Committee. In particular, their argument that ethical and moral values could be separated from Christianity was a fundamental principle accepted by Mackay Committee. While the argument would not have regulatory effect until the 1980's, it is clear that the discourse regarding the role of religion in public education and in Ontario society was changing in the 1960's.

The social context of the 1960's in which the Mackay Committee was writing is iconic for a number of things, one of the most important being that it was a decade characterized by "revolutionary change" and "liberation". In Quebec, the Quiet Revolution after the death of Maurice Duplessis signalled the end of the traditional partnership between the Roman Catholic church and the government; in the United States, the African-American civil rights movement and American Indian Movement were moving the issue of institutionalized racism into public discourse, while throughout the Western world, students were contesting control of universities and high schools. While there was not one goal unifying the protest movements, there was a generalized understanding that the problems of the world originated in institutions which stifled the creative potential of the individual. Warnings about the risks to American society of the growth of "the military-industrial complex" by President Eisenhower in his farewell speech in 1961 represented a startling assessment by someone at the very pinnacle of institutionalized power.

"Organized religion" was also experiencing the effects of the 1960's common sense, its declining influence being narrated in the secularization thesis and documented by research on rates of membership and participation in formal religious institutions (Cox, 1965; Wilson, 1966; Berger, 1967; Bruce, 2002). The individual experience of religion was theorized as "invisible religion" (Luckmann, 1967) and later as "lived religion" (McGuire, 2008). While the secularization thesis as an historical meta-narrative has itself been subjected to

widespread theoretical criticism, what continues to be widely accepted is that authority in religion has been diversified in institutional and non-institutional settings .

The goal here is not to provide an analysis of the 1960's except where the discourse of change and liberation intersect with the debates about the role of religion in Ontario public education. Because, of course, the Ontario public education establishment in which Protestant Christianity was firmly entrenched through the 1950's and into the 1960's, was not isolated from the wider debates about institutionalized religion. One theme in the re-assessment of the role of religion in society was the coercive power of institutions, particularly organized religion in partnership with the state and its negative effects on the individual. While the individual was important in the *Hope Commission Report*, during the 1960's institutions were increasingly being assessed in terms of how they protected the individual's rights to self-realization.

Given over forty years of hindsight, it is easy to characterize the *Mackay Report* as naïve and perhaps overly enthusiastic about the emergence of the free, morally mature student. However, it appeared in a context in which there was growing prosperity in Canada which, along with other social changes, seemed to indicate a new and exciting modern world freed from old prejudices. The Mackay Committee really did listen to people who were experiencing the coercive effects of the *Drew Regulation* and Christian religious instruction in public schools. In fact, its adoption of the Kentucky Movement as a working educational model separating religion from moral education, its recommendation that the Ministry of Education introduce a discrete course on comparative religions, its sensitivity to students' experience of coercion in the classroom are among the features which reflected a confluence of thought with the brief submitted by the Canadian Jewish Congress.

The Kentucky Movement was only one of many experiments in what became known as "child centered education", along with a plethora of books advocating for what the Mackay Committee described as a "totally new approach" in education (Bruner, 1963; Ashton-Warner, 1965; Cullum, 1967; Holt, 1967; Kohl 1967, 1969). In this environment, Summerhill, a private school in the UK, which had been in operation since 1921, became popular in the 1960's. Summerhill is still in operation, its website saying

> Imagine a school …..
> Where kids have the freedom to be themselves,

> Where success is not defined by academic achievement but by the child's own definition of success,
> Where the whole school deals democratically with issues, with each individual having an equal right to be heard,
> Where you can play all day if you want to,
> And there is time and space to sit and dream.
> Could there be such a school?

Although educational fashion has moved on, Summerhill is an educational icon of the 1960's as a symbol of what was possible with a "totally new approach" in education. Leaders in Ontario public education were also caught up in the excitement. In the mid-60's the Ontario government mandated the Hall-Dennis Commission to examine the state of public education with a view to reforming the system. The Commission tabled its report in 1968 and it reflected the wave of change in education, shifting the focus of education to the individual and to individual choice in education. While Hall-Dennis did not deal with religion directly, it contributed to a shift in the discourse, placing the individual as the central concern of the education system, assuming that a society of fully realized and civilized individuals would necessarily lead to a harmonious social diversity.

It was the task of the Mackay Committee to supplement Hall-Dennis with recommendations for the role of religion in a modern public school system. Neither Hall-Dennis nor Mackay were prepared to go in the direction of the "de-schooling movement" (Ilich, 1970) which is understandable given the fact that their mandate was confined to reform of the public school system. However, their tone, reasoning and recommendations reflected a more general shift in thinking about ways in which education needed reform to better serve the individual.

In contrast with the cautious reception given the *Hope Commission Report* in 1950, the *Hall-Dennis Report* commissioned by Education Minister William Davis had enormous impact on public schools (Gidney, 1999). While its child centered approach to education was controversial and highly contested in the late 1960's and 1970's it was embraced as the educational way of the future. By the 1980's it had been eclipsed by other educational theories of school organization and pedagogy as successive governments began the process of re-centralizing the public school system. However, in its day, it was received with great enthusiasm which was fuelled more by ideology and fond hope than practice based on evidence (Gidney, 1999).

It was in this context that the Mackay Committee conducted its research and submitted its report on religion in public education. Specifically its focus was the *Drew Regulation* and the issue of religious instruction but its report also reflects a more broad awareness that the role of religion in society was changing and that public school system practices were part of that larger social context. In the social climate of the 1960's in which organized religion was under critical re-examination, the Committee was prepared to listen to the Canadian Jewish Congress with new respect. Jewish communities in Ontario had opposed the *Drew Regulation* since its inception in the mid-1940's and while they were divided on the strategies of resistance they were, to a large degree, unified on their belief that the imposition of Christian religious instruction was harmful to Jewish children and to their status as full citizens. However, until the 1960's they had been unsuccessful in achieving the changes for which they had been advocating.

4.3.4. Canadian Jewish Congress and Mackay

The Canadian Jewish Congress approached the Mackay Committee with greater expectations than it had the Hope Commission, partly because of the changing social climate but also because the Committee membership and its mandate specifically identifying the *Drew Regulation* as a problem suggested that the government was prepared to take a different approach in response to the role of religion in public education (Sable, 1999, p. 150).

The brief submitted by the CJC was organized around eleven propositions supported by a historical survey of Ontario public education highlighting incidents most relevant to the Jewish argument, the legal basis for their claims and anecdotes of the experiences of Jewish citizens in a predominantly Christian society. The eleven propositions were based on four claims. They were that the *Drew Regulation* was an anomaly in Ontario public education history (Propositions 1 & 2), that it could not be supported by law and the constitution (Proposition 3), that the *Drew Regulation* and its effects in educational and religious practice represented harm to Jewish children and Jewish communities (Propositions 4 & 5) and that opposition to the *Drew Regulation* was widespread, going beyond the Jewish community and that it therefore did not represent the will of a critical mass of Ontario citizens (Proposition 6). These claims provided reasons for the CJC opposition to the *Drew*

Regulation and, indeed, to "any course of religious instruction in the public schools" (Proposition 7).

The brief provided supporting evidence for the propositions by re-interpreting Ryerson and Ontario public school legacy, including stories of widespread and persistent resistance to the *Drew Regulation.* In addition, it offered an alternative interpretation of the legal and constitutional framework governing religion and religious diversity in public education. It presented evidence of harm to Jewish children and communities, but also to Ontario society as a result of the effects of the *Drew Regulation* in educational and religious practice in public schools; however, the *Regulation* also was doing harm to Ontario society by foregrounding and problematizing religious differences as a social fault line. The brief included policy and program alternatives to the *Drew Regulation* which, in its view, answered the concerns of the opponents of religious instruction in public education and provided an alternative conceptualization of the basis for public and individual morality.

In other words, the CJC offered a counter-narrative contesting the dominant one which proposed Protestant Christianity as the only basis for personal and collective morality as had the Roman Catholic minority report in 1950. In Chapter II it provided evidence for its claim that the 1944 law was an historical anomaly which had been contested by Christian as well as Jewish groups. Their objections, based on philosophical and practical grounds, included the impossibility of training teachers to deliver a program of religious instruction in an objective and impartial way, since teachers are themselves religiously positioned. A more fundamental objection, however, was to the idea that the state should involve itself in religious instruction.

The brief appealed to Ontario's public school tradition, reminding the Committee that the regulation requiring religious instruction as a part of the formal public school program was radically new in 1944. Based on its reading of Ontario public education history, the CJC argued that religious instruction as part of the academic program was inconsistent with the Ontario legacy, violating the principles established by Egerton Ryerson (Propositions 1&2; Part A, p. 1).

However, while the CJC argued that the *Drew Regulation* was a radical departure from the Ryerson legacy attempts to introduce religious instruction were not new in 1944 with conflict over various proposals to do so going back to the 19th century. The role of

religious instruction had been contested in Ontario public schools since the 19th century with the Jewish community engaging in the debates at various points. The Canadian Jewish Congress saw its 1967 submission in that longer tradition of resistance with particular reference to "The 1897 Incident" in Toronto when "a deputation of Anglican clerics" made representation to the Toronto Public School Board to include religious instruction as part of the school curriculum (p. 6). A "deputation of the Toronto Jewish Community" presented a brief described by the *Mail and Empire* of June 11, 1897, as a "lengthy, fervid and vigorous protest". The essential arguments presented by the Jewish delegation were that religious instruction would "tend to impart a sectarian bias to the character of the teaching given in the schools" which would be harmful to impressionable young students and, equally important "it would strike a severe and perhaps an irremediable blow at the very root-principle underlying the institution of the Public School, which is that it should devote itself to the task of educating the citizen, irrespective of denomination, faith or creed, and treat all who seek its advantages on a basis of equality" (p. 8).

The Toronto School Board rejected the proposal by the Anglicans but that did not settle the question with repeated representations by other Anglican groups which in their turn were opposed by Baptists (p. 10) as well as Jews. According to the Jewish reading, part of the Board's argument rejecting religious instruction as part of the school curriculum was that such a provision would violate "the principle of the separation of church and state" and that "it would re-open the trouble just settled" (p. 10). However, according to the Congress, the Board also saw in the Anglican representation a future threat, saying, "If denominational teachers are countenanced, then anarchists, agnostics and atheists must be allowed to teach" (p. 10-11). The religiously diverse harmonious public school system as a microcosm of Ontario society must be protected from religious sectarianism of all kinds, including "agnostics and atheists". The CJC brief quoted Chancellor Wallace of McMaster University who was also on the Baptist delegation, saying, "It was essential to preserve the schools as indicative of the national life of Canada. Canada's educational system was the most characteristic feature of the country. It was fundamental and should be preserved." (p. 11).

The advocates in favour of including religious instruction had their own interpretation of the Ryerson legacy. A book titled "Christian Instruction in the Public Schools of Ontario", by Rev. James Middlemiss published in 1901, argued in favour of religious instruction in

public schools, because while Roman Catholics were free to deliver religious instruction in their schools, Protestants were not. The Congress submission quoted his plea that "instruction in the common Protestant Christianity of the Province be made part of the school program". Dr. Middlemiss' reference to "common Protestant Christianity" was an appeal to an important theme in the Ryerson legacy although his remedy, that religious instruction be included in the formal school program, represented a radical departure from Ontario public education policy and practice. However, from a Jewish perspective what was equally significant was that Middlemiss had simply assumed that public schools were Protestant.

The observations by the Toronto School Board about "agnostics and atheists" reflected Ryerson's concerns at an earlier stage of the common schools that public schools not be seen to be "secular", a sentiment repeated as late as 1990 in the *Watson Report*. The public school establishment was defending a common religion against anti-religious voices as well non-standard religions, something it has done throughout the history of the public school system. The common religion was to be "inclusive of all and offensive to none" to which the Canadian Jewish Congress appealed in order to establish common ground with other groups objecting to the *Drew Regulation*. The Jewish account of public school history positioned Jewish resistance to religious instruction in the public school program as consistent with the inclusive public school broad middle way, not against religion but against religion out of bounds. Its post-1944 briefs to various committees, commissions and politicians represented George Drew and the *Drew Regulation* of 1944 as a sectarian anomaly outside the Ontario legacy of inclusive public education.

Seen through the Jewish reading of Ontario public education history, the 1944 regulation was a victory of a sectarian group normalizing its form of religion and raising it to the status of a common ethos for all non-Catholic Ontario citizens. On the basis of their counter-narrative the Jews saw themselves as partners alongside other Christian groups in protecting the Ontario legacy of public education from sectarian interests. They also saw non-sectarian public education as a feature, not just of Ontario but as a protector of Canadian values delivered by the public school system. In the 1960's they were appealing to the state as a protective power transcending the sectarian powers threatening their viability as a religious minority. Therefore, while the purpose of the brief in 1967 was in the first place to protect Jewish children, it was also an effort to reverse practices which threatened the public

school legacy of inclusive, non-sectarian public education accessible on an equal basis to all religious minorities. The CJC was engaging in a process of reforming public schools, addressing an injustice created by the 1944 regulation by appealing to an earlier and longer Ontario legacy.

The advocates for the 1944 regulation had their own reading of Ontario public schooling in which the introduction of Protestant religious instruction was a logical extension of a long tradition of a public school system unified by a common Protestant Christianity. However, the Congress responded to that interpretation by saying, "We submit that the facts, as revealed by the foregoing historical outline, establish that this is just not so, and that the present Ontario law in this regard is completely out of step with history" (p. 17). The point of the *Drew Regulation* had been to entrench the Protestant Christian basis for Ontario society and western civilization, one result of which was that religion was exposed as a fault line which was usually backgrounded to avoid acrimonious social conflict and exclusive social barriers. In the analysis of the CJC, opposition to the legislation proved that Drew had misread current public opinion and the Ontario legacy. Chapter VIII of the brief summarized reaction to the legislation from religious "fundamentalists" to "religious liberals and humanists" whose resistance was based on a variety of principles, among them the role of the state in imposing religion to the risks to religious identity and the welfare of the child. It included Gallup Poll results showing a wide range of opinion on religious instruction with a significant minority of Canadians in opposition to the inclusion of religious instruction as a formal part of the academic program. However, when religious affiliation was isolated from poll results, it showed a majority of non-Catholic Christians indicating opposition. Further research indicated significant opposition among school teachers, administrators and school trustees and the Brief quoted widespread rejection of religious instruction in public schools expressed in the press. In short, the historical narrative proposed by the Congress and its reading of the political climate supported its claim that the *Drew Regulation* had little support.

However, another interpretation is that Drew had read the majority quite accurately, given the fact that the 1944 legislation remained in effect until 1990 and the Progressive Conservative Party retained control of the government for much of the second half of the 20th century. The Congress had good tactical reasons for trying to demonstrate that Drew was

out of step with history but its interpretation missed the overall impulse in Ontario toward a form of Protestant Christianity as its common social ethos. In addition however, while the CJC objected to the role of the state in delivering religious instruction, the role of the state in delivering a common ethos through the public school system was not its central issue of analysis in 1967 as it would be later in the 1990's.

The Congress, by foregrounding Protestant Christian religious instruction as the focus of its analysis, received a sympathetic hearing from the Mackay Committee in 1967 and later in *Zylberberg* and *Elgin County* in 1988 and 1990. However, it did so because its goals coincided with those of the Committee in changing the role of Protestant Christianity in the public school system and by seeing the state, not as a source of coercion but as its protector from the religious majority. In the 1990's the CJC would see that secularism was the state imposed ethos which would have the same regulatory effect on religious diversity as had the common Protestant Christianity in the 1960's. In 1996 under a secular regime in public education when the CJC was advocating for support service funding for disabled children in privately funded Jewish schools, in 2003 when it was defending the *Equity in Education Tax Credit* and in the 2007 election it would find itself, along with other religious minorities, in the same place as it had in 1950 when it was presenting its brief to the Hope Commission. In hindsight, one could conclude that it was the Congress which misread and that it was George Drew who had a more accurate understanding Ontario history and the power dynamics in Ontario public education.

However, in 1967, the Congress interpretation that the *Drew Regulation* was an historical anomaly based on Drew's sectarian mis-reading of Ontario public school culture found a sympathetic hearing. In addition, it was also contesting the legal and constitutional basis for the *Drew Regulation*. It did so by quoting the Ontario *Education Act* which stated, "No pupil in a public school shall be required to read or study in or from any religious book or to join in any exercise of devotion or religion objected to by his parent or guardian" (R.S.O. 1960, c.330, s.7(1) and (2)). Its analysis demonstrated that Christian religious instruction was forcing students to engage in religious education to which their parents objected. The Congress further supported its contention that the *Drew Regulation* was on dubious legal ground by referring to "The Freedom of Worship Act" (1851), part of the legal framework

for the unification of the provinces of Upper and Lower Canada, reiterated in Canadian law in 1897 and still in effect in the 1960's. It said,

> …it is hereby declared and enacted by the authority of the same that the free exercise and enjoyment of Religious Profession and Worship, without discrimination or preference, so as the same be not made an excuse for acts of licentiousness or a justification of practices inconsistent with the peace and safety of the Province, is by the constitution and laws of the Province allowed to all Her Majesty's subjects within the same. (1967, p. 2)

The brief included an interpretive comment pointing out that the Act specifies "profession" and "worship", the former referring to private affirmation and belief while the latter referred to practices which may include "overt public demonstration of adherence to a religion" (p. 2). The Act also explicitly 'forbids both "discrimination" and "preference" of profession and worship'. Its summary of legal history supported the CJC case that religious instruction during school hours was actually against the law which was why governments until 1944 had refused to include religious instruction in the academic program. Instead, before the imposition of the Drew legislation, religious instruction was allowed "from 1857 until 1924 after four o'clock and from 1924 to 1944 before or after school hours". (p. 3). The one exception occurred between 1871 and 1874 when a religious education course introduced on a trial basis but soon discontinued by Egerton Ryerson in response to protests, "including a petition signed by 73 clergymen in 1874 (p. 5).

However, legal history alone may not have been enough to persuade the Committee which had to consider the CJC brief along with others which had landed on its collective desk. Therefore, in order to demonstrate the effects of the offending legislation on real children, the CJC presented evidence of harm on the lives of students and their communities. One way it did so was with an analysis of the way terms and categories were being used in the program material designed to deliver religious instruction. The use of terms and categories is central to the regulation of religion in Ontario public education, with important implications for access to public resources but also, more broadly, for the construction of the boundaries of social diversity. The Congress, like the Roman Catholic writers of the minority report in the Hope Commission, was highly sensitive to the ambiguous distinction between social respect and tolerance embedded in terms and categories. It said, "Words such as sectarian, non-sectarian or Judaeo-Christian have no fixed meaning but vary in their sense according to the purpose and intent of the user" (1967, p. vi Proposition Four). This is

expanded in a critical analysis of terms and categories in Chapter IV which said, "Semantics" with the terms "sectarian", "non-sectarian" and "Judaeo-Christian" receiving particular attention. The question, "Which meaning (of sectarian and non-sectarian) is intended by the Minister of Education?" was rhetorical, the argument being that the terms were used to mark boundaries between normal religion and those forms of religion which existed on the edge of or outside the boundaries of what could be tolerated in public spaces. The conclusion was that, "It is clear that in the various booklets and regulations describing the 1944 course, non-sectarian denotes non-sectarian within Protestantism" (p. 30). For Jewish children and their communities, this meant that theirs was an outsider religion, categorized as "sectarian" in the language of religious instruction as defined by the *Drew Regulation*.

The meaning of the hyphenated term "Judaeo-Christian" was particularly ambiguous but like the category "sectarian" did the work of establishing boundaries. Offering a number of interpretations of the term in the program materials designed to support religious instruction, the CJC said,

> We are bound to say, however, that in our view, the most frequent use of this term employs "Judaeo" as a qualifying adjective describing Christianity in contexts which connote Christianity in Christian terms as being the fulfilment of Judaism as prophesied in the Scriptures according to the Christian interpretation thereof. (p. 31)

In this interpretation, Judaism derives its legitimacy as a prior stage of religious development in a teleological historiography of which (Protestant) Christianity is the completion. History leads up to Christianity, a view which represents Jews as holding on to a less developed stage of religion. The terms "Judeao-Christian", "sectarian" and "non-sectarian" are powerful in the sense that they establish who does and who does not belong as full members of Ontario society. The CJC suggested caution about the casual use of the terms "sectarian", "non-sectarian" and "Judaeo-Christian" since their use was invariably ambiguous and, at the same time, loaded with meaning by those using it in specific situations. For children and their parents being subjected to religious instruction which identified their religion as being on the margins of toleration, the experience could not have been anything but negative.[15]

[15] Janet Jakobsen and Anne Pellegrini critically analyse the use of the term "Judaeo-Christian" in the regulation of religion and sexuality in the United States. Their point is that in the universalizing of Judaeo-Christianity as the basis for morality, Judaism is backgrounded, saying that "the hyphen actually passes off a wished-for

Examination of instructional materials and teachers guides demonstrated that terms and categories were being used in ways that confirmed the worst fears of the Jewish communities. In Chapter III (The Teachers Guides) the CJC was more specific about the guidance given teachers delivering religious instruction as mandated by the *Drew Regulation*. The brief noted that the Guides were modelled on often "hasty revisions" of British teacher manuals which included anachronistic terms and references and which, when mandated in 1944, triggered consternation among administrators and teachers who were on the front line of delivering the new religious instruction. The Congress argued that among other concerns, religious instruction was bad educational practice in both conception and in delivery.

The brief referred to an article by The Reverend James Brown attached as Appendix J which surveyed the uses of "Judaeo Christian" and representations of Jews and Judaism in Christian texts and Christian education, including studies on the impact of such representations on children. The article, titled "Christian teaching and Anti-Semitism: Scrutinizing Religious Texts" (reprinted from "Commentary", December, 1957), was a critical analysis of the story of the crucifixion of Jesus Christ as the defining moment in Christian history. Brown had argued that, while the story of the crucifixion provided the theological cornerstone of Christian theology, it had also been the basis for Christian anti-Semitism, the "Jews" playing the role of villains responsible for the death of Jesus Christ. Drawing from a variety of Christian religious education sources, he demonstrated that anti-Semitism was a recurring theme with Jews represented as the perpetrators of Western history's iconic murder, as people who "turned their backs on God", as a result of which they "were visibly punished by God", wandering "through the whole earth, homeless and without a country" (1969, A69). The Jews, in this Christian tradition of religious instruction, were responsible for their own historic suffering, perpetual outsiders by the very fact of their being Jewish.

Further, the brief pointed out that, while Jewish tradition and religion were included in the religious instruction program, numerous historical and religious inaccuracies and interpretations showed Judaism in an unfavourable light (p. v). While James Brown was not specifically addressing the situation in Ontario, the brief demonstrated that the teachers

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assimilation of Jewish difference into Christian tradition as an instance of religious pluralism." (2004, p. 31). The authors of the CJC brief were making same point.

guides issued for use in Ontario public schools contained similarly negative portrayals of Jews and Judaism. Appendices C and D of the 1967 brief identified specific words, phrases and passages portraying Jewish tradition in a negative light, that it was significant only as an antecedent to the Christian story and that Jews were portrayed as murderous opponents of the supposed new truth of Christianity. While some changes to the program had been made in response to ongoing criticism, they were described as "a disappointment" (p. 27). The recommendation by the Hope Commission tabled in 1950 to "give careful consideration to specific items raised by the Canadian Jewish Congress" was not implemented in public policy (p. 26).

The portrayal of Jews as responsible for their own suffering was especially potent and poignant after the horrific events of the 1930's and 1940's in Europe when industrial efficiency mobilized by a powerful state put anti-Semitism into effect on a scale that is now iconic. The significance of the Congress testimony would not have escaped the Mackay Committee which included a Jewish member. For the Mackay Committee, the exemption or opt out provisions designed to protect the interests of religious minorities could in no way address the situation in which Jewish children found themselves.

While the *Drew Regulation* included provision for students to exempt themselves from instructional activities to which they or their parents objected, the Congress argued that "opting out" actually exacerbated the situation in which they found themselves. The brief unequivocally stated, "The exemption provisions though beneficent in intent and though perhaps expedient in the circumstances, are a thoroughly bad practice." It noted that parents and students were reluctant to take advantage of the provision for a variety of reasons, particularly that doing so would single them out as "peculiar non-conformists. However, non-conforming children who chose to remain in religious instruction classes were trapped in a situation in which they, their communities and their religion were identified in negative terms. The exemption provisions thus put them in a "dilemma of conscience" which should, in the view of the CJC, never be permitted in a public school (p.32). Remaining in class creates a conflict "in the mind of the child between the authority of the teaching of the school and the different religious concepts which he will be taught at home and in his religious institution" (p. 33).

Martin Sable observes that disagreements in Jewish communities over political strategies and their reluctance to being identified as "peculiar non-conformists" were directly related to their awareness of their marginal status in Ontario. Many of them were recent immigrants whose recent memories of the 1930's and 1940's included being stateless and subjected to well organized attempts to wipe them out. They were happy to be in Ontario where they were relatively safe so their attitude to social engagement was to "play by the rules" (Sable, 1999, P. 34) and not rock the boat (Sable 1999, p. 39-40). In 1944 the Jewish community was a marginal player in Ontario politics, something of which its members were very aware.

Even though they were reluctant to engage in open resistance, the Jewish communities were dismayed by the *Drew Regulation*. They argued that it represented a threat to their participation as full citizens in a variety of ways, including the exemption clause which, in the reality of the classroom situation, identified Jewish children as different and outside the mainstream. The CJC brief addressed the dilemmas created by exemption provisions in Chapter V, "Exemptions" quoting its brief to the Hope Commission in 1945, saying,

> The provisions that pupils may be excused from the classroom during religious instruction upon written request of the parent, does not prevent or correct injustice. It subjects the children of a small minority to the embarrassment of excluding themselves from a school exercise in which others are called upon to share. The excluded child may become the object of reproach and suspicion. Such a course tends to destroy that equality of pupils which democratic law seeks to maintain and protect. Some parents, rather than expose their children to the embarrassment of segregation from their fellow pupils may yield in silence. (1967, p. 33)

However, by the mid-1960's Jewish communities had gained more confidence, especially in areas where their numbers grew to become a critical mass of citizens who could exercise political power. One of these was in North York where Jewish parents engaged in a protracted struggle with the Director of Education, Dr. Frederick Minkler, to successfully negotiate a variety of accommodations, among them a general exemption from religious instruction in schools where Jewish students formed a majority.

While the Jewish community was trying to protect its own identity within the public school system it was doing so alongside Christian allies who were aware of the impact of a dominant religious group on their own interests. The basic issue was that "any instruction in

doctrinal religion has no place in the public school." The exemption provisions in effect since the 1840's and repeated in the 1944 regulations allowing students to opt out of any lessons to which they or their parents might object did not meet their concerns about Christian religious instruction being mandated in public schools (1967, Proposition 5, p. vi; Sable, 1999).

The Jewish writers of the brief in 1967 saw themselves as integral members of Ontario society engaging in an important social struggle against the hegemonic power represented by religious instruction in public schools. In this their arguments were similar to those in the Hope minority report where the authors also called for respect of the Roman Catholic tradition which in their view existed as a right and not as a privilege. However, unlike the Roman Catholics, the CJC in 1967 did not want to opt out of public schools to organize "sectarian" schools; Jews wanted to eliminate the source of the insult to create more respectful, accessible public space.[16] They wanted respect on the basis of equality, not tolerance as a marginal religious minority.

The brief went on to illustrate the ways in which the 1944 regulation generated "friction and ill will" (p. 38) citing examples from North York and Essex County as case studies of the unintended consequences of the 1944 legislation. Martin Sable provides more detail describing the intense debates among parents and school officials over the interpretation of the *Drew Regulation* and religious instruction. One of the contentious educational practices was evangelism by volunteer religious instructors using program materials which included offensive representations of non-Christians, particularly Jews (Sable, 1999). The language deployed by those supporting the religious instructional strategies reinforced the sense of Jews as marginal members of Ontario society who had no right to challenge the Protestant majority but it also showed deep divisions among Christians who opposed religious instruction in public schools. In other words, there were grounds for the analysis of the *Drew Regulation* as an innovation with shaky historical and constitutional justification but also as socially harmful, not just to Jews but to all religious groups. By

[16] Jewish schools were operating in the province and had been since the 19th century. However, their right to exist or their right to public funding were not what was being argued by the CJC in 1967. That advocacy would come later starting in the 1970's.

foregrounding religious differences it placed people on opposite sides of a religious fault line with exactly the opposite results of what the Ontario public school was supposed to do.

The CJC brief was only one of many received by the Mackay Committee which was mandated to hear diverse public input as a way of understanding the issues regarding the educational policy under its critical scrutiny. The focus in the next section turns to the *Mackay Report* itself to examine the way it heard minority voices and the effects of the CJC challenges to the *Drew Regulation*. Examination of the *Report* provides evidence that the Committee had its own interpretation of the Ryerson and Ontario public school legacy and of the legal and constitutional framework governing religion and religious diversity in public education. It accepted evidence of harm to students, communities and Ontario society as a result of the *Drew Regulation's* interpretation of the Ryerson legacy in educational and religious practice. However, Mackay's remedy reflected its own aesthetic of religion and public education through which it selected and interpreted the evidence offered by religious minorities as it sought to address social and educational harm to children and to Ontario society.

4.3.5. Mackay Report; "Listening to minorities in a new way? The Ontario legacy and religious minorities in the 1960's"

The *Mackay Report* was a critical examination of the dominant role of Protestant Christianity in Ontario's public schools, which had been made explicit in the *Drew Regu*lation. However, a critical genealogical analysis reveals that the authors' analysis of the problem predetermined their remedy. Examination of key passages provides insight into how the Committee interpreted Ontario public school history, its current realities and their choices about which voices most closely reflect the Ontario legacy on which to go forward into the future.

The mandate of the Mackay Committee included review of the program of religious instruction in public schools but, in addition, it was "to study means by which character, ethics, social attitudes and moral values and principles might best be instilled in the young and to consider the responsibility of the public schools in these matters." (1969, p. 41). The problem for the Committee was to establish the basis for morality and character development in public education, also a key concern in the *Hope Commission Report*. However, while the

basis for morality and moral choices was explicitly identified as "Judaeo-Christian principles" by the Hope Commission, the mandate of the Mackay Committee was clear in stating that, in the late 1960's, something new was required in public education. Its mandate specifically identified the controversial *Drew Regulation* of 1944, still in effect in the 1960's, as the focus of its mandate.

The Committee's interpretation of its mandate is found in the Preface to its report. While reaching its conclusions was "not an easy matter" given the "great variety of opinions in the province" and the divergent viewpoints, there was basic agreement on a number of points. The Committee understood that it was introducing something "new" into the debates over the role of religion in public education and that its conclusions were to be based on the "recent conclusions of educational research" (p. xiv) embodied in "new principles of education" (p. xv). "Education should always concerned with the whole child" and delivery of education or the educational experience "should seek to be in harmony with the discoveries of developmental psychology.", while the educational environment should also be "unequivocally non-authoritarian". The authors agreed "on the importance of the role that religious faith has played in the people of this province", something which, in their opinion, hardly needed to be said since it was being expounded by "many spiritual leaders every week" (p. xv). This is a significant observation since it seemed to assume that students in the province were being influenced by "spiritual leaders every week", an assumption shared by regulators up to 1944. In contrast, the *Drew Regulation* had depended on research demonstrating that church and Sunday school attendance were in decline to the point where religious instruction in Ontario public schools was deemed necessary to establish a common set of values and moral principles. The Mackay Committee agreed with the long standing consensus among regulators that religion was important, but saw part of its role preparing its audience for new ways in which religion would be incorporated into public education.

The Mackay Committee positioned itself in the longer Ontario public school legacy, referring to Egerton Ryerson but doing so with more caution and reservation than had the Hope Commission before it. Ryerson may have been the founder of the common school movement but his legacy included common Protestant Christianity as the ethos energizing Ontario public schools. However, the Mackay Committee highlighted Ryerson's skepticism (or concern) about school opening exercises in making the case that Christian religious

exercises, while they may have been an expected part of the public school culture, were not taken seriously or implemented with any kind of consistency (p. 31). In other words, while religious instruction was being delivered adequately by "spiritual leaders" outside the public schools, the same could not be said of the program in public schools. In addition, the account in its report of the implementation of Christian religious instruction was consistently negative, for example quoting Rev. W.A, Mackay's description of "zeal (which) reached an unusual intensity", including students who "were flogged if they failed to recite correctly the Shorter Catechism", adding, "Oh! how the Presbyterians envied the other denominations for their privilege of exemption from the Catechism". The *Report* included an example from Oxford County in 1842 where a writer 'protested, "I am no bigot or sectarian, nor do I wish any note or comment to be used by any of the Teachers, when the Bible is read" (p. 31). The Committee acknowledged that these were "extreme positions" but their use is significant in setting the stage for its wider point that religious instruction was seen by many in a negative light. Placed alongside the evidence that religious instruction was being poorly and inconsistently delivered, the evidence of educational harm set the stage for the suggestion that, if religious instruction were to be removed from the educational program in public schools, it would not make much difference except to eliminate a source of educational harm.

However, there were many briefs to the Committee advocating for the continuation of religious opening exercises which balanced the negative picture about religious instruction. In response, the Committee recommended that religious opening exercises be continued, provided they were non-sectarian and non-indoctrinational, its concern being that "to eliminate opening exercises would suggest that religion is not an integral part of the life of the people of this province" (p. 35).

The *Mackay Report* identified the larger context in which public education found its meaning in the language of democracy and citizenship consistent with earlier reports about public education. However, its emphasis was different from the one in the *Hope Commission Report* in which the purpose of public education was defined as preparing students for citizenship and for serving the democratic community. In *Mackay* the emphasis shifted to the individual and the individual's right to choose, referring to "our belief that in a democratic society every adult and every young person has the right to choose freely the spiritual and moral values he wishes or, indeed, to reject them" (p. xv). In fact, the Preface identified the

central purpose of education to enable students to make "informed judgements" which was their right and which it was the duty of a democratic society to protect through a variety of means including "true education". It was through the protection of individual rights that the democratic society in which young people found themselves would be best served. As a result, the identification of educational harm in *Mackay* shifted to authoritarian educational environments and "any kind of indoctrination", the dark opposite of "true education", in contrast with the Hope Commission which had asserted the legitimate role of indoctrination to achieve essential civic values.

In contrast to indoctrination, the process of "true education" proposed in the *Mackay Report* was "moral reasoning conducted in a non-authoritative, non-directive and non-coercive environment which respects and protects the right of the individual to choose the "spiritual and moral values (s)he wishes". This was entirely consistent with the educational philosophy of the *Hall-Dennis Report* tabled in 1968 which placed the individual and her right to choose at the centre of the educational enterprise. The issue of indoctrination linked with religion positioned in binary contrast to education linked with critical thought has continued to be critically important in public education discourse.

Harm done to children, to religious communities and to Ontario society was important to the Mackay Committee. It is clear that the Committee was listening to those groups who had resisted the *Drew Regulation* and objected to its educational and religious effects in school programs and school culture. The Committee emphatically rejected the *Drew Regulation* and the educational practices based on it, saying

> The present course of studies in religious education has failed in its first obligation, teaching, because it is not designed in accordance with modern principles of education. It does not provide objective examination of evidence, nor stimulate the inquiring mind; it does not teach children to think for themselves either about the facts of religion or about other matters." (p. 27)

However, this left the Committee with a problem of what educational model would replace the indoctrinational practices based on the *Drew Regulation*. For that it turned to the findings of modern psychology and "the Kentucky model" of moral reasoning.

The Mackay Committee based much of its commitment to moral reasoning on the idea of moral development and the principles of "developmental psychology" developed by Lawrence Kohlberg. The overall end of moral development was the morally mature person

with moral reasoning skills exercised without external constraints or coercion. The authoritative basis for the Mackay Report's conclusions was "the insights" which "scientific approaches furnish into the true nature of moral understanding" (p. 46). It referred to Kohlberg's six stages of development in moral judgement in which stage one was "punishment and obedience orientation" and stage six was "morality of individual principles of conscience" (p. 59). However, the reference to "the true nature" suggests that the Committee had its own essential idea of the nature of moral reasoning, as did its earlier assertion that "a central object of education is to further the search for truth" (p.vi).[17]

The "Kentucky Movement" provided the educational model based on the principles of developmental psychology as theorized by Lawrence Kohlberg, among others. The Mackay Report saw in the Kentucky Movement the remedy for the educational harm done by two negative models, the first of which was the religious indoctrination formalized by the *Drew Regulation* and the other was the use of peer pressure in "Soviet schools." (p. 50). The Committee's use of the idea of "pressure" linked the Soviet schools with indoctrinational educational practices in Ontario public schools based on the *Drew Regulation*. For example, the *Report* said, "The pressure becomes stronger at the Christmas and Easter seasons, sometimes resulting in serious conflict in the minds of children" (p. 22). The reference to "Soviet schools" was a powerful rhetorical device in 1969 as it was in 1950 when it was also used by the Hope Commission as the dark foil for the "Judaeo-Christian" tradition (Hope, 1950 p. 29 # 19 – 20).

The real problem, seen from the perspective adopted by the Committee, was that the educational practices based on the *Drew Regulation* or those practiced in Soviet schools were not true education in the sense that they did not teach or even allow students to think critically or freely. Such approaches "are surely to be condemned when used to influence process of logical reasoning", and become meaningless in a "true moral development program" (p. 51). The *Report* made a clear distinction between "moral assumptions" and "moral reasoning" saying, "it is fatal to the development of mature character to enjoin behaviour solely on the

[17] Patrice Milewski (2010) examines the shift from the language of philosophy and ideals to the language of science in Ontario public education in a shift to progressivism between 1910 and 1934 which gave way to essentialism and the language of religion and nationalism in the late 1930's. Mackay's language of science as the basis for education was not new but brought it back in the 1960's during a re-emergence of a form of progressivism.

weight of authority or because 'it says so here'. …. *Even if tradition is right*, to teach children to obey it simply *because* it is tradition or an 'authority' is to cripple their capacity to become truly mature and intelligently self-governing in their moral behavior" (p. 53, italics in the original). Moral assumptions were those derived from any source other than moral reasoning and tradition and authority are identified as particularly offensive bases for morality.

The Kentucky Movement provided a case study which proved the effectiveness and benefits of the moral reasoning approach, summarizing rewarding effects on student behaviour in an "exciting year, a happy year, full of accomplishments and recognition; life was interesting and challenging. Bourbon County Vocational High School was a good place to be"., having become a place in which morals are taught and practiced without moralizing, or where punishment is simply not a part of the behaviour management strategies (p. 58). Mackay proposed this as the model for teaching morality in Ontario's public schools. However, in order to find the way forward, the Committee had to identify and address obstacles to a brighter educational future, identified as anything resembling authority and tradition.

In place of tradition or authority, the *Report* proposed a "true moral development program" based on scientific reasoning. It also identified the home as the "most powerful environmental influence which young people encounter" in the development of "character"; however, the home and parents were viewed with some suspicion, saying, "…there is a limit to which the school can hope to provide a desirable countervailing influence on character for the purpose of balancing an undesirable influence at home". Parents were profoundly important in the development of character and children would display that influence, "no matter what contrary pretences some parents try to present to society" (p. 51). Thus the school must play a remedial role to protect children by helping them take critical distance from their traditions, the authorities in their lives, their peer groups and their families. The role of the common school in playing a remediating role in the nurture of children was consistent with Egerton Ryerson's description of the state as the "collective parent" and was a source of fundamental disagreement with Roman Catholics (Hope, 1950, p. 829 #13; Glenn, 1988).

Addressing matters of pedagogical strategy, the *Report* quoted Lawrence Kohlberg, saying, "*The child will listen to what the teacher says about moral matters only if the child*

first feels a genuine sense of uncertainty as to the right answer to the situation in question" (p. 61, italicized in the original). In educational terms, this meant that the teacher must first stimulate the "sense of uncertainty" in the child. It is not the purpose here to challenge the creation of a "sense of uncertainty" as a pedagogical strategy but, in a way similar to the use of "critical thinking skills", strategies are never neutral or "objective" in intent or in application. While creative and conceptual dissonance is an important pedagogical strategy in any classroom, it is strategic in the sense that teachers, schools and school systems always make choices about the situations in which they would like to stimulate a "sense of uncertainty". The Committee's argument was constructed to suggest that all forms of education not based on science and or on its moral reasoning model were not true education. The suggestion in the *Report* was that under the *Drew Regulation* cognitive dissonance as a pedagogical strategy was not employed and that therefore, true education was not occurring. More broadly, the *Report* privileged Ontario public education through its largely unexamined assumption that in competing educational models, critical thought and sophisticated pedagogical strategies did not occur. The assumption that true education can occur only under one particular pedagogical and epistemological model is questionable on a number of grounds but it has had important effects in law, in the regulation of religion in public education, public recognition of alternative educational sites and in the distribution of public resources.

Another assumption seemed to be that Lawrence Kohlberg had somehow discovered stages of moral development through a process of scientific discovery. While there is little argument about the fact that people go through stages of moral development, the Committee's assertion that these stages were newly discovered by science and based on scientific principles is highly questionable. My principal argument is not that the Committee chose Kohlberg as its authority; rather, it is with the assumption that its model of moral reasoning based on the principles of scientific psychology is the only way to achieve moral maturity in the modern world. This, by its very nature, represents models of morality and moral reasoning based on religious principles as necessarily limited to the more primitive stages of moral development and religion as a barrier to moral maturity. It also represents moral reasoning and religion as mutually exclusive, with religiously based moral reasoning

being an oxymoron which has had important effects in law and regulation in Ontario public education.

However, while the case law regarding religious freedom and equality in Ontario public education between 1985 and 1997 refers to *Mackay* as an unambiguous educational expert, examination of the *Report* itself demonstrates rather a less clear picture of the implications of its model in achieving a non-coercive educational environment. Somewhat confusingly, given the emphasis on the free thinking individual and the negative characterization of peer groups, the *Report* included the possibility that "incidental exposure to the peer group's reasoning about a particular moral conflict may assist development of the young person's capacity to reason morally". While it did not specify what positive "incidental exposure" might look like it did, albeit cautiously, situate its imagined free thinking student in a social context which might have a positive influence on the development of moral maturity. It also described the morally mature thinker which would naturally emerge from a successful program of moral reasoning, but doing so in ways suggesting that the Committee was, if anything, ambivalent about its logical consequences.

From an educational perspective, the emphasis in the *Report* on the individual's right to define his or her own path to a self-defined moral truth had some troubling implications. The problem was that students, in acting on their right to find their own path to truth, might make choices harmful to themselves and to the democratic society which protected their right to make those choices. The conundrum inherent in its emphasis on the individual's right to choose his or her path to moral truth did not go unnoticed by the Committee. The *Report* reflected ambiguity about the implications of its moral reasoning model based on free choice since, at the same time it proposed a particular profile of the sophisticated moral reasoner as the end result of the moral reasoning process, contrasted with the immature reasoner. The *Report* said, "It is true that a hedonistic philosophy is likely to lead to moral bankruptcy, but this is a conclusion that the morally mature person should be capable of reaching independently." While it suggested that an emphasis on behaviour is misplaced, it made reference to "good behaviour" and "virtuous conduct" (p. 47) as the marks of sophisticated moral reasoning. Although some might interpret this as authoritarian teaching by another name, the *Report* asserted that "socially desirable behaviour patterns are a natural consequence of a successful program" (p. 47), suggesting that it was stating something

obvious. However, its comments on the role of the teacher are revealing, suggesting that Kohlberg's six stages of moral development had become a new orthodoxy on which to judge student progress. The *Report* said, "It leaves to teachers generally to apply both diagnostic techniques and instructional methods in other subject areas that will be consistent with the most recent findings in developmental psychology" (p. 59). It further recommended that, wherever feasible, " a highly trained technician" should be engaged to ensure moral development as outlined in Kohlberg's theory or, presumably whatever "most recent findings may have surpassed Kohlberg" (p. 60).

Given the *Report's* emphasis on "Moral Development and Religious Information as "A Program – Not a Course" (p. 52) its educational model begins to sound not unlike some of the indoctrinational models it was designed to replace. In fact, quoting Kohlberg it said, "Without suggesting the Russian moral indoctrination approach it seems safe to suggest that a conscious interest by teachers in stimulating moral development would provide a valuable supplement to the concrete focus upon negative and immediate classroom behaviour, upon maintaining discipline, and upon expressing personal values and prejudices" (p. 53). The *Report* did not make a clear distinction between indoctrination and "a conscious interest by teachers" or what constituted the limits on students' "expressing personal views and prejudices", leaving open the question of the distinction between true education and indoctrination.

My argument here is not with the particular model of moral development chosen by the Committee nor is it to advocate for one model over another. Nor is the Committee to be faulted for its ambivalence about the implications of free moral reasoning, ambivalence suggesting a healthy humility in discussions and proposals about something as complex and unpredictable as human moral development. The issue under critical scrutiny here is the regulatory framework which came to privilege this model over others through the use of state power, turning Mackay's hopes for positive results into regulatory certainty.

While the 1969 *Report* contrasted "modern principles of education" and the "present course of studies" on "objective examination of evidence", it included other recommendations affirming the public value of religion. For example, it offered the recommendation that opening exercises be held in the home rooms of elementary schools, including "the singing of the National Anthem and a prayer, either of a universal character

appealing to God for help in the day's activities or the Lord's Prayer". This was justified by making the distinction between "inspirational and dedicational activities" rather than confessional ones designed to indoctrinate (p. 36-37). The *Report* expressed concern that the "absence of opening exercises would indicate the religion was not an integral part of life and make the school wholly secular" (p. 34). It suggested that moral reasoning is best taught through the use of "situational anecdotes" but that these anecdotes be "well-chosen" (p. 61) from the "Aesopian and other classical tales – including carefully selected Bible stories …" (p. 64).

Although the tone of the *Report* was optimistic, the Mackay Committee was actually conflicted about the implications of its moral reasoning model. However, it was constrained by its framework of reference formalized in its mandate but also less formally as is evident throughout the *Report* in two ways. First, the Committee was restricted by its mandate specifying the public school system unified by a common ethos as the only way to deliver the mature moral reasoner. Second, it assumed "science" as the way forward as the basis for moral development. However, its view of science came with a lot of epistemological baggage, particularly its assumption that science was the basis for how to arrive at public truth accessible to all reasonable, mature moral thinkers. "Thought" and reasoning are complex and nuanced and the assumption that moral truth can be divined through rational thought as imagined by the Committee reveals a contestable protestant bias in conceptualizing religion (Smith, 1987; Connolly, 2002; Zine, 2008; Cavanaugh, 2009).

The recommendations in the *Report* indicated a bias towards a more propositional understanding of religion reminiscent of Protestant Christianity when, making a distinction between "emotion" and logical thinking, it said, "To reason morally is to think logically, not emotionally. To think emotionally is not to reason at all". (p. 67). Religious information was to be presented in a "scholarly and objective fashion and every effort should be made to avoid either giving undue emphasis to a particular form of religious practice or to minimizing the contributions of a particular creed or religion" (p. 72). While, on the one hand this recommendation was consistent with Egerton Ryerson's attempt to formulate a common religion free of sectarian interests or Drew's advice to avoid controversial issues in the delivery of religious instruction, it also indicated a way of accessing and understanding lived religious and moral experience through a screen of Western rationalism, something which

has been critically examined by feminist scholars (Smith, 1987; Smart, 1989; Beaman, 1996, 2001, 2008) and others (Asad, 2003, 2009; Connolly, 2002; Orsi, 2005; McGuire, 2008; Cavanaugh, 2009).

In fact, the *Report* made clear that the Committee was not hostile to religion itself. In explaining why religious information should be included throughout the school's program, *Mackay* said that religious information "adds to the child's understanding and developing respect for all men" (p. 88). The Committee was sensitive to the lack of understanding and respect experienced by Jewish communities in their advocating for repeal of the *Drew Regulation* which had been, in the view of the Canadian Jewish Congress, harmful to Jewish children and their families. However, its sensitivity did not lead it to conclude that public schools should not deal with religion at all; rather, it was trying to find a mid-20th century formulation of a common religion, inclusive of all and offensive to none.

Despite its interest in religion, however, the *Report* said that it "does not recommend the addition of professors or religious knowledge to the staffs of colleges of education" (Page 90). It recommended courses in "comparative religions" and "instruction in methods of teaching world religion…given by professors of methods in history" for training of teachers of religious information, suggesting that "religious information" and "education about religion" were less about religion itself and more about social attitudes and the social context about religion in a democratic society (p. 90). In fact, representing religion in the public school program as "religious information" is telling, reinforcing the idea that religion, in a public sense, is about information best delivered by people who are not specialists in religion and who have no vested interest in the outcomes of education about religion.

The Committee's proposed way forward was constrained by its uncritical acceptance of the conflation of the public school system, public education and social harmony unified under a transcendent ethos. It also seemed unaware of its epistemological biases in its acceptance of science as the rational, inclusive and unassailable basis for the way forward in the modern world. While it was prepared to recommend that the public school system discard Protestant Christianity as its dominant ethos, it reverted to proposing a kind of secular Protestantism as the new ethos unifying the social practice of public education. Its description of the moral person at the end of a process of moral reasoning was actually quite similar to that of the earlier model it was designed to replace. But it was also left with the

same conundrums it had attempted to resolve which would become evident in voices of resistance after 1969.

4.3.6. Reconsidering Mackay's reception of religious minorities

In 1967, the reception given the Canadian Jewish Congress by the Mackay Committee was quite different from the reception given Jewish concerns by the Hope Royal Commission. The Mackay Committee agreed with the Congress that the *Drew Regulation* mandating religious instruction was unacceptable because it represented religious indoctrination by a religious majority. Nevertheless, closer examination of the recommendations of the Mackay Committee indicates that, while there was significant convergence with the Congress there were also differences revealing selective listening to religious minorities which left power structures in Ontario public education intact.

The Canadian Jewish Congress brief to the Mackay Committee concluded with Propositions 10 and 11 which included its reflections on the way forward. Proposition 10 said this,

> Except for those among us who feel that true objectivity cannot be attained, we do not object in principle to courses "about religion" or courses in "comparative religion". We recognize that such courses are extremely difficult to devise and teach. (1967, p. 70)

There were two concerns, one of them philosophical and the other practical. The philosophical concern was that true objectivity in the teaching of religion was impossible so there was consensus that any course about religion claiming to be objective would be "extremely difficult to devise and teach". The brief urged the Committee not to be naïve about the biases and points of view inherent in any educational project relating to religion.

As a result of Jewish concerns the brief said, "There must be no teaching of religion in the public school" (p. 70), citing concerns that "we know of no such course or not jurisdiction which offers such a course in the public school" (p. 71), that teacher training for the delivery of such a program had not been developed (p. 71- 72) and that the pedagogical issues associated with education about religion had not been fully examined (p.72). However, the brief also questioned "whether even comparative religion can be taught in an objective way. Many have no doubt that it can; many are not so sure" (p. 72).

Their philosophical concern had a practical basis in Jewish experience dealing with the Ontario public school establishment dominated by Protestant Christians. The brief referred to its engagement with the Hope Commission in which they had been assured that they had no reason to fear religious instruction. It said,

> In 1945 after we appeared before the Hope Royal Commission on Education, we heard assurances that with goodwill, good teaching and discretion the curriculum could be made to work despite its imperfections. The predictions we made then were, we regret to say, more than fulfilled by our experience during the 21 years since. All our apprehensions unfortunately were realized – divisiveness, disunity, community tension and unhealthy conflicts. (p. 70)

According to the brief, educational projects involving religion devised by a religious majority had inherent risks for religious minorities. However, the CJC did acknowledge the legitimate inclusion of religion in the curriculum, given the important role of religion as a motivating factor in human history, offering a number of historical examples which

> cannot be properly interpreted without an understanding of the religious factor and it is in these situations that a skilful and understanding instructor can indicate the force that religion has been as a factor -- without in any way imposing an ideological or theological straitjacket upon teacher or pupil. (p. 75)

The Mackay Committee, having listened to the CJC and others made twelve recommendations, the first of which was

> We recommend that the present course of study in religious education in the elementary schools of Ontario be discontinued, and that its aims as set out in related legislation, programs of studies, regulations and guide books be abandoned. (1969, p. 93)

The recommendation was based on the Committee's assessment that

> The present course of studies in religious education has failed in its first obligation, teaching, because it is not designed in accordance with modern principles of education. It does not provide for the objective examination of evidence, nor stimulate the inquiring mind; it does not teach children to think for themselves, either about the facts of religion or about ethical matters. (p. 27)

The recommendation represented a significant victory for the Canadian Jewish Congress and other advocates for the repeal of the *Drew Regulation*. It was recognition at the highest levels that all students, not just religious minorities, had been subjected to harmful educational practices by a religious majority.

However, the Mackay Committee did not follow the reasoning of the Canadian Jewish Congress in its philosophical consideration of the issue of objectivity and the challenges in achieving a program which would achieve "objective" education about religion. Instead, the *Report* suggested that a "scholarly and objective" approach was not only achievable but expected in a program of religious information. Religious information was to be delivered on two levels. One was that it should be woven throughout the curriculum at both the elementary and secondary levels of schooling and the second was in an optional course in world religions. However, the *Report* was vague about the actual content of the program, as it was about teacher training and program development saying,

> The program we recommend will not have a prescribed course of study nor a specific period in the timetable, except for the optional courses in *religious education* (italics added) in grade 11 and 12 of the secondary school. Complete flexibility in planning and administering the programs we recommend is necessary to cope with the dynamics of modern society. (p. 76)

In other words, the Committee did not have in mind a particular body of information about religion, emphasising flexibility in the matter of program content and methodology. In fact, the *Report* did not indicate a clearly defined program about religious information at all, nor did it recommend that specialists in religious studies be trained to design and deliver the program. This vagueness allowed the Committee to suggest that "The transition from the present course in religious education to the new recommended program in religious information and moral development need not be difficult" (p. 75). This seems a curious statement given its earlier commitment to a "totally new approach" to replace the religious instruction program under the Committee's critical scrutiny. Therefore, while the *Report* used language suggesting radical change, there was more continuity than change between what it recommended and what Hope had proposed in 1950. The language of objectivity so confidently used by the Mackay Committee but about which the CJC was raising concerns suggests that the Committee, like the Hope Commission, assumed that it could devise a language and an approach to religion in public education which would speak for all religions.

It was in Proposition 11 that the Congress proposed a way forward which resonated most strongly with the cultural trend in which they found themselves. Proposition 11 said, "Moral and spiritual values can be presented to pupils in a public school system by the use of pedagogical techniques not requiring religious sanctions (1967, p. 76). The CJC was

addressing an irritant for religious minorities which was the assumption in Hope that Protestant Christianity provided the universal language for morality and spiritual values which other religions might approximate but could never fully achieve. The resolution proposed by the CJC was a separation of religion from moral values which was adopted by the Mackay Committee as part of its broader re-evaluation of the role of religion in public education. The CJC accepted moral reasoning and a form of "situation ethics" saying,

> Moral values are learned inductively from situation to situation rather than deductively from formal lesson or instruction. The teacher deliberately makes his students conscious of value conflicts and the problem of choice. In such a context there is no need for theological conceptualism. There are enough values which we all hold in common, e.g. courtesy, the Golden Rule, kindness, neatness, etc. We would not need to be concerned with differences of opinion among religious groups. (1967, p. 80)

The language used here was reflected in the language of science, rational thought and moral development adopted by the Mackay Committee and helps explain the sympathetic reception given the CJC. While later developments suggest that the Mackay Committee and the Congress had different interpretations of what this actually means for education, in 1967 it seems that their understandings of the problem and of their goals coincided.

In addition to protecting Jewish interests, the Congress was engaging in a process of reforming the public school system and was not raising the critical questions about the privileged role of the public school system in delivering public education as it would after 1990. The Hope Commission's view of religion in public affairs had made the separation of religion from moral values unacceptable. To the Hope Commission, religious difference made a difference and therefore, Christian religious instruction was a logical strategy in public schools. As a result it was not prepared to listen to the Canadian Jewish Congress with the sympathy and understanding of the Mackay Committee in the late 1960's. In contrast to the Hope Commission, the Mackay Committee could accept the Canadian Jewish Congress as a partner in both formulating the problem and establishing the basis for a new approach in reforming Ontario public schools.

However, while the Committee agreed that a "totally new approach to the problem" (p. 26) of teaching morality and religion was needed, it was selective about which voices it included and those which it did not include in the way forward. Its recommendations provide evidence that it was listening to the Canadian Jewish Congress in so far as the Congress

supported the non-negotiable role of the public school system as the state agency uniquely positioned to deliver public education and social inclusion. Its recommendations also reflected the Congress's separating moral values education from a specific religious framework. In light of the long history of Jewish resistance to the dominant role of Protestant Christianity in public education, this separation served to destabilize the common sense linking morality and moral values to Protestant Christianity. However, while the CJC's tactic of backgrounding religious difference and embracing the idea of a common language which would transcend religious differences was effective in 1967, it would later prove to be unacceptable to religious minorities.

Seen from another perspective, the Jewish advocacy in its 1967 brief reinforced the perspective of the Protestant Christian majority that the establishment of a common language transcending religious particularities was possible and even essential for achieving inclusive social cohesion. While the Hope Commission found this common, transcendent language in a form of Protestant Christianity, the Mackay Committee found it in the language of secularism, science and objectivity. The Mackay Committee, while it represented its approach as a "totally new" departure from the one offered by the Hope Commission, actually shared its commitment to a transcendent common language accessible to all reasonable persons and the role of the public school system as a state instrument in delivering it in the achievement of social harmony.

The common ground between Mackay and Hope becomes clearer in Mackay's selection of the voices it considered legitimate contributors to its research and those it rejected. Among those before the Committee were groups advocating for non-Catholic faith-based schools, identified in its report as "parochial or private schools". About that approach, the Committee said, "We rejected this as destructive of our great democratic school system" (p. 26). Accepting their recommendations would have required a much more profound re-consideration of the common school project. While Mackay said it was introducing something "totally new", it was not prepared to do anything new outside the boundaries established by its mandate and its own aesthetic. These schools, therefore, could not be considered legitimate instruments in the delivery of public education and were, in fact, described as destructive to "our great democratic school system". The use of "our" suggests

that the groups operating such schools are somehow "other" and not part of a common social activity of education.

Another option considered and rejected by the Committee was the proposal of '"released time" which means the release of pupils during regular school hours for attendance at classes of religious instruction given either within or without the school buildings'. The Committee's reason for rejecting this option was that it would be "divisive and unnatural" (p. 26). Other proposals, also rejected, include courses in religion, morals and ethics taught by "trained specialists". The subsection titled "Alternative Proposals" (p. 26) concluded with this loaded paragraph,

> In the end, it became clear to us that all of these proposals were incompatible with the basic principles of good education. They would promote dissension in the community, engender sectarian pressures among groups, and continue the painful embarrassments for the children who would not participate in the proposed program. (p. 27)

In this one paragraph, the Committee combined the principles that good education can be delivered only in public schools, non-public schools promote dissension in the community, that only public schools can mediate among sectarian groups and harm is done to children who are educated in educational environments other than the public school system.

This is not, in the first place, an argument against the Committee's biases although there are critical questions about the epistemological assumptions and the conundrums inherent in its attempt to universalize any one approach to education, of religion and morality. Considered as one among many possibilities, the Committee's perspective added to the diversity which should characterize a public school system in a democratic society. Rather, my argument is with its assumption that its perspective is the only normative one for public education and, on that basis, that it rejects alternative possibilities. The "alternative proposals" rejected by the Committee challenge the assumptions that public schools are the only way to deliver public education and that the very existence of "parochial and private schools" represent a threat to social cohesion. Therefore, the Committee was clearly not prepared to include those proposals in its "totally new approach" suggesting that its approach is not as totally new as suggested.

The *Report* accepted a wider theoretical shift based on what might be seen as a form of a "secularization narrative" which served to create an aesthetic about the way religion has

been represented in a wider range of areas, including education and developmental psychology. However, it did so without evidence of critical self-awareness of its own biases, as if its conclusions were logical outcomes of a rational and objective process. So, the *Mackay Report* was both a courageous critique of the past and, at the same time, a conservative protector of the dominant discourse. A critical reading of Mackay demonstrates that both its problematizing of the past and its vision for the future provided a restrictive screen for the voices it was prepared to engage sympathetically and which voices it marginalized. The overall effect was to narrow rather than expand the space for religious diversity in Ontario public education.

In fact, the narrowing window on religious diversity in public education is evident in the fact that the *Mackay Report*, in contrast with the *Hope Commission Report* tabled in the 1950's, did not include a minority report. The Hope Commission's minority report was extensive and highly critical of the dominant discourse of the majority report, challenging the Ryerson legacy, its preferred educational philosophy, its pretentions to universal inclusivism and its recommendations for school centralization and provincial funding. In fact, the authors of the minority report were identified as "non-signatories to the majority report", leaving no doubt about their position. It seems that, although the majority report spoke of the existence of separate schools as regrettable but politically unavoidable, there was an attempt to engage, on some level, in a dialogic process among the dominant religious groups. The *Mackay Report* contained no minority report and dealt with minority voices quite summarily so that, while the Canadian Jewish Congress clearly had its desired effect, it did so only because its recommendations did not challenge the nexus of power in the public schools. While the minority report in the *Hope Commission Report* challenged the conflation of public schools as an institutional site with the public education as a social practice, the Canadian Jewish Congress brief actually agreed with Ontario's dominant discourse about public education. While the Canadian Jewish Congress was successful in achieving more *social* room for religious diversity within public schools, its strategy served a more general trend in which *educational* room for religious diversity in Ontario public education continued to be restricted and even reduced. This was a different trajectory from the one followed in other jurisdictions in both Canada and in the rest of the Western democracies and one which has attracted censure from the United Nations.

4.3.7. *Reception of the Mackay Report*

However, even in Ontario, the initial reception given the *Mackay Report* shows that Ontario was not quite ready to go down the road of the "totally new approach" to religion and the teaching of moral development in public schools. The *Mackay Report* was tabled in 1969 after the *Hall Dennis Report* titled "Living and Learning" (1968). While they were based on similar educational principles and biases, the *Mackay Report* focussed specifically on the problem of inculcating moral principles and practices detached from a religious framework. Its work was specifically limited to the issue of religion and its role in public education, while the *Hall-Dennis Report* was a much more broadly based analysis of public school organization, school culture and delivery of school programs.

The Hall-Dennis Commission began its work in 1965 in response to a range of ad-hoc program revisions implemented since the *Hope Commission Report* of 1950 had resulted in a variety of educational approaches and inconsistent application of Ministry of Education directives. The great social and economic changes since 1950 which had animated the Mackay Committee provide the context in which Minister of Education William Davis mandated the Hall-Dennis Commission to conduct a review of educational practices, philosophies, and school organization. Its report, tabled in 1968, contained 258 recommendations about a wide range of issues but what unified it was its uncompromising optimism and its commitment to the same educational philosophy as the one underlying the *Mackay Report*. R.D. Gidney says of the *Hall-Dennis Report*, "It was -- very much a child of its age. While never denying the value of preparation for employment, the uses of career training, or the role of the school in promoting economic efficiency, the emphasis of the report fell almost exclusively on education for personal fulfilment" (1999, p. 72).

The recommended changes in program organization and delivery, learning materials, classroom and school arrangements (including the iconic if short-lived "open classroom") were dramatic and controversial as was the shift from a centrally controlled to a more locally controlled and site based management model of public school organization. An important motivation for the recommendations was an unacceptably high dropout rate out of high schools, attributed to the assessment of school organization as rigid and school programs as

out of touch with the students, denying them adequate choices in planning their path to future success as they defined it.

In addition, the mid-60's was a time of cultural optimism and economic prosperity which allowed education planners and students to be less concerned about their economic futures than generations before and after them and allowed politicians and taxpayers to be less attentive to the rising costs of education through the 1960's and 1970's. As a result, many of the Hall-Dennis recommendations were adopted by the government and the Ministry of Education, but with inconsistent implementation on the school board and classroom levels where educators fiercely debated the merits of the more child-centered education which they were required to adopt. The point is that the *Hall-Dennis Report* was adopted by the government as the way of Ontario's educational future for a number of reasons, one of which was that its spirit and recommendations coincided with overall trends in education. Another reason was that it did not deal with the volatile issue of the role of religion in public education. That was the role of the *Mackay Report* which experienced a much more muted reception.

While there had been general rejoicing among Jewish communities at their sympathetic reception by the Mackay Committee, the Canadian Jewish Congress was less sanguine about the future. It saw many of its recommendations and ideas adopted by the Committee but the Congress realized that the political will to actually implement them was by no means a foregone conclusion. Government action (or inaction, in this case) during the 1970's and 1980's proved them right. While there were obvious and visible changes in school buildings, program organization, the distribution of decision making, the status of teachers and, to a lesser degree, program delivery in response to the Hall-Dennis recommendations, changes in the way the role of religion was regulated were slower in coming.

The *MacKay Report* was an important reconceptualization of religion in public education reflecting both overall trends in the social role of religion and sensitivity to minority religions suffering under the coercive dominance of a form of Protestant Christianity but it was not adopted by the government of the day primarily because its proposals were politically sensitive. One unintended consequence was that it energized faith communities who saw it as evidence of the secularization of public education and who

reacted to the recommendations in a way that suggested the high political risks for any government to directly engage the question of the role of religion in public education.

However, government squeamishness did not make the questions of religious coercion and religious indoctrination go away. One of the factors that did not make them go away was the presence of a growing and assertive minority religious presence that challenged the key pillars in the conceptualization and the regulation of religion in public schools. The first of these pillars was the conflation of public schools with public education in delivering social harmony based on common civic values. The second of the challenges was to the conceptualization of a limited role for religion based on "religious-secular" and "private – public" binaries by which religion was imagined to be one private life style choice among many in a world to be segregated from secular public space.

4.4. Conclusions on the Mackay Report

The Canadian Jewish Congress brief to the Mackay Committee was a voice of resistance to the 1944 legislation which, by mandating religious instruction, foregrounded religion as a fault line that the Jewish community could not ignore. The brief focused on the dominance of Protestant Christianity in public education because the *Drew Regulation* made it unavoidable for religious minorities. While Protestant Christianity had been the dominant ethos in Ontario public education since the founding of the common school movement, care had been taken to de-emphasise religious differences by avoiding explicit religious instruction as a formal part of the academic program. The 1944 legislation and the religious instructional practices based on the *Drew Regulation* was a daily reminder to religious minorities that they and their religious traditions were marginal and even harmful to social harmony.

Despite the fact that religious instruction was a serious irritant, its being foregrounded by the Canadian Jewish Congress as the key issue avoided examination of other forms in which hegemonic power was situated. The CJC brief advocated for Jewish citizens to be considered an integral part of public schooling as a way of being included in Ontario society. While it rejected Protestant Christianity as the common, transcendent language of common space, it did not explicitly reject the idea that such a language was possible and that it could be delivered in a common school system. The CJC, at least in 1967, advocated for a protected

place within a secular public school system, arguing only that Jewish tradition and religious practices should be included within the bounds of toleration. The Jewish voice of resistance in 1967 was quite different from that of the Roman Catholics on this point, Roman Catholics having consistently argued for public recognition of their sectarian differences outside the public school system.

The Jewish and Roman Catholic communities had different traditions of resistance in the story of public schooling in Ontario. The Roman Catholic community had consistently rejected the role of the state as the primary stakeholder in schooling, arguing instead for schooling as a church strategy to perpetuate Roman Catholic identity and religious faith. The Roman Catholic school tradition explicitly rejected that a common language transcending religious particularities was possible or desirable and it rejected the idea that religious particularities were harmful to the public good. While it accepted the labels "sectarian" and "separate", these did not imply hostility to common interests in a stable, modern and diverse democracy.

However, Roman Catholic resistance to the idea of a common religion as an instrument of the state to achieve social harmony has meant that public funding of the Roman Catholic separate school system has been controversial throughout the history of Ontario public education. Roman Catholic practice of education is protected in Ontario both by *s. 93* and by the political power of the Roman Catholic constituency which explains why the government did not act on the Hope Commission recommendation that the basis for separate school funding should be the Scott legislation of 1863. The political costs of reducing funding to Grades K though 8 would have been too high for any government, despite persistent opposition in some quarters to the funding of Roman Catholic separate schools. In contrast, the Jewish voice of resistance, because it looked to the state for protection from a Christian religious majority, was actually easier for the Mackay Committee to accommodate than other religious minorities who, like the Roman Catholics, have looked for recognition outside the public school system.

At the same time, it is important to accept the good intentions of the members of the Mackay Committee. The tone of the *Report* suggests that they genuinely heard the distress of the religious minorities who experienced the coercive weight of the *Drew Regulation* and agreed that the time had come to address offensive public school practices which was hurting

students. However, framing the problem in a way that foregrounded religion as the source of indoctrination and coercion presupposed a solution which was the elimination of religion as an equal player in public education.

The Mackay Committee, constrained by its mandate limiting it to the role played by public schools in instilling civic virtues in the young and by its own biases, chose to listen to the Jewish voices and not to other religious minorities asking more fundamental questions about religious diversity in public education and the public school system. Jewish interests seemed to have an impact in 1967 that had eluded them in earlier advocacy because it coincided with a trend already in play in Ontario society at many levels (Sable 1999 p. 147 – 148). Jewish advocacy was for inclusion and respect in the Ontario public school system but its focus on religious instruction as the instrument of exclusion allowed other forms of hegemonic power to remain unexamined.

Nevertheless, subjecting Protestant Christianity to critical scrutiny and proposing that it be demoted from its position of privilege took courage and foresight. The *Drew Regulation* had had remarkable staying power in Ontario legislation after the *Mackay Report* was tabled for a number of reasons one of which was that its critics were not clearly unified around a common strategy or a clear alternative with which to replace it (Sable, 1999). In addition, there was still a high level of support for the *Drew Regulation* and the role of Protestant Christianity as the voice of morality and as the ethos transcending religious sectarianism.

However, the context in which the *Drew Regulation* had found support changed during the 1950's and 1960's as the experiences of the Second World War faded In the 1960's accompanied by a number of trends in the social fabric of Ontario. Urbanization, increasing religious and ethnic diversity, beginnings of a shift to a global, knowledge based economy and changes in the religious landscape created incentives for reassessing both the organizational structure and the identity of the public schools. In the world of education, religious voices that had previously been marginalized were now finding more sympathetic reception as the role of religion in defining social norms was being re-assessed. Nevertheless, there were limits on the religious diversity that could be tolerated in public education. In the next section, the focus is on a voice of resistance that found itself outside the limits of what could be tolerated by the Mackay Committee.

4.4.1. Dutch Calvinists: Resistance outside the bounds of toleration

Dutch Calvinists provide another voice of resistance to public policy regulating religious diversity in Ontario public education. Unlike the reception enjoyed by the Canadian Jewish Congress, Dutch Calvinists were a religious minority to whom the Committee did not listen, although they had also been engaged in challenging the organization of Ontario public education around the public school system. They had entered the Ontario scene in the 1950's, part of the great post-World War II wave of European immigration, carrying their own social model for religious diversity in public education on which they based claims for public recognition with increasing confidence over the next decades.

a. Historical context

The period from the 1950's to the 1980's was a time of enormous change and contestation in Ontario's public school system, including in the way the role of religion was conceptualized. By the 1980's, the one room school house run by local neighbourhood trustees had given way to large, centralized schools organized in amalgamated boards. The education program had changed, with increased emphasis on pedagogy and attention to individual students, although by the 1980's educators and regulators were re-thinking the child centred school imagined by the Hall-Dennis Commission. Education spending had increased enormously and the emphasis of professional teacher organizations had shifted to include greater emphasis on labour relations, wages and other activities more closely associated with labour unions. As a result, the teachers' movement had emerged as an important stakeholder and a powerful political force in public schooling and the delivery of public education.

However, after the 1970's a period of economic slowdown saw successive Ontario governments trying to reduce their budgets. At the same time, in response to a political backlash relating to a perception of disappointing outcomes of an increasingly expensive education system, they were engaged in a process of re-centralization of control. In this context, relationships among the stakeholders were showing signs of strain between governments trying to control budget, re-centralization of the public school system, teacher militancy and political action and public agitation.

In the meantime, urbanization, industrialization and immigration, which had been trends in Ontario throughout the 20th century, continued to change the landscape, providing evidence that through times of restraint and prosperity the issue of managing social diversity was as important in the 1980's as it had been in the 1950's. The warm reception given the Canadian Jewish Congress by the Mackay Committee was only one of many developments which signalled a new level of sensitivity to diversity. In summary, the period from 1950's through the 1980's was a dynamic and energetic time in the politics of public education.

b. Independent school movement

It was in this context that the independent school movement in Ontario changed and grew. Ontario has a long history of private schooling going back to before Confederation with private schools modelled on the British public schools and targeting, although not exclusively, children of wealthier families. Upper Canada College in Toronto founded in 1821, Ashbury College in Ottawa founded in 1891 and Albert College in Belleville, founded in 1857 are only three examples. Their history goes back to time when education was less accessible to the general population and in which government involvement in schooling was informal rather than formal and structured.

Throughout Canadian history graduates of private schools have participated in Canadian society in a vast array of fields and so they can hardly be considered marginal. Paradoxically however, private schools continue to play an important political role in the contest over school funding because of their image which can, when it is useful to do so, be used to characterize all privately funded and independent schools as elitist and exclusive. For example, in a comment to the Ottawa Citizen June 27, '2003, Dalton McGuinty said about the Progressive Conservative *Equity in Education Tax Credit*, "It is not my intention through a private school tax credit to help out the Mercedes Benz set." A study published in 2007 (Van Pelt, Allison and Allison, 2007) provides evidence of a broad socio-economic spectrum represented in independent schools but the reference to "the Mercedes Benz set" and similar language has been an effective political strategy to marginalize citizens challenging the current model of educational governance in Ontario. However, the schools described above accept the "private school" label in order to distinguish themselves from the more accessible public school system while other privately funded schools identify themselves as

"independent schools" as a way to distinguish themselves and their political objectives from those of the "private schools".

In any case, during the 1950's and into the 21st century new independent schools were established by parents looking for educational alternatives for both religious and educational reasons and they grew rapidly. In 1960 1.9% of the student population was enrolled in private and independent schools and in 2006 that percentage had increased to 5.6% (Van Pelt et al, 2007, p. 3). Van Pelt's study provides evidence that this new wave of schools serves a clientele more broadly representative of the general Canadian population in socio-economic terms than do the traditional private schools. These are middle and working class people who cannot be described as "elite" but neither do their schools pretend to serve all Ontario students. Coming from a variety of religious perspectives, they are prepared to re-examine the binary categories of "public and private" and "religious and secular" and to challenge the long standing discourse in Ontario which conflates public schools with public education in creating social harmony. For some of them, religious diversity in public education is not just a matter of creating social space for different religious groups or to engage in "tourist religion" represented by the World Religions classes recommended by the Mackay Committee. They are also not prepared to accept the characterization of their schools in the *Mackay Report* as destructive to social harmony. In this sense, their language resembles the Roman Catholic language in the Hope Commission minority report and, in fact, much of their political and legal advocacy has drawn inspiration from the fact that Ontario's funding of Roman Catholic separate schools is entrenched in *s.93* of the *Constitution Act of 1867*.

The independent school movement also draws inspiration from Canada's embrace of social diversity with appeals to multiculturalism being evident as late as the election of 2007. However, because much of the advocacy for independent schools has come from immigrant and religious groups, the faith-based school movement has intersected with the long standing ambivalence about immigration and with the particularly sensitive matter of religion in Ontario. Both immigration and religion have been seen as potentially disruptive to Ontario's political culture in which public schools have been seen as the social and political agent of integration and assimilation into the dominant culture. Therefore, when immigrant groups

identifying themselves by religion entered the contest for recognition in the site of education they are engaging in a highly risky mode of insertion in their host country (Beckford, 1985).

Although anxiety associated with immigration has increased since 2001 after the terrorist attacks in New York City and the perpetual war on terror, it is not a new phenomenon. The themes of elitism associated with Ontario's private schools, sectarianism rooted in Ontario's long history of difficult relationships between Protestants and Catholics and ambivalence about immigration have provided rich ground for misunderstanding the advocacy for non-Catholic faith-based schools. Such advocacy challenges the role of the public school system as the one institution uniquely positioned to deliver public education designed to overcome the social disruptions of elitism, sectarianism and social diversity by providing an ethos to transcend religious, ethnic, racial and social particularities.

However, immigrant groups have arrived in Canada with their own histories and models for religious practice only marginally aware of the complex and dynamic politics they were engaging. Like immigrants everywhere, their reasons for emigrating are usually to seek political, economic and social opportunities not available to them in their countries of origin. For many of them religion has provided a primary narrative of meaning and purpose as a way of retaining collective memory while engaging their host society.

Dutch Calvinists, like the Jewish and Roman Catholic communities, robustly entered the politics of public education in Ontario by engaging in political and legal action to achieve specific goals regarding delivery of educational programs, student services and tax relief as well as the more general goal of public recognition and funding. Dutch Calvinist schools are widely recognized to be good schools and they have been well organized for a number of decades. They have also embodied a view of religion which has challenged the "sacred-secular" and "public-private" binaries and their educational practices have blurred the distinction between education and indoctrination. Their advocacy is not complicated by the fact that they are a "racial other", like the Muslim community who are the targets of racial profiling in their claims for recognition (Zine, 2007, 2008; Razack, 2008). Dutch Calvinists tend to participate enthusiastically in a free market economy and democratic values, sharing the values of the Canadian society in which they established themselves. Their history includes the experience of having been liberated from Nazi German occupation by Canadian troops during World War II which has made the fit between them and their host country of

Canada a natural one. The Dutch Calvinist school movement is, therefore, a good case study for the study of religious difference in education since Dutch Calvinists, in every other way, are immigrants who adapt well to a neo-liberal social and economic model.

c. Dutch Calvinist social model

Between 1948 and 1962 around 150,000 Dutch immigrants settled in Canada, part of a wave of post war immigration from Europe. Immigration to Canada was encouraged by both the Dutch and Canadian governments, Canada being interested in the economic benefits represented by immigration and the Dutch government trying to reduce its population as part of a post-war reconstruction strategy. There had been earlier Dutch immigration to Canada which occurred between 1880 and 1914, most of them settling in Western Canada.

Dutch immigrants to Canada identified themselves primarily in two religious groups, Roman Catholic and Calvinist. The Roman Catholics Dutch immigrants settled in existing Roman Catholic parishes, their integration supported by the Church hierarchy. They tended to assimilate rather quickly into Canada, encouraged to find their place in existing Catholic institutions including Roman Catholic separate schools. Dutch Calvinists have a different immigration history, most notably in their tendency to form parallel organizations to engage Canadian culture in what might be termed "outsider politics" (Van Dijk, 1998; Hiemstra, 2005). A number of historical, theological and philosophical strands help to explain this tendency.

One of the theological concepts underlying Calvinism in its 19th and 20th century formulations is an emphasis on an "antithesis" or a radical demarcation dividing people based on religion in which there is a "kingdom of light" and a "kingdom of darkness" with little room for theological compromise. Following Groen Van Prinsterer's 19th century analysis of the Enlightenment and the French Revolution, Dutch Calvinists identified an antithesis between Christianity and the revolutionary, secularizing spirit of the Enlightenment with its emphasis on reason and the basic goodness and rationality of human beings. The conflicted relationship between Catholics, Calvinists and “liberals” in the Netherlands has a much longer pedigree going back to the Reformation movements of the sixteenth century. The point here is that theological and religious differences were important and conflict among the groups was intense.

As a way of managing the conflicts arising out of religious diversity the Dutch developed their own version of multiculturalism in a "silo" or pillarized social arrangement in which the three dominant religious groups (Calvinists, Catholics and liberals) lived in relative harmony and tolerance, forming social and political institutions as expressions of their own religious orientations. While on the one hand there was a strong sense of "antithesis" which found expression in theological and philosophical debate and polemic, the politics of the Netherlands was marked by a pragmatism based on a mutual commitment to social order. For Dutch immigrants, social order and the public expression of religious difference were not mutually exclusive. However, it is also true that the relatively stable pillarization of Dutch society emerged out of intense political struggle, so the Dutch Calvinists came to Canada with memories which included a model of managing religious diversity, but also of the political struggle required to achieve what seemed like a common sense solution to the challenges of religious diversity (Glenn, 1988, 2000, 2011).

The religious orientation and identity of the Dutch Calvinist immigrants was reinforced through regular church attendance and extensive church education programs including the teaching of the Heidelberg Catechism and clubs or societies which focused on bible study and theological debate. However, their religious orientation cannot be described as isolationist. Rather, religious communities were seen to provide platforms for social and political engagement with a strong emphasis on living religion as a comprehensive category through which all human life and, in fact, all reality was understood (VanderMey, 1983; Van Dijk, 1998; Hiemstra, 2005).

For this analysis, four characteristics of Calvinism are relevant. They are a belief in the sovereignty of God, the sacramental nature of all reality, an a-millenial view of history and the divine calling of all institutions and human endeavour. These have important implications for a Calvinist understanding of living in this world which includes social and political engagement going back to its early history in 16th century Geneva where social welfare, public health and democratic institutions was incorporated into government policy. Translated into political terms by Abraham Kuyper, Prime Minister of the Netherlands in the late 19th century, Calvinist principles were formalized in social reform programs, including a program of funding faith-based schools identified under the three dominant religious groups (Glenn, 1988, 2011; MacDonald in Bramadat and Seljak, 2008, p. 173).

Dutch Calvinists arriving in Canada in the 1940's and 1950's carried with them the theological and cultural framework described above. Although they were welcomed by various Christian groups in Ontario, especially the Presbyterians with whom they shared common theological ideas, language and other barriers proved to be an obstacle to an ongoing, comfortable relationship. The combination of their own version of the secularization narrative and their pillarized or silo social model along with the disruption of the immigrant experience lead to their conclusion that Dutch Calvinists had a unique moral and political task with much of their language including references to God's purposes for their immigration to in Canada. Encouraged by their American Calvinist counterparts who had settled in the United States in the 19th century and inspired by their own recent history in the Netherlands, Dutch Calvinists in Canada proceeded to establish parallel organizations carrying a unique vision, fuelled by a combination of theological passion, homesickness and missionary zeal. These organizations provided an important place in bridging the gap between the immigrants and their new country but doing so in ways that protected both their identity and their (divine) calling to be socially and politically engaged.[18] Examples of parallel organizations emerging out of the Calvinist community are schools (the first one established in Holland Marsh, 1943), the Ontario Alliance of Christian Schools (1952), Christian Reformed churches (the first ones established in the 1940's), Christian Labour Association of Canada (1952), Salem Mental Health (1970's), Institute for Christian Studies offering graduate level studies (1967), Redeemer University College (1976), Christian Farmers Federation of Ontario (1954) and the Calvinist Contact (a newspaper, now the Christian Courier, first printed in 1951). Other organizations based on a Calvinist vision have continued to emerge in response to various social and political events and trends.

Dutch Calvinists, then, without knowing the history of the cultural sensitivities at play in their new country, practiced a form of religion in which religion and identity are inextricably linked, forming the basis for public engagement. Their view of society included pragmatic acceptance of religious difference as a contribution and not a threat to public order.

[18] Bramadat and Seljak (2008, p. 28) identify the role of institutions and state and non-state "institutional completeness" in the adaptation strategies of immigrants and minority groups while Stuart MacDonald in the same volume identifies the Christian Reformed Church as an example of institutional completeness (p. 189). Their analysis shows how institutions, among them schools, serve as both protective strategies (in the Dutch Calvinist case, against Canadian secularism and a platform for social engagement.

This did not preclude intense assertion of a unique religious vision, sometimes opposing their educational counterparts in public schools with language coloured by a tendency to see the world through the screen of religion. For example, the following assessment of Ministry of Education goals was included in a document written by a group of Dutch Calvinist educators "prepared for the attention of all who are interested in education". The writers asserted that "What is clear from these general goals is that the perspective of life and education in Ontario is not Christian in that it is not God-centered, but it is man-centered" (1973 May/June Issue, "New Dimensions: Christian Education in Ontario, 1973", p. 5). Further, however, the same document indicated recognition and respect for the "dedication, the professional expertise and the humanity of the Ontario system. We try to learn much from it. And people whose beliefs it reflects certainly have the right to this type of education for their children. The point is this: the religious direction and dominant philosophy of the system is fundamentally at odds with our confession" (p. 6).

What is evident in this working paper is that the authors had no pretensions to any kind of common Christianity and they were quite willing to identify and assert religious differences. However, religious differences, even those strongly and clearly asserted, were not an impediment to mutual respect so that schools representing diametrically opposing points of view could live harmoniously in the same jurisdiction. A recurring theme in this and other publications is that religious difference should not make a difference to social harmony, professional respect and equal access to recognition.

Another Dutch Calvinist publication says, "In order to provide good education, the school cannot treat all possible values equally. That will lead to total moral and intellectual confusion – so educational pluralism must be institutionalized" (Guldemond, 1990, p. 20). This statement, like the one before it, was matter of fact about the different value systems at play in a society but, at the same time made the claim that no school can do justice to them all. In fact, to do so would result in harmful educational practice, at least in this way of thinking about religion in education.

Advocacy for recognition of their schools essentially meant that Dutch Calvinists were asking for a fundamental change in the rules by which religion in Ontario education was regulated and funded. James Tully argues that recognition is not just a matter of symbolic gestures. Rather, it usually involves "an amendment to the prevailing norms of

recognition" as the result of a struggle which, if successful "redistributes the opportunity of citizens to gain economic and political power" (2008, p. 298). Of course, changing the prevailing norms of recognition is a process contested by those social forces in whose interest it is to maintain the prevailing norms of recognition. Dutch Calvinists began, early in their history in Ontario, to engage in a struggle for recognition in the province on the basis that parents should have a right to choose the school which best reflected their religious values, forming more and less coalitions along the way with other groups sharing its goals. Expecting more than symbolic gestures of recognition, they were advocating for public funding of their schools.

In 1958 the board of the Ontario Alliance of Christian Schools (OACS) began legal action, ultimately unsuccessful, challenging the system of municipal taxation which, in Ontario, is based on a dual school system. The system allows Roman Catholics registered in a parish to allocate the education portion of their municipal taxes to the Roman Catholic school system but it forces all other tax payers to support the public school system. In 1962 the OACS successfully negotiated an agreement with Minister of Education William Davis, allowing Calvinist schools with certified principals to host practice teachers from Ontario's teacher's colleges for purposes of certification. In 1969 it was listed as one of the organizations submitting briefs to the Mackay Committee, along with some of its member schools and Christian Reformed churches, the church denomination out of which the Calvinist day schools originated. Here its impact is less obvious, being included under the "alternative proposals" category which were "incompatible with good education" and which would "promote dissension in the community" (Mackay, 1969, p. 26 - 27). In 1971, the OACS supported the campaign which eventually led to full funding of Roman Catholic Schools.

Legal and political engagement has continued, much of it in partnership with other independent schools and faith-based organizations, especially the Canadian Jewish Congress [19]but also other faith groups and school groups representing interests around alternative

[19] After 1967 the Jewish community became more assertive in its advocacy for recognition for Jewish faith based schools. This meant that between 1967 and 1990 they were engaging in two strategies in education. One was the changes within public education for which they were arguing in 1967, successfully concluded in the *Zylberberg* and *Elgin County* decisions in 1988 and 1990. The other was that, along with other groups,

approaches to learning such as the Montessori and Waldorf schools. For example the OACS became a member in the Ontario Association of Alternative and Independent Schools (now the Ontario Federation of Independent Schools) in the early 1970's. In 1982, the OACS, in partnership with other groups, concluded an agreement with Revenue Canada clarifying the charitable status of faith based schools, in 1984 the vice-chair of the OACS was appointed to the Shapiro Commission which, among other things, recommended the inclusion of faith-based schools in public boards as associate schools. In 1993 faith-based schools won the legal battle to grant religion credits. In 1996 the Supreme Court of Canada's ruling in Adler/Elgersma denied the plaintiffs' claim to government support services for their disabled children enrolled in privately funded faith based schools but did protect the right of parents to operate independent schools and ruled that there were no legal obstacles for provincial governments to provide financial support to schools outside the public school system.

The OACS was involved in negotiations with Elizabeth Witmer, Minister of Health, which in 1999, resulted in an announcement to allocate $3.4 million annually for School Health Services for special needs students in independent schools, later increased by $11 million by Ernie Eves in 2000. In each of the cases, opposition came from the Ontario Public School Boards and the Ontario Teachers Federations, among others, who argued that any government services for privately funded faith-based schools represented a threat to public education. In each case, a coalition of faith-based schools including Dutch Calvinists continued to advocate for recognition as schools in the province.

The point is that Dutch Calvinists, like their Jewish, Muslim and Roman Catholic fellow citizens, are faces of religious diversity in education which have their own unique features, ways of understanding religion and its role in education and the institutional forms which can carry the social activity of religion. For all of them, religion represents a category of knowing that cannot easily be privatized or limited by the binary framework of the religious and the secular. They recognize the importance of education as a social practice and the role it plays in perpetuating collective memory, religious tradition and the definition of moral framework. They resist the conflation of public schools, public education and social cohesion and the dominant discourse which problematizes religious differences in terms of

including Dutch Calvinists, they were advocating for a more fundamental change which was recognition of non-Catholic faith based schools which has continued to the present day.

the distinctions between common and sectarian, public and private or religious and secular, which positions non-public schools as perpetual and dangerous educational outsiders. Their tactical responses have followed different trajectories as a result of different histories, theologies and collective memories, all of which play out in different institutional carriers of the social activity of education. However, they all resist the idea that their view of education is socially harmful, that its delivery in non-public schools is, by definition, not true education or that their decision to choose education outside the public school system represents civic disloyalty.

It is also worth remembering that religious groups advocating for faith-based schools are minorities within minorities. The majority of Christians, Jews, Muslims, Sikhs and other religious groups accept public education delivered in public schools for a variety of reasons, one of which is that they accept the characterization of faith-based schools as isolationist, socially disruptive and exclusive. For example, the Canadian Islamic Conference and the Muslim Canadian Conference are on opposite sides of the debate, the CIC supporting and the MCC opposing funding for faith-based schools. The Muslim Canadian Congress emphasises its support of strong public institutions to encourage social integration and to address concerns about Islamic extremism. For them, the state and state institutions provide a pathway to social mobility beyond the reach of religious authorities and sectarian divisions. Christians supporting faith-based schools find themselves at odds with the majority of Christians, including Dutch Calvinists who are increasingly divided over the issue (The Banner, March 3, 2013; June 18, 2011).[20] Among Jews, faith-based schools have always been controversial, most Jews choosing public schools (Sable, 1999).

It could also be argued that supporters of faith-based schools have contributed to the perception that they are outsiders hostile to the wider society, among which are references to moral deterioration of society as the result of secularization (Edlin, 1994, p. 23–25; Guldemond, 1990, p. 18). Jasmin Zine (2008) refers to the concept of a "straight path" as a key motivation for Islamic schools, the concern being that Muslim students will stray from the path if they attend public schools (2008). The Ontario Alliance of Christian Schools, in its brief to the Shapiro Commission, describes itself as an "organization (which) represents

[20] The Banner is the official publication of the Christian Reformed Church. http://www.thebanner.org/)

an educational tradition and a coherent subculture…." (1984, p. 3), suggesting that the Dutch Calvinists for whom it claims to speak accept that they are self-consciously not a part of the Canadian mainstream, at least not in education. The rationale for faith-based schools can reflect links between religion, morality and community loyalty with education which resembles the Ontario conflation of public education, the public school system and civic loyalty. These links can suggest an oppositional relationship between faith-schoolers and the rest of the world (Ammerman, 1987). Even as they have advocated for public recognition and funding, independent and private schools have been cautious about blurring the public-private boundaries out of concerns about the implications of increased state regulation and public scrutiny.[21] Part of their appeal is that they are "sectarian" and able to maintain a unique identity and practices which set them apart from other groups and from mainstream society, often expressed in what others might see as hostile or exclusive language. In other words, supporters of faith-based schools are actors and participants in the representation of their schools as sectarian by design with control over public scrutiny and oversight. While this representation can work against their stated interests, it also works to protect them from outside forces, regulation and influences and it serves to provide a basis for community solidarity (Ammerman, 1987).

In any case, Dutch Calvinist faith-schoolers, along with other religious minorities, have found themselves on the margins of tolerance in the world of Ontario public education. However, they found an opportunity to share their vision of society and of education in the mid 1980's when the Shapiro Commission invited participation from all parties interested in education in a process of reconsidering the role of private schools in the delivery of education.

4.5. The Shapiro Commission 1985

[21] Trinity Western University's attempt to launch a law school is an example of the risks faced by faith based organizations crossing the private-public boundaries, law societies across Canada having come out in opposition due to TWU's life style clauses referring to "homosexual behaviour". Roman Catholic separate schools in Ontario face similar challenges, public funding being accompanied by increasing scrutiny over their religiously based regulation of gender diversity and their requirement that students participate in all religious activities having been successfully challenged in court.

The focus in this section is on the conflicting discourses on religion and its role in education which came into sharp view as the result of a unique confluence of factors in the 1980's and 1990's. The data for examination of this period is taken from *The Report of The Commission on Private Schools* in Ontario chaired by Bernard J, Shapiro, tabled in October of 1985 (hereafter "the Shapiro Commission") and from the brief to the Commission submitted by the Ontario Alliance of Christian Schools. The section proceeds from the Commission's origins, mandate and interpretation of its mandate and its research methodology, to the Dutch Calvinist brief to the Commission and through the Commission report, including its interpretation of the research results and its recommendations and analysis of the social and political context in which it was received.

4.5.1. Background and mandate

By the 1980's the issue of government funding of independent and private schools had been discussed for many years, not only in Ontario but also throughout the world (Shapiro, 1985 p. 1). It was placed on the public political table in a new way by then Premier William Davis when he introduced his initiative to extend full funding to Roman Catholic separate schools. Davis' language in addressing this issue in the Legislature was revealing when he said that the question of Roman Catholic separate schools "legitimately raises questions about the place of independent schools in our province …. (and that) it is timely and useful to review the role of these schools in educating our children" (p. 1). Davis' reference to "our children" suggested that, in his view, independent schools were not a kind of sectarian "other" which was more characteristic of the language of the Mackay Committee and Dalton McGuinty, among others. Using language similar to that of John Tory in the election of 2007, Davis seemed to accept that independent schools engaged in "education", suggesting that public education could be delivered in places other than public schools.

In order to address the questions raised by William Davis, the Shapiro Commission was established by an Order in Council on July 26, 1984 to,

a) document and comment upon the contribution of private schools in elementary and secondary education in Ontario;
b) identify and comment upon possible alternative forms of governance of private schools that provide elementary or secondary education, or both, and make recommendations for changes in governance of such private schools in Ontario as the Commissioner considers appropriate;

c) comment upon whether, with reasonable attendant obligations, public funding of private schools that provided elementary or secondary education, or both, would be desirable and compatible with the nature of such schools;
d) identify and comment upon existing and possible relationships between private schools and publicly supported school boards. (p.1-2)

The mandate was based on the premise that private schools made a contribution to education in Ontario and the Commission's task included documenting what this contribution might be. While the Commission's mandate included consideration of "attendant obligations" as part of any funding of private schools but also that any such obligations be "reasonable" and that they be both "desirable and compatible with the nature of such schools" (p. 2). This suggested that the Commission's mandate was to take seriously issues of accountability associated with funding but that any accountability mechanisms must respect the integrity of the private schools receiving the funding. In other words, the Shapiro Commission was to listen carefully to those very schools whose testimony the Mackay Committee had rejected as harmful to the public school system and to Ontario society.

The Commission's "Plan of Work" included a review of relevant research and policy literature, "special papers", meetings with a variety of government agencies, "informal consultations" with representatives of interested groups across the province, and consideration of briefs from a wide variety of groups and individuals. Shapiro also criss-crossed the province speaking on numerous occasions, apparently making himself available to almost anyone who wanted to speak with him and tabling the Commission's report in October of 1985.

4.5.2. Shapiro Report

a. Introduction

The purpose of this section is to analyze the Shapiro Commission's responses to the many, often conflicting briefs presented in response to its invitation to "Interested individuals or parties who have information and/or wish to comment on any or all of these issues (identified in the mandate–note added) are… asked to submit briefs to the Commissioner" (p. 214). Chapter IV (Public Funding of Private Schools; The Views of Ontarians) contained Shapiro's summary the data on which the Report's conclusions are based. First, the Report cited three opinion polls published "during the early months of the

Commission's work" relating to the question of public funding for private schools, commissioned by the Ontario Teachers Federation, the Ontario Institute for Studies in Education and the Ontario Secondary School Teachers Federation. While Shapiro advised caution about the collection of data "sponsored by groups with a particular position on this public policy issue", he observed a "quite consistent picture" indicating that "a majority of Ontarians appear opposed to the public funding of private schools but that such funding is supported by a substantial minority group" (p. 19).

The *Shapiro Report* identified two common themes in the "informal consultations", the first of which was that Ontarians generally had very little exposure to private schools and that there was misinformation about the size of the private school sector and about the socio-economic demographic making use of private school services. The second theme was that almost all those involved in both privately and publicly funded professional education expressed "strong support for the maintenance of a high quality public school system that would be free to all, open to all and with a range of programmes sufficiently broad so as to be appropriate for all" (p. 20).

After that fundamental commitment, "the consensus ended", breaking down over the issue of public funding for private schools between members of similar groups (for example, business people). The key concerns among those opposed to funding for private schools the informal consultation process included increased cost to taxpayers, decrease in public support for public schools and the implications for less advantaged students, fragmentation of the public school system with "devastating impact within smaller communities" and erosion of the role of public schools in fostering tolerance and understanding of social diversity in a multicultural society (p. 20).

On the other hand, "a substantial minority" of those participating in the consultation process supported funding for private schools, basing their arguments on the value of increased choice for parents and students, the unfairness of Ontario's public policy which funded the school of one religious group while refusing to fund others, the financial burden of parents having to pay both public school taxes and private school fees, support of religious freedom for those parents for whom education is a religious practice and dissatisfaction with the delivery of education in public schools. There were significant differences of opinion among those supporting funding for private schools about the degree to which private schools

should be funded and the mechanisms by which it should be done relating to concerns about the impact on public schools and to conditions attached to funding which might jeopardize the identity of a particular school. Virtually all agreed that government had an important (if limited) role in the regulation of education, by setting minimum standards, including observations that under the current regime the Private Schools Branch of the Ministry of Education did not even inspect privately funded elementary schools (p. 20 – 21).

b. Written Briefs

In this section Shapiro's data and his observations provide a survey of the main voices engaged in the politics of Ontario public education.

b. (i) Public school boards

Shapiro noted that there was almost unanimous agreement among public school boards and affiliated teachers federations that funding for private schools would (1) violate the private-public boundary, (2) threaten the pluralistic nature of Canadian society, (3) deny students equal access to quality education and access to the benefits of a diverse school population, (4) cross a boundary by siphoning off public money for sectarian religious purposes, (5) encourage schools which would not be publicly accountable, would be restrictive in their admissions policies and have uneven professional standards for teachers, (6) would siphon public money away from already under funded public institutions, (7) attract more motivated students leaving public schools to serve the students with greater learning and social needs and (8) provide encouragement for schools which might well not promote basic values shared by "almost all Canadians". Briefs submitted by the Victoria County Board of Education in Lindsay and the Oxford County Board of Education in Woodstock argued "That the public educational system does serve the needs of Ontario is suggested by a number of writers". A brief from the Ontario Association of Education Administrative Officials asserted that "the values reflected by the boards of education are seen as the shared values of almost all Canadians, irrespective of their religious background". The brief submitted by the Federation of Women Teachers' Associations of Ontario, Shapiro observed that "the relatively secular, humanistic nature of the public schools is seen by some to truly reflect the current societal conditions in Ontario and Canada". According to the Tamiskaming Board of Education, "there is no guarantee that independent schools will in

fact inculcate basic values and provide programmes that will ensure a student a productive future and schooling for responsible citizenship" (p. 25).

While there were nuanced differences among the public school boards and their teacher affiliates, there was general agreement that Ontario's public education system, based on a "relatively secular" humanism, represented the values held by most Canadians "irrespective of their religious background" (p. 25). While there was recognition that Canada's growing diversity required that public schools adapt and while there was some recognition that Ontario's public schools were not perfect, there was virtual unanimity that reform within the system was the only way forward. There was equally strong agreement that delivery of public education through public schooling was essential for the well-being of Ontario society and its citizens (p. 22 – 26).

b. (ii) Separate school boards

While there were differences about the mechanisms by which it could be accomplished, submissions from separate school boards and affiliated organizations supported the principle of funding for private schools. The overall basis of this position was the rights of parents to choose the education they deemed most suitable for their children. The freedom of parents to choose their preferred school option without penalty as a basic right in a democratic society was foregrounded with religion, religious difference and religious equality being in the background if they were mentioned at all. There was overall agreement that funding of private schools should be contingent upon compliance with the provisions of the *Education Act*, along with mechanisms of public accountability. However, there should be protection for the widest possible range of educational options reflecting the diversity in Ontario society (p. 26 – 28).

b. (iii) Jewish schools

The majority of submissions by presenters involved in the Jewish school sector indicated a significant shift from Jewish opinion in 1969. The Canadian Jewish Congress brief to the Mackay Committee (1967) had reflected earlier Jewish desire to be included in the public school system; however, the submissions to the Shapiro Commission overwhelmingly supported public funding for Jewish private schools. While privately funded Jewish schools had been operating in the province for many decades, the Jewish school movement became more assertive about its public role and its claim on public

recognition during the 1970's and 1980's. This shift was evident in the *Shapiro Commission Report* where Jewish arguments in favour of funding included; the inequity of "double taxation" [22],; the fact that education is an integral part of Jewish religious practice; public schools cannot provide the education most appropriate for Jewish children and families; Canadian society, claiming to be pluralistic, has an interest in supporting Jewish schools which are an "a legitimate and positive factor in the Canadian mosaic" (p. 28). In addition, constitutional protection of funding for Roman Catholic separate schools should be the basis for the extension of funding to other religious groups.

The parties interested in Jewish schools were aware of the charge that religious schools had discriminatory hiring practices, based on religion but the response from the Leo Baeck Day School said that, "Because the very nature of a school is dependent upon the commitment of its staff and the composition of its student body, guidelines directed to total openness in hiring practices and admissions policies would likely have the result of destroying the independence and uniqueness of the school and should be avoided" (p. 28 - 29).

b. (iv) Protestant denominational schools

Interested parties affiliated with Protestant denominational schools were split between those who supported government funding for private schools and those who opposed it. Those who supported some form of government funding for private schools did so on the basis of fairness and justice since the schools they represented delivered high quality education and on the argument shared by other supporting groups that "parental choice of schools is seen as a prior right" (p. 29). This group argued that the right to educational choice might have been established by the United Nations and in other jurisdictions but the ability of parents in Ontario to exercise their choice was made much more difficult and, in many cases, impossible by the burden of "double taxation" also identified in the Jewish arguments. Protestant denominational schools perform a valuable public service, not only by delivering excellent education but also because they are a factor in Canada's social pluralism which was "threatened when government actively promotes one view and way of life and strongly

[22] "Double taxation" is the phrase used by some private and independent schoolers to refer to their obligation to pay public school taxes along with private school fees to access educational services in private and independent schools.

discourages the others". Ontario public policy did harm by "forcing all people to think the same way, by officially sanctioning certain values to the exclusion of others, violates their God-given humanity and creativity" (p. 30). In this view, the state's role in education should be to create an environment in which educational diversity flourishes in institutional form. In language similar to that expressed in the Jewish submissions, religion and education are, for the Protestant schools represented in this group of briefs, inextricably linked. The brief submitted by Alliston Christian School said, "Education is inherently and inescapably religious in the sense that we believe all education grows out of a conviction as to how the world ought to be" (p. 30).

However, at the same time those supporting public funding of Protestant schools were ambivalent about its implications for their independence and the unique contribution they made to Canadian society. Opinions ranged from those who argued that there should be no government constraints to those who agreed that funding must be accompanied by some level of public accountability. However, accountability standards should be clear and the mechanisms for achieving them should respect those already in place, having emerged organically out of the schools and their supporting organizations. Teacher certification was seen as important but should also respect the unique needs of each school and school movement. However, regarding accountability and teacher certification, representatives of Redeemer Christian High School and Ottawa Christian School argued that they already followed Ministry of Education curriculum guidelines and that preservation of their unique school identity made selective teacher hiring an essential component of any arrangement for funding negotiated with the government.

However, there were also significant voices representing privately funded Protestant schools expressing opposition to government funding (p. 32–33). Their arguments included references to "separation of church and state" and rejection of any form of government control. About this argument Shapiro observed that, 'Independence is valued more highly than government funding, the acceptance of which: "would soon direct ministry or government involvement in the classroom, and/or regulations regarding curriculum or teaching methods and procedures" (p. 33).

b. (v) Conference of Independent Schools

The schools in the Conference are more traditionally thought of as "private" schools and they tended to view public funding with "great caution" (p. 33), their concern being primarily based on the implications of increased government oversight and the threat it would represent for their independence to deliver a high quality education in a unique school environment. The brief submitted by Upper Canada College referred to an "increasingly prescriptive" trend in the Ministry of Education program guidelines which it, along with "many schools, both public and independent", viewed with "growing anxiety". Increased centralized control by the Ministry of Education "discourages teachers and schools from being innovative and make it difficult or impossible for a particular school to meet the special needs of its students" (p. 33). One brief identified the benefits to public education of a vibrant independent and alternative school sector, saying, "it is the very existence of independent and alternate schools which can help ensure that public education remains vital and responsible" (p. 34).

b. (vi) Schools for special education

A number of submissions from organizations and individuals indicated a particular interest in the student population whose learning needs were not being met in the public school system. The primary argument presented by this group was for flexible funding mechanisms which would allow students, their parents and school access to appropriate resources regardless of their source. While the interests of this group, like those of the Conference schools, did not directly relate to the issue of religion, their submissions to the Shapiro Commission argued that, in the words of the Remedial Training Centre, "despite the enactment of relevant legislation, the majority of public boards neither will be able nor can be expected to be able to provide for the needs of all children" (p. 35).

This argument challenged the claim by the Ontario public school system that it is equally accessible to all the children of the province and that it can serve all the needs represented in its student population. A "significant minority" of Ontarians, in the findings of the Shapiro Commission, did not find this to be the case. However, while the proponents of funding for private schools are often represented as being a threat to both public schools, public education and to social harmony, private schoolers speaking to the Shapiro Commission did not see themselves in that way. Shapiro concluded that there is strong and widespread support "for the maintenance of a strong, non-denominational public school

system" among all the participants in the Commission consultations. Based on a number of data sources, the majority of Ontarians did not favour funding for private schools although there is a "significant minority" which did favour a change in school funding policy. This significant minority included groups with very different socio-economic, ethnic and religious profiles supporting private schools for a wide range of reasons. They proposed different mechanisms by which funding could be delivered and had widely differing opinions about the role of the government in education. The basic agreement among them was consistent with voices of resistance throughout the history of Ontario education; that the conflation of public schools, public education and social harmony, while it may serve the interests of the public school system, does not serve the needs of at least a significant minority of Ontarians and is one that needed to be addressed (p. 34-35)

4.5.3. Dutch Calvinists and the Shapiro Commission

If the Mackay Committee in the late 1960's had seemed to the Jewish community like a light at the end of a long public education tunnel, the Shapiro Commission provided a similar source of hope for Dutch Calvinists. They were well represented among the names listed among the briefs submitted either as individuals, as representatives of schools and school societies, churches and social advocacy organizations. One of these was the official brief to the Commission submitted by the Ontario Alliance of Christian Schools (hereafter the OACS), written by its then Executive Director, Dr. Adrian Guldemond, and presented to the Commission in 1984. The brief, titled, *The Christian Day School Alternative: Report to the Commission on Private Schools in Ontario*, was statement of arguments which had been presented at various levels for at least thirty years with references both to its Dutch Calvinist heritage and to its interpretation of moral and political task based on its form of Christianity.

Section I of the OACS Report to the Commission contained a synopsis of the basic arguments, unambiguously challenging the discourse in Ontario public education in which public schools were the only delivery mechanism for public education as a state instrument for achieving social harmony. The OACS identified itself as a self-governing organization with its own accountability procedures, serving a network of schools with "an excellent reputation". The brief addressed the issue of public accountability saying, "The OACS proposes that the establishment of accreditation standards, defining minimum requirements

is the appropriate basis for public recognition" (OACS Report, 1984, p. 1, original capitalized). The state, in view of the brief, had an important but limited role in the delivery of education, one of its main roles being to redistribute public resources, "since the purpose of public funding is the provision of necessary services to all citizens (p.1). Public funding should be released to those schools meeting the established requirements "since the parents have a prior right to choose the education of their children" (p. 1).

The OACS argument that its member schools had a right to government funding was supported by the contention that OACS schools provided a valuable service by training students "who graduate to become productive and responsible citizens." The brief situated the OACS schools in "the Judaeo-Christian tradition in Ontario" and as community based small scale enterprises resisting a trend toward excessive centralization and economic conglomerates. The OACS was claiming an important social role because, "the public system cannot legally provide a distinctively Christian education" and that opening up more institutional sites for the delivery of education would provide healthy competition among schools. Consequently, it argued that governments should encourage, rather than discourage, Christian schools through some form of funding.

The brief proceeded to identify its educational confession in the context of Christian tradition clearly basing its educational vision on its reading of the Bible citing many passages to establish its confessional framework of reference. It included statements of social and educational philosophy based on its form of Christianity, going into detail about the implications of the religious and philosophical framework for professional standards of teachers, school culture and other aspects of the operation of a parallel school system. By describing a comprehensive educational model currently in operation in the province, the Ontario Alliance of Christian Schools was presenting itself to the Shapiro Commission as a credible third school system in the delivery of education in Ontario, alongside the public and separate school systems. In this view, there is no clear or necessary distinction between the religious and the secular, nor is religion, in the first place, a private matter to be kept out of public spaces.

The Shapiro Commission in the mid-1980's represented an opportunity to religious minorities engaged in education to be heard at the highest levels of government through a mechanism designed to seriously consider what they had long claimed; that the fundamental

problem in the organization of public education was not the *Drew Regulation* which had made religious instruction an integral part of public school programming. For the OACS, the problem in Ontario had originated in the state which, through its agency the public school system, had claimed exclusive control of public education on the basis of a form of common Protestant Christianity, thereby denying the legitimate claims of religious minorities to public recognition in education. The recurring theme throughout Dutch Calvinist literature has been that religious difference makes a difference but not in the way so often represented in debates about public education. In this argument religious difference is not by definition a threat to social harmony and cohesion, nor does a religious framework by definition lead to bad education. Religious difference demands an organization of public education which encourages organizational and structural diversity. In this model, parents have the prior right to choose without penalty the education which they understand to be most closely aligned with their family values and the needs of their children as a contribution to healthy social diversity and a matter of justice and right, not a matter of grudging tolerance.

Dutch Calvinists provided one more voice calling for change to the way religion is regulated and practiced in Ontario's public schools. Like the Roman Catholics they challenged the idea that the state is the primary stakeholder in the delivery of public education but unlike the Roman Catholics for whom the church is the primary stakeholder in the delivery of education, Dutch Calvinists have tended to use the language of family and religious communities as a way to organize education. However, by presenting itself as a third educational alternative to public and Roman Catholic separate school systems, the Ontario Alliance of Christian Schools was, in 1984, advocating for reconsideration of a foundational idea in conceptualization of religious diversity in Ontario. The OACS was arguing for a generous interpretation of *s. 93* to suggest that it had dynamic implications for ongoing expansion of the public education umbrella to include non-Catholic faith-based schools established by groups who were not actors in 19th century Ontario or who were not in a political position to exercise their voices at that time. In other words, it was arguing for "an amendment to the prevailing norms of recognition" (Tully, 2008, p. 298).

The Calvinist argument was similar to the Jewish advocacy offered in 1967 in two ways. The first was that religious instruction should not be mandated in public schools and the second was that no one religious group should have a dominant role in the delivery of

public education. However, the reasoning of the Dutch Calvinists in the mid 1980's and the Canadian Jewish Congress in the 1960's were different in important ways. In the arguments presented by the Canadian Jewish Congress, Christian religious instruction was identified as coercive to Jewish children and families, violating the Ontario legacy of inclusive, non-sectarian public education. Their proposed resolution at that time was that religious instruction should be eliminated from public schools. The Calvinist argument foregrounded the role of the state rather than any one religious group acting as a voice for state interests. It was based on a more comprehensive role for religion in education which identified coercion and indoctrination, not in a limited part of the academic program identified as religious instruction but as the inevitable result of the way public education is organized in Ontario. The 1984 brief argued that Christian religious instruction should not be offered in public schools because they were essentially "non-Christian" and because, being state actors, their doing so would be an act of state coercion and indoctrination. In the OACS analysis public schools were Christian in name only and "secular" in reality and should not pretend to be otherwise despite their being represented as inclusively Christian. By mandating Christian religious instruction public schools were doing harm to those students who had taken the language of inclusive Christianity at face value.

The OACS positioned itself as the new carrier of the "Judaeo-Christian tradition" on which public schools had once been based but had abandoned. The goal for the Jews in 1969 had been repeal of the *Drew Regulation* to make public schools more inclusive by backgrounding religious difference and emphasising a common, non-religious approach to the teaching of morality and values. The Dutch Calvinist strategy in the mid 1980's was to foreground religious difference to demonstrate the impossibility of religious inclusivity in public education, thereby supporting advocacy for their role as "the Christian day school alternative". Both Jews in 1967 and Dutch Calvinists in 1984 wanted to be included in the delivery of Ontario public education system but their ways of conceptualizing how that inclusion might be achieved were quite different. The OACS claim was that its member schools should be funded as a parallel alternative to the existing Roman Catholic school system and the public school system currently operating under the "old 'enlightenment' argument" (OACS, 1984, p. 43).

4.5.4. Shapiro Commission Recommendations

In introducing the Commission's recommendations in Chapter V, Shapiro made two observations. First of all, the research on the educational outcomes demonstrated by students in private schools was sparse and inconclusive due to the fact that it did not take into account all the variables not related to the public or private status which might have contributed to the higher or lower student achievement. [23] His second observation was that research results did not directly result in public policy since the facts generated by research were interpreted through a complex screen identified as "values". The description of "values" included shared commitments which made a "truly shared existence (as opposed to mere co-existence) … possible" (p. 38). Shapiro did not address the power issues associated with the problem of which values were adopted as those essential to a "truly shared existence" but he did say that conflict over values have been a key factor in shaping "Ontario's policies in education". Further he observed that "a commitment to common schools and/or private schools starts with values that are not themselves subject to empirical demonstration" (p. 38). The public policy results of any research project were, therefore, the result of a political process.

The *Report* went on to establish "Some Matters of Principle" (p. 38), summarizing the Commission's commitments to the value of education in a democratic society. In particular, mechanisms should be developed to maximize access for all citizens and that "schools can contribute to the strengthening of the social fabric by providing a common acculturation experience for children" (p. 39). However, in describing the stakeholders, the *Report* said that a regulatory mechanism should "provide for the shared responsibility of government and family; the family exercising its natural interest in and responsibility for the welfare of the child and the government acting on behalf of the interest of the wider society and as the protector of the rights of individual children" (III c, p. 39). By identifying the family as the primary partner with the government, Shapiro seemed prepared to recognize

[23] Since 1985 the most recent surveys of private school achievement were the 2012 research projects conducted by Donald Sikkink of Notre Dame University who served as principal researcher and Cardus, a Christian research organization based in Hamilton, Ontario. It examined the longer term impact of Christian schools in Canada and the United States on alumni, specifically as regards their academic trajectories, their professional status and their civic involvement. The research project is available at http://www.cardus.ca/research/education/CES/

that education can be provided as a valued public service in different social sites and that public policy should provide protection for a variety of delivery mechanisms.

The Commission seemed to consider the roles of tradition, the family and other social agencies in the delivery of education in an approach similar to the one taken by Hope (1950) and different from the one taken by Mackay (1969). The 1969 report suggested a more conflicted relationship between the school, family and tradition with the role of the public school being to mitigate the damage done by influences in a child's life which might point them toward a traditional past rather than toward a modern future. Mackay explicitly identified science as the source of validation for educational principles and pedagogical practices as opposed to other epistemological frameworks, among them religion and tradition. The Shapiro Commission seemed to conceptualize the various influences on educational outcomes differently, placing schooling as one among a number of partners, saying,

> Great importance is also attached by the Commission to the shared role of the school, particularly vis-à-vis parents in the education of young people. Education does not begin and end with the school. The home, the place of worship, and the cultural traditions of the family all play a major role in shaping the child's attitudes and learning. (p. 39)

However, the issue of social harmony was a concern for the Commission when it emphasized the importance of a "common, non-commercial acculturation experience in the socialization of the young" which "becomes ever more important in an historical context marked by increasing social fragmentation and diversity in which groups compete for their place" (p. 39).

Trying to balance the creative tension between parental choice and common values, the Commission placed the emphasis in its public policy considerations on the protection of a "common public school" which "represent the priority, but not necessarily the exclusive public investment in education" (VI e, p. 40). However, the *Report* also said that the arguments in favour of a public policy making the public school system the "exclusive public investment" of the government in order to achieve a common acculturation experience can be "overstated so that all dissent and variation is suppressed in favour of some single, necessarily imperfect, vision, and it is an unfortunate truth that the public school community has not always avoided this pitfall" (p. 40). Arguing that private schools have made a

valuable contribution to the delivery of public education, it said that although the government was under no legal obligations to fund private schools, "some public assistance to private schools might, nevertheless, be a feature of a creative public policy" (p. 40).

Examination of the Shapiro Commission's summary of its principles shows the perpetual creative tension between protection of diversity and social harmony in public policy. Of course, this is not unique to Ontario with jurisdictions around the world struggling with the same tension. However, the resolutions depend in part on how religious diversity is problematized. In the *Mackay Report*, religion and tradition were seen as impediments to the achievement of education appropriate to a modern, diverse society with their effects being mitigated by a "totally new" approach to education based on scientific principles. The Shapiro Commission seemed to have taken a different approach to the conceptualization of religious and social diversity, not unaware of its potential to fragment Ontario society but not making that potential the essential point of analysis. The central point for Shapiro was that education was embedded in a diverse social environment which must be reflected in public policy and practice, partly for the benefit of the subgroups whose needs were not adequately addressed in public schools but also for the public schools whose single vision was "necessarily imperfect". The public school system, having successfully argued for its position as the "exclusive educational investment" of the government had sometimes resulted in the suppression of diversity, a tendency also observed by the minority report in the Hope Commission and by others resisting the common school project from the 19th century into the 21st Centuries.

The principles to which the Commission was committed were evident in its sixty one recommendations to the Ontario government in 1985 (p. 40–68) and considerations of the costs resulting from implementation of the recommendations (p. 68–69). They addressed the implications of the principles for public accountability (#1,2), teacher qualification and accreditation (#3, 13–16) legal status and minimum standards of private schools (#4 – 8), legal responsibilities to operate a private school (#9 – 12), mechanisms for public funding of private schools (#17–20), governance models (#21–32), recommendations for reform of both public and separate schools including changes to the *Education Act* to accommodate private schools (#33–40) , pre-school programmes and home schooling (#41–44), religious education (#45–47), special education (#48–54), and "some matters of process" (#55–61).

The focus here is on the recommendations most relevant to this thesis and on the words and phrases which most clearly represent the intention of the Commission. Analysis of the recommendations reveals that the discourses identified earlier in the thesis are also evident in the *Shapiro Report*.

A recurring theme in the recommendations was the attempt to find a balance between accountability for adherence to some kind of provincial standard of competence and the protection of the unique identity and contribution of individual independent schools or school organizations. Thus teacher qualifications and accreditation were identified as important but the mechanisms recommended by the Commission attempted to achieve a standard which would be recognizable by parents and be adaptable to the unique school contexts in which they would be implemented. While "citizens of Ontario, through the Ministry of Education should expect that anyone teaching children in the province is at least minimally qualified to fill" the role of teacher, qualifications in Recommendation 3 read as follows;

> (ii) in private schools
> --an individual holding an OTC (Ontario Teacher Certificate); or
> --an individual deemed by the Ministry of Education to be qualified to teach at the private
> school at which he/she is a staff member;.
> (iii) elsewhere as:
> --a parent or guardian conducting home schooling; or
> --an individual holding an OTC; or
> --negotiated between the local school board and the individual in charge of the educational programme based on the individual's academic qualification, teaching experience and professional training.

The point is that the *Report* expressed respect for the integrity of private schools and their capacity to deliver education and therefore recommended collaboration between representatives of independent schools, the Ministry of Education, Ministry of Colleges and Universities and Ontario Faculties of Education in designing flexible programs allowing non-certified teachers to earn an Ontario Teacher's Certificate (#16).

In its discussion about the legal status of private schools, the *Report* addressed the use of categories in the *Education Act*, recommending that the category "private" be replaced by the term "independent" (#4). The reason for this recommendation was that "private" suggested a fundamental separation from public space which was misleading given the important public contribution of privately funded schools. The *Report* also addressed the use

of the category "school" which was restricted to those educational institutions owned and operated by publicly funded boards (#6). The narrow use of "school" in the *Education Act* has meant that those educational institutions owned and operated by non-government organizations are not legally considered schools with important implications for public recognition and access to public funding. The use of categories in the *Education Act* reinforces the idea that in Ontario true education is delivered only in schools which by definition are those educational institutions owned and operated by public or separate school boards and publicly funded by the government. This persistent discourse has had important regulatory effects in Ontario law, regulation and in school practice and one which Shapiro addressed in his recommendation that independent, private and publicly funded schools be categorized as "schools" in the *Education Act*.

Recommendations #1-16, while they did not directly address the issue of funding, did reflect a groundwork of principles and mechanisms for public recognition of the role of independent schools. The *Report* included a section titled "The Public funding of Independent Schools" summarizing the arguments for and against public funding for independent schools. The main arguments in favour of government funding were the parents right to choose in a democratic society, public funding of Roman Catholic schools and the burden of "double taxation". However, other arguments referred to the benefits to the public interests of greater efficiencies and more consistent delivery of educational services encouraged by competition among institutions.

The main arguments against the extension of public funding for independent schools were that public schools are already underfunded, private schools segregate students along lines of religion and class thus undermining the common educational and social experience that only public schools can create, funding of private schools would erode public support for public schools and foster a two tier educational system "inimical to the democratic tradition that public schools are intended to serve" (p. 47). While the opponents of funding for private schools recognized the growing social diversity in Ontario, they argued that the social and educational needs generated by that diversity should be met within the public school system. They also directed the attention of the Commission to a demographic trend suggesting a decline in student population going into the future, the implication being that

along with competition for public funds, competition for students would harm public schools, and by extension also harm public education thus undermining social harmony.

The Commission did not accept all the arguments presented by either the supporters or the opponents of public funding for independent schools. However, it did agree that the public policy allowing funding for Roman Catholic separate schools while denying it to other faith based schools was discriminatory, based on the "relatively permissive nature of *Section 93* of the *British North America Act*" which provided a "strong argument" in favour of funding for a greater variety of schools, particularly when *s. 93* was read in the context of the "anti-discrimination provisions of *The Canadian Charter of Rights and Freedoms*" (p. 49).

The Commission rejected the argument presented in a number of briefs that *s. 93* was a "historic mistake". Its interpretation of *s. 93* would later be repeated by the plaintiffs in *Adler* and *Bal* and rejected by the courts; however, it was significant in the context of the mid 1980's when there was a real contest over the role of religion in public education and an attempt to consider the possibility that public education in Ontario could be delivered in a variety of institutional sites. In other words, the Shapiro Commission seemed prepared to re-examine a number of ideas that had been foundational to public schools since their early beginnings in the 19th century.

The Commission accepted the idea that public and separate schools should be the funding priority in public policy along with the argument that public schools were underfunded. However, this did not lead to a conclusion that no public funding should be extended to private schools. In fact, the costs of implementing Shapiro's recommendations "were estimated at no more than $200 million annually", which, when compared to the $6.5 billion annual expenditure on public schools, did not constitute a financial threat to public school funding (p. 49). Besides, the Commission noted that educators spent the amount allotted to them and therefore could not be expected to imagine that there would be extra for rival school movements.

The Commission accepted the arguments that social cohesion was an important and pressing issue and that there should be more rather than fewer "common cultural touchstones" and for the need for the development of "tolerance" in the young citizens of the province. The *Report* expressed "some sympathy for" the argument that public board schools "represent the only institutional vehicles that is available for providing a common but non-

commercial experience for young Ontarians of, at least potentially, widely differing personal and family backgrounds" (p. 50). However, the Commission noted that in actual fact public board schools did not provide a common experience, given the wide diversity within the public system.

Further, the Commission noted that, while both public board and independent schools expressed a commitment for the civic value of tolerance, it did not see much evidence of this commitment in actual practice. The Commission observed that public schools too often assumed that physical proximity among students of different backgrounds would inculcate the desired civic values without being intentional in their programs. At the same time it noted that religiously based private schools "rather too easily assumed the equivalence of piety and good citizenship without taking into account that, for at least a number of religious groups, the claim to universality has often meant the spiritual repression of other religions and cultures" (p. 50). There were, in the opinion of the Commission, no easy ways to predict which school settings would produce citizens with the civic values identified as fundamental to Ontario's multicultural diversity.

Examination of the *Report* reveals a struggle to find the balance between protection of social harmony on the one hand, with protection of the rights of minority groups on the other. This is tension inherent in the management of social diversity running throughout the history of Ontario public education with religion being a particularly sensitive point of contact between the two equally important social values. Shapiro seemed always aware of this tension, illustrating it by a reference to Egerton Ryerson. Writing about Irish Roman Catholic refugees of the Irish famines in the mid-19th century, Ryerson argued in favour of making accessible the benefits of a common education for "the families of these unfortunate people" so that they might be prepared for "industry and intelligence" and not the "idleness and pauperism, not to say the mendacity and vices of their forefathers" (p. 50). Ryerson was a social and political reformer courageously challenging the power interests of his day but for him, Irish Roman Catholics had tendencies of character and behaviour which, being beyond tolerable diversity, needed to be domesticated by the common schools so that their children at least, would acquire the necessary civic values. However, Shapiro observed that for minority groups on the receiving end of such attention "large-scale common settings are often repressive settings" (p. 50). On balance, however, the Commission found it to be

"intuitively plausible" that the civic values of tolerance and understanding of others was more likely to occur in more socially diverse educational settings. It concluded that, "the public school represents… the most promising potential for realizing a future characterized by a more fully tolerant society" (p. 50).

The strongest point of agreement with those opposing funding for private schools was around the issue of equality of educational opportunity, given one of the "historic missions" of the public school to act as a kind of "social mobility ladder" for young people who do not bring to schooling special advantages of background, experience and/or wealth" (p. 50). The Commission agreed with this characterization of public schools despite the fact that they had not always lived up to that ideal observing that "it has often been observed that the public schools help reinforce and maintain the high status of exchange rather than the use value of credentials". At the same time, the Commission noted a "hidden curriculum that favours the middle class and is simultaneously destructive of working class children and values", and that they, "on occasion…. are said to actively prevent citizenship and actively promote the stifling of self-government" (p. 51).

4.5.5. Shapiro, independent schools and risk management

Shapiro acknowledged that among the distinct advantages of independent schools was their freedom to design programs to serve the needs of unique populations, "at least for those for whom the school is designed and who can afford their cost." However, the Commission went on to express concern about the potential social costs of full funding for such schools because "the higher achieving and more affluent students who could not otherwise afford them, would leave public schools to seek the benefits available in independent schools. This, in turn, would erode the ability of public schools to engage in their "historic tasks" of bringing together students of different backgrounds and to act as a "social mobility ladder".

The Commission's conclusions reflected its cautious acceptance of independent schools, agreeing with the broad outlines of the dominant discourse in Ontario in which public board schools are the primary institutions to deliver public education. While the Commission parted company with the dominant interpretation of *s.93,* suggesting that it was "relatively permissive" and rejecting the interpretation that it was an "historic mistake", it

nevertheless viewed non-public schools as potential threats to public schools and concluded that their impact must be mitigated by a variety of means.

The nuanced differences in interpretation of the drawbacks of public schools and of private schools in the conclusions are revealing. The concerns about public schools were identified as issues of *performance* which must be addressed if public schools were going to achieve their mission. The drawbacks of private schools, on the other hand, were expressed as issues *inherent in* their identities. In other words, public schools may have had their drawbacks and shortcomings but those were peripheral to an organization that was basically sound in principle. This did not mean that the Commission was unsympathetic to those citizens for whom public schools were not universally inclusive and, as a result, felt they must opt out. However, while statements earlier in the *Report* suggested critical engagement with the conflation of public schools, public education and social harmony, in the end the Commission repeated and reinforced the dominant discourse in public education in its conclusions.

The ambivalence of the Commission about private and independent schools was evident in its discussions of various levels of support and possible cooperation between public boards and independent schools. They included "Programmes of limited support" (p. 51) and "Associated schools" (p. 53). Under "programmes of limited support" the Commission recommended that independent schools should, through a modification of the provincial "Capital Grant Plan", be made eligible to lease or purchase surplus public school facilities, provided they were used for educational purposes (p. 52, #17). However, its proviso that they should be placed "just below the priority basis for other school boards" was consistent with an earlier statement that, while the legal status of independent schools "should be more explicitly recognized in provincial legislation" as per Recommendations 4 and 5 (p. 43), "the Commission does not … believe that such schools have a right to public funding in any way commensurate with that provided to the Province's public schools" (p. 51). At the same time, under "Programmes of limited support", the Commission recommended sharing of transportation routes and buses (p. 52, #18, 19) and that the "General Legislative Grants Regulations" be amended to release funds for learning materials purchased by independent schools (p. 52, #20). Shapiro recognized that many of these activities were

already taking place across the province (p. 53) which his recommendations were designed to support.

It is clear that the Shapiro Commission was genuinely listening to the voices of Ontario citizens on both sides of the debate over the shape of public education and that it was sensitive to the discrimination inherent in Ontario public funding policies. It recognized the valuable contribution to the delivery of education in the province made by independent schools while also expressing respectful skepticism about the claims made by all parties, including public schools, about their moral or educational superiority. However, it is equally clear that, like the Mackay Committee before it, Shapiro was listening through the screen of the dominant discourse in Ontario public education. This is evident in its recommendations under the heading "Associated schools" which were the most radical of the Shapiro recommendations, at least within the confines of the debates in Ontario although quite conservative in the global context.

The Commission opened its discussion of the associated school model by saying that "the health and viability of the Province's public schools were not its only concern", noting with approval the ongoing local negotiations between independent and public schools to arrange a variety of cooperative activities. The Commission stated its belief that opportunity to negotiate should be encouraged through an "association between a board school and an independent school" that would be "both substantial and formal" in which independent schools which met particular criteria regarding teacher qualifications, free and open admissions policies, could, under certain circumstances, apply to become an "associate school" under the organizational umbrella of a public board (p. 53).

The school's independence would be protected by being operated by a board of governors, at least half of which must be parents of students attending the school (p. 53 # 21), and having authority to hire and supervise staff, raise funds for organizational needs except through tuition fees, purchase, rent, own or lease property, establish enrollment levels, provide a religious base for its programmes (p. 55 #29). The associated independent school would be eligible for provincial grants based on the amount of the provincial per student cost of education, the precise amount being negotiated between the public board and the associated independent schools (#26). The associated independent school would be eligible for access to consulting, transportation and programme services (p. 55, # 27) and the

Commission recommends ongoing sharing of academic programmes, extra-curricular activities and community activities.

While the associated school model was one of many models in operation around the world which had formalized and protected educational and religious diversity, Shapiro's introducing it into Ontario represented the introduction of an important new idea into Ontario's public school legacy. Although the Commission placed itself within the dominant Ontario discourse seeing religiously based education as marginal to public education, it nevertheless broadened the boundaries and nature of the religious diversity imagined by the Hope Commission in 1950 and the Mackay Committee in 1967. Shapiro explicitly identified the public school system as the primary vehicle to deliver public education and social cohesion but took seriously the significant minority for whom education and religion were intertwined in ways that had led them to identify public schools as a threat to their religious identities (Ammerman, 1987; Glenn, 1988, 2011; Bader, 2007).

While its mandate included examination of the role of private schools in Ontario, the Commission was listening to submissions reporting frustration with their experiences of the public school system. While the Commission recognized the legitimacy of independent schools in delivering education, its cautious, conservative recommendations reflected its real priority which was reform of the public school system. Its recommendations suggest that the Commission was engaged in the management of risk to the public school system by the growing independent school movement.

The emphasis on the reform of public education was evident in the fact that, of the 61 recommendations, 29 were included in the section titled "Board (Public and Separate) Schools: New Opportunities". Some of these were designed to create administrative mechanisms for greater cooperation between public board and independent schools. Most of the recommendations were responses to complaints by parents and stakeholders of excessive centralization and professionalization resulting in loss of local influence and lack of choice for parents in the public system. Public schools were perceived by many interveners to have become "primarily instruments of the state and the professional experts rather than partnerships between the government and the professionals on the one hand and both parents and local communities on the other" (p. 58). Schools and the educational process had been disconnected from local communities and parents through a process of "re-centralization"

after the overly optimistic experiment in site based management of the 1970's (Gidney, 1999; Bedard and Lawton, 2000). However, in the re-centralization process "parents and local community representatives often are seen as the real casualties of both school district consolidation and the Province's emphasis on control through professionalization, specialization and standardization" (p. 58). The Commission agreed with the perception that there had been a "decline in the publicly funded school systems" and "that other option ought to receive serious consideration along with the more standard approaches."

While the Commission shared the widespread commitment among the submissions to a strong public school system it also identified the dangers inherent in the way public schools had achieved an "effective near-monopoly" on the delivery of public education, observing that, "it is not surprising that as institutions – despite the very best intentions and training of those involved – they exhibit some of the behavioural characteristics of monopolists" (p. 58). Therefore, its recommendations were designed to protect what the Commission saw as the public school system's important role in delivering an harmonious society, while, at the same time, to "introduce into these schools some aspects of a more competitive environment in the hope that this will result in both greater programme diversity and a more finely- tuned responsiveness to local communities" (p. 58).

The cautious encouragement of independent schools did not indicate acceptance of their role as partners in the delivery of public education as much as it revealed the Commission's sense of their strategic use in the reform of the public school system. While it observed the effects of the conflation of public schools with public education and social harmony in the "effective near-monopoly" and the "behavioural characteristics of monopolists" the Shapiro Commission, was not prepared to consider the possibility that these are evidence of hegemonic power inherent in the dominant discourse about how public education is institutionalized in Ontario. It used the presence of independent schools because they might provide an element of competition necessary to provide stimulus for reform of the public school system as it has been conceived since the 19th century. Therefore, despite the window of opportunity for independent schools created by the Shapiro Commission, its report, like the *Mackay Report* before it, was conservative in the sense that it protected the power interests at play in the organization of the public school system. In the Commission's own words, "the recommendations do not, in fact, propose very radical change" (p. 71).

The recommendations of the Shapiro Commission, while they engaged the role of independent schools in Ontario, avoided the restructuring of public education recommended by the Ontario Alliance of Christian Schools. The OACS, based on a social philosophy with its historical roots in the Netherlands, introduced an idea which is quite foreign to the way religious diversity in public education have been conceptualized and regulated in the Ontario legacy. By proposing itself as a third publicly funded school option in Ontario, it was challenging the central tenets on which hegemonic power is based, something the Shapiro Commission was not prepared to support.

4.5.6. Conclusions

Although the *Shapiro Report* had dealt with a wide range of issues, the reactions to it focused on the recommendation that private schools be included in a public funding mechanism through an associated school model. While that idea was carefully embedded in a commitment to the vitality of public schools along with Shapiro's oft-repeated assertion that his priority was the health of the public school system, the nuances of the *Report* were largely ignored. Also ignored were the descriptions of funding mechanisms in other jurisdictions where private schools were funded, included by Shapiro to support his reassurances that the recommendations in the report did not call for radical changes.

The largely negative reactions can be explained, in part at least, by the political context. The mid-1980's was a highly charged time in Ontario education with a number of government studies and reports having been tabled of which the Shapiro Commission was only one. The most volatile of these was the proposal by Premier William Davis to extend full funding to Roman Catholic separate schools. Davis had risen in the legislature on June 12, 1984, to announce his government's commitment to the extension of full funding of Roman Catholic separate schools. Davis cited three principles guiding his announcement; the extension of full funding was a way to "honour those contracts and obligations which were struck to create a united Canada in 1867; the "viability of our non-denominational public secondary school system" must not be compromised and; the social fabric of Ontario must be strengthened and not fragmented (Shapiro, 1985, p. 74). A fourth principle, mentioned further along in the announcement, was that "we must consider the interests of our secondary school teachers" (p. 76). Davis, in closing his address to the legislature, quoted

Sir John A. MacDonald who, explaining "the accommodations of his time" had said, "We do not want to stand on the extreme limits of our rights. We are ready to give and take. We can afford to be just. We can afford to be generous, because we are strong." (p. 76). Davis specifically identified the interests of secondary school teachers who, along with other professional teacher organizations, had emerged as a formidable political force after the 1960's. Davis took a significant amount of time to reassure them that their interests would be protected, something that all Ontario premiers after Davis found they could not ignore in debates about public education.

Another theme in the Davis statement was his awareness that he was addressing a dominant group, trying to reassure them that they could afford to be just and generous because they were strong. In other words, their extension of generosity would not mean their dominant social position was threatened. However, his careful crafting of the statement suggested that religious diversity in Ontario public education was viewed through the screen of risk assessment to the dominant group in Ontario society. Davis had been a successful premier because he was risk averse and highly tuned to the way power worked in Ontario. Up to 1984 he had resisted the lobbying efforts by Roman Catholics advocating for full funding and efforts by other minority religious groups for recognition for their schools (Gidney, 1999; Sable, 1999), his primary political strategy having been to "smooth over differences and find the middle way" (Speirs, 1986, p. xxi.). He had also inherited a long tradition of Progressive Conservative domination of the Ontario political scene which had successfully positioned itself as the protectors of Ontario values and, in particular, of public education.

However, in promoting the extension of full funding to Roman Catholic separate schools he crossed a line which had long term political consequences for the Progressive Conservatives, setting "the stage for the most divisive conflict over an educational issue in Ontario since the middle decades of the nineteenth century; indeed, over the same issue – the right of a minority to public funding for its own religious schools" (Gidney, 1999, p. 124-125). There was immediate and strong reaction from a variety of sources, including the Ontario Public School Trustees' Association, the Ontario Secondary School Teachers Federation, leaders in various Protestant denominations and the Loyal Orange Lodge, describing themselves as "horrified", "shocked and dismayed". One Protestant leader

described the proposal as an "ugly discrimination" since it applied only to Roman Catholic and not to other faith-based schools while another called it "a betrayal of the ideal of a common education for all" (Gidney, 1999, p. 124). The reactions to the Davis proposal were quite similar to the reactions to the Tory proposal in 2007, indicating a persistent social fault line around religious difference.

However, one decisive difference was that in the mid 1980's all political parties accepted the legitimacy of the Davis proposal, both the Liberals and the New Democratic Party having been in favour of the extension of funding for many years. Therefore, although the Premier Davis retired in 1985 and the Progressive Conservatives were defeated in the next election, the Liberals under David Peterson saw the proposal through to its formalization in *Bill 30*. The constitutionality of *Bill 30* was tested in Ontario Court of Appeal where it was declared constitutional, a ruling which was affirmed by the Supreme Court of Canada, rejecting an appeal by the Toronto Board of Education and the Ontario Secondary School Teachers Federation in 1987. *Bill 30* and the full funding of Roman Catholic separate schools thus became a part of the *Education Act* and although the actual implementation was marked by acrimony, particularly in smaller communities where the impact of transfer of property, hiring of teachers, and other details were immediately visible and often personal, by the end of the century an apparent new normal had been established. However, as the election of 2007 shows, reaction against Roman Catholic separate schools is never far below the usually smooth surface of Ontario togetherness.

The Shapiro Commission tabled its report in October, 1985, right in the middle of the controversy over the Davis proposal, after he had retired and the Progressive Conservatives had won the 1985 provincial election. However, their hold on power was tenuous and, in June, 1985, they were defeated in a non-confidence vote in the legislature. The Liberals formed the next government under the leadership of David Peterson and Sean Conway, the new Minister of Education, received the *Shapiro Report*. While in July he had indicated that he "looked forward to the *Shapiro Report* with interest", by September he ended the speculation about what he might do with its key recommendations by saying that, although he supported full funding to Roman Catholic separate schools, "we do not contemplate extending that funding to third (or private) schools" (Gidney, 1999, p. 135).

Thus, the private schools, which had intervened on behalf of Roman Catholic schools in the political and legal contests around *Bill 30*, supporting the Liberals in the face of strong opposition from a variety of powerful interests, found themselves shut out in their struggle for recognition. The boundaries of the public space for religious diversity had been moved slightly without challenging the well-entrenched Ontario tradition of two publicly funded school systems, but even that move had been fraught with political risk. There was clearly no political appetite, at least not in 1985, to address the "near monopoly" of the public school system or to consider Bernard Shapiro's idea that a carefully controlled level of competition might actually be good for both public schools as institutions and public education as a social activity.

4.6. Ontario public education politics 1980's - 2003

4.6.1. Introduction

Three themes are significant in this analysis of Ontario public education politics of the last two decades of the 20th century. They are changes in and perceptions of social diversity, a collision course between rising public school stakeholder demand and a decline in economic prosperity, and the commonsense revolution and the introduction of the language of free market economics in the delivery of social services by the Progressive Conservatives under Mike Harris. To say that the last decades of the 20th and the first decade of the 21st centuries were a time of change on the global and domestic scenes would be to engage in understatement.

4.6.2. Social Diversity

The 1980's had inherited the liberation movements of the 1950's through the 1970s' which had challenged hegemonic power on a number of fronts. The language of liberation was in the air but, by the 1980's, a number of events suggested that liberation is a two sided concept. For example, on the global stage, the Iranian revolution of 1979 challenged the Western secularization narrative with religion playing an important role in framing the new Iran emerging after the fall of the Shah. This was liberation but it was not so clear that it was liberation in a form that coincided with Western interests. In Canada, the first Quebec referendum in 1980 and the second one in 1995 were framed as mechanisms of liberation for

those in favour of Quebec's going its own political way but this view was not universally shared.

Canada's adopting the language of multiculturalism in the early 1970's had given official approval to the protection of cultural particularity and encouraged many groups to assert their resistance to assimilation. However, multiculturalism was controversial as many Canadians worried that the policy officially sanctioned social centrifugal forces which threatened Canadian unity (Ryan, 2010). The backlash to multiculturalism was evident in language linking funding for non-Catholic faith based schools to Ontario's social fragility in 2007, used by politicians, commentators and other interveners in the debates. In short, the politics of the 1980's and 1990's were marked by the tension between the management of social diversity and the protection of freedoms, heightened by changes in immigration patterns.

Immigrants to Canada through the 1950's and 1960's had primarily come from Europe but after the 1960's were primarily coming from Asia, Africa and South America. Worries about the implications of multiculturalism were exacerbated by a trend which saw an increasingly diverse population with communitarian religious and cultural practices which they seemed loath to discard. Some of these resulted in successful court challenges, for example, in 1990 by Baltej Singh Dhillon, a Sikh RCMP officer, allowing him to wear a turban rather than the Stetson. His success was seen by some as a breakthrough for minorities in achieving social equality but for others it represented one more way in which an iconic Canadian institution was being lost to outside forces.

The tension between protection of the rights of religious minorities and the maintenance of a common social ethos was evident in the proposal to extend full funding to Roman Catholic Separate schools in Ontario. Initiated by former Premier Bill Davis, full funding completed a long contested process with its roots in the 19th century. In response to a constitutional challenge to full funding to separate schools, the Supreme Court of Canada affirmed Ontario's commitment to *s. 93* establishing its binary model of publicly funded education. However, the political backlash against the Progressive Conservatives revealed the high political risks of engaging in the politics of religion and public education. Despite the backlash revealing the conflicted role of the Roman Catholic school system, the language of multiculturalism, the political will to see *Bill 30* through to its successful conclusion and

its affirmation by the Supreme Court encouraged non-Catholic religious minorities to promote their own goals of achieving funding for their schools.

Both the extension of full funding to Roman Catholic separate schools and consideration of funding to non-Catholic faith based schools were very controversial with stakeholders in public education who became increasingly alert to threats to their interests, developing sophisticated strategies to protect the role of public schools as the one institution privileged to deliver public education. The controversy over the extension of full funding to Roman Catholic separate schools made clear that the politics of school funding was dynamic indeed with powerful groups well positioned to protect their interests. Anxiety over school funding went beyond schools, however, exacerbated by a more general concern about the social cohesion due to changes in social diversity and apparent encouragement in public policy for immigrants to retain their collective practices. Religion in this context, particularly forms of religion which included the social practice of education, was seen as especially resistant to Canadian values. However, the politics of public education funding gained additional energy due to economic conditions after the 1970's and their effects on public schools.

4.6.3. 1980 – 2000 Economics, stakeholder demand and control of schools

The advocacy for political recognition by religious minorities in the 1980's and 1990's landed in the context of highly charged battles over public school funding, school culture, educational philosophy and control of the schools. While the public school environment in Ontario has never been particularly friendly to religious minorities advocating for alternative approaches to the delivery of public education, the 1980's and 1990's were even more difficult as stakeholders in public education fought among themselves. As a result, the political realities of the 1980's and 1990's made advocacy for recognition of private and independent schools a challenging task.

The political climate of the 1980s was a sharp contrast with the optimistic 1950's and 1960's when the post-World War II economic boom had generated unprecedented levels of wealth and a dramatic population increase from Europe. The economic prosperity, along

with a population increase, created new opportunities and new challenges for Ontario's social institutions, including the public school system (Gidney, 1999). The challenges included the need to expand the school system in order to educate the increased number of students coming through the system, adapting education programs and pedagogical approaches in response to the increased percentage of students who expected to graduate with a high school diploma and even to enter a university program and addressing the educational and social needs created by the post war wave of immigrants needing to be assimilated into Canadian society. The opportunities were created by the fact that governments had access to a great deal of money to build schools, adapt programs and hire the necessary personnel.

In public education, optimism was evident in the *Hall-Dennis Report* which imagined a new and exciting era of progressive education preparing students for a modern, diverse society in a world of opportunity. Implementation of the Hall-Dennis recommendations contributed to a tremendous increase in budget expenditure, along with a shift in de-centralizing political control from the central government to regional boards of education. The important role of teachers in delivering a more child centered educational program was reflected in rising salaries and increasing influence in affecting public policy, particularly after the 1960's. The post-war years had seen teachers organizing themselves in professional associations, one purpose of which was to engage in the debates about educational practices and programs but also to protect teacher interests, particularly in regard to working conditions, salaries, benefits and job security. After the 1960's, protection of teacher interests was never far removed from any discussions about changes in education policy, including any proposal which might involve re-examination of the privileged role given public schools in delivering public education.

However, four developments during the 1970's and 1980's cast a shadow over the earlier optimism, creating an environment which added to the intensity of debates over education during the 1980's. The first of these was in the area of economics and the need for governments to rein in the skyrocketing costs of delivering social programs, including education. Economic recessions had intensified the problem as tax revenues fell and governments had to confront the realities of economic limitations. The second development were rising public expectations and public engagement with public education and the move to hold public schools accountable when they fell short in meeting the expectations of

excellent education. The focus of much of the dissatisfaction over the results of what was perceived to be the child centred approach to education recommended in the *Hall-Dennis Report*. A great deal of literature documented the gap between the education achievement of Canadian children and their counterparts in other countries, adding to the sense of crisis in the system triggering widespread calls for reform. The third development was in public school organization and the re-centralization of government control over education due to growing public concern over what was perceived to be a decline in the effectiveness of public education in delivering satisfactory results (Gidden, 1999; Bedard and Lawton, 2000). A fourth development was decreasing student numbers as the bubble created by the post war baby boom passed through the system. The longer term population trends indicated that competition for students was going to be a real factor in considering school reform of any kind. Successive provincial governments dealt with budget cutbacks by shifting costs from the provincial government to regional school boards, leaving them to struggle with teachers and parents over reduction in services, hiring, salaries and working conditions. As a result, provincial governments, regional school boards, teacher organizations and parents struggled to protect their interests,, creating a political climate with reduced receptivity to advocacy for recognition by religious minorities.

Successive governments tried to navigate the stormy political environment created by a dissatisfied public energized by the perception that their children were being badly served by a bloated public school system and self-serving teachers defending their interests, public boards trying to balance reduced revenues, increased public expectations and teacher militancy and economic realities created by reduced tax revenues. Added to this volatile mix were court cases in which public funding for privately funded faith based schools was being considered, along with politicians musing over the mechanisms by which such funding could be administered. It is not surprising that the 1970's through the 1990's were decades of unrest in the world of Ontario public education.[24]

[24] It was also in this environment that the courts in *Bal* and *Adler* advised faith-based schoolers advocating for public funding of their schools that their problem was not a legal but a political one in which they would have to compete for public recognition against powerful forces who were already on high alert for any further changes which might adversely affect their interests.

In 1995, anger over budget deficits, rising taxes and the public perception of the ineffectiveness of both the New Democratic government of the day and the Liberals before them found expression in a decisive electoral victory and a return to power of the Progressive Conservatives under Mike Harris. However, the "Common Sense Revolution" slogan associated with Harris and his political style made clear that this was not the seemingly gentle, middle of the political spectrum Progressive Conservative party of the Bill Davis era. This was a government which interpreted the budget deficits and economic woes through neo-liberal lens which foregrounded the growth of government and its interference in free market forces.

4.6.4. Mike Harris and the commonsense revolution

The Harris government quickly moved forward on its election promises which included board amalgamation, organization of academic programs with an emphasis on assessment and evaluation, reform of the public school funding model, the creation of accountability mechanisms in public education such as the "Education Equality and Accountability Office" and provincial testing of students in key subject area. Some of the measures had been proposed and planned by previous governments but the Harris government pushed these and other measures forward with a speed and political tactics that triggered strong reactions from teachers and boards. Sweeping changes were mandated at the same time that the federal government was cutting transfer payments in a program to eliminate its own deficits, leaving provinces to struggle with the delivery of education, health and social services but having less money with which to meet what had come to be seen as entitlements. The Harris government was faced with a huge deficit which it resolved by cutting budgets, including education budgets to an extent that inevitably had an impact on boards and teachers. The boards responded by cutting programs and confronting teachers over the issue of salaries and benefits, bringing about another period of labour unrest and public discontent.

The complexity of the issues and the discontent were simplified in competing messages by the government, boards and teachers. The government's message was that the vast public moneys invested in public education had produced less than satisfactory results and that much of the money was being diverted from the essential service of delivery of

education in the classroom and thereby hurting children. In the government narrative, there was "fat" in a self- serving system in the form of too much administration, too many boards of education, and salaries and benefits which were out of control. The message from teachers was that the Harris government was an enemy of public education and that it was trying to bleed money from the system and thereby hurting Ontario's children. The Ontario government and Ontario public school teachers were on a collision course. Both sides presented the other as a threat to public education, the bigger picture issue from the government's perspective. R.D. Gidney says, " As Mike Harris was wont to say, education policy for Ontario was going to be made by the elected government of the province and not by the unions or the multitude of 'special interests' who lobbied in the public arena on their own behalf" (1999, p. 210-202). While the Harris government has become an iconic symbol of hostility to public education, it was actually addressing issues which previous governments had avoided, something Gidney observes saying, "It was a principle of no small importance and long overdue in an environment where successive governments had ducked tough issues for fear of the political repercussions" (1999, p. 262).

The point is that by 2000, all stakeholders were on high alert for any threats to their position and any discussion about reform was evaluated through the screen created by that sense of risk and political advantage. In addition, all stakeholders had developed sophisticated political strategies to protect their interests with the resulting political climate in which non-Catholic faith-based schools were caught between powerful political forces leading up to the election of 2007.

Into this volatile mix the United Nations Human Rights Commission ruled in the case of Waldman v. Canada that Ontario's school funding mechanism was discriminatory. Included in the ruling were two alternative remedies. First, the government could decide to cease funding the Roman Catholic separate school system or second, the government could decide to extend funding to other faith-based schools. The UNHRC decision came toward the end of the first Harris government in a ruling which provided evidence for all sides in the school funding debates. Both those advocating for "one school system" and the elimination of government funding for all faith-based schools and those advocating for an expansion of government funding to include more faith based schools found legal and moral support for their respective causes in the judgement. In the meantime, Harris and the Progressive

Conservatives were elected for a second term, continuing their program of reducing government budgets and the role of government in Ontario society and generating growing hostility from public sector unions, among other sectors.

For some faith-based school groups, the Progressive Conservative government signalled a possibility that their interests would be considered in education reform plans. For example, the Ontario Alliance of Christian Schools included its position in a public policy and political analysis published during the election of 2007 saying, "The time seemed right for a major restructuring of the union controlled education industry". However, while there were significant changes during the Harris years, non-Catholic faith- based schools did not get the "major restructuring" for which they had been advocating. What they did get was financial relief included in the 2001 provincial budget (called the "Responsible Choices for Growth and Accountability Act") which was a change in taxation policy designed to avoid a confrontation with the education establishment in Ontario. It was called the "Equity in Education Tax Credit "(EETC) which allowed parents with children enrolled in some privately funded schools to claim their school feels as tax deductible expenses. It also triggered another political contest between those who supported and those who opposed any form of relief for non-Catholic faith based schoolers.

4.7. Equity in Education Tax Credit (EETC)

4.7.1. Introduction

If the EETC was designed to avoid the legal, constitutional and political entanglements inherent in any debates over school funding it was not successful in doing so, making it one of the historical moments in Ontario during which competing discourses over public schools and public education are more clearly in view than what they normally are. The EETC, being part of a budget bill, was seen as a way of addressing the non-funding of private and independent schools without involving the public school establishment. Because it was a tax measure which allowed tax credits for the costs of private school fees, it was not actually a direct funding proposal and it was not, strictly speaking, an education measure. However, even this arms-length strategy by the Harris government to address the concerns raised by the United Nations Human Rights Commission triggered strong reactions indicating the state of high alert among opponents of independent schools.

The data for this analysis of the contest over the EETC comes from the transcript of proceedings of the "Standing committee on finance and economic affairs" June 19, 2001 recorded in *Hansard*. I chose this date somewhat randomly as a representative sample of the debates over the EETC. I chose *Hansard* because it records the voices of a variety of citizens as they engage the political process in a direct attempt to influence its outcomes. In addition, while this debate was over a specific piece of legislation, the language and the themes are representative of other debates over the roles of public and privately funded schools in delivering commonly held civic values in Ontario. The individuals and groups presenting their points of view to the standing committee represent the range of perspectives and interests which have been engaged in debates over the issue of religious diversity in public education since the 19th century. The presentations, while well prepared and articulate, have the raw feel of citizens on the front lines in education who have a great deal at stake in the outcome of the debates.

The purpose of the standing committee was to provide a forum for public consultation on the 2001 provincial budget titled the "Responsible Choices for Growth and Accountability Act (2001 Budget)" contained in *Bill 45*. Presenters were allowed 20 minutes each to make their cases and to respond to questions. The committee included members of the provincial legislature drawn from the political parties, each of whom was allowed to ask questions of the presenters. While formally structured, it is clear that the members of the committee knew each other and were acquainted with some of the presenters from previous encounters. While this was a new issue and the situation was new to some of the presenters, the debate went beyond the EETC to wider issues of the kind of school system and the kind of society the EETC was trying to encourage.

Because it did not specifically target parents in religiously based independent schools religion was not, in any obvious way, the primary fault line between opponents and supporters of the EETC. However, the debates about the EETC are relevant to the topic of this thesis for three reasons. First, they provide insight into the politics of public education after the 1996 *Adler* decision where the court had advised advocates for non-Catholic faith-based schools that their problem was a political and not a legal one. Second, although religion and faith-based schools were not identified as a school category in the legislation, religion and faith-based schools were a topic in the debates, being among the strongest voices

among those advocating for change in public school funding policy. While not specifically identifying parents in religiously based schools as the beneficiaries of the legislation, the EETC was linked to religiously based schools. Third, the EETC debate, like the election of 2007, is an historical moment in the political history of Ontario public education in which the dominant and competing discourses in Ontario public education are clearly in view.

4.7.2. Three themes

This section is organized under three themes. They are, (a) public and private schools and the delivery of public education, (b) choice and (c) the role of the state in public education.

a. Public and private schools and the delivery of public education

While there was general agreement among all presenters on the value of public education as a social activity and support for a strong public schools system to which all citizens would have access, there was fierce disagreement over the mechanisms by which public education could best be delivered and how the shared values considered essential to a modern democratic society could be achieved. Opponents of the EETC were deeply committed to one public school system designed to create equal access to a common educational experience and common civic values equally accessible to all students. Supporters of the EETC were also committed to shared civic values but defended the idea that they could be delivered in different ways. However, they often found themselves on the defensive about this issue, having to explain that their advocacy for private schools did not mean that they were enemies of public education or that they were not committed to the public good. For example, Paul Triemstra, then vice-principal of Ottawa Christian School, rejected the charge that advocacy for independent school and the EETC was motivated by hostility to the public school system. As evidence he pointed to the fact that independent school supporters, like all citizens, pay their taxes which fund public schools because, "the public school system offers a good education for the vast majority of the citizens of this province". He also rejected the assertion by some that independent and faith schoolers are narrowly focused on their own private interests, expressing concern "about all the children of the province and the quality of education they receive" (p. F-386).

There was also general agreement with the UNHRC ruling that Ontario's school funding policy is discriminatory in funding one faith-based school but refusing to fund others. However, there was disagreement over the public policy implications of the UNHRC ruling. For opponents of the EETC the remedy for Ontario's discriminatory funding policy was to remove constitutional protection for the funding of Roman Catholic separate schools while for its supporters the remedy was to fund all independent schools, subject to some form of regulation. For example, Martha Jackman (Faculty of Law, University of Ottawa) agreed with the UNHRC ruling that Ontario's funding policy was discriminatory but she recommended that the government proceed with the process of rescinding *s. 93* of the *Constitution Act of 1867*, creating one public school system. She said, "The only real alternative available to the Legislature of Ontario to the discrimination that was identified in the Waldman case is the repeal of section 93 and the provision of the Ontario *Education Act* that provide for funding to Catholic schools" (p. F-374).

Having established her interpretation of the legal issues, Professor Jackman proceeded to her objections to the EETC as a measure which would, in her opinion, harm public education but also Ontario society by violating the principle of equality and equal access. She said, "the proposed tax credit violates both international and domestic equality rights principles" (p. F-374). The "tax credit --.discriminates on the basis of poverty or the analogous ground of social condition under the Canadian Charter". This was because "By definition, private schools with private school tuition are designed to perpetuate systemic discrimination based on social class, and as such they are objectionable." By targeting tuition paying parents, the EETC was further objectionable because it discriminated on the basis of poverty since poor people cannot pay the school fees required for entry into private schools and, by extension, it discriminated on the basis of race because racial minorities are disproportionately represented among the poor.

In her opinion the EETC was further objectionable because, it included parents who chose religious schools where "the religious, cultural and social norms which underlie much private religious schooling perpetuate stereotypical discriminatory ideas about the role of women – the fact that they should be confined to the private rather than the public sphere- and also discriminatory attitudes around issues, for example, of reproductive choice for women.". Jackman built her case on a number of stereotypes of religious communities and

religious schools regarding gender and stereotypes of private schools as instruments to perpetuate a class system. For the same reason, in Professor Jackman's view, the EETC discriminated on the basis of gender orientation since "many of the religious and cultural private schools -- hold as a fundamental tenet that sexual orientation is morally reprehensible" (p. F-374).

Professor Jackman objected not only to the EETC itself but to the very existence of private and faith-based schools in Ontario since they are, in her view, inherently harmful to the social fabric of Ontario. They are "morally reprehensible" because they perpetuate values and norms that are inherently in conflict with the Canadian values underlying the *Charter of Rights and Freedoms*. She did grant, however reluctantly, the rights of parents to choose private schools guaranteed by *s.2* of the *Charter of Rights and Freedoms* and other international covenants but, based on her interpretation of *s.15*, they have no right to equal treatment with the public school system, represented as the one institution which can deliver public education in a way that satisfies the *s.15* equality guarantees.

Heather-Jane Robertson, vice-president of the Canadian Centre for Policy Alternatives, added her opposition to the EETC by expressing concern for the state of public schools, and describing herself and her organization as "critical of the gap between our aspirations for public education and what we have thus far been able to realize" (p. F-394). In her view, the most important thing was "to remember that through our schools we build the world." Public schools have a key role in creating an ideal future world for our future generations. In her own words, her ideal world "does not have Muslims over here and Jews over here and Christians over here and lefty parents over here and activists over there and Marxists over there and Conservatives – we are together". This was why she described having "written extensively" to oppose voucher and charter schools "and the "kinds of separation and segregation these lead to.". By contrast, the role of public schools is to create an environment in which students recognize that "not everybody thinks like your parents or your grandparents" and to instill the values of tolerance of difference.

Nancy Myers, co-chair of the special education advisory council in the Ottawa-Carleton District School Board, spoke on behalf of learning disabled children against the EETC on which she reflected through the screen of her wider social concerns. For her, the EETC represented a threat to Ontario's multicultural society in which public schools serve

the vital role of bringing students together to learn the civic values of tolerance of differences. Her imagined common basis for civic values was a kind of common religion since, in her view, "All major religions have a belief which, when I was young, was called the golden rule". Her understanding of the Ontario legacy of a common school system was reflected in her question, "Why can't all schools use that (the golden rule) as a simple starting point to teach children to treat others the way you want to be treated?" While she was committed to a common public schools system as the only institution to deliver public education, she also recognized the need to accommodate religious differences saying, "Why not adapt a curriculum to encompass comparative religions or humanity as a starting point to learn about the spirituality of coexistence?" (p. F-400).

Jim Libbey, chair of the Ottawa-Carleton District School Board, opposed the EETC because, in his view, it encouraged a "two-tier" education system in which the real benefits would go to the most privileged families. His opposition to the EETC was based on his vision of the public school system. He said, "…..public school challenge all students to achieve personal excellence in learning and in responsible citizenship". Reflecting the idea that the public school system is a microcosm of Ontario society he said, "In Ontario we value our diversity". In his view, the EETC violated essential Canadian values and represented a threat to social cohesion, having "the potential to divide people, rather than bring them together". Like Professor Jackman, he identified the public school system as the only institution which can bring people together under common Canadian values, unlike privately funded schools which divide people. Using the language of "togetherness" he constructed a binary opposition between the values and education offered in public schools and in privately funded ones. He went on to project the potential harm of funding for private schools by pointing to the United States, saying, "One need only look south of the border to see that these sorts of incentives have had the serious negative effect over time of creating a counter-productive and inherently unfair two-tiered system of education" (p. F-406).

Libbey was speaking in a kind of political code using the language of togetherness and referring to the effects of "these sorts of incentives" in the United States. The United States is a complicated presence in the Canadian imagination but one of the purposes it serves is to demonstrate the moral superiority of the Canadian commitment to "equal access" and the regulation of the effects of "free market" forces on the distribution of public resources.

The label "two-tier", for example, is a highly charged code word suggesting privileged access to the delivery of health and education services which in Canada are important markers of an advanced, modern and civilized society. The label "private" is often linked to privileged access to essential services so "two-tier" , which makes the link between government funding "private" schools as a policy which would entrench, in public policy, a society which actually encourages privilege. In his case for a common school system to deliver public education services equally accessible to all citizens, Libbey pleaded with the government to remove the EETC from the budget proposal. Through the use of "we" and "our" ("we" value "our" diversity) he created the distinction between those of "us" who hold the Canadian values of equal access to public education and "them" who advocate for policies that "divide rather than bring them together".

Part of Libbey's strategy was to create a common sense about what "we" all understand, through the use of the phrase "one need only look south". This assumed a common knowledge about what one finds by only looking south of the border and that we would reach a common conclusion about what we would find when we had looked. He did not have to specify what he saw when he looked south of the border or what the connection was between what he saw and "these sorts of incentives". He was creating a picture of the negative social consequences of the EETC and, at the same time, creating a kind of imagined community unified by common Canadian values which sees the world in the same way.

Another perspective on Libbey's testimony is provided by the "discourse – knowledge – power" triad theorized by Michel Foucault and applied in a variety of contexts by other scholars (Beaman, 2008). Libbey assumed a kind of shared knowledge which served as evidence, but, because it was shared and common knowledge, did not have to be specified. However, the framing of that knowledge was an expression of power in two ways. First, there is a persistent discourse which has generated knowledge about the dire consequences for Ontario society of challenges to the public school system and second, this knowledge was the basis for problematizing the EETC as public policy legislation in a particular historical moment, thereby further entrenching the discourse, legitimizing the knowledge in a new context and protecting the power interests of the public school system.

Like other speakers, Libbey recognized the need to accommodate "our diversity" which "we value", asking for consideration of an alternative school model to accommodate

"cultural and religious schools" within public schools (p. F-407). This was reminiscent of the recommendations offered by the Shapiro Commission in 1985, suggesting that the legal cases and regulatory changes between 1985 and 1997 and in *Memorandum 112* were being identified as problematic for public as well as independent schools, by restricting their capacity to accommodate religious diversity. While he did not cite the *Shapiro Report* in his testimony Libbey, like Shapiro, was sensitive to the many diverse needs of the student population being served by the public school system. Like other speakers before and after him, he was aware of and disturbed by the gap between public school ideals and their actual implementation. However, his remedy was more funding for reforms within a "one public school model" to which the EETC represented a threat.

Art Buckland, trustee in the Upper Canada District School Board, was equally committed to one public school system although the boundaries around what was included in that common space seemed to be restricted to the English public school boards. For him the EETC was just one more in a series of legal and regulatory changes eroding what had once been one common school system He said "Frankly, I object to losing any students and I objected when there was full funding to the Roman Catholic system." …. "my worry is that it (the best that education can be) is in the past unless we restore government respect and lost funding to the English public system. I see Bill 45 (the budget bill) as another disastrous blow to English public education" (p. F-412).

Buckland was referring to *Bill 30* which, in 1986, had extended full funding to Roman Catholic separate schools and to the 1997 legislation which had created publicly funded French language school boards. These changes in legislation had created challenges for the English boards but his testimony also shows that "public schools", like the independent schools, are not one monolithic entity, with the primary stakeholders competing among themselves for public resources. However, there has been persistent representation of public schools unified under one system, offering students of Ontario equal access to one common experience, as opposed to independent schools which separate and segregate students from that common experience. In fact, Buckland's testimony indicates a great deal of diversity within public education suggesting that the language of common experience delivered by the public school system as opposed to the segregated experience delivered by private and

independent schools is a political strategy rather than an accurate description of the realities of schooling in Ontario.

One thing characterizing the testimony of the opponents of the EETC was a deep commitment to a publicly funded school system that provides a high quality education to its young citizens on the basis of equal access. In this they stood firmly in a long tradition starting with Egerton Ryerson, affirmed by the Hope Commission and the Mackay Committee. This discourse places the state as the voice of togetherness transcending forces which threaten to divide Ontario society along sectarian lines and the narrow interests of social class. Public education delivered by the public school system is an essential social practice providing a conceptual centre which creates harmonious diversity. It is also a tradition that represents initiatives and groups proposing alternative strategies to deliver education as threats to Ontario society. Therefore, besides a passionate and laudable commitment to a high quality public education accessible to all, the Egerton Ryerson common school legacy also includes the language of othering those citizens who see schooling as an important strategy for the raising of children in which parents, religious communities or groups unified by a particular vision of education.

However, despite the representation of independent schoolers as enemies of the public school system and public education, the EETC testimony indicates that supporters of the EETC also supported the idea of an inclusive public education system serving the common good. Elaine Hopkins, representing the Ontario Federation of Independent Schools, supported the EETC but she did so advocating for diversity within public education. She cited examples of parents within the public school system eager to exercise school choice when reasonable opportunity was given. However, her model of diversity differed from the one being defended by the opponents of the EETC, particularly on the issue of how diversity should be structured. For Hopkins, the state's role should be diminished with parents becoming the main stakeholders in education. The right of parents to create, operate and choose the schools they consider the most appropriate for their children within a broad framework of publicly funded education was the central theme of her testimony to the committee.

Hopkins referred to Bernard Shapiro's observations about the "wonderful education taking place in private schools and the wonderful education taking place in public schools".

She interpreted the associated school model recommended in the Shapiro report as a way to bring all schools together to replace the current model of education funding which places them in antagonistic opposition to each other" (p. F-398). Rather than opposing the public education system, she wanted to be included in it saying, "I would like to think that Bishop Hamilton School (the Anglican Montessori school in Ottawa of which she was principal at the time) is part of the public education system; …. I see a public education system that has many choices" (p. F-399).

Other supporters of the EETC seemed less sure of a common school model which might allow accommodations in response to social diversity. The problem, identified much earlier by the Roman Catholic members of the Hope Commission, was that the common school project confuses social harmony with uniformity. This counter-discourse suggests that although there is much talk of protection of diversity, a common school system with its privileged access to the delivery of public education, actually suppresses it. Accommodation of diversity is controlled by the state through the public school system, placing the minorities being accommodated in a subservient power relationship to dominant social groups. Paul Triemstra, (Ottawa Christian School) raised the issue of "unity versus uniformity", saying that, rather than creating social disharmony, "support for parental choice in education can only strengthen the unity of the populace in Ontario and avoid the risk of uniformity". He based his assertion, in part, on an interpretation of s.*93* of the *Constitution Act of 1867* which, in his view, is evidence of the recognition among the founders of the Canadian federation, that one school system cannot adequately meet the diverse needs of Canada's population. In the 1860's religious diversity in the 1860's primarily meant the division between Roman Catholics and Protestant, which was reflected in the constitutional protections given the establishment and public funding of Protestant common schools and Roman Catholic separate schools.[25] However, there is far greater diversity in Ontario in the early 21st century and given the highly prized values of "toleration and our cultural diversity" and the fact that Canadians like to think of Canada as a "mosaic rather than as a melting pot", extension of public support for "parents who choose a school based on their pedagogical philosophy" was, to Triemstra, an obvious next step in public policy.

[25] First Nations traditions were not included in the conceptualization of religious diversity, the residential school system designed to assimilate them into the European framework assumed by the founders of Canada.

In a strategy to create common ground between himself and the opponents of the EETC Triemstra placed himself in a Western tradition of liberal thought, citing John Stuart Mill who "warns against monopolistic education in the hands of the government" saying, "A general state education is a mere contrivance for molding people to be exactly like one another" (p. F-385). Like Elaine Hopkins, Triemstra argued that his advocacy for the EETC and for independent schools, while it challenged the public school system as currently organized, did not represent hostility to the values shared by Canadians. Rather, it was an expression of Canadian values by encouraging diversity.

Triemstra's concern about the homogenizing effect on social diversity of a monolithic public school system was similar to concerns expressed Roman Catholics in the 19th century school debates, in the Hope Commission minority report and by Bernard Shapiro. This is also the conclusion by Charles Glenn (1988, 2012) in his analysis of the common school movement in Europe and the United States and similar to the conclusions of Robert Nisbet, in his critique of the growing role of the state in delivering social unity at the expense of competing social relationships and organizations (1976). The argument is that states have an impulse to uniformity and control which can be mitigated by decentralization of power. Therefore, rather than creating homogeneous environments, privately funded schools actually are educational and political efforts to resist the centralizing tendencies of the state.

Triemstra addressed the charge that students in privately funded schools learn in isolated homogeneous environments, segregated from society and deprived of the opportunity to experience the social diversity so highly valued by Ontarians. Citing the racial, socio-economic and geographic diversity and the "25 Christian denominations" represented in the student body at Ottawa Christian School, he argued that the respect for diversity, high quality education and civic values reinforced through social and educational practices "is the kind of thing that any democratic government would want and the kind of thing that all in society would benefit from" (p. F-387). Education that contributes to the public good can be delivered on multiple sites, enriching public education while, in contrast, the public school system cannot be seen apart from state interests in nation building with its tendencies toward homogenizing unity.

Jason Reiskind, identifying himself as having worked in the area of international law all his professional life, also challenged the idea of a common school system as the only way

to deliver education. His support for the EETC was based on his reading of international law and the gap he identified between the Ontario school funding and "the accepted international standards of Western democracies" (p. F-392). He referred to the international covenants also used by Professor Jackman and to the UNHRC ruling in the *Waldman* case but came to quite different conclusions. His main argument was that Canada is a signatory to the international covenants but that this has had no effect on school funding policy in Ontario which does not recognize the rights of religious minorities to freedom of choice and equality of access in schooling. Canada is also a signatory to the UNHRC (which he describes as "Canada's oversight committee") and, citing previous cases, Reiskind showed that Canada had consistently complied with its rulings. However, he observed that in the case of *Waldman*, Canada and Ontario have refused to deal with the issues of discrimination raised by the UNHRC, leaving unaddressed the burdens of the double costs of education assumed by Ontario citizens in exercising their religious freedoms.

Lisa Addario, board member for the Ottawa Montessori School, supported the EETC because the legislation created opportunity for parents to make educational choices that best suit their children. While the illustrations she used are drawn from her experience in Montessori schools, she was also speaking more generally when she said, "Parents want choice because children don't all fit into a standardized mould" (p. F-403). Schools are expressions of communities unified by common interests which should be encouraged by public policies in a democracy to increase the range of choices open to them. The EETC was one step in that direction based on the principle that "Parents should be free to explore their educational choices and not be limited by their income" (p. F-404).

Both opponents of and supporters of the EETC legislation consistently expressed their commitment to a strong public education system and to common civic values. At the same time they also agreed that the public education system should be responsive and respectful of the multicultural mosaic of which Ontarians are proud and that parental choice should be in important factor in the decisions shaping the institutional responses to diversity. However, there was disagreement about the role which parents should be given or the weight that should be given in relationship to other interests shaping public policy. In fact, the issues around power are most clearly evident in the differences over how "choice" should be managed and regulated.

b. Theme Two "Choice"

Another theme dividing the presenters was "choice". Freedom to choose is considered a characteristic identifying a liberal, modern society and none of the presenters said they were against choice. In fact, advocates for independent schools based much of their argument on the rights of parents to choose the education they think best for their children. However, there was little agreement between the supporters and the opponents of the EETC about how choice should be defined and regulated in public policy. This made the issue of choice a significant one because the differences in interpretation of choice reflect the contours of the dominant and counter-discourses about public education, religion and the state.

Examination of the testimony in support of and in opposition to the EETC suggests three issues relating to "choice" debated in the context of public education. The first issue was (b.i) choice as a potential source of harm. Choice in education was framed in terms of either "free market" or as a "right" which should be protected in a free and democratic society. If the language of free market is applied, choice is considered harmful to society, but particularly when it is applied to essential social practices of health and education. If the language of democratic rights is applied to choice, then it becomes a virtue which deserves protection.

A second issue (b.ii) in the testimony involved different perspectives and interpretations of the capacity of parents to make choices that would be beneficial or harmful to their children's and, by extension, to society's interests. In most social activities in liberal societies people are considered to have the capacity to make choices. In fact, the very basis of democracy rests on the belief that people have the capacity to choose their governments while the free market economy depends on people having the capacity to choose from a wide range of consumer goods and services. While people can be ruled to have diminished capacity in particular circumstances, usually capacity is assumed.

However, the testimony of those opposing the EETC suggested that people have diminished capacity in education and in school choice. Opposition to the idea of school choice was based on the idea that education is too complex and important to be left to parents and best left to administrative and professional experts. This assumption was not isolated to the EETC debates. The *Hope Commission Report* and the *Mackay Report* both referred to

the importance of scientific experts on which to base their recommendations and conclusions. This stance has sparked resistance from non-state actors and anyone considered outside the circle of expertise to what they see as their being marginalized in matters relating to education. The inner circle of expertise in Ontario public education is occupied by state actors and, as a result, one form of marginalization has been the representation of education offered in privately funded faith-based schools as sub-standard. The language of coercion, indoctrination, brainwashing and references to "creationism" to characterize faith-based education suggest that the activities in non-state schools are marginal and even threats to real education.

Supporters of the EETC, on the other hand, asserted a robust role of citizen engagement with education with a great deal of confidence in the capacity of parents and non-state actors to make intelligent and positive choices about education and in their ability to deliver high quality education as a public good. Supporters of the EETC expressed confidence that citizens have the capacity to make choices and that it is the role of the state in a liberal democracy to protect their right to make choices, including in education.

A third issue in the theme of choice was of accountability in ensuring the quality of educational services (b.iii). While there was agreement that there must be some mechanism for accountability, there was disagreement over what that mechanism should be. Opponents of the EETC tended to represent privately funded schools as wanting to avoid accountability and the parents who choose privately funded schools being motivated by a desire to operate without accountability structures. Supporters of the EETC tended to assert that the schools they represented were accountable on multiple levels, primarily to the parents whose children they were serving, but also to the professional associations in which they participated and to the state. In their regulatory model, accountability and the power associated with oversight are diversified among multiple actors.

b. (i) Issue #1: "Choice in education as a source of harm"

The framing of choice as harm depended on a logical progression of thought which began with the identification of the public school system with public education. If public schools are considered the one institution capable of delivering public education then any encouragement for citizens to choose alternative delivery mechanisms of education is

inherently harmful to public education and by extension, to Ontario society. Citizens must, therefore, be encouraged to stay in the public school system and they must be discouraged from making other choices. The EETC was identified as a mechanism encouraging people to leave the public school system by making it easier to choose an alternative.

Greg McGillis, representing District 26 of the *Ontario Secondary School Teachers Federation of Ontario* expressed his opposition to the EETC, describing the threat it represented to public education which was, in his words, "first and foremost, a public good". Among the threats to the public good represented by the EETC was that it "will fragment an already fragmented society" by encouraging parents to choose privately funded schools which would result in the closure of public schools. He cited the "outflight" of students to private schools in Milwaukee and Cleveland as evidence of the harm done by a school voucher policy, encouraging school choice outside public education with students "leaving public schools to join parochial and private schools in droves" (p. F-377). For McGillis, any public policy measure which might encourage parents and students to choose schools outside the public system is harmful to public schools and, by extension, to public education and to social harmony by fragmenting Ontario society.

However, McGillis was not against some kinds of choice regarding education. Echoing the testimony of Professor Jackman regarding the funding of Roman Catholic separate schools, he said, "The government must introduce a referendum on the constitutional right to a Catholic education so that Ontarians can decide whether this is a reasonable provision in a free, secular, multicultural, pluralistic and democratic society" (p. F-379). A referendum is a political process so his recommendation is actually expressing the same principle adopted by the Supreme Court in *Adler* (1996) when it said that the extension of funding to privately funded faith based schools is a political matter to be decided by the majority. McGillis supported province wide choice through a referendum which, according to him, would result in Ontarians choosing to remove constitutional protections of government funding for the Roman Catholic school system and create one public school system.

Further objections to the EETC were expressed by Erika Shaker of the Canadian Centre for Policy Alternatives who had, "for the past 10 years ….been researching education restructuring and how it facilitates the privatization of public education" (p. F-382). She

described the EETC as "market based reforms to education" which is "alarming on a number of levels". A market based model creates winners and losers, the losers in education being the poor, the learning challenged and others who require services which are, in her view, accessible only in the public school system. She repeated the concern that tax dollars diverted to encourage educational options outside the public system would lead to further underfunding of the public system, "already experiencing profound financial instability". Looking into the future, she asserted that "Some 25% of schools will not survive under this system" (p. F-383). For Shaker the EETC was evidence of a market based social model and the "privatization of public education" with negative consequences for the public school system because it encourages people to choose educational alternatives.

Heather-Jane Robertson, vice-president of the *Canadian Centre for Policy Alternatives,* also framed the issue of school choice in terms of a "free-market" narrative, proceeding to challenge "fundamental logical fallacies" underlying the EETC legislation. The first logical fallacy she identified was that "parents own schools" (p. F-395), which she rebutted by saying, "Public education is an obligation, a transaction between one generation and the next generation. It's not a private transaction between individual parents choosing or buying some kind of particular education for their individual children. We are collectively responsible and "collectively accountable" for "creating the future, all of us, in public education" (p. F-395). Her comments reflected the language of togetherness and, significantly, she seemed to place the public school system as an institution and public education as a social activity beyond the rights of parents to choose. In fact, in schooling, unlike in other areas of social life, she saw little or no room for choice which placed public schooling in a kind of sacred space about which there can be little or no critical question.

She also seemed to assume that an "obligation" or a public "transaction between one generation and the next" can be conducted only by a state operated institution. In her view, choices by parents, in contrast, are "private" and thereby not legitimate transactions between generations. Choice in schooling represented a threat to "the future which we are creating" and, as a consequence she challenged the second fallacy, which was that "competition somehow increases quality" (p. F-395). While competition may increase quality in, for example, buying refrigerators (her example), public schooling and educational services are very different. Competition among schools would hurt children because schools will

compete for the high functioning students who will cost less to teach, leaving the more needy children to fend for themselves, citing "lots of research evidence" to support her claim (p. F-396). She used the example of her daughter, in a wheelchair, asking, "Which private school is going to want to enrol my daughter?"

Robertson's conceptualization of school choice in free market terms made school choice a "zero sum game" in which there are winners and losers. For her, the only way to protect vulnerable students who are the most obvious losers in the zero sum game of school choice, is to protect one public school system in which the state is the primary stake holder. She seemed to assume that privately funded schools have no interest in vulnerable students and that they are necessarily motivated by the desire to turn an economic profit. Non-state actors in education are, in her representation, inherently self-interested and not concerned about common public interests. Other testimony challenged this characterization of private schools, but it is a powerful image and a persistent one in the discourses about public education in Ontario.

Lamar Mason, representing special education interests in public school, recognized the importance of the right of parents to make choices about education but in a way similar to speakers supporting the EETC, applauded "the suggestion that the independent schools come under the public system". However, the reason for her applause is ambiguous when she said, "I'd like to see them manage themselves and deliver what they want to deliver under the same rules and regulations that the rest of us are dealing with". The ambiguity lies in the fact that she recognized the freedoms enjoyed by independent schools to operate outside provincial "rules and regulations" under which she laboured as a professional within the public school system and which she seemed to resent.

Mason did, however, refer to the alternative schools within the Ottawa Carleton District School Board "which had a unique delivery model" but were being eroded by increasingly restrictive legislation and underfunding, asking, "Why isn't the flexibility allowed within the public system? Why are you suggesting that we have to go outside the public system to provide choice?" (p.F-401). She seemed to recognize that flexibility increases the potential for the implementation of educational alternatives and best practices among which people can choose their preferred educational best practices.

Mason observed that parents were choosing private schools because public schools were underfunded and could no longer provide the services required for their children, but stated that "Special education students will not be accepted into those other school. They are constantly dumped out of them. We know that". Her phrasing suggests a common sense of shared knowledge that does not require evidence supporting her claim that privately funded schools do not accept special education students. Who "we" are was also not specified but seems another example of assumed common knowledge serving to distinguish those of "us" who share the knowledge with "others" who do not.

JIm Libbey (Ottawa-Carleton District School Board) echoed this sentiment, part of his opposition to the EETC being fuelled by the reduction in provincial allocation of funds to public school boards. By 2003, funding cutbacks had had a severe impact on, among other programs, the Canterbury Arts School and other alternative schools in the board which have been encouraging parents to look for alternatives outside the system. Like other opponents of the EETC, he recognized the demand for educational choice but blamed provincial funding policies for creating an environment in which people were choosing alternatives outside the public school system.

Nancy Myers (Special Education Advisory Council) shared her suspicion, based on what she was told that "Seventy-five to 90% of the tax credit dollars will go to above-income-average parents of students in non-religious private schools", confirming the opinion expressed by earlier presenters that the EETC violated the spirit of an egalitarian public school system equally accessible to all (p. F-400). Her concern was that higher needs students would suffer by any encouragement of non-state school options. She argued that students with learning disabilities and ESL students would be especially disadvantaged, saying, "Most private schools will not be able or willing to provide for the needs of exceptional children" (p. F-400). Her concerns were based on the idea that any form of funding for private schools will mean diminished funding for public schools. Myers was a professional educator on the front lines of delivering services to a vulnerable population and her distress was obvious when she said, "…. many of our most vulnerable children are already drowning and, as one colleague says, her child isn't drowning alone, she's having her head held under water" (p. F-400). Besides the damage to her students, Myers saw the

overall impact on society of the EETC in a growing gap between advantaged and disadvantaged citizens.

The concerns expressed by the opponents of the EETC went beyond this particular piece of legislation to concerns about the health of public school system itself due to government funding policies going back to the austerity measures of the 1980's. In fact, much of the focus was not on the details of the EETC itself but on what it represented and how it was interpreted. There are significant parallels in the opposition to the EETC and debates over other changes to funding policy, for example, *Bill 30* and the extension of full funding to Roman Catholic separate schools in the mid-1980's. The recurring theme is that any changes to education funding immediately divides along a fault line over the role of the public school system in the delivery of public education and its implications for the public good. Nancy Myers' statements indicated a genuine concern for her students but she assumed that the public services essential to their welfare can be delivered only in the public school system. Consequently, harm to students was not only because they would be denied special education services but also because they might be denied the common education available in the non-sectarian public school environment. Therefore she shifted her attention from vulnerable students to the issue of religion, saying

> We live in a multicultural society where every child should grow up proud of their own family but also informed and respectful of their neighbours. Whether the difference is religion, race or learning ability, society must accept and encompass all our differences. How is this possible if children are not respectfully exposed to those differences? (p. F-400)

She went on to talk specifically about religion and religious difference, with some suggestions for program adaptations which would allow students "to learn about the spirituality of coexistence". She described her goals for her own children saying, "In the same way that I want my child to learn about the religious beliefs of his neighbours and classmates, I want them to understand the difficulties which he struggles with." She went on to quote the wisdom that "It truly does take a village to raise a child." However, just as with the educational services to vulnerable students, Myers assumed that the "spirituality of coexistence" can occur only in public schools and that the village required to raise a child can be created only by the state through state agencies. Therefore she opposed the EETC

because it represented encouragement to private schools which would harm vulnerable children but also, more broadly, harm the village in which vulnerable children are raised.

However, for other presenters, choice is not a "zero sum game" with winners and losers, nor were parents driven to choose privately funded schools due to a failure of public policy. In this view, school choice is a democratic right which parents exercise, not because of funding cutbacks to public schools or other failures of public policy. Rather, people choose private schools more positively for what they offer because diversity in education is a normal and natural reflection of a diverse democratic society. Supporters of the EETC, like its opponents, used the language of democracy and diversity but they imagined a different social model for its protection.

Paul Triemstra (Ottawa Christian School) responded to charges that school choice is a zero sum game in which students with higher learning needs are the losers. He rejected the assertion that privately funded schools discriminate against students with needs for higher levels of support in their learning, pointing to Ottawa Christian School's policy and practice of taking responsibility to serve all students within the school's capacity to do so. While he reported an admissions procedure which included testing for academic needs, the school's capacity to serve the needs of all students was limited, not by design or principle, but by limited financial resources. He cited the challenges of "double taxation" as an important factor in the financial resources available to serve all the students applying for admission. Some of the financial barriers to parents were mitigated by tuition rates based on income and a family based tuition structure in which families with higher incomes and smaller families subsidize the education of larger families and those with lower incomes (p. F-386).

Ken Gehrels (Ottawa Christian School) also challenged the idea that parents in privately funded schools are members of an economic elite interested in protecting their children from social diversity. He used his own family as an example of one who had had to make hard choices in order to pay school fees. His family's decision to choose a privately funded Christian school was not based on public funding policies which made the public school system less attractive. Rather, his family's choice was made not because of but despite a failure in public funding policy which penalized parents for exercising their democratic rights. For supporters of the EETC the penalties for exercising their democratic rights actually harm the delivery of public education because it limits choice and threatens social

harmony which is a violation of democratic principles. One school system cannot represent the diversity in Ontario society which is evident in the fact that parents do choose to exercise their rights, despite the penalties of double taxation. He argued that the protection of the democratic rights of religious minorities is good for society, so the right to school choice is good for all citizens (p. F-387).

According to supporters of the EETC, limiting the right to school choice is costly, not only in economic terms but also in terms of social marginalization. Jason Reiskind protested the marginalization of Ontario citizens who choose privately funded schools when he said, "Parents have a right to send their children to the school of their choice and should not be slandered for doing so. There has been a lot of slander in the papers against people who make that choice" (p. F- 393). He also referred to the "tremendous assimilation forces to give up their cultures and religion" faced by minorities, reminding the Committee of the disastrous consequences of other attempts in Canadian history by the state for forcibly assimilate minorities citing the examples of the Indian residential schools and the violence done to the Doukhobours. His key argument was that the rights of parents to choose the education most appropriate for their children must be protected, saying, "It's not right for administrators to tell minorities how to educate their kids" (p. F-393).

b. (ii) Issue #2 "Educational choice and the capacity of parents to make good choices"

However, for some presenters, telling citizens how to educate their children was the legitimate role of administrators and other professionals due to the lack of capacity of parents to make good educational choices. Raising the issue of accountability, Heather-Jane Roberston argued that the EETC rewarded both good and bad private schools without requiring evidence that they were adequately serving the needs of their students (p. F-396). She asserted that parents cannot tell the difference between good and bad schools leading her to conclude that public policy should strictly regulate and restrict choice in education.

Mitchel Beer, representing "Our Schools, Our Communities", described the EETC as a "monstrous tax credit" (p. F389) creating a "blatant two-tier system" which would "indeed hasten the flight to private schools", not because parents and students wanted to but because the "defunding formula will soon leave them no choice". In his view it was due to government cutbacks that parents were giving private schools a "second look", creating a

situation in which "we drift toward unparalleled disaster." Beer described his group as being one "trying desperately to protect an institution that has served our community and served it well for generations". Although he referred to statistics suggesting that his group represented the opinion of a majority of Ontarians, he also suggested that he was up against much better funded forces who were behind the EETC, saying, "unlike the special interest groups that brought this nightmare down on us, our organization doesn't have a budget for photocopying" (p. F-390).

Beer's testimony made a causal linked between the EETC and the choice by citizens to leave public schools, forecasting the growth of privately funded schools as a result of diversion of public money from the public system to the privately funded schools. In his view, parents who choose private and independent schools are motivated not by what the private schools might offer but, rather because of what public schools cannot offer due to what he repeatedly called the government's "defunding policy". His comment that the "defunding formula will soon leave them (parents who choose private schools) no choice" suggested a diminished agency on the part of parents who choose privately funded schools.[26] He seemed to suggest that people are not intentional about choosing alternatives to public education but that they do so because they have "no choice".

Emphasising the collective nature of education, Heather Roberton addressed the issue of "ownership" of schools and the education process, saying, "Parents don't own schools." In fact, when parents act as if they do own schools, they do so in order to serve their own private, rather than public interests. She cited the example of charter schools in Alberta which "sprang up" when granted public funding but she went on to "respond to the conservatism of the parental marketplace. Those schools consistently look more and more like each other and more like the 1950's than the kinds of schools we need for the next century" (p. F-396). She seemed to suggest that parents who choose educational alternatives to public schools are somehow out of step with the modern world preparing students for the future. They are not making intelligent choices about education for the modern diverse world but want to recreate the world of the mid-20th century. The representation of people who choose educational alternatives as regressive and incapable of owning and operating schools

[26] The EETC was repeatedly linked to reductions in government funding of public schools referred to by its detractors as a "de-funding formula".

can be challenged on a number of grounds, but it is a powerful and recurring image with important regulatory effects. It is also consistent with the representation of religious minorities and educational alternatives in the reports of the Hope Commission and the Mackay Committee as destructive to Ontario society.

Agreeing that parents do not own schools, Greg McGillis (District 26 of the Ontario Secondary School Teachers Federation of Ontario) cited evidence of parents who reported that they were confused by school choice, not knowing how to choose a good school or to distinguish between a good school and a bad one. Referring to the impact of a voucher system adopted in Milwaukee (1990), he said,

> ….it's quite clear that people in fact were leaving the public school system to join parochial and private schools in droves. Those who had the ability, in large numbers were doing it, not because, actually, those private schools were better. In fact, the studies indicated those private schools and those parochial schools were about the same. The difference clearly was that the perception of parents was that this was a better thing for their children. They had no indication; many of them in fact admitted that it was so confusing they really wished to go back to the old way. This was parents talking. They were saying, "I don't know how to choose a school." (p. F. 377)

McGillis saw social and educational chaos resulting from parents being thrust into a situation marked by choices for which they were ill equipped.

In summary, opponents of the EETC seemed to assume that Ontario's common school system is based on the common sense that in matters of education parents have diminished agency and that their children would be harmed if they were forced to make choices beyond their abilities.

b. (iii) Issue #3 "Management of risk in educational choices"

Erika Shaker (Canadian Centre for Policy Alternatives) saw private school choice as a threat to the common good, agreeing with Heather Robertson and Greg McGillis that education is a public and collective good suggesting that the EETC "reinforces the mistaken notion that education is an individual service or commodity, instead of a public investment and a social good". Education is a public investment and a social good which should not be a matter of choice since individuals and families are likely to make choices against their best interests and against the common good. In particular, she worried about the freedom people might have to choose substandard schools, saying that the proposed legislation "eliminates

the legislated guarantee that all children have the right and the opportunity to attend quality public schools". She opposed any legislation which would "come at the expense of our community betterment or our collective responsibility to all children". For her, private schools are opposed to the common good and should not, in any way, be encouraged.

Among Shaker's concerns was the issue of accountability, saying that "It is shockingly simple to establish that, as was recently established, private schools are not subject to provincial regulations". She went on list the ways in which private schools operate outside a provincial framework of accountability, saying that,

> private schools in Ontario are not subject to provincial regulations. They do not adhere to the Ontario curriculum. They are not required to take standardized tests. Their teachers need not be certified and are presumably also exempt from the schoolteacher testing which will soon be administered by the Educational Testing Service……. Private schools are also partly exempt from the Ontario Human Rights Code because private schools can discriminate on order to serve a certain group of people they represent. (p. F-382)

Shaker's summary emphasized private schools as essentially "other" and outside the educational and social mainstream, suggesting that the EETC was part of an overall public policy shift based on free market principles. She said, "The market system requires winners but it also requires losers." She repeated the prediction made by others that "Some 25% of schools will not survive under this system. This means that the children and the communities those schools serve are, de facto, a necessary casualty"(p. F-383). In other words, the EETC represented an invitation to a kind of uncontrolled and unregulated free market chaos which would damage children, communities and the fabric of Ontario society. This was in contrast to the society represented by a "strong public education system, whether or not we attend it and whether or not our children are enrolled."

Jim Libbey (Ottawa Carleton Public School Board) objected to the lack of accountability for the delivery of excellent education and for financial management for schools benefitting from the EETC asking, "Will they have to make their financial statements public"? He asked, "……under what conditions will independent school qualify for this privilege? Will they be exposed to EQAO testing, including its administrative burden? Will they hire teachers with Ontario qualifications? Will they have to make their financial statements public? Will they be compelled to provide services to special-needs children?" Libbey provided his own answer saying, "I think not", which he followed up by asking his

"basic question" which was "…will they be held accountable?" (p.F-406). Later he said that accountability should be structured through existing public school boards, operating under the same rules as the current public school system.

The opponents of the EETC clearly saw it, not as an isolated tax measure but as the thin edge of a wedge leading to free market chaos. They also represented the public school system as the only mechanism by which quality education can be delivered by qualified teachers. However, supporters of the EETC presented another picture of the schools they represented. Paul Triemstra (Ottawa Christian School) responded to the charge that independent schools are outside the provincial educational norm pointing out that the staff at Ottawa Christian School were "highly qualified" with most of the teachers being holders of an Ontario teacher's certificate although the school also hired teachers with equivalent certification and qualifications. Describing the school he represented and the provincial school organization of which it was a member, Triemstra emphasized the crucial role played by parents, not only choosing a school but also in its operations by serving on the board of directors and various committees. He described them as "key stakeholders" the school being based on the principle that "parents have the primary responsibility for education their children and the primary responsibility in delegating who should be doing the formal educating in a school setting" (p. F-386). There was, therefore, a high level of volunteerism and involvement in every aspect of the school's operation and in the ongoing exchange of information between the school staff, the board and parents.

Ken Gehrels (Ottawa Christian School) addressed the issue of accountability and quality control in a response to a question about the school's willingness to comply with provincial academic standards. However, he was also speaking to the widespread perception that the quality of education delivered in faith-based schools is under a double suspicion because, not only do they operate as privately funded schools outside the provincial system but they are religious. He distinguished between the issue of world view which he described as "the basic beliefs and understanding of how the world runs, where it comes from, where it's going and what's of importance" and academic standards. The fact that Ottawa Christian and other schools are based on a particular way of answering fundamental worldview questions "doesn't mean, contrary to some of the hysteria we hear…..that we're going to produce a bunch of illiterates or that we are opposed to taking certain standardized

testing of our children …. I don't know where people are getting the idea that we don't want to test and that we have no interest in quality education. We do. Come on over and we'll show you" (p. F-387).

Elaine Hopkins (Ontario Federation of Independent Schools) suggested an even more restricted role for the state in ensuring accountability for quality of instruction, saying that "we should not have Queen's Park telling us….how to teach in the classroom" (p. F-397). Contrary to the view that parents have diminished capacity in matters of education, Hopkins asserted that "Parents know their children best", and are the primary sources of values for their children, so, consequently, parents should have the freedom to choose their schools. She addressed the issue of accountability by saying that schools are, in the first place, accountable to parents. State funding should be distributed to encourage school diversity which reflected diversity in society.

b. (iv) Conclusions on "choice"

A key point of contention was over interpretation of choice in education being encouraged by public policy. To opponents of the EETC, choice in education was interpreted through the screen of resistance to neo-liberal free market principles, seen as a threat to an egalitarian society since they privilege the richest members of the society at the expense of the poorest and most vulnerable. Opponents agreed that there should be choice but that it should be mediated and regulated within the public school system. However, to EETC supporters, school choice was seen as a natural part of any democratic society with benefits in community involvement, direct parental access to the schools attended by their children and the flourishing of educational diversity to meet the needs of students and their families. So, while everyone agreed that parental choice is important, there were fundamental differences over how choice should be regulated or how the boundaries around those choices should be constructed.

The issue of free market principles was more important in the debates over the EETC than they were in the Tory proposal in 2007 for a number of reasons. Because the EETC was a tax measure aimed at parents in privately funded schools, it blurred the "private-public" boundaries which are central to the rhetoric in public education politics. In addition, taxation is a way to redistribute wealth and the EETC was represented as a measure to protect the

privileged classes who can afford to use the services of private schools. This in turn was based on the image of private schools as being exclusively designed to serve the educational needs of the rich who do not want to associate with under-privileged groups. Socio-economic "class" as a social fault line was more clearly evident in the rhetoric around the EETC, with privately funded schools being seen as a threat to the egalitarian values of which the public school system was seen as the primary defender. In contrast, in the election of 2007 the Tory proposal foregrounded religious schools, triggering debates around religion more than free market principles, although the two were frequently linked. Non-Catholic faith-based schools were often broadly characterized as elite private and religious schools making them a questionable presence in Ontario society on both grounds.

In contrast, public schools are represented as micro-societies of Ontario's multicultural and diverse macro society in which students can meet to learn, simply by being in the same educational space, the essential Ontario civic values. Privately funded schools, by contrast, are represented as schools which isolate and segregate students to serve the needs of a particular, self-serving and self-perpetuating enclave. The EETC therefore, was represented as an attack on the public school system, on public education and, by extension, on Ontario society itself. Rather than a piece of tax legislation, it was seen as a social anomaly and a public policy encouragement of a regressive re-introduction, not only of neo-liberal principles into social policy but also of religion into a progressive history of ever expanding rationality, inclusivity and egalitarianism.

c. Theme Three "The role of the state"

A third theme in the EETC testimony was role of the state in the delivery of education. Both opponents of the EETC and its supporters agreed that the state has obligations in the delivery of education and both agreed that harm is done when the state does not meet those obligations. There was also agreement that the state's role should be a limited one in the delivery of education. However, the presenters were opposed over the particular role of the state and over the limitations of state obligation in education. Those opposed to the EETC tended to hold the position that public education is a state project to be delivered through its mechanism of the public school system. Mechanisms of accountability and quality control are problems for the state working in partnership with state actors, with the state ensuring

equal access to high quality education for all citizens regardless of race, religion, gender, economic status or any other social category which might be the basis for discrimination. However, the state's role in the delivery of education is limited in the sense that it should not have to pay for choices made by Ontario citizens considered "religious" and, consequently, "private". In other words, the obligation of the state is to adequately fund the public school system and to protect it from alternative education systems.

Supporters of the EETC tended to hold the position that the state's role is to provide opportunity for citizens to exercise their freedom of choice in education. Freedom of choice is a democratic right and the state fails in its obligations when it is complicit in raising barriers to choice through funding polices or other regulatory means. In this view the state's role is also limited in the delivery of education which is primarily a matter for non-state actors, among which are parents organized in a variety of ways to achieve their educational goals.

Jim Libbey (Ottawa Carleton District School Board) suggested that the government had gone beyond its mandate in the EETC legislation which he termed 'this euphemistically labeled "equity in education tax credit – the $300 million gift to those Ontario families that have already made personal decisions not to avail themselves of the publicly funded system" (p. F-406). Libbey seemed to make the point that choosing a school system other than the one he represented is a personal and private matter which the government must not support. This made the choice of privately funded schools a personal or private matter while the choice of citizens to "avail themselves of the publicly funded system" was portrayed as a public one deserving public funding. Therefore, the government had overstepped its boundaries in encouraging private choices through introducing the EETC.

Martha Jackman (Faculty of Law, University of Ottawa) directed the attention of the committee to the provisions in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights which guarantee the right to a free public education and also, the rights of parents who wish to choose schools based on religion; however, she pointed out, there is no legal obligation of states to fund those religious choices. She referred to *ss.2* and *15* of the *Constitution Act of 1982* which, similar to the international covenants, guarantee religious freedom and equality rights but put states under no obligation to fund the choices people might make in exercising those rights. The important issue for Professor Jackman was that the international covenants and *ss. 2* and *15*

guarantee equal access to education free of discrimination based on gender, sexual orientation, social class and poverty. This kind of education is delivered only in public schools, in her opinion.

Greg McGillis, (OSSTF, District 26) reflected the stresses of longer term struggles between successive governments and the professional teachers organizations and therefore his testimony included more political references. He introduced a number of objections to the EETC, one of which focused on the obligation of government to deliver the social good. In his view, the EETC was a new proposal which had never before been discussed in a public forum and was therefore, "a crime, a kind of crime of government. It's disgusting.". He added that "The government has essentially betrayed the people of Ontario and even its supporters in proceeding with such and unusual measure", further using the words "outrage" and "unbelievable" to describe the EETC (p. F-376).

The problem in Ontario, in McGillis' view, was that due to underfunding Ontario's schools were not as good as they once were, leaving them even more vulnerable to the outflight of students if a tax credit made privately funded schools more attractive. Looking into the future, he saw uncertainty in the viability of public schools and, by extension, public education, saying, "What will be left of our public education system in 10 years? It is staggering"(p. F-377). The EETC "actually robs from the poor to give to the rich." since the tax credit benefits those parents who are already wealthy enough to afford the school fees which they claim as tax credits. In McGillis' view the government had failed in its obligations to adequately fund the public school system by introducing policies which further failed to protect the poor against the privileged classes.

Ericka Shaker (Canadian Centre for Policy Alternatives) echoed the concerns expressed by McGillis with references to the negative results of legislation in the state of Arizona and in New Zealand which had also introduced tax credits for private school fees. She was careful to distinguish her evidence from contradictory evidence from jurisdictions where faith-based schools have been funded, saying, "It has been demonstrated in other jurisdictions *where comparisons are legitimate*, that it will not (benefit public education)" (p. F-384, emphasis added). She did not specify on what basis comparisons might or might not have been legitimate. Her language in describing the effects of the EETC suggested alarm when she referred to evidence that the "impact of market –based reforms, student

directed tax credits and public funding of private schools is overwhelming. It is also chilling". She referred to "balkanized schools and communities", "entrenched existing socio-economic inequities', the impact of the diversion of tax dollars from "an already starved public system." For Shaker the government, by introducing the EETC legislation, had failed in its obligations by starving the public school system but also by its policy proposals which threaten to balkanize schools and communities and entrench existing socio economic inequities. The legitimate role of the state is to create a modern, diverse and harmonious society through a well-funded public school system and therefore, the implications of its current policies were "chilling".

Mitchell Beer (Our Schools, Our Communities) referred to "rampant, punitive cutbacks" and "arbitrary de-funding formula under which the Harris government has looted $172 million from our schools and classrooms". The EETC was a "new low for a government that has been determined to bring the public education system to its knees" (p. F-388). The public school system can deliver a wide range of skills and knowledge to all students in Ontario although its ability to do so had been damaged by a hostile government which has had a "financial interest in undermining a universal education system that has been perhaps the strongest pillar of Ontario's society and economy" (p. F-389). Beer's outrage reflected a sense of betrayal that the government had not delivered the expected funding and protection for the public school system but his use of the term "looted" went beyond challenging this one budget measure to more fundamentally calling into question the very legitimacy of the government itself.

Jim Libbey, (Ottawa Carleton District School Board), described the EETC as "an astonishing flip-flop, the misguided giveaway of tax dollars" (p. F-405) and "the $300 million gift to those Ontario families that have already made personal decisions not to avail themselves of the publicly funded system" (p. F-406). His use of the terms "giveaway" and "gift" suggested an exchange in which one party receives a benefit to which they really do not have a right. Further, his use of the term "personal" to describe the decisions made by people to not "avail themselves of the publicly funded system" was a way of reinforcing the binary between "public" and "private" matters. The state has a role in public matters but not private ones and therefore, the EETC policy was a "misguided" and "astonishing flip-flop".

Art Buckland (Upper Canada District School Board) added another concern arising out of the "educational earthquake" suffered in 1997 due to public board amalgamation which reduced the number of trustees to serve much larger, diverse districts. However, his concern was more specifically about the English public boards, seeming to suggest that the English public school sector was the real public school system. He referred to competition within public education when he said, "Money was taken away from the English public system in order to organize language boards and new religious boards. [27] I see this as another blow to public education"(p. F-411).

Buckland used the term "shock" to describe his reaction to the announcement of the EETC describing it as "funding, a tax credit, a voucher system, for the private system." (p. F-11). He described the difference between the public and private sectors by saying, 'I see "public" as having the connotation of service and "private" as having the connotation of profit' (p. F-411). Pointing to the emergence of privately funded colleges and their impact on publicly funded colleges he said,

> We've seen colleges go bankrupt. We've seen student leave without learning, left with loans, without having completed any formal academic credit and qualifications for diplomas. So I would warn you that this is a possibility with the private systems. We're going to see many more of these private systems opened now that there is an incentive to do that. (p. F-411)

For Buckland, the role of the state is to fund public institutions designed to deliver public education services and to protect such institutions motivated by service from encroachment by private interests motivated by economic profit. He was dismissive in describing private colleges calling them "matchbox colleges, instant colleges" suggesting that privately funded schools all share the same negative characteristics. While Buckland drew the boundaries around the public school system differently from some of his colleagues, he shared with them the principle that the role of the state is to adequately fund one public school system. He did this for economic reasons but there was more to his testimony than loss of funding due to the loss of students to competing systems. For him,

[27] This was the period in which English Catholic, French Catholic and public French language boards were created, increasing the number of publicly funded systems from two (public and separate) to four (English public, French public, English Catholic and French Catholic) to address the needs of the Ontario French population.

the ideological issue was that the public system is designed to serve students while private schools use as a source of economic profits. In his view this is simply wrong and a betrayal by the current government of the legitimate and moral duty of the state.

Buckland offered evidence of public service delivered by the English public school system by telling the story of his own family who had gone on to live successfully due to the education they had received. He said, "…we have six success stories as a result of English public education that allowed social mobility", adding that as a result of underfunding, "I'm concerned that's not going to be the case any longer" (p. F-412). For Buckland, the English public school system was the original and legitimate public school system and his testimony suggested regret and worry that ongoing policy changes signal loss of respect by the government. Two themes linked his testimony with the much longer story of Ontario public education. The first of these was that he could not see public education delivered by any institution other than the one he represented. The second was that the public school system is the only way to deliver social mobility and other civic values.

However, his testimony also demonstrated that the boundaries of the public school system are contested. He had been personally involved in the battles of the mid 1980's over the public funding of the Roman Catholic separate school system and the 1997 battles over the creation of French and English boards within the publicly funded system. One result of those changes was that the English public boards could no longer claim to be "the" public school system which had important economic consequences but which also undermined the narrative of a common experience delivered by a common school system.

Supporters of the EETC had a different perspective on the role of the state. In their view the role of the state is limited in the sense that, while it should facilitate parental choice, it should not over- regulate those choices. The state has a legitimate but limited regulatory role in the delivery of education because schools are primarily accountable to parents and not to the state. In contrast with the opponents of the EETC, its supporters argued that the boundaries between the public and private were not so clear and therefore, therefore did not provide the basis for funding policy.

Paul Triemstra (Ottawa Christian School) began his presentation by describing the school he represented and then went on to summarize the two-fold purpose of his presentation

which was to explain "the justness of the cause of supporting parental choice in education" and to familiarize the Committee with the work of Christian schools (p. F-385). For him, the EETC and school funding were matters of justice and therefore a legitimate concern of the state. The EETC was not just a tax measure but was one skirmish in a longer "cause", that of "supporting parental choice in education". The role of the state is not to over-regulate education but to ensure justice; therefore public policy which denies support for independent schools is a matter of injustice and evidence of dereliction of duty by successive governments.

Triemstra argued that besides achieving justice, funding "of parental choice in education" would do more, saying "government support for parental choice is a good thing for society as a whole" (p. F-385). He agreed with opponents of the EETC that in 2003 Ontario was a vastly more diverse society than it was at the time of Confederation when *s.93* of the *Constitution Act of 1867* guaranteed public funding for Roman Catholic separate schools. He also agreed that the state has a duty to respond to social diversity but he disagreed with the principle that one school system is the appropriate strategy to manage diversity. He argued that the state should respond to social diversity by funding diverse educational initiatives under the rubric of "parental choice". Refusal of successive governments to support parental choice through funding was "puzzling" to Triemstra, supporting his claims for school choice with references to John Stuart Mill.

Triemstra's use of Mill did a number of things, one of which was to position a limited role for the state in the liberal tradition while positioning opponents of the EETC in opposition to it. It made this contest over a tax matter a larger one about who truly stood in the liberal tradition and by extension, who had the view of society and the role of education which deserves recognition by the state. He argued that the over-regulation of education by the state was an important example of the state over-reaching its boundaries which has had the effect of creating unhealthy uniformity in society.

Elaine Hopkins (Ontario Federation of Independent Schools) argued that a good public education system should respect the right of parents to choose from among a variety of schools representing the diverse philosophical and religious perspectives in Ontario. She echoed the opinion that a uniform school system is bad for society and for diversity, arguing that "we have the right to think differently" (p. F-397). She also positioned herself in the

liberal tradition in which the power of the state to regulate its citizens is limited in Canada by the *Charter of Rights and Freedoms* and in Ontario by the *Ontario Human Rights Code*. In her interpretation the freedom to choose is a legal right protected by the constitution, in law and in regulation. In a way similar to other presenters, she saw her participation in the EETC debates not just as a matter of tax reform but in the larger struggle over social values and, particularly over the role of the state in the regulation of thought.

Hopkins' concern over the "right to think differently" and Triemstra's references to Mills provide a link to the issue of religion in public education because religion, while it is often defined in terms of belief, is equally about a way of providing an "aesthetic" or an "imaginary" for practice in the world. The regulation of religion and religious diversity has been an important state interest expressed up to 1990 in a Protestant Christian framework framing a common religion and after 1990 in the language of liberal secularism framing Canadian values. *Memorandum 112 (1991)* used the phrase "Canadian values that transcend traditions and religions" but both Protestant Christianity and liberal secularism claimed to frame "Canadian values" delivered through public education in the common or public school system as a state strategy to create social harmony. However, religious minorities have always been suspicious that a common religion delivered by a state common school system has been a strategy to detach minorities from their religious distinctiveness, thereby placing boundaries around the right to "think differently".

While she did not identify the school she represented as religiously based, Lisa Addario (Ottawa Montessori School) did share a concern about the over-regulation of education and educational diversity by the state. In an exchange with a committee member defending the public school system's capacity to deliver comprehensive diversity and choice, Addario expressed caution about government funding and regulation shared by other independent schoolers saying, "I would be interested to see what the terms of a flexible public system were before I made that commitment" (p. F-404). Government funding is controversial among independent schoolers in all jurisdictions (Glenn, 2000; Bader 2007), including in Ontario where the central role of the state in a highly centralized system is often seen as a threat to the unique contribution to philosophical and religious diversity by communities of common interest. Responding to an observation by a committee member that there might be space within public education "to have a Montessori type of education",

Addario said, “I think there are probably a variety of eccentricities that are unique to Montessori. I would caution between importing Montessori-style philosophies and have a Montessori classroom” (p. F-405).

The themes in the EETC interventions are by now familiar ones. On the one hand, opponents advocated for the public school system as the one educational institution which can deliver public education and thereby create social cohesion. Underfunding of the public school system and consideration of funding for independent schools represents harm to Ontario public education, to Ontario society and to Ontario’s children. On the other hand, supporters of the EETC asserted that public education can be delivered on multiple sites, that diversity in education is good for a democracy and that the right to choose educational alternatives without penalty is a democratic right.

Both sides referred to evidence of harm done to families, public schools, public education and to societies by funding for faith-based schools or conversely, evidence of harm done to families by the refusal to fund them. One significant added element was the suggestion by opponents of the EETC that parents must be protected from having to choose the schools they consider best for their children, the concern being that parents are unable to make intelligent choices about schooling. While this is hinted in other data, it is an explicit assertion in these testimonies along with the corollary that education is best left to the state and to professional educators.

4.7.3. Effects of the EETC legislation

Progressive Conservative Premier Mike Harris (1995 - 2001) rode to victory in 1995 on the basis of his "common sense revolution" which was code for a neo-liberal free market agenda to address budget shortfalls but equally motivated by a more general that government had grown beyond what was good for society. He, like William Davis before him in 1971 – 1985, targeted education as an important issue but, unlike Davis, his government demanded results and accountability from the education system framed in the language of free market economics. The Harris government introduced legislation relating to education which required provincially mandated achievement testing for students, reorganized the curriculum around testing and evaluation and mandated teacher professional development. While some of these initiatives were consistent with policies introduced by previous governments and

with developments in other jurisdictions, what is not in question is that he and the public school establishment identified each other as enemies. Difficult labour relations and an aroused public school establishment were significant factors in the defeat of the Progressive Conservative government in 2003. References to the Mike Harris government continue as political slogans to the present day with long lasting effects on the relative fortunes of the Liberal and Progressive Conservative parties.

It was Dalton McGuinty, taking over the leadership of the Liberal Party of Ontario in 1996, who capitalized most successfully on the shift in popular support away from the Progressive Conservatives. McGuinty's attitude to faith-based schools shifted from 1998 to 2003. While he has come to be known for (among other things) his support for the public school system and opposition to funding for non-Catholic faith-based schools, in a speech to the Canadian Jewish Congress on December 3, 1998 he had declared that he had "no ideological opposition to ensuring that public funding supports Jewish Day schools." He expressed his commitment to public education, but he recognized the inherent unfairness of the current system. While he listed conditions and restrictions for addressing the unfairness, he said that "the ideal here is equity with the Catholic system" (Bernie Farber, Toronto Star, December 7, 2007).

However, by 2003, he had declared his opposition to the *Equity in Education Tax Credit* and, on winning the provincial election of 2003, introduced legislation to retroactively roll back the tax credit. This was only one piece of legislation among a number designed to create labour peace in the public service generally and the public school system in particular. Among the others was change in policy for mandatory teacher upgrading and changes to the EQAO Grade 10 literacy testing, successful completion of which is required for high school graduation and the Ontario Secondary School Diploma. The retroactive rollback of the EETC was unusual in Ontario's legislative history, creating additional financial burdens for parents whose tax returns were audited but it also indicated a more punitive tone in the regulation of faith-based schools.

Chapter Five *Law*

5.1. Introduction

This chapter examines the role of law in the story of religion in Ontario public education. In the dominant discourse identified in previous chapters, the public school system is seen as the only legitimate instrument for the social practice of public education representing the best mechanism to deliver a harmoniously diverse society. There has been an equally long history of resistance to the dominant discourse to the idea that the state should impose a common ethos to unify society through public education and that it should use the public school system to do so. The question in this chapter is whether the discourses identified in previous chapters are repeated in the case law contested and decided between 1985 and 1997.

There were four court cases specifically relating to religious freedom and equality in Ontario public education between 1985 and 1997. They were *Zylberberg v. Sudbury Board of Education* (hereafter *Zylberberg*), *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (hereafter *Elgin County*), *Adler v. Ontario* (hereafter *Adler*) and *Bal v. Ontario* (hereafter *Bal*). In this thesis they are treated as two groups of two, the first two of which, *Zylberberg* and *Elgin County*, were launched by religious minorities challenging the constitutionality of Christian school opening and exercises and Christian religious instruction in public schools. The second group, *Adler* and *Bal* was launched by religious minorities challenging the constitutionality of legislation and regulation which denied funding of health services to students in privately funded faith based schools and the restrictions on religious accommodation in public schools as a result of *Zylberberg* and *Elgin County*. While religious minorities in *Zylberberg* and *Elgin County* were alleging coercion and indoctrination by a Protestant Christian majority, in *Adler* and *Bal* religious minorities were alleging similar violations of their Charter rights by a liberal secular majority.

5.1.1. Organization

The chapter proceeds as follows; a brief review of theoretical and methodological issues is followed by a timeline providing an overview of legal and constitutional developments in the 1980's and 1990's and a summary of the constitutional and legal framework within which the courts were operating after 1982. Of particular importance here

is the adoption of the *Constitution Act of 1982* and the *Charter of Rights and Freedoms* which provided the constitutional basis for the legal claims in the four cases. The next section is a critical discourse analysis of the cases usually in chronological order of decisions outlined in the timeline with one exception. The two *Bal* decisions appear in sequence because the Ontario Court of Appeal decision in 1997, rejecting the appeal of the divisional court decision (1994) in summary fashion, does not add much to the analysis. The chapter concludes with a review of the issues as a way of introducing the regulatory effects of the decisions on Ontario public education policy with a specific focus on the phrase "education about religion".

5.1.2. Theoretical and methodological issues

Following Lori Beaman's critical socio-political analysis of the Bethany Hughes case (2008, p. 3), I examine the cases for how religion is represented in the courts and which religious voices are and are not accepted as providing reasonable, persuasive evidence. The courts made distinctions between forms of religion acceptable in public education and private forms of religion. The key to the distinction was the bias in the courts toward protestantized forms of religion, fitting into the social and educational spaces created by law and regulation. The courts were predisposed to designate as private those forms of religion which include education as religious practice, challenging the boundaries between the religious and the secular. The courts agreed that these are transgressive forms of religion which represent a threat to Ontario public schools, public education and Ontario society and that, as a restrictive measure, those forms of religion should be denied public recognition. The focus of this analysis, then, is on the language deployed by the courts between 1985 and 1997 which provide evidence that these cases are moments in the longer story of the regulation of religion in Ontario public education, providing further insight into the nexus of power in Ontario public education.

This analysis takes an emic approach around the questions, "What did the different actors, including judges, think they are doing or creating? How did they define harm to children, to religious minorities, to public education and to society?" These cases were contested by citizens representing, not only their own interests but who also saw themselves as standing in the "Ontario legacy" protecting the best of Ontario's diverse, multicultural

society. While they disagreed in crucial ways about the role of religion in public education and in Ontario's modern society, they agreed that the values of inclusion in a harmoniously diverse and democratic are foundational to their claims and counter claims.

5.2. Timeline

The following is the timeline by which the cases occurred

- 1867 *Constitution Act of 1867* and *Section 93* which defined education as a matter of provincial jurisdiction and which, in Ontario, established the constitutional protection for government funded Roman Catholic Separate Schools
- 1944 Amendment to the *Education Act* under the Conservative government of George Drew which mandated religious instruction as part of the public school curriculum, also referred to as the *Drew Regulation*.
- 1982 *Constitution Act of 1982* and the *Charter of Rights and Freedoms* adopted by the Canadian government
- 1982-1985 *R v. Big M Drug Mart* in which the Lord's Day laws were overturned, having been ruled a violation of the rights of religious minorities.
- 1985 *Zylberberg v. the Sudbury Board of Education (Zylberberg)* Jewish parents, among them Philip Zylberberg, challenge the Sudbury Board of Education's practice of Protestant Christian school opening exercises and the sections of the *Education Act* on which the practices were based. The Divisional Court rejects their *Charter ss 2* and *15* arguments but, encouraged by the dissenting opinion, they appeal to the Ontario Court of Appeal
- 1985 *Canadian Civil Liberties Association v. Ontario (Minister of Education)* The Canadian Civil Liberties Association challenges the Elgin County Board of Education's practice of religious instruction and the section of the of the *Education Act (Drew Regulation)* on which they are based. The Divisional Court rejects their *Charter ss 2* and *15* arguments but, encouraged by a dissenting opinion, they appeal to the Ontario Court of Appeal. Also referred to as *Elgin County*.
- 1988 Ontario Court of Appeal hears the *Zylberberg* appeal and overturns the Divisional Court ruling

- 1989 Ontario Ministry of Education issues *Memorandum 108* in order to bring school opening exercises into compliance with the Court of Appeal ruling
- 1990 Ontario Court of Appeal hears the *Elgin County* Appeal and overturns the Divisional Court ruling
- 1990 the offending sections of the *Education Act* are changed to bring the Act into compliance with the 1990 ruling
- 1991 The Ministry of Education issues *Memorandum 112* in order to bring public school policy and practice into compliance with the 1990 Elgin County ruling and the revised *Education Act*
- 1992 *Adler v. Ontario (Minister of Education)* Ontario Court of Justice (Toronto Motions Court) Parents in privately funded faith based schools, among them Suzie Adler, unsuccessfully challenge the *Education Act* which denies funding the support services for which their handicapped children would have been eligible if they had been enrolled in government funded schools. The Divisional Court denies their claim but does so with enough grounds for an appeal.
- 1994 *Adler v Ontario (Minister of Education)* The Court of Appeal denies their *Charter ss 2* and *15* claims, including in its judgement opinions disagreeing with the Divisional Court opinions on which the appeal was based. *Adler* is appealed to the Supreme Court of Canada
- 1994 *Bal v Ontario (Attorney General)* Parents identifying themselves as members of minority religious groups unsuccessfully challenge *Policy Memorandum 112* which had eliminated any form of religious instruction in government funded public schools. The Divisional Court ruling in *Bal* is appealed to the Ontario Court of Appeal
- 1996 *Adler v Ontario* The Supreme Court of Canada rejects the *Adler* appeal
- 1997 *Bal v Ontario* The Ontario Court of Appeal affirms the Divisional Court ruling, basing its reasoning on *Zylberberg* (1988), *Elgin County* (1990) and *Adler* (1996).

5.3. Constitutional framework: *Constitution Acts of 1867 and 1982*

The constitutional and legal context in which the courts found themselves and which formed a common basis of appeal for all parties are found in the *Constitution Act of 1867 s.*

93 (See Appendix 4) and the *Constitution Act of 1982 ss 1, 2, 15, 21, 22 and 23* (See Appendix 5). *S.93* does three things relevant to this thesis. It identifies education as a matter of provincial jurisdiction, it allows the provinces to fund "dissentient schools" and it protects "denominational schools" included in the funding policies at the time of Confederation. The central issue of interpretation of *s.93* is whether the 1867 agreement was a historically specific response to political conditions applicable only to the religious groups engaged in the political negotiations at that time or whether it provides a constitutional basis for challenges by faith-based schools established after 1867. In other words, was *s. 93* a narrow and case specific arrangement arising out of political necessity or was it based on more broad principles of religious freedom which could be adapted and applied to changing conditions?

Up to the 1980's, changes to the Canadian constitution had to be approved by the British parliament but in the 1980's the Liberal government of Pierre Trudeau "brought the constitution home". The constitution entrenched certain rights in the *Charter of Rights and Freedoms*, among them religious freedom and equality in ss *2* and *15*.. The 1980's subsequently saw a number of landmark religious freedom and equality cases in which the courts addressed violations of religious freedom and equality rights by the Christian legacy in Canada's legal system and institutions.

Most relevant to this thesis are *ss 2* and *15* (Appendix 5) which identify religious freedom and equality as rights protected under the Constitution. However, *s 1* gives the government power to set "reasonable limits" on religious freedom and equality claims, although such limits must be "demonstrably justified. The *Charter of Rights and Freedoms* therefore, gave religious citizens a legal and constitutional instrument to challenge the violation of their rights but it also gave the state the power to balance the rights of minorities with the need to create social order.

5.4. Religious freedom and equality case law

5.4.1. Big M 1985 and the link between religion and coercion

The first of the religious freedom and equality cases relevant to this thesis is *R v. Big M Drug Mart*, which did not involve education at all but set an important precedent in

framing the relationship between religious minorities and majorities around the definition of freedom and coercion. *Big M* was over the regulation of commercial activities on Sundays and is included here because of its effect on subsequent cases in education. Up to the 1980's Sundays had been given a special status protected by the *Lord's Day Act*, one effect of which was that only specially exempted commercial establishments could be open for business. On May 30, 1982, police in the city of Calgary charged *Big M* with violating the Lord's Day Act, having "witnessed several transactions, including the sale of groceries, plastic cups and a bicycle lock". The case went through several levels of courts ending up in the Supreme Court of Canada in 1985 where the arguments rested on the purpose of the Lord's Day legislation as "religious" or "secular". The question was, "did the validity of the legislation rest on its religious intent rooted in Canada's Christian history or was it a "common pause day" with social benefits separate from any particular religion?"

Big M argued that that the Lord's Day legislation violated the Constitution because, being religious in purpose and effect, it represented coercion by a Christian majority. The government argued that the Lord's Day legislation had a "secular" purpose which, by providing a "common pause day" separate from religious purposes, put the legislation out of the reach of *ss 2* and *15* claims. The characterization of the Lord's Day legislation as a "common pause day" with a secular purpose would have denied Big M the right to appeal to *s 2* since its religious freedom rights were not being violated.

In the end, the Supreme Court found that the Lord's Day legislation was religious in both purpose and effect and that it violated the religious freedom rights of the plaintiffs. However, in doing so, the Court commented on the nature of freedom in a way that had effects on subsequent Charter cases, when it said

. Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and

> freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

The link between freedom and coercion established by the court in *Big M* was adopted by subsequent courts but, equally important was the link between coercive majoritarian religious groups and the state acting on behalf of religious majorities. The court said

> What may appear good and true to majoritarian religious groups, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of "the tyranny of the majority".

The legal opinion linking coercion and a religious majority echoed the conclusions in the *Mackay Report* which, having heard the Jewish minority voices about the effects of the *Drew Regulation* concluded that the Christian majority was engaging in coercive practices. The link between "majoritarian" and "religious" and the idea that the state might be acting at the behest of a religious majority which would prove to have important influence in future cases. While the link was logical given the political power of the Christian majority in Canada in the mid-1980's, the foregrounding of religion as a source of coercion became a kind of common sense which made examination of coercion in public education by other, non-religious sources almost impossible. *Big M* therefore, had an important influence on how various courts came to see the relationship between religion and harm in the form of coercion and indoctrination in *Zylberberg* and *Elgin County*.

The opportunity to challenge Protestant domination in Ontario public education took shape in Z*ylberberg* in which the issue was school opening exercises and *Elgin County* in which the issue was religious instruction. The two cases occurred in the same time period, both having been launched in 1985 in Ontario divisional courts and both being appealed to the Ontario Court of Appeal where they were decided in 1988 and 1990 respectively. However, they were launched by different groups working independently of one another, *Elgin County* by the Canadian Civil Liberties Association and *Zylberberg* by a group of Jewish parents. In fact, Martin Sable (1999) describes consternation in the Canadian Civil Liberties Association over the launch of *Zylberberg*, since the primary interest of the CCLA action was the *Drew Regulation* and not school opening exercises. CCLA had carefully developed its strategy which included taking the time to choose the plaintiff whose ethnicity, religion and complaint would have the most impact on the courts. With the cooperation of

the Canadian Jewish Congress they chose not to have a Jewish family as the primary plaintiff. However, while the planning for the challenge to the *Drew Regulation* was occurring, Philip Zylberberg, along with four other applicants, decided to challenge school opening exercises in the Sudbury Public Board. The concern of the CCLA was that a judgement supporting current practices of school opening exercises and the sections of the *Education Act* on which they were based would prejudice its own case challenging religious instruction and the *Drew Regulation*. However, as events unfolded the two cases followed similar trajectories through the divisional courts to be finally resolved at the Court of Appeal.

5.4.2. Zylberberg v Sudbury Board of Education (1988 or (*Zylberberg*)

a. Background

School opening exercises had been in effect since the establishment of the common school movement, mandated in the *Education Act* and practiced (more or less consistently) in public schools throughout the province. The Christian origins of the common school movement made the religious character of school opening exercises more or less inevitable but in order to avoid exacerbating sectarian tensions between denominational groups in the 19th century, they were designed to be non-denominational. There had been a long standing commitment, at least in principle, to making school opening exercises inclusive of all religious groups in schools and offensive to none. The ideal of finding a common and inclusive expression of religion in school opening exercises has been a theme in common schools and the legal issues in *Zylberberg* can be viewed in the context of that longer project.

The issue having to be decided by the Ontario Court of Appeal in *Zylberberg* was whether or not the "religious exercises, prescribed for the opening or closing of each school day in the public schools of this province, infringe the freedom of religion and conscience guaranteed by *s. 2(a)* of the *Canadian Charter of Rights and Freedoms*". The court identified two elements which would prove to be germane to its reasoning. The first was that the parents identified themselves as religious minorities, one of them Roman Catholic who wanted a secular education for their children and second, that although they objected to the school opening exercises practiced by their school, they also did not want to exercise the opting out provisions included in the *Education Act*. As a result, the problem was the protection of their religious freedom and equality rights but the courts had to decide if their

rights were being violated in the first place or if the *Education Act*, specifically the conscience or opting out provisions provided adequate protection. Analysis of opting out provisions as a way of protecting the religious rights of minorities would be important in the reasoning of the Court of Appeal in overturning the lower court decision. In the end the Court of Appeal agreed that their religious freedom and equality rights had been infringed both by the school practices of religious opening exercises and by the sections of the *Education Act* on which those practices were based.

Religious minorities, among them Jews, were taking significant social, political and legal risks by objecting to Christian school opening exercises because of the practice of reciting the Lord's Prayer. While the Lord's Prayer is iconic in Christian religious practice it was also, in the mid 1980's, embedded in public practice and therefore seen as a cultural symbol as much as a religious one. Therefore, challenging the Lord's Prayer was risky for three reasons. The first was that religious minorities, by objecting to a religious practice which was often not really seen as uniquely religious would further identify themselves as social outsiders. The second risk was political, given the fact that the challengers were in a relatively weak position with a history of unsuccessful advocacy and, as a result, their action could have had unexpected consequences, among which could have been the loss of accommodations they had achieved in local boards of education. Their political power was further weakened by the fact that there was not really widespread objection to the Lord's Prayer, even among religious minorities. The third risk was that a successful outcome of a legal challenge was by no means assured. This was uncharted legal territory and there was a long tradition in law and regulation which had identified school opening exercises as religiously inclusive, inspirational activities. It was for these reasons that the Canadian Civil Liberties Association had decided to challenge the *Drew Regulation* and religious instruction rather than school opening exercises and, as it turned out, the comments of Justice O'Leary's in the Divisional Court hearing *Zylberberg* confirmed their analysis. However, Philip Zylberberg, along with his co-applicants argued that school opening exercises including the Lord's Prayer were onerous because they were expressions of a dominant religion

Justice O'Leary's reasons for rejecting the claims by the religious minorities before him vividly illustrate the risks involved in challenging school opening exercises. His tone of impatience with minority religious groups suggests that the courts were not friendly to

religious minorities. However, given Jewish experiences with school boards and committees in attempting to negotiate their concerns, Justice O'Leary's attitude would not have been completely unexpected. In O'Leary's view, Canada was a Christian country and, while there was tolerance for religious minorities, he did not see the need to encourage them or to share public space with them. Giving his reasons for rejecting Zylberberg's claims that his *ss. 2* and *15* religious freedom and equality rights had been violated, he said, "Where a country is founded on the principle of the supremacy of God, there is no obligation on the schools to spend the same profit reinforcing the belief of non-believers that God does not exist as in teaching believers about the nature of God" (Sable, 1999, p. 296).

In addition, Justice O'Leary rejected the *s. 2* claims of the applicants because, in his opinion, their religious freedoms were protected by the excusal or opting out provisions in the *Education Act*, allowing them to excuse themselves from any religious activity to which they objected. However, while he accepted the role of excusal provisions to protect religious freedoms of minorities, he could not really see why they would be necessary since, in his view, reciting the Lord's Prayer was not onerous. Nevertheless, opting out provisions were designed for those few who needed them as one mechanism to protect religious freedoms of minorities but, in his view, they could not be considered coercive. If students were embarrassed by either of their options, 'embarrassment was a "fact of life" (Sable, 1999 p. 295). In O'Leary's opinion, "no judge who believed that Canada was founded on 'the principle of the supremacy of God' was going to rule against the Lord's Prayer."

However, the dissenting opinion by Justice Reid of the Divisional Court gave the applicants in *Zylberberg* grounds for an appeal which went to the Ontario Court of Appeal in 1988. Justice Reid's opinion included critical commentary on the issue of religious freedom and the threats to religious freedom by coercion. The issue of coercion was the one on which the Court of Appeal focused in overturning the Divisional Court ruling. While the Court of Appeal restricted itself to the issue of school opening exercises, it is clear from a number of references that it was aware of the issue of religious instruction in public schools being contested in *Elgin County*. There is some overlap with *Elgin County* in the *Zylberberg* summary of the regulatory framework in the *Education Act (1980) s. 28* (Appendix 6).

The Court of Appeal agreed with the appellants that their *Charter s. 2 (a)* had been violated by the religious school exercises, both in principle and in practice, overturning the

Divisional Court ruling and the long tradition of thought which held that Protestant Christian school opening exercises could be inclusive and non-coercive. Further, the Court of Appeal ruled that the exemption clauses which had long been represented as protection of the religious freedoms of minority religious groups were themselves evidence of coercive religious practices and were, therefore, inadequate instruments to protect the *s. 2 (a)* rights of religious minorities. The focus here is on how the Court of Appeal arrived at its decision and how, in doing so, it both drew on and adapted a representation of religion which has had important implications for debates about the role of religion in Ontario public education.

Four themes are evident in the court's reasoning. They are definition of religion, definition of religious freedom, threats to religious freedom and protection of religious freedom.

b. Defining religion

The Court of Appeal in *Zylberberg* did not explicitly define religion or its social role, and it did not engage the philosophical issues associated with the distinctions between the religious and the secular. However, its judgment reflects the trajectory of history and the changing role of religion in secular, modern societies assumed by *Big M* saying,

> In an earlier time, when people believed in the collective responsibility of the community toward some deity, the enforcement of religious conformity may have been a legitimate object of government, but since the Charter, it is no longer legitimate. With the Charter, it has become the right of every Canadian to work out for himself or herself what his or her religious obligations, if any, should be and it is not for the State to dictate otherwise. The State shall not use the criminal sanctions at its disposal to achieve a religious purpose, namely, the uniform observance of the day chosen by the Christian religion as its day of rest.

Justice Dickson, in *Big M* had assumed a historiography based on secularization theory and an historical trajectory with a decreasing public role for religion in society. The Court of Appeal in *Zylberberg* accepted this historiography which predisposed it to see the way forward in the context of a social model in which religion, diversity and secularism are linked in a project of modernity (Asad, 2003; Hurd, 2012).

In *Zylberberg* the Court of Appeal adopted a concept of religion that includes "practice" but it seemed ambivalent about religion as "practice". The word "practice" occurred over forty times in *Zylberberg*, eleven of them in the majority opinion. However,

while *Big M* used practice as a form of religion to be protected, *Zylberberg* tended to link practice with forms of religion to be resisted. In nine of the eleven times (two of the eleven being in references to *Big M*), it was associated with a "majoritarian" religious presence and practice. By foregrounding practice as evidence of coercion by a majority from which minorities must be protected, the court backgrounded consideration of religious practice which should be protected. While it did not explicitly say so, the court seemed to assume that religious freedom is freedom of "conscience" and "religious beliefs". This would have important implications in future cases for religious minorities whose religious practice included education and whose religious freedom and equality claims were denied.

However, the legal question for the court was not the definition of religion but the definition of religious freedom and how religious freedom was to be protected in a modern, secular and diverse public school system. Religious freedom is an important value in Ontario's modern society and it was the central issue in *Zylberberg*. However, religious freedom itself is not a straightforward matter.

c. Defining religious freedom

The definition of religious freedom was a high priority in *Zylberberg* with the Court of Appeal basing its reasoning on *Big M* when it said,

> Chief Justice Dickson, speaking for the court, eloquently described the meaning of the words "freedom of conscience and religion". In its most traditional sense, freedom of religion means the unimpeded freedom to hold, profess and manifest religious beliefs …
> 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.

Chief Justice Dickson had included a number of things under the concept of freedom, among them the right "to hold, profess and manifest" religious beliefs and practices. He seemed to recognize that religion included more than "conscience" or "belief" and that freedom went beyond the right to "hold" and "profess" but also to "manifest" or to act on those beliefs. In other words, religion for Chief Justice Dickson included "practice" which deserves protection along with the beliefs on which those practices are based.

The religious minorities in *Zylberberg* were claiming that their *s. 2 (a)* religious freedom rights were being violated in two ways. First, their children were being subjected to school opening exercises based on a religion they did not share and over which they had no control and the second, the children, if they chose to excuse themselves from the activities to which they objected, were forced into a position of having to make a declaration of religious identity which would mark them out as different from their classmates. Either way they claimed that students, given the possibilities for intimidation and embarrassment on the one hand and religious indoctrination on the other were not free in the sense that freedom had been defined in *Big M*.

The Sudbury Board of Education defended itself in two ways. First, it described the school opening exercises as inclusive and non-coercive and second, it pointed out that the few students offended by the opening exercises were free to exercise the long established right to excuse themselves or to opt out. Excusal procedures had been available to students in Ontario common or public education since the 19th century in recognition of the fact that schools, despite their best efforts to be inclusive of and sensitive to minority religious groups, had to admit the possibility that their classes might not be able to adequately address the variety of religious beliefs represented in their classes. *S. 28 (10), (11)* and *(12)* of the *Education Act, 1980* was, at the time *Zylberberg* was being heard, the latest version of provisions that had been a standard of the Act from its earliest beginnings.

However, although excusal provisions had been considered evidence that public schools were sensitive to religious diversity and religious freedom, they had also been controversial from the point of view of minority religious groups who experienced the actual process of opting out of classes and activities which offended them. While from the perspective of the *Act*, excusal was an expression of respect for religious diversity and a way to protect religious freedom, from the perspective of religious minorities it was one more way in which they were identified as "other". They reported that in actual practice there were many ways in which the process of activating and accessing the excusal procedures became a humiliating and embarrassing experience of power and subservience (Canadian Jewish Congress, 1967; Sable, 1999).

As a result, excusal provisions were flashpoints providing insight into differences of understanding the basis for the claims of the applicants in *Zylberberg*, evident in the

comments of Chief Justice O'Leary which attracted the negative attention of the Court of Appeal. Justice O'Leary could not hear the issues of power in the claims of the religious minorities before the Divisional Court but while he may have been out of step with changing trends in the role of religion in Ontario public education in the 1980's, he was completely consistent with the discourse which had dominated Ontario public schools since the 19th century. The Court of Appeal recognized not only a difference in perspective but, more important, it identified the difference in power represented in the different interpretations, most of which were invisible or opaque to those in the majority position.

Therefore, in the same way that the *Mackay Committee* in 1969 had been prepared to listen to the Canadian Jewish Congress in a different way from the Hope Commission in 1950, the Court of Appeal in *Zylberberg* seemed prepared to listen to minority religious voices in a way strikingly different from the Divisional Court of Justice O'Leary. It agreed that exemption provisions, rather than protecting religious freedom, were another way in which minority religious groups were reminded of their marginal social positions. One of the reasons for this new level of sensitivity was that the court was prepared to reconsider the issue of coercion through the lens provided by the court in *Big M*.

d. Coercion

The Court of Appeal in *Zylberberg* took time to consider the issue of coercion saying this in reference to Justice Dickson's re-consideration of coercion in *Big M* in light of *s.2 (a)*,

> He (Dickson) continued by saying that "the concept means more than that" and stated that the freedom can "be characterized by the absence of coercion or restraint". He went on to say …..
> Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices.

Justice Dickson in *Big M* gave the Court in *Zylberberg* a more broad or generous way to think about religious freedom as a concept but equally important, he reconsidered the coercive barriers to the actual exercise of religious freedom. While the excusal provisions in the *Education Act* in 1980 provided a legal or formal means to exercise religious freedom, Justice Dickson asked more nuanced questions about the actual experience of exercising

those options. The court in *Big M* recognized that formal mechanisms can actually mask the real exercises of power which can, through a variety of means, reduce access to religious freedom by raising the cost of exercising formally defined and protected rights. This had important implications for consideration of power on the school and classroom level where age and status, peer pressure, stages of development and other factors operate in multiple subtle and not so subtle ways often making real power opaque. This was the point made in *Big M* pointing out the fallacies in the defence of the *Lord's Day Act* which had appealed to its "secular purposes", thereby masking its religious purpose and effect.[28] The new lens on coercion developed in *Big M* and adopted by the Court of Appeal in *Zylberberg* allowed power to be unmasked and revealed for what it was.

It was on this basis that the Court of Appeal described as coercive the excusal process in principle as well as in practice. Given the realities of the classroom and the school, there was no way, at least in the opinion of the court, that children could exercise their religious freedoms without constraint or compulsion. Drawing on the insights in *Abington School District v. Schempp (1963)* the court said,

> While the majority judgment in *Abington* struck down the legislation on the basis of the establishment clause, Justice Brennan, in a concurring opinion, held that it also violated the free exercise clause. He said,
> "The more difficult question, however, is whether the availability of excusal for the dissenting child serves to refute challenges to these practices under the Free Exercise Clause. While it is enough to decide these cases to dispose of the establishment questions, questions of free exercise are so inextricably interwoven into the history and present status of these practices as to justify disposition of this second aspect of the excusal issue. *The answer is that the excusal procedure itself necessarily operates in such a way as to infringe the rights of free exercise of those children who wish to be excused.* We have held ... that a State may require neither public school students nor candidates for an office of public trust to profess beliefs offensive to religious principles. By the same token the State could not constitutionally require a student to profess publicly his disbelief as the prerequisite to the exercise of his constitutional right of abstention." [Emphasis added in the original]

However, Justice Dickson's analysis of coercion in *Big M* had another important effect on future discussions and debates about the role of religion in Ontario public education. The

[28] Linda Woodhead's distinction between strategic and tactical religion provides a way to recognize the designation of the *Lord's Day Act* as "secular" in purpose as a strategic move by a dominant religious group to retain its power and influence in a society (Woodhead, 2012).

critical point was his relating "coercion" and the impulse to impose "conformity" to "religion" and then directly to a "majoritarian religious group". The Court of Appeal in *Zylberberg* seemed to accept these links, thereby bypassing critical consideration of the possibility that the key to coercion was the role of the state as a source of coercive power. So while *Big M* unmasked one form of power, it left other forms of power opaque. *Zylberberg*, referring to *Big M* said this,

> Another aspect of the Charter freedom of conscience and religion, which is of particular significance in this case, is freedom from conformity. The practices of a majoritarian religion cannot be imposed on religious minorities. The minorities should not be subject to the "tyranny of the majority", as Chief Justice Dickson said ……..
> What may appear good and true to a majoritarian religious group, or the State acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of "the tyranny of the majority".

The focus on religion or the screen of religion put religion at the centre of the issue of coercion in a way that has had lasting effects on future regulation of religion in Ontario public education. It also suggests a theme which becomes more explicit in subsequent debates which is that the coercive impulse to enforce conformity is unique to religion. Some of this was inherent in *Zylberberg* itself in which the claims by the applicants were based on *s. 2(a)* making them, by definition, "*religious* freedom" claims, determining the parameters within which the case proceeded. However, the point here is to identify the effects of foregrounding religion in subsequent decisions and in subsequent debates which is that religion has been represented as focal point of coercion.

This link is important because it was central to the way the courts in *Adler* and *Bal* would proceed in the 1990's, allowing them to hear some voices but not others. The religious minority groups alleging coercion in the liberal secular ethos that replaced Protestant Christianity would be unsuccessful because the courts would accept the idea that secularism is religiously neutral and cannot, by definition, be considered coercive. The foregrounding of religion also gave particular credence to the representation of religion as a particularly important social and epistemological fault line which has been taken as a kind of common sense in the debates over access to public funding in 2003 and 2007. *Big M's* reasoning, adopted in subsequent case law, reinforced an essentialized representation of religion as a

source of harm in the modern world which has had important effects on how its public role in education has been regulated.

A theme in the analysis of coercion in *Zylberberg* was the identification of Christianity as a "majoritarian" religious group responsible for the coercive environment of the public school system. The term "majoritarian" appears nine times in the case, each time linked in some way to "religion", "group" or "dogma". There is no doubt that the common ethos for public schools was defined by a common Protestant Christianity well into the 1980's, resisted by other religious groups some of which were Protestant minorities. However, while they were resisting coercion by a Protestant Christianity representing itself as inclusive and non-coercive, they were equally resisting coercion by the state through its control of the common school system. Throughout the history of Ontario public education, minority religious groups have linked the coercive impulse to impose conformity to the state and its control of public education for its own purposes of nation building. The focus on "religion" and identifying the issue of coercion as linked to a "majoritarian religious group" has allowed state power exercised through the public school system as the only mechanism to deliver public education to remain opaque.

This is not an argument to support Justice O'Leary of the Divisional Court opinion that the religious freedom rights of minority religious citizens were adequately protected by the exemption provisions or that, if they were being hurt, it was not significant in a legal sense. *Zylberberg* exposed the subtle and not so subtle ways coercive power was exercised using the formal language of tolerance for religious diversity while masking the many ways in which power and the interests of those in power were maintained. However, the focus on religious freedom allowed certain forms of coercive power, particularly those based on religion, to be exposed while masking others (Hurd, 2008, 2013, 2014; Cavanaugh, 2009).

e. Recognizing coercion

Besides defining religious freedom and coercion, the court had to determine if coercion had actually occurred. Coercion had been identified as an essential component in considering limits on freedom of religion, the term occurring about forty times in *Zylberberg* which adopted the *Big M* insights on the issue. The definition of coercion and the identification of power issues was one of the important contributions of *Big M*, recognized

as such by the Court of Appeal in *Zylberberg*. However, the Court's recognition of the multiple ways in which power is exercised in society in general and in schools in particular introduced the important question of how coercion can be recognized. Another way of phrasing the problem is, "how is knowledge about coercion generated?" and then, "how is that knowledge heard and by whom?". One of the insights of the courts in *Big M* and *Zylberberg* was that coercion is usually not recognized by those in power and, if it is recognized, is usually framed in ways that makes the knowledge ineffective in terms of public policy or law. Justice O'Leary of the Divisional Court in *Zylberberg* recognized that coercion may have occurred but he turned to *s.1* of the *Charter* to justify coercion. Some of the mental health experts in *Zylberberg* recognized coercion but they normalized it by suggesting that it can be good for the students experiencing it or that it is normal in a diverse society and not a matter of state concern. However, when the Court of Appeal turned its attention to this issue it concluded that the minority religious voices alleging coercion were key sources of knowledge. In addition, feelings associated with the minority experience of being coerced were evidence to be considered by the court.

The terms "feel" and "feeling" occur eleven times in the case, all of them associated with the experience of minority religious groups. The court, referring to dissenting opinion of Justice Reid of the Divisional Court, said, "No one has suggested that the feelings expressed by applicants are not real, or that they do not run deep.". In other words, the feelings of those alleging coercion were important but it was Justice Reid's dissenting opinion which identified them as important in a legal sense. The feelings of minority religious groups were important sources of legal knowledge, at least in the view of the Justice Reid and later in the Court of Appeal.

However, the court was selective in deciding *whose* feelings were important in generating legal knowledge about coercion and quoting with approval the dissenting opinion of Justice Reid of the Divisional Court in *Zylberberg*, said,

> It may be that a control or limitation indirectly imposed is not readily appreciable to those who are not affected by it. It may be difficult for members of a majoritarian religious group, as I am, to appreciate the feelings of members of what, in our society, are minority religions. It may be difficult for religious people to appreciate the feelings of agnostics and atheists. *Yet nevertheless those feelings exist*. No one has suggested that the feelings expressed by applicants are not real, or that they do not run deep.

In other words, people in positions of power are not in a position to identify coercion because they do not feel its effects. It is the minorities who experience the effects of coercion who are best positioned to identify it.

This seems a straightforward conclusion and opens the door to challenging the exercise of power as it occurs on multiple, more or less subtle levels. However, examination of the case suggests that the matter may not be as straightforward as one might expect. For example, while Justice O'Leary may have come across as harsh and unfeeling, he represented the majority opinion of the Divisional Court and in public school system into the 1980's. It would be stretching credulity to propose that before *Big M* and *Zylberberg*, public school officials and judges were callous and indifferent to the feelings of the people in their care.

Further, expert testimony in *Zylberberg* was divided, not so much on the matter of the existence of hurt feelings but on their significance, introducing ambiguities around the interpretation of feelings more thoroughly examined by Justice Lacourciere, dissenting in the Court of Appeal. The point he made was that in a diverse, multicultural society students will inevitably encounter different opinions and part of their growing up into maturity involves learning how to engage those differences. This interpretation was subsequently described as "insensitive" by the court but its doing so could be described as arbitrary. For example, while the court recognized the differences of opinion among experts, it sided with the experts who testified to the negative impact of children having to identify themselves as different. However, it did so for reasons that went beyond the experience of children in school when it said,

> The effect of religious exercises cannot be glossed over with the comment that the exercises may be "good" for minority pupils. This view was expressed, as we indicated above, by a psychologist in supporting the Board's case who said that it was salutary for minority pupils to confront "the fact of their difference from the majority". This insensitive approach, in our opinion, not only depreciates the position of religious minorities but also fails to take into account the feelings of young children. *It is also inconsistent with the multicultural nature of our society* as recognized by s. 27 of the Charter. (emphasis added)

The court thus placed the hurt feelings of children in a wider context of Canadian multicultural values giving them even greater weight. Feelings were important to the court, not only for the children directly reporting them but also as evidence that Canada's practices of multicultural diversity did not match its ideals. The feelings of children

indicated a moral and social problem which must be addressed but which, in the opinion of the Court of Appeal, had been ignored by courts and school officials in an earlier stage of Canada's history.

However, Justice Lacourciere, in his dissenting opinion offered a different way of seeing the issues raised in testimony of students being forced to declare themselves on their religious identities and of the possible negative impact due to injured feelings. In his opinion, in a multicultural society where religious groups are in constant contact the state is under no constitutional obligation to define religious freedom in a way to ensure that no one will ever have to make a declaration about his or her religion. Neither is the state under any obligation to ensure that no child will ever be hurt as a result of having to do so. Referring to Chief Justice Dickson's opinion in *Big M*, Justice Lacourciere said,

> The Chief Justice left open the possibility that the concept of freedom of religion may mean more than freedom from coercion to affirm or manifest specific beliefs or practices, but the concept cannot be so broad as to prohibit government acts which compel the making of a religious choice. If "freedom" were so broadly conceived, it would demand a stance of state neutrality that is not justified and probably not possible to achieve.

Further, referring to Stewart J's dissenting opinion in *Abington*, Justice Lacourciere said,

> As mentioned above, we have no "wall of separation" between church and state. Not only are we a pluralistic society like the United States, but further, our pluralism, or "multicultural heritage", has been entrenched in the Charter as an aid to its interpretation. The state is under no duty to insulate children from cultural and religious differences. Thus, being compelled to choose whether or not to participate in religious exercises is not, in itself, constitutionally impermissible.

Justice Lacourciere went on to outline the conflicting and inconclusive evidence of harm to children alleged by the applicants. Further, while the Sudbury Public Board of Education was portrayed by the majority of the court as unwilling to make changes to its practices, he referred to evidence that it was quite willing to do so out of sensitivity for the students under its care and respect for multicultural diversity.

The issue here is which voices were heard in determining harm and how they were used to generate knowledge about the problem to be resolved. This would become even more

complex in the examination of *Bal* and *Adler* when the arguments of minority religious groups were rejected by the courts even though they closely paralleled the arguments in *Zylberberg*. So, while the Court of Appeal agreed that "no one is suggesting that the feelings expressed by the applicants are not real or that they do not run deep", what is less straightforward is which voices contributed to the knowledge about coercion and under what circumstances they could be heard. In a way, the decisions made by the court about the voices which could and could not be heard seem arbitrary but, seen from a critical perspective, those decisions can also provide insight into the aesthetic about religion assumed by the courts in their reasoning.

f. Public and private forms of religion

The Court of Appeal in *Zylberberg* overturned the Divisional Court ruling along with pertinent sections of the *Education Act (1980)* and, rejecting expert opinion to the contrary, accepted evidence that harm was being done to religious minority children by Christian opening school exercises. The excusal or opting out provisions were judged to be inadequate instruments to protect religious freedoms of minority religious groups and were themselves judged to be coercive instruments both in practice and in principle. This left the question of how coercion of religious minorities in opening school exercises should be avoided, something the court addressed by outlining an inclusive religious environment or a form of public inclusive religion to replace the sectarian exclusive and coercive one created by the *Education Act (1980).* In doing so, the court was drawn into declaring itself on religion itself and on the boundaries between public and private forms of religion or the forms of religion acceptable in public education.

The Court of Appeal was trying to move beyond the view of Justice O'Leary of the Divisional Court and the long tradition in Ontario public school system which saw Ontario's public religion in the framework of a form of inclusive Protestant Christianity. However, Justice Lacourciere, dissenting in the Court of Appeal, argued that inclusive Protestant Christianity was not only possible but an essential component of the Ontario public school legacy, saying,

> …..our society is collectively powerless to repudiate its history, including the Christian heritage of the majority. The Lord's Prayer, admittedly of Christian origin, perhaps because it does not mention Christ, has gained such wide

> acceptance that it is regarded by many as ecumenical and so acceptable to other religious groups as to make it universal. It reads as follows:
> Our Father, Who art in Heaven, hallowed be Thy name, Thy kingdom come, Thy will be done in earth as it is in Heaven; give us this day our daily bread; and forgive us our trespasses as we forgive them that trespass against us; and lead us not into temptation, but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever. Amen. Holy Bible: St. Matthew 6: 9-13.
> I find it difficult to see how its words could offend any religious group.

Justice Lacourciere recognized that modifications to the practice of school opening exercises were necessary in the 1980's but argued that the concerns of the applicants could be addressed by changes in practice without having to reject the regulations on which those practices were based. Agreeing with Justice O'Leary of the Divisional Court, he could not see the problem of the Lord's Prayer which, since it did not even mention the name "Christ", was an expression of a universal religion. For them, the Ontario tradition of inclusive Protestant Christianity had important historical, cultural and social significance in framing the basis for personal and public morality.

However, the Court of Appeal rejected this long standing understanding of inclusive Protestant Christianity as the ethos unifying Ontario public education, using *Big M* to provide the precedent in doing so. Referring to Justice Dickson's opinion in which he called for a generous rather than a legalistic interpretation of coercion, the court said that the "approach (taken in Big M) compels the re-evaluation of opening religious exercises in public schools. It can no longer be assumed that Christian practices are acceptable to the whole community". Rather than reforming current practices, the court was moving in the direction of rejecting Christianity as the religious framework within which the social and moral order had been imagined since the earliest days of European settlement of North America. It was not alone in doing so, other courts in North America having come to similar conclusion, some as early as the 1960's. However, in the context of Ontario public education, this represents an important conceptual shift in which the court saw itself being in step with history by initiating changes in the public role of religion which, in its opinion, were an inevitable result of modernity.

By contrasting what it saw itself doing with what had been accepted practice until the 1980's the court seemed to position itself on the side of history in what might be considered an expression of the secularization thesis based on the premise that religion is in decline as a public presence. A secularization meta-narrative assumed by the court provided conceptual

legitimacy to its concluding that the injury expressed by the applicants indicated more than incidental religious practice in public education. Rather, their injury was due to public policy allowing religion to exercise power in public education, a state of affairs which is wrong in a modern, diverse society not only in practice but also in principle and something the Mackay Committee had also concluded in 1969.

The *Mackay Report* was an important source of educational expertise for the court as it considered the role of religion in public education in *Zylberberg*. The Court of Appeal agreed with the Mackay Committee's analysis of the historical trends, proposing an increasingly diverse, modern Ontario requiring a re-evaluation of the dominant role of Christianity in public education. However, despite its critical examination of the role of Christianity, the Mackay Committee had not recommended the elimination of religion in either the public school system or in Ontario society, saying

> It was also brought forcibly to the Committee's attention, as previously noted, that to eliminate opening exercises would suggest that religion is not an integral part of the life of the people of this province. It is the Committee's view that religion does indeed play a vital part in our life and that the holding of opening exercises therefore exposes the child to a valuable learning experience in relation to the whole community in which he lives. (p. 13)

Rather than recommending the elimination of religion from public education the Committee was defining the kind of religion it saw as contributing to the formulation of Canadian identity. It said,

> The opening exercises recommended by the Committee consisted of the "singing of the National Anthem and a prayer, either of universal character appealing to God for help in the day's activities, or the Lord's Prayer". The Committee felt that opening exercises in the hands of a sensitive and intelligent teacher could be expanded to "recognize national days such as Remembrance Day and significant religious days of all faiths such as Easter, Hanukkah, Christmas, or the Passover".

In *Zylberberg* the court agreed with Mackay, identifying the forms of religion which would detract from or be harmful to public education and to society and what should not be included as public religion in light of a changing society, saying

> The Committee recommended the cessation of Bible readings as part of the opening exercises, noting that the reading of the Bible had been criticized in numerous briefs for a variety of reasons. The Report emphasized that: The intention of the recommended opening exercises should be inspirational and dedicational rather than confessional. The above distinction is essential in order to permit participation by all students. Throughout its Report, the Mackay Committee demonstrated sensitivity to the change in the composition of the

> population of the province in post-war years and the present pluralistic nature of Ontario's society.

The court recognized the challenges facing the Mackay Committee in finding the balance between religious freedom, on the one hand, and social cohesion on the other, the two fundamental values marking Ontario as a modern, diverse and democratic society. It said,

> The pluralistic nature of Ontario's society has been recognized by the Committee. The recommended opening exercises have religious significance for many and cultural significance for all. We are aware of the rights of minorities as well as the rights of the majority, and we have attempted to recognize the rights of both. What we have recommended is intended to fulfil a useful learning purpose, and should not be objectionable to most reasonable persons.

The court did not enter the debates about whether or not Canada was a secular society or if the public school system was or was not "secular". The word "secular" appears over 30 times in the judgment, about half of which are in the majority decision where it is used mostly used to distinguish between the "religious" and "secular" purposes and effects of relevant passages of the *Lord's Day Act* and the *Education Act*. The dissenting opinion by Justice Lacourcierce accepted the description in *McBurney v. The Queen (1984)* characterizing the current historical period as the "modern, secular age" and its description of Canada as a "modern secular state". However, there it served to support an argument that religion has a legitimate public role even in a secular modern age and in a modern secular state. In *Zylberberg*, other than using the term for the purposes of making legal distinctions between religious and secular purposes, the term is used twice, once to describe the choice of one of the applicants who, Roman Catholic, had chosen a public school for his children in order to receive a "secular" education", the other to describe opening exercises in the Toronto District School Board as including readings of a "Secular Humanist" origin.

The majority opinion in *Zylberberg*, while not explicitly entering the debates over the distinction between the religious and the secular, assumed that the boundary line between them exists in a sufficiently clear fashion to have legal implications. For the court, the religious purpose and effect of *s.28* of the *Education Act* rendered it inappropriate in public education and, without explicitly saying so, linked such a purpose to "indoctrination". Indoctrination is identified as a form of educational harm, the court explicitly agreeing with the *Mackay Report* in its conclusion that the exemption provisions intended to protect children from educational harm were themselves coercive and discriminatory. Unlike

Mackay, the court did not attempt to outline a specific educational remedy, ruling only that s.*28* of the *Education Act* violated the *s.2(a) Charter* rights of the applicants while saying its religious purposes represented the power of 'the *"smug majority"* who permit the practice'.

However, that left unanswered the question of what should replace the regulations and school practices under the court's critical scrutiny. While the court did not specify the way forward, it agreed that a non-coercive and inclusive environment could be achieved by the public school system in a manner acceptable to all "reasonable persons". The court agreed on the goal to be achieved in the public school system, quoting *Mackay* when it said,

> "The public schools must surely be kept free of prejudices if society as a whole is to advance towards their elimination. Every course or program in the public school should be designed to be acceptable to all *reasonable persons* and, consequently, leave no justification for requiring discriminatory exemptions."

The court applied the principle formulated in *Mackay* to school opening exercises, saying

> Although this statement was made by the Committee with reference to religious education, we think it applies equally to religious exercises. This conclusion of the Mackay Committee supports the appellants' argument, with which we agree, that the right to be excused from class, or to be exempted from participating, does not overcome the infringement of the Charter freedom of conscience and religion by the mandated religious exercises.

Although not explicitly identified as such, the Court of Appeal in *Zylberberg* problematized the issue of school opening exercises through a common sense distinction between the religious and the secular but also and equally important, between public and private forms of religion. By linking some forms of religion with coercion and indoctrination it set the stage for how the creative tensions over religious diversity in public education would be decided in future decisions. The court relied on the educational expertise of the *Mackay Report* which, in its opinion, had found the form of religion expressing the balance between individual religious expression and common interests. It said "Certainly, the opening exercises need provide no opportunity for indoctrination on the one hand or for watering down of individual belief on the other. We hope that all students will feel free to attend them in good heart".

The court accepted the evidence of harm suffered by religious minorities but its uncritical acceptance of religion as the source of that harm focussed on the management of religion in establishing the principles for the common way forward. The court did not doubt the possibility of a common and inclusive way forward regarding religious diversity which

would both respect "individual belief" on the one hand but also be acceptable to those of "good heart" on the other. However, the court also recognized, as had the *Mackay Committee* in 1969, the presence of those citizens who, not sharing the good heart of most citizens, might request exemptions. The language of the "reasonable person" is used to distinguish between those who might accept and those who reject the new school opening exercises. The court regretfully accepted their right to exemptions for "democratic reasons but expressed the hope that their requests would be isolated saying,

> Recognizing that the recommendation might not be universally approved, the Committee concluded (with its) opinion that "the opening exercises which we now recommend should be found acceptable to almost all reasonable persons. Isolated requests for exemption, on the basis of individual religious implications, may have to be dealt with on their merits as they arise. We would regret such necessity, but for democratic reasons must admit the possibility."

The court's reasoning placed it firmly in the longer story in Ontario public education in which the public school plays the role of the reasonable arbiter of the forms of religion acceptable in common or public space and, on that basis, serves as the gate-keeper of the boundaries of religious diversity. Religion and religious diversity are accepted as legitimate in any democratic society but are also a problem for public order. *Zylberberg* expressed both the hope that most reasonable persons can agree and participate in a common public religion while, at the same time, expressing regret over the inevitable presence of those citizens who are less reasonable. In this way, while the Court of Appeal wanted to distinguish itself from the Divisional Court of Justice O'Leary, there was actually important common ground between them.

The Ministry of Education responded to *Zylberberg* by issuing *Policy Memorandum 108 (1989*) instructing public boards of education on the way forward in compliance with the ruling. *Memorandum 108* reflects the attempt to balance the attempt to formulate school opening exercises which would provide a common experience acceptable to reasonable persons while not watering down individual beliefs. It does so by emphasising their "patriotic and inspirational" purposes and including the possibility for boards of education to respond to local demographics. The only restriction in *Memorandum 108* is that school opening exercises not privilege any one religion and that they, in no way, be coercive and indoctrinational. *Memorandum 108* also includes an exemption provision for parents and students for whom the school opening exercises were offensive, in order to protect the

religious freedoms of religious minorities (Sable, 1999, p. 299). It does so without reference to the critical analysis in *Mackay* and *Zylberberg* which had identified exemption provisions themselves as evidence of a coercive and exclusive educational environment.

5.4.3. Canadian Civil Liberties Association v. Ontario (Minister of Education) 1990 or *Elgin County*

a. Background

In the meantime, another case was proceeding through the courts in a parallel process. The focus in *Elgin County* was on the *Drew Regulation* and religious instruction in Ontario public schools. Like *Zylberberg*, it started at the Divisional Court in 1985 and was finally resolved at the Ontario Court of Appeal in 1990. The issue, summarized by the Court of Appeal, was the constitutionality of *Education Act, Regulation 262, s. 28 (1980)* and the curriculum of religious studies practiced in the Elgin County public school board. The Court of Appeal agreed with the plaintiffs and the Civil Liberties Association that their constitutional freedom and equality rights were being violated, overturning the Divisional Court ruling. Its ruling that both *Regulation 262 s. 28* and the educational practices of religious instruction were unconstitutional brought the era of the *Drew Regulation* to an end.

As in the analysis of *Zylberberg*, the focus here is on the language deployed by the court in arriving at its conclusion. While the primary concern of the court in *Zylberberg* was social and educational harm in the form of coercion, in *Elgin County* it was indoctrination. This is logical because the issue in *Zylberberg* was school opening exercises, designed to inspire loyalty students to a kind of collective consciousness and a common set of values or "imagined community". Until 1988 the language of collective inspiration was that of Protestant Christianity, imagined to express the universal values of civilized humanity. However, religious minorities who did not share the language of Protestant Christianity were daily reminded that they were outsiders in mainstream Ontario society leaving them two options. One was to submit and suffer in silence while the other option was to make a public declaration of their outsider status by exercising their right to excuse themselves from the classroom for the duration of the offending activities. Either way, in the opinion of the Court

of Appeal, minority religious groups were being coerced and their *ss 2* and *15* rights were being infringed. The Ministry of Education responded by issuing *Memorandum 108* mandating the use of the national anthem and restricted the scope of any additional inspirational activities to those which were not coercive or indoctrinational. However, in its analysis of coercion *Zylberberg* made the crucial link between religion and coercion which would shape subsequent decisions about the role of religion in public education.

In *Elgin County* the issue was religious instruction in Ontario public schools mandated in 1944 by the George Drew government in a regulation known as the *Drew Regulation*. Consideration of religious instruction required the court to rule on educational matters and to define the nature of the education acceptable in public schools. It did so by adopting the rhetorical binary between "education" and "indoctrination" and by identifying indoctrination as the source of educational harm to Ontario's children, to public education and to Ontario society.

The common thread between *Zylberberg* and *Elgin County* was the link between the dominance of Protestant Christianity as the source of educational harm in the forms of "coercion" and "indoctrination". However, the courts did more than consider the role of Protestant Christianity in Ontario public education during a specific historical period. In addition, they universalized Protestant Christianity by using it interchangeably with "religion" as a more generalized source of harm. It was this more generalized view of religion which would be adopted by subsequent courts and is evident into the 21st century.

The legal issue in *Zylberberg* was the constitutionality of school opening exercises, at the heart of which was the Lord's Prayer. Challenging the Lord's Prayer was risky for religious minorities from legal, social and political perspectives. The Lord's Prayer was one of the features of Christianity which, more than some others, was considered to be inoffensive because it did not mention Jesus Christ and was imagined to express universal sentiments and values shared by all the world's religions (*Lautsi v. Italy*; Justice Lacourciere dissenting in *Zylberberg*). The mythological status of the Lord's Prayer made challenges to it seem like attacks on Western Civilization itself, particularly when those challenges were launched by non-Christians (Sable, 1999). School opening exercises took much less educational time than religious instruction classes, could be represented as inspirational rather than devotional

and could, at least in the opinion of some, including Mackay, be modified to avoid being indoctrinational.

It was for this reason that the Canadian Civil Liberties Association decided to avoid the issue of school opening exercises in favour of the *Drew Regulation* which had been the target of Jewish advocacy since 1944 but which, by the 1980's was receiving much wider critical attention. *Regulation 262 s. 28* of the *Education Act (1980)* mandated religious instruction as part of the instructional program designed to deliver Christian religious instruction. In the 1980's Christian religious instruction was still delivered in some boards by volunteer representatives of local Christian ministerials. There is evidence that *Regulation 262 s. 28* was applied inconsistently across the province and that, even more, there was fairly widespread resistance to the *Drew Regulation* in public boards. For this reason, while no one could with any confidence predict the outcome of legal action, the CCLA concluded that challenges to *s. 28* and religious instruction had a much better chance of success than did challenges to school opening exercises.

Despite the long history of resistance to religious instruction, a growing chorus of voices challenging its presence in Ontario public education and the inconsistent delivery of religious instruction, the Ontario government had refused to entertain overtures from the CCLA to negotiate rather than going to court to decide the fate of the *Drew Regulation*. There were a number of reasons for the government's reluctance to negotiate, one of which was that the political risks of taking the initiative in a process of change were too high in the 1980's (Speirs, 1986). It was politically less risky to have the courts rule on the matter and forcing the government to act.

However, this interpretation tells only part of the story and could leave the impression that politicians and school board members were generally opposed to the *Drew Regulation*. There is evidence of widespread support, not only among the electorate but also among political, religious and educational leaders who saw Protestant Christianity as the only viable basis for public education and a civilized society. One example comes from the Northumberland-Newcastle Board of Education which the CCLA had considered for its challenge to the *Drew Regulation*. Martin Sable describes a significant backlash from the local community" to "these people (who had made the request and who were Jewish) are

entitled to their own religious beliefs but nobody invited them to our country" (Sable, 1999, p. 289).

Sable further observes that there was very little political will to address the *Drew Regulation* since "politicians faced with a choice between favouring those who advocated for the Regulation's repeal rather than those who called for the status quo immediately saw that there was no contest" (1999, p. 344). The political situation in which religious minorities found themselves led them to the courts because, "without any political will, the courts proved the only solution for redress on this issue." In the end, the Court of Appeal in *Elgin County* did what politicians could have done but would not do, which was to "mark the "death of the consensual Protestant model of education. It also precipitated reconsideration of the role of religion in public schools" (Sable 1999, p. 344–345). Further evidence that the *Drew Regulation* enjoyed widespread support is the ongoing resistance to the new regulations resulting from *Zylberberg* and *Elgin County* after 1988 and 1990, suggesting that support for Christian school opening exercises and religious instruction was strong.[29]

Despite the politics around religious instruction, the CCLA chose the *Drew Regulation* as its legal target and having carefully planned its strategy, chose the Elgin County public board and the case of the Millington family from among a large number of possibilities to proceed with a legal challenge. The Millingtons were members of the Bah'ai faith whose daughter, Andrea, was enrolled in Grade 2 in Forest Park Elementary School in St. Thomas. Their concerns arose when Andrea began to have nightmares about the possibility that she and her family might be going to hell. Discussions with Andrea revealed to her parents that hell was being described in graphic terms as the eternal destination of all those who did not confess their sins and belong to Jesus Christ. The Millingtons followed up their concerns with the instructor, Mr. Plum, the school principal and other officials but found that, since religious instruction was being conducted within the regulations the only course open to them was to have Andrea exercise her right to the exemption provisions. This she was unwilling to do, being reluctant to identify herself as different from other students.

[29] In 2010 and following, decisions by public boards of education to discontinue the practice of allowing Gideon International to distribute Bibles in public schools generated very strong reactions as did a decision by the Toronto Board of Education to allow prayer space for Muslim students, the introduction of new sex education curriculum suggesting ongoing social energy around the feeling that religion or the right kind of religion was losing ground in public schools.

At the same time, while Mr. Plum was described as a gentle instructor and very willing to listen to Andrea and her parents, he was also a born-again Christian believer whose concern for his students was expressed in his unwillingness to compromise on what he thought of as the message of salvation. This created an impasse which continued when Andrea was in Grade Four and began to seriously question her parents' religious beliefs. The gentle and well-meaning Mr. Plum was having an effect, emerging as a "serious threat to the spiritual authority of Andrea's parents" (Sable, 1999, p. 285). They again approached Mr. Plum, school authorities and the local school board and while some attempts were made to address their concerns the basic dilemma remained, Andrea having to either submit to the instruction or to exercise her right to opt out.

Testimony at the Court of Appeal in 1990 indicated that the Elgin County Board had made modifications to the program so that the 1986-87 curriculum materials 'did contain references to other faiths, specifically Judaism, the Mennonites, "Native Peoples", the Mormons, Jehovah's Witnesses, Islam and Baha'i.'. However, according to Justice Austin, dissenting in the Divisional Court, "the material continued to be taught exclusively from the Christian point of view and not from the point of view of a person of one or other of the other faiths". Despite the Board's efforts to respond to the Millingtons, Justice Austin concluded that "the content and the layout of the material suggest strongly that the purpose was indoctrination rather than education in the ordinary sense".

For the CCLA, the Millington's story was almost perfect for a legal strategy for change because it focussed attention on human rights issues which, with the adoption of the *Constitution Act of 1982*, were specifically identified in *ss. 2* and *15* of the *Charter of Rights and Freedoms*. Neither the Millingtons nor Mr. Plum had exhibited negative behaviour which could be used as a distraction, both having been reasonable and both having worked within the regulations and the law. Andrea's story was not unusual among the many gathered by the CCLA but the Millingtons did not have a history with the CCLA, having pursued their quest on behalf of Andrea on their own as concerned parents without a wider social or legal objective. The fact that the Millingtons were Bah'ai, and not Jewish, meant that the anti-Semitism which was always a factor in debates over the *Drew Regulation* was not an issue.

The CCLA action had begun earlier in 1986 with a request for a judicial review of the *Drew Regulation* and it was at this stage that the Millingtons, having come to the end of

their resources and their hopes of success, joined the wider legal effort that would eventually result in a major change in Ontario public education. The CCLA alleged that *Regulation 262 s.28*, by mandating religious instruction, violated the *s.2* religious freedom rights of religious minorities by being coercive and indoctrinational in both purpose and effect. Further, it alleged that the regulation and the curriculum violated the *s.15* equality rights of religious minorities because it privileged Christianity over other religions. In addition, using the same reasoning as the applicants in *Zylberberg* and the Canadian Jewish Congress appearing before the *Mackay Committee* in 1967, the CCLA alleged that the exemption provisions were not adequate to protect the *ss.2* and *15* rights of religious minorities, being themselves evidence of coercion.

However, the Elgin County Board, defending *Regulation 262 s.28* and its educational practices, argued that religious instruction was not designed to be exclusive, being based on the principle of a universal, inclusive Protestant Christianity. Its purpose and the educational practices based on it were

> 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 religions and even nonreligious interests are to be ignored. Rather it is hoped that moral, ethical and religious consensus which they hold in common with Christianity will be the primary content in any religious education program in the public schools.

The Divisional Court, agreeing with the Elgin County School Board, rejected the CCLA arguments saying that the regulations and the curriculum "did not compel, coerce or constrain anyone" because no student was actually required to take the program of religious instruction. Students could exercise their religious freedoms by opting out of the program. There was also no "sectarian purpose of religious indoctrination" to the regulation since, as reported by the Court of Appeal,

> the purpose of religious education -- 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 work life.
> In the opinion of the majority of the Divisional Court, the section 15 rights of religious minorities were not violated because instruction in religious education was equally available to Christians and non-Christians any disadvantage from taking advantage of the exemption mechanism would be the result of one's own exercise of free choice and right of self-determination.

However, the dissenting opinion of Justice Austin provided the basis for an appeal in the same way as had the dissenting opinion of Justice Reid of the Divisional Court in *Zylberberg*. Justice Austin agreed with the CCLA that both the purpose and effect of the regulation and religious instruction curriculum were indoctrinational and that the exemption provisions were not adequate to protect the *ss 2* and *15* religious freedom and equality rights of minority religious groups.

b. "Court of Appeal, religious instruction and indoctrination"

The Elgin County Board's position and *s. 28* which represented Protestant Christianity as inclusive and non-coercive had a long pedigree going back to 1944 and reiterated in the *Hope Commission Report*. However, the Court of Appeal saw *s.28* differently and, referring to the analysis in the *Mackay Report*, said,

> This material, much of which is definitely Christian and Protestant in content, is in our opinion a vehicle leading to religious commitment rather than to true education. The Regulations and Programme clearly states "that '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,' and further, that 'the school must seek to lead the child to choose and accept as his own those ideals of conduct and endeavour which a Christian and democratic society approves'. The teacher is then counselled 'to bring home to the pupils, as far as their capacity allows, the fundamental principles of Christian and their bearing on human life and thought'.

The reasoning by the Court of Appeal In *Elgin County* was similar to *Zylberberg*, coming to the conclusion that the *Drew Regulation* and *Regulation 262 s.28* which mandated Christian religious instruction was coercive and indoctrinational. However, the court in *Zylberberg* restricted itself to declaring *Regulation 262* unconstitutional without specifying what was to replace it. *Zylberberg*, while it drew on *Mackay* as its source of educational expertise on the trajectory of history and the nature of Ontario's multicultural society, did not adopt Mackay's recommendations for what school opening exercises should actually look like other than specifying the use of the national anthem. In *Elgin County* the court went beyond declaring unconstitutional the *Drew Regulation* and religious instruction to establish in law the epistemological and educational framework which should govern educational practice going forward. As its basis for doing so, it also relied on the *Mackay Report* but did so less critically and cautiously than had *Zylberberg*.

The court agreed with *Mackay* that, "in accordance with these instructions, the children of Ontario are exposed to Christian indoctrination" and that "this indoctrination occurs with greater and lesser degrees of intensity but is particularly evident around events in the Christian calendar, especially Easter and Christmas". The court accepted the testimony that "this has the effect of creating conflict in the homes of children whose families are not Christian, with the result that "Confusion and distress (are) created in the minds of young children loyal to both teacher and parents". The court, agreeing with *Zylberberg* on the issue of exemptions and opting out provisions, quoted Mackay when it said "that this special treatment is itself discriminatory and should as far as possible be eliminated from the public school system. Discrimination through exemption is felt equally by those who find the course too secular to accord with their religious ideas and by those who find it too sectarian".

The *Mackay Committee* had "found the present system inconsistent with modern principles of education and proposed instead that the focus be directed to instilling knowledge of world religions and transmitting high standards of character, ethical ideals and moral values without trespassing on students' personal religious beliefs". The court agreed with the essential point in the *Mackay Report* and the 1967 Canadian Jewish Congress brief which detached moral principles from Protestant Christianity in the interests of delivering moral education to young people in an increasingly diverse society. The relationship between moral values and Protestant Christianity had been a consideration in *Zylberberg* but in *Elgin County* it was a central issue. The link between Protestant Christianity and morality had been made explicit in 1944 when the *Drew Regulation* was introduced, offending minority religious groups who claimed that their moral frameworks and commitments to good citizenship were being called into question. It was the offense to these citizens that the *Elgin County* Court of Appeal had to consider, but it was doing so in the new legal and constitutional climate created by the *Constitution Act of 1982* and the precedents set by *Big M* and *Zylberberg*. The court concluded that indoctrination was clearly the purpose of the *Education Act Regulation 262 s. 28*, since "one might have argued that the real aim was 'teaching morality' by means of teaching religion".

In considering the purpose of the *Education Act*, the court traced the history of religious instruction and religious exercises in Ontario public schools, relying on a number of important distinctions when it said that "Both activities were conducted from a normative,

rather than descriptive perspective" by which it meant that "the pupils were to participate in manifestations of faith, not critical or objective study". This suggests that "religious instruction" is not critical or objective in contrast to "education" which is critical and objective. The court went on to say that, "In this sense, both (religious exercises and religious instruction) can be said to have been aimed at "indoctrination".

The Court of Appeal in *Elgin County* reinforced the link between religion and indoctrination by identifying indoctrination as "religious indoctrination" in much the same way that *Zylberberg* had accepted the link between religion and coercion by identifying coercion as "religious coercion". In doing so, *Elgin County* separated religion from education in much the same way it separated morality and religion. Later in *Adler* and *Bal* in 1996 and 1997 the courts would treat as precedents the links between religion, coercion and indoctrination in *Zylberberg* and *Elgin County* leading them to reject arguments that the secularism of the public school system created a coercive and indoctrinational environment for religious minority students. By accepting religious coercion and religious indoctrination as the sources of harm, the courts assumed that the elimination of Christian opening exercises and religious instruction would resolve the problems of coercion and indoctrination.

The Court of Appeal in *Elgin County* agreed with the *Mackay Committee* and the dissenting opinion of Justice Austin in the Divisional Court "that there is an appreciable degree of coercion or pressure on the personal applicants in this case. There is an inequality of situation by virtue of the nature of the programme". The court agreed with *Zylberberg* that "the exemption provision imposes a penalty on pupils from religion minorities who utilize by stigmatizing them as non-conformists and setting them apart from their fellow students who are members of the dominant religion". Having established that religious indoctrination was the purpose of the *Education Act, s.28*, the court went on to rule that religion indoctrination violated the *Charter s.2(a)* religious freedom and the *s.15* religious equality rights of religious minorities. However, its reasoning in doing so provided the framework for and indeed predetermined its remedy when it said "State-authorized religious indoctrination amounts to the imposition of majoritarian religious beliefs on minorities". There were two ways in which religious indoctrination infringed the religious freedom rights of minorities, in court's opinion. First, it taught moral principles assuming Protestant Christianity as the only basis for morality, and second, it "creates a direct burden on religious

minorities and non-believers who do not adhere to majoritarian beliefs".

The court, having ruled that the purpose of *s.28* was indoctrinational and coercive, went on to consider its effects by considering the testimony of two expert witnesses with opposing opinions. Dr. Jonathan Freedman testified that a classroom environment in which indoctrination occurs is harmful to children since they "will feel pressure to conform and experience stress and discomfort if they remain in the classroom. The stress and discomfort arises from the fact that children are caught between the opinions and wishes of two authority figures, their teachers and their parents". Dr. Kennedy disagreed, observing that children are excused from classes for many reasons other than religion without obvious psychological distress, particularly as "instruction has become more individualized". He further observed that although peer pressure exists it is usually not the result of exemptions from classes and further, "some peer pressure would strengthen the child's learning process and his or her genuinely held convictions". However, the court ended this part of the discussion by saying simply, "We agree with the conclusions of Dr. Freedman as they accord with the evidence of the individual appellants".

The link between religion and indoctrination predetermined what could and could not be seen by the court and it has continued to be a powerful theme in later debates about the role of religion in public education. What could be seen is the dominant role of Protestant Christianity, the educational and social effects which were evident in the testimony of religious minorities but which were also entrenched in the law and regulation. However, what could not be seen was the dominant role of the state in defining and delivering public education. The court hinted at the role of the state in its statement identifying "state-authorized religion" and in considering the distinction between curriculum as "law" or "government conduct", ruled that curriculum was "governmental conduct authorized by s. 28(4) of the Regulation". However, the court went on to focus on "religious indoctrination" without further reference to the state as the dominant stakeholder in Ontario public education. The foregrounding of religion masked the role of the state, including its crucial role in deciding nuanced and highly contested educational and religious questions.

The court accepted the principle that education and curriculum are state projects but in doing so further entrenched the state as the key actor with a vested interest, not only in ensuring that all children have equal access to education but also in regulating the particular

ways in which education is delivered. In *Elgin County*, the central role of the state in education was normalized as a non-issue while the role of religion became the central issue in the Court's analysis of the abuses of power and educational harm.

c. "Education about religion" and the shaping of public religion

The Court of Appeal in *Elgin County* applied the principles regarding religious exercises established in *Zylberberg* to the religious studies curriculum, ruling that "religious education" is inappropriate in state funded, public schools. The court based its ruling on the distinction between "education about religion" and "religious education", concluding that education about religion is appropriate in publicly funded schools while religious education is not. In this distinction, teaching about religion allows students to make informed decisions about religion while religious education is designed to inculcate dogma without critical thought. Education about religion is thought to increase agency by equipping students to exercise their freedom of religious choice while religious education reduces it. Education about religion is ruled in law as the remedy for the harm caused by religious indoctrination. The court agreed with the shift from a program of religious instruction to "information about religion" recommended in the *Mackay Report* when it said,

> We recommend that the acquisition of information about and respect for all religions be recognized as an essential objective of the educational system from kindergarten to grade 13. This should be achieved by a program of incidental teaching and study, not through a formal syllabus. (1969, p. 93)

The Mackay Committee's rationale for including information about religion in the public school academic program was that "religious ceremonies and rites" had been "one of the most potent forces in determining this culture and civilization" and that "never in the history of mankind has the need for understanding the cultural foundations of the world's populations been more necessary", due to "the impact of communications, the ease and speed of travel and the inter-dependency of all parts of the globe" which have "created a global village" (p. 71). The Mackay Committee suggested urgency in adopting a new educational approach in keeping with the modern world, making a distinction between the religious indoctrination of the educational program in the late 1960's and modern principles of education requiring "a forthright, honest and objective consideration of the influence of religion upon historical and social development". The Court of Appeal in *Elgin County* accepted this formulation of the

situation facing public schools and the way forward in keeping with the needs of a diverse democratic society and the principles of modern education. Building on the *Mackay Report*, the Court of Appeal outlined the principles of a program of information about religion, using the language of American education theory to do so when it said,

- The school may sponsor the *study* of religion, but may not sponsor the *practice* of religion.
- The school may *expose* students to all religious views, but may not *impose* any particular view.
- The school's approach to religion is one of *instruction*, not one of *indoctrination*.
- The function of the school is to *educate* about all religions, not to *convert* to any one religion.
- The school's approach is *academic*, not *devotional*.
- The school should *study* what all people believe, but should not teach a student *what* to believe.
- The school should strive for student *awareness* of all religions, but should not press
- for student *acceptance* of any one religion.
- The school should seek to *inform* the student about various beliefs, but should not
- seek to *conform* him or her to any one belief. (Emphasis included in the original).[30]

The educational issues involved in this formulation of education about religion receives more detailed treatment later in the thesis, the focus here being on role assumed by the courts in clarifying contested and nuanced educational principles. In *Elgin County* the court did so by making explicit rhetorical binaries placing religion in opposition to education and making religion a subject to be examined through an intellectual process of critical thinking which claims to be objective and religiously neutral. The court said that religious practice is not appropriate in public schools or that religious practice cannot be part of the educational process while suggesting clarity in the distinctions between "study and practice", "exposing students to without imposing upon", or "informing about and conforming to". While critical analysis reveals those distinctions to be much less clear than the court suggested in 1990, they have become foundational for the way the role of religion in education is represented in

[30] This is taken from Religion in Public Schools (1986), a publication of the American Association of School Administrators, at p. 33 which, in turn, quoted from an earlier statement of the Public Education Religion Studies Center, Wright State University.

public debate and for state recognition of some forms of religion and the marginalization of others in public education.

5.4.4. Effects of Zylberberg and Elgin County

The effects of *Zylberberg* and *Elgin County* were immediate and have been long lasting. The immediate effect was the Ministry of Education's issuing of *Policy/Program Memorandum 108* (Appendix 1), revisions of the *Education Act* in 1990 (Appendix 2) and *Policy/Program Memorandum 112*, which was withdrawn in 2009 (Appendix 3). *Memorandum 108* was issued by the Ministry of Education to bring public school opening exercises into compliance with *Zylberberg* in which Christian school opening exercises were found to be in violation of s*s. 2* and 15 Charter rights of religious minorities. *Memorandum 112* was issued in 1991 in response to *Elgin County* which had found Christian religious instruction and the *Drew Regulation* on which it was based to be in violation of the *ss. 2* and *15 Charter* rights of religious minorities. The longer term effects can be seen in subsequent Ministry of Education documents where the decisions are represented as breakthroughs in a story of ever increasing inclusivity and religious freedom and in the entrenchment of a form of secularism in public education.

Policy Memoranda 108 and *112* and the revised *Education Act* were the effects of legal victories in the long campaign by minority religious groups to have Christian school opening exercises and Christian religious instruction eliminated from public schools. Protestant Christianity is no longer the privileged religion in Ontario public education, the hope being that the children of minority religious groups are no longer subjected to the intentional and unintentional violation of their religious freedoms and equality rights. The public school system is now considered secular which, in the definitions accepted by the Courts, means that it and the programs it delivers are seen as religiously neutral.

In post-1990 discourse, secularism in the context of Ontario public education is not interpreted as hostility to religion. Rather, secularism is seen as creating an educational environment hospitable to all religions and as the remedy to religious coercion and indoctrination. The courts in *Zylberberg* and *Elgin County* and the Ministry of Education through *Policy Memoranda 108* and *112* and various curriculum documents were committed to the idea that religion is important to the people of Ontario and that religious diversity must

be respected and protected in the social life and the academic programs in Ontario public schools.

Education about religion is a conceptualization of religion in public schools designed to create social harmony while respecting religious diversity. The domination of public education by Protestant Christianity had been identified as harmful to religious diversity by privileging one religion and by imposing that religion on Ontario's children through coercive educational practices characterized as indoctrination. Secularism, in the dominant discourse, is religiously neutral and is, therefore, the way forward in managing religious diversity in a modern society.

Both the *Zylberberg* and *Elgin County* Courts of Appeal were sensitive to the historical context of their rulings in which coercive religious indoctrination could no longer continue in Ontario public schools. They saw themselves moving Ontario public education forward into the modern world with a particular view of the role of religion in a modern society. While the Court of Appeal in *Zylberberg* restricted its ruling to Christian school opening exercises as coercive and therefore unconstitutional, it also made important statements on the link between coercion and religion which have had important effects on future consideration of the role of religion in public education. The Court of Appeal in *Elgin County* went further, not only defining Christian religious instruction as coercive religious indoctrination and therefore unconstitutional but also specifying the educational remedy as "education about religion". The Ministry of Education, interpreting the two rulings, issued *Memoranda 108* and *112*. *Memorandum 108* instructed the public boards of education to refrain from school opening exercises, mandating only the national anthem and requiring that any additional activities should be constructed in such ways as to avoid privileging any one religion and to avoid indoctrination. *Memorandum 112* ordered the boards to refrain from any form of religious indoctrination in school program design and delivery, replacing religious instruction with education about religion in order to comply with the law.

5.4.5. Resistance to the effects of Zylberberg and Elgin County

a. Background to Adler and Bal

One might think that *Zylberberg* and *Elgin Country* settled the issues relating to the role of religion in Ontario public schools. After all, the religious minorities involved in the

cases had won decisive victories. However, *Memoranda 108* and *112* and the revised *Education Act* triggered resistance from a number of sources. In the same way that the interpretation of inclusive Christianity as the unifying ethos of Ontario public schools was contested, the meaning and effect of secularism sparked intense debates. One source of opposition came from Christian groups for whom the restrictions placed on expressions of Christianity in school opening exercises and in religious instruction represented the loss of a cultural and religious heritage closely associated with Canadian values and the loss of power, privilege and control they had come to accept as normal. Across the province but particularly in rural and small town Ontario, boards refused to comply with the new legal rulings and with the Ministry of Education directives. This opposition was addressed by the Ministry of Education and, within five years, a new normal had been established.[31]

Another source of opposition came from groups within a number of public school districts who had negotiated agreements with their school boards. As a result of the Ministry of Education interpretation of the 1988 and 1990 rulings these agreements were declared illegal in response to which the groups affected began to advocate for re-institution of the arrangements they had come to expect as part of a diverse public school system claiming to be hospitable to religion.

A third source of opposition came from religious groups who had been advocating for public funding for their privately funded faith-based schools. They based their advocacy on the historic precedent of constitutionally protected funding of Roman Catholic separate schools and on arguments resembling those used successfully by the minority religious groups in *Zylberberg* and *Elgin County*. While they had been politically active before 1990, after 1990 minority religious groups were arguing against the dominant role of secularism rather than a form of inclusive Protestant Christianity. For them, state sponsored secularism created a coercive school environment similar to the one it had replaced which left them with no option but to operate outside the public school system. They are the focus of the analysis of the legal developments following the release of Memorandum 112 in 1991.

[31] The debates over Bible distribution and sex education as late as 2012 demonstrates that there continues to be alarm among some Christian groups about the "secularization" of the school system and the loss of control of public education.

Having been unsuccessful in achieving their goals through political advocacy, some of them followed a similar legal route as the religious minorities in *Zylberberg* and *Elgin County*, going to the courts to launch *Charter ss.2* and *15* cases known as *Adler* and *Bal*. *Adler* and *Bal* involved different issues but both relied on the principle that secularism is not religiously neutral and that it has its own coercive and indoctrinational impulse. In both *Adler* and *Bal* religious minorities claimed, as had the religious minorities in *Zylberberg* and *Elgin County*, that their religious freedom and equality rights were being infringed but in their cases the offending ethos was secularism, as interpreted and applied in the context of Ontario public education. Like *Zylberberg* and *Elgin County*, both *Adler* and *Bal* began at the Divisional Court level, went to the Court of Appeal, *Adler* going on to the Supreme Court of Canada in 1996, testing the boundaries of religious diversity in public education at the highest legal levels.

There were important ways in which the legal and regulatory situation had changed with the 1988 *Zylberberg* and 1990 *Elgin County* rulings and subsequent changes to the *Education Act* and Ministry of Education policy and program documents. Specifically, the dominant role of Protestant Christianity in school opening exercises and in religious instruction had been identified as coercive indoctrination and a violation of the *ss.2* and *15* freedom and equality rights of religious minorities guaranteed in the Charter. In public school narrative, the changes in law and regulation of religion in Ontario public schools in the 1988 and 1990 cases tend to be represented as one of ongoing progress in response to growing religious diversity in the province. For example, in a 1993 publication, the Ministry of Education says this,

> Opening or Closing Exercises Today Amendments to Regulation 262
> Much of Canadian history is a record of our society's movement towards the fuller recognition and protection of a broad range of political, legal, egalitarian, linguistic, and cultural rights. The development of the Ontario Human Rights Code and the entrenchment of the Charter of Rights and Freedoms under the Constitution Act, 1982, are significant legal landmarks in this movement — landmarks that are now affecting the way laws will be formulated in the future and encouraging the modification of laws and regulations made prior to 1982. (1993, p. 9)

The Ministry of Education placed this narrative in the Egerton Ryerson tradition when it said,

> Interpreting Ryerson's vision in the light of modern realities requires us to recognize that in a multicultural, multi-faith society, the philosophical or

> religious viewpoints of any one group cannot be the sole basis of important lessons for all. Today, therefore, we need to find Ryerson's "principles common to all" in readings drawn from a variety of sources that truly reflect the nature of the province and the communities served by the schools. (1993, p. 8).

The document goes on to refer to the *Zylberberg* decision as one important step in the longer narrative of progress. However, this progressive story of ever increasing inclusivity is not new in the history of Ontario public education and, is, in fact, characteristic of the dominant narrative in Ontario public education. For example, Egerton Ryerson's narration of the common school movement, the *Drew Regulation* of 1944, the *Hope Commission Report* of 1950 and the *Mackay Report* all used the language of progress in Ontario. Charles Glenn identifies a similar narrative in the American common school movement which was highly influential in Ontario (2000, 2012).

While a narrative of progress creates opportunity for ongoing reform, it also has a tendency to marginalize stories of resistance and voices representing alternative models of education as out of step with progress or out of step with history (Glenn, 1988, 2012). This is particularly true with the representation of the role of religion in Ontario public education. The central role of religion in Ontario public education before 1988 is associated with a coercive and indoctrinational past in which religious minorities were marginalized. *Zylberberg* and *Elgin County* are represented as creating a radical break with this past by introducing a secular, inclusive educational environment appropriate for a modern, diverse society. The public school system is seen, as it always has in the dominant narrative, as an important institutional expression of social progress. However, this formulation of history leaves those who question the religious neutrality of secularism and who propose models of education in which religion plays a more essential role as people out of step with social progress, with history and as threats to Ontario society.

In *Adler* and *Bal* minority religious groups challenged the dominant role of liberal secularism and, as a result, the courts and other state actors declared themselves on the nature of secularism, religion and the boundaries between the two. In *Adler* and *Bal* discourses about religion and its role in society which are usually opaque became explicit and visible. Religious differences are generally not important social fault lines in Ontario but they become so when religious minorities challenge a dominant discourse or when they transgress the boundaries established in the dominant discourse about religion. It is in this sense that

Zylberberg and *Elgin County* were similar to *Adler* and *Bal*. In both sets of cases, religious minorities used the Charter to challenge what was essentially a common sense about the role of religion in society and in public education.

However, a key difference between the two sets of cases is that, unlike *Zylberberg* and *Elgin County*, the religious minorities in *Adler* and *Bal* were also challenging the role of the public school system as the state institution uniquely privileged to deliver public education. This difference is key to understanding the success of the religious minorities in *Zylberberg* and *Elgin County* and their failure in *Adler* and *Bal*.

5.4.6. Adler v. Ontario 1992, 1994, 1996

Adler was launched at the motions court level in 1992 by two groups of parents, one of them Jewish and the other Christian Reformed (a Calvinist denomination with roots in the Netherlands), claiming that their *ss.2* and *15* religious freedom and equality rights were being violated by public policy in education. At issue was the refusal of the government to provide support services for handicapped children enrolled in privately funded faith based schools for which they would have been eligible had they had been enrolled in public schools. However, *Adler* must also be seen in the context of the wider advocacy by religious minorities for provincial funding of non-Catholic faith based schools, of which the courts were also aware.

Justice Anderson of the Motions Court ruled that the *ss.2* and *15* rights of the parents had indeed been violated because, based on his interpretation of *s. 21* of the *Education Act*, he concluded that school attendance was mandatory.[32] He went on to make the link between mandatory attendance and religious freedom and equality saying that,

[32] Section 21 reads as follows:

(1) Unless excused under this section,

(a) every person who attains the age of six years on or before the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in that year until the person attains the age of 18 years; and

(b) every person who attains the age of six years after the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in the next succeeding year until the last school day in June in the year in which the person attains the age of 18 years.

> Those (the majority) whose children attend the public schools receive the benefit of an education for their children free of any direct costs attributable to that education. Those whose children do not attend the public schools, because their religious convictions prevent them from allowing their children to do so, do not receive that benefit.

In his opinion, the *Education Act* made distinctions based on religion despite its intention to create a public school system free of religious bias. In Justice Anderson's opinion, the religious convictions of the minorities were sufficiently important to create a barrier preventing them from attending public schools. He said, "Those whose religious and conscientious beliefs do not permit them to attend the public schools do not receive equal benefit of the law to which they are entitled under s. 15(1) of the Charter.". Although Justice Anderson ruled that violation of the applicants' *ss. 2* and *15* rights was justified under *s. 1* of the Charter, he agreed with the applicants that the only choices open to them were public, Roman Catholic or independent faith-based schools, the first two of which were free of charge. In his opinion, the distinction between the school systems was based on religion which created a situation for "those whose religious and conscientious beliefs to not permit them to attend the public schools". He accepted the testimony of the applicants that, for them, religion was a category in which "choice" did not apply in the same way that it might to other forms of social activity. Therefore he ruled that the situation in which the applicants found themselves was the result of government action.

Justice Anderson briefly described the process by which he arrived at his conclusion, acknowledging that he had changed his opinion on the matter. Initially he had believed that while parents are free to choose privately funded schools, the costs of their doing so are theirs alone. However, he came to agree with the applicants that their religious freedom rights were being infringed by the *Education Act* explaining himself by saying,

> Untutored by authority, I do not think I would have arrived at that conclusion. Persons in the position of the applicants are at liberty to act consistently with the dictates of their conscience and religion and to meet the requirements of the *Education Act* by having their children educated in other than the public schools. For that they must pay the costs of tuition. However, I am persuaded by the authorities that my initial view would be in error. I am led to my conclusion that there has been an infringement of s. 2(a).

However, finding a rational connection between protection of a secular public school system and the infringement of the *ss. 2* and *15* rights of the applicants, he ruled that the infringement

of *ss 2* and *15* was justified under *s.1*. Agreeing with him, the Supreme Court said that the legislative objectives which included 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. Anderson found there to be a rational connection between those objectives and the means chosen to achieve them and 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. In other words, Justice Anderson, although he accepted the arguments of the applicants before him, placed his priority on protection of the public school system which was the objective identified in the legislation as a more pressing social value.

Although Justice Anderson dismissed their claims based on *s 1* of the *Charter*, his opinions gave the applicants grounds to appeal his decision.[33] This they did in 1994 where the Court of Appeal described two issues which it had to consider; first, whether *s.21* of the *Education Act* made school attendance mandatory and; second, whether the services under consideration were health or educational services.

The applicants argued that a faith-based education was an essential practice in perpetuating their religious faith and that, while they may have had a choice in deciding on the education of their children, the costs of enrolling them in the public school system were too high given the secular nature of public schools which they claimed was coercive and harmful. The Jewish parents emphasised the cultural significance of their religious heritage, describing the education at their schools as having a secular component along with an essential religious one. While the Christian Reformed parents did not subscribe to a religious and secular distinction both groups testified that religion had significance in their lives that did not leave open to them the option of enrolling their children in a public school. However, the financial costs of enrolling their children in privately funded schools created significant

[33] Section One reads

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.

barriers to their exercising the religious freedoms entrenched in the Constitution and the *Education Act*.

The Court of Appeal, agreeing with the Divisional Court, accepted the importance of religion and a religiously based education in the lives of the plaintiffs and did not question the sincerity of their beliefs. It acknowledged that the kind of education the parents believed they needed for their children was not available in public schools, accepting "expert evidence" on which to base its conclusions. However, the Court of Appeal disagreed with the Divisional Court on a number of grounds, one of which was its interpretation of *s.21* of the *Education Act*. Based on its own interpretation the court ruled that what is defined as compulsory in the Act is access to satisfactory instruction or an "equivalent learning program" and not actual attendance in a school.[34] Therefore the applicants could not be described as being coerced by the *Education Act* since it specifically gave them the option of not attending school if they choose to seek satisfactory instruction elsewhere.

However, equally important was the disagreement of the Court of Appeal with Justice Anderson's opinion that the *Education Act* made distinctions based on religion, having distinguished between public, secular and independent faith-based schools. Its reason for disagreeing with the Divisional Court was that public schools, having been made secular, could not be said to make distinctions based on religion because they are secular. The court said,

> If the absence of public funding for private schools creates a distinction, it is not one based on religion. The public school system is solely secular and, because it is secular, it cannot found a claim of discrimination because it does not provide public funds for religious education under private auspices. The *Education Act* does not provide for public funding of any private school, be it denominational or otherwise. The *Education Act* does not violate the applicants' rights under s. 15 of the Charter.

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[34] S. 21 Participation in equivalent learning

(1.1) A person shall be considered to be attending school when he or she is participating in equivalent learning if the equivalent learning program, course of study or other activity and the group, organization or entity providing it have been approved under paragraph 3.0.1 of subsection 8 (1). 2006, c. 28, s. 5 (1).

When attendance excused

(2) A person is excused from attendance at school if,

(a) the person is receiving satisfactory instruction at home or elsewhere;

The court's assertion that the public school system was "solely secular" included its interpretation of "secular" as "religiously neutral". It further reasoned that private schools were not funded because they were private. However, here the court linked "secular" with "public" and "religious" with "private" creating a kind of circular reasoning. The court was correct in saying that the Ontario *Education Act* did not provide funds for any private school, that being a matter of public policy in Ontario. However, its opinion that the state did not fund private schools because they were private automatically meant that non-funded schools, having been designated "private" did not have access to government funding because they were not funded. When the court added the claim that public schools were secular and could therefore, by definition not be said to make distinctions based on religion, the court disposed of the religious freedom claims before it on two grounds. First, the *Education Act*, having made the public schools secular, could not be said to limit religious freedom because, by its nature, secularism was religiously neutral. Second, the court ruled that the private schools in which the applicants had enrolled their children were not eligible for government funding because they were not government funded and therefore private.

Part of Justice Anderson's reasoning was based on *Big M* and *Zylberberg* in which government action in the form of the *Lord's Day Act* and in the *Education Act* (1980) mandating religious school opening exercises had been identified as coercion because it forced a particular religious practice on the population. In the same way, in Anderson's opinion, the *Education Act* (1990) made distinctions about schools based on religion forcing the applicants to make decisions based on their religious obligations. Therefore the problem for the parents was created by government action in the form of public policy.

The Court of Appeal disagreed with Justice Anderson in his characterization of the *Education Act*, saying that

> In this case, in my opinion, there was no government action that compelled the appellants to send their children to private, religious-based independent schools. They were free to send their children to secular public schools maintained at public expense. Their decision not to do so was solely a response to their religious beliefs and not a result of any government action.
> There is no provision in the *Education Act* which in any way interferes with the freedom of conscience and religion of the appellants. The public schools cannot accommodate the appellants because the religious instruction that they are seeking is not permissible in such institutions. What is really complained of in

> this case is not government action, but government inaction which in the circumstances of this case cannot be the subject of a Charter challenge. The absence of funding in the *Education Act* for private, religious-based independent schools does not contravene s. 2(a) of the Charter.

Upon closer examination, the disagreement with Justice Anderson was over a number of issues only one of which was his interpretation of *s.21* and the issue of school attendance. The Court of Appeal was, in fact, right in its assessment that school attendance is not compulsory but access to satisfactory instruction is. The *Education Act* is deliberately vague on the options open to Ontario citizens and there is little oversight of the mechanisms by which satisfactory instruction can be delivered. Compliance with Ministry of Education regulation is voluntary and supervision of home schoolers and independent schools depends on their decision to offer the Ontario Secondary School Diploma or for other reasons, many of them having to do with promotion of independent schools as viable educational institutions. The point is that the Court of Appeal was more accurate than was Justice Anderson in the reading of *s. 21* of the *Education Act* regarding school attendance.

However, beyond the reading of the *Education Act*, Court of Appeal and Justice Anderson heard the applicants in different ways which had important implications for their conclusions. One difference was in the way they understood the role of religion in the lives of the applicants and the way the applicants themselves saw the situation in which they found themselves. Justice Anderson heard the testimony of the applicants in a way that turned their experience into legal knowledge. He seemed to indicate that his opinion was influenced by "authorities" and that, untutored by those authorities, he would have rejected the *ss 2* and *15* claims of the religious minorities before the Court. He recognized their claims and their reasoning in a way similar to how the *Mackay Committee* and the Courts of Appeal in *Zylberberg* and *Elgin County* had recognized some of the minorities appearing before them. Justice Anderson recognized the importance of religion, of education as religious practice and of the coercive impact of the *Education Act* and of *Memorandum 112*.

The Court of Appeal interpreted the situation in much the same way as the Divisional Courts in *Zylberberg* and *Elgin County* had interpreted the testimony of the religious minorities before them in 1985. They had not seen coercion because in their opinion the Protestant Christianity underlying the *Drew Regulation* and the Lord's Prayer was universal, inclusive and, by its very nature, non-coercive. Besides, they saw the exemption provisions

as adequate protections of the religious freedoms of those few citizens who could not accept the educational practices in public schools. In the same way the Court of Appeal in *Adler* could not hear the applicants because the court's interpretation was that secularism is inclusive, religiously neutral and non-coercive. Further, the court's reading of *s.21* of the *Education Act* allowed a form of opting out of the system by specifying that school attendance is not compulsory while access to satisfactory instruction is compulsory, regardless of how it is delivered. In this way, both because of the court's interpretation of secularism as inclusive and non-coercive and its interpretation of the issue of attendance in *s.21*, the applicants' *s.2* claims were rejected.

Relying on *Jones v Alberta* the court said the following about how religious freedom is protected by the limited role of the government in the matter of school attendance,

> I do not agree, however, with the appellant's contention that the School Act gives the government absolute control over the education of children. It does not purport to force children to attend a school over which a board has control. Section 143(1) allows for instruction at home or elsewhere, so long as that instruction is certified to be efficient, or to attend a private school approved by the department. In essence, as the trial judge observed, it does not provide for compulsory attendance at schools controlled by a board, but for compulsory education.

By saying the government does not force children to attend schools "over which a board has control", the court also accepted the existence of schools where "compulsory education" can be delivered but over which "a board" does not have control. In Ontario, independent schools can operate by filing an "Intent to Operate a School" but, other than that, non-funded schools exist in the regulatory margins of the province. In effect this makes the children enrolled in them invisible to the state, a situation welcomed by some independent schools but not all. Further, although the *Education Act* does not give the government "absolute control", its funding policy does, according to the appellants in *Adler* and other advocates, create significant hardships for anyone trying to exercise their freedom of opting out. One of the obvious ways is the costs of school fees but another is that exercising their freedom of religion in education means that children in non-funded schools or in home schools disappear as students. "Opting out" has always been expensive, whether in social or economic terms, something that the Courts of Appeal in *Zylberberg* and *Elgin County* had recognized as an issue which must be addressed by the government.

The point here is not to argue in favour of making school attendance compulsory or to support Justice Anderson's interpretation of *s. 21*. The point is that *s.21* of the *Education Act* was interpreted by the Court of Appeal in *Adler* as an "opt out" mechanism which blunted the impact of the arguments of those citizens who felt they could not submit to the dominant ethos of the public schools. Consequently the court could not hear the applicants before it in much the same way that the Divisional Courts could not hear the applicants in *Zylberberg* and *Elgin County*. The result was that the evidence of coercion presented by the appellants was not persuasive to successive courts in *Adler* in the same way it had not been to the Divisional Courts in *Zylberberg* and *Elgin County* in 1985.

While the Court of Appeal in *Adler* relied on *Zylberberg* and *Big M* for much of its reasoning, it did so selectively. It accepted the foregrounding of religion as the source of educational harm and accepted a form of secularism as the remedy. However, it did not accept the insights in *Big M, Zylberberg,* and *Elgin County* that coercion can be understood only from the perspective of those alleging coercion, and it also did not accept their insights that protection of religious freedom is the responsibility of the whole society. In *Zylberberg* the Court of Appeal disagreed with the opinion of Justice Anderson of the Divisional Court when he said about the personal costs of opting out of school opening exercises, "Choice is of the essence of freedom and the decision as to what choice is appropriate is often difficult. The difficulty is part of the price of freedom". It quoted with approval the dissenting opinion of Justice Reid of the Divisional Court who had "held that the position of religious minorities had to be appreciated and that it was no answer to their concerns to say that they should not be upset and that the religious exercises might be good for them". In other words, their being upset was legitimate legal knowledge with important implications, not just for them but for the whole society in which they found themselves. The Court of Appeal in *Elgin County*, overturning the ruling of the Divisional Court, said,

> We do not agree with those who would describe the "differences" between minorities and the majority as "their" differences, i.e., those of the minority, which they must "face" as soon as possible. Rather, we would emphasize that religious diversity is to everyone's benefit and everyone's burden.

The Courts of Appeal in *Zylberberg* and *Elgin County*, listening in a new way to the applicants about the coercive impact of Protestant Christianity in Ontario public education, said that the problem of coercion for minorities was the responsibility of the whole society,

not just something with which the minorities had to cope. Accepting the testimony of the applicants, the courts were willing to overturn sections of the *Education Act* which had been in effect for many years and to address an ethos that had been in place from the very establishment of the common school system.

However, the Court of Appeal in *Adler* saw the position of the religious minorities before it quite differently. It recognized that religious minorities might feel the need to opt out of public schools and did not question the sincerity of their beliefs but, in its opinion, this was not the problem of the state or the majority. Rather, in this case, the exercise of religious freedom was a choice, the costs of which were to be borne by those making it. It said,

> Freedom of religion does not provide an entitlement to state support for the exercise of one's religion. Thus, in order to found a breach of s. 2(a) of the Charter, there must be some state coercion that denies or limits the exercise of one's religion. The motions court judge erred in holding that s. 21 of the *Education Act* makes school attendance mandatory and caused the applicants to send their children to private schools. …..There was no evidence that compulsory education was inconsistent with any of the applicants' religious beliefs, and there is no conflict between s. 21 of the Act and the applicants' religious freedom. The applicants' decision not to send their children to public schools was solely a response to their religious beliefs and not a result of any government action.

The court made it clear that, in the case of the parents in *Adler*, they were free to take advantage of the attendance provisions in the *Education Act* but that their doing so was a result of their religious beliefs with consequences that were theirs and theirs alone.

Another factor shaping the *Adler* decisions was the interpretation of the legal parameters in which the court found itself. The Court of Appeal felt bound by a number of things one of which was the definition of *Adler* as a religious freedom and equality case in which religion is foregrounded. This was, of course, the way the issues were presented by the applicants who framed them as *ss.2* and *15 Charter* claims. It was also consistent with the issue as defined in *Zylberberg* and *Elgin County* in which the applicants challenged Christian religious instruction and school opening exercises as mandated in the *Education Act* and practiced, however, inconsistently, in public schools. While the issue in *Adler* was the provision of support services for handicapped children enrolled in privately funded faith-based schools, the arguments which foregrounded the role of religion led to consideration of the nature of secularism in public education and in the public school system. The claims of

the religious minorities that their *ss.2* and *15 Charter* rights had been infringed forced the court to declare itself on the issue of religion and religious diversity in the secular public school system. However, the focus on the issues as ones of religious freedom and equality foregrounded religion as the source of harm and central to the resolution.

The Court of Appeal, having accepted the problem as one of religious freedom and equality, also accepted the resolutions in *Zylberberg* and *Elgin County* in the revised *Education Act* by which the public school system had become "secular". It reasoned that, since the issues in *Zylberberg* and *Elgin County* had been defined as "religious coercion" and "religious indoctrination" by a "majoritarian religious group", the claims by religious minorities had been adequately addressed when Protestant Christianity was no longer the dominant ethos in the Ontario public school system. The court was not prepared to revisit and redefine either the problem or the resolutions achieved in 1988 and 1990 and, therefore the *s.2* religious freedom claims under consideration were rejected on philosophical grounds as well as on its interpretation of *s. 21* of the *Education Act*.

The *s.15* claims of the plaintiffs were based on an interpretation of *s. 93* of the *Constitution Act of 1867* on which public funding for Roman Catholic separate school system is based while denying it to other faith-based schools. To the plaintiffs, this indicated inequality of treatment based on a religious distinction, a claim supported by the *Shapiro Commission Report (1985)* and by the United Nations Human Rights Commission. Justice Weiler, dissenting in the Court of Appeal hearing *Adler* in 1994 also agreed public policy providing support services to children in the Roman Catholic separate schools while denying it to children in privately funded faith-based schools was discriminatory. However, the Court of Appeal rejected this argument, affirming the judgement of the Supreme Court of Canada ruling on the constitutionality of *Bill 30* which had extended full funding to Roman Catholic separate schools in 1986. After considering various interventions which claimed that full funding to Roman Catholic schools violated *s. 15* of the Constitution Act of 1982, that court had said,

> In my opinion, s. 93(1) of the Constitution Act, 1867, and s. 23 of the Constitution Act, 1982 define the extent of the constitutional obligations of the legislature with respect to denominational and language instruction. Under such circumstances, no claim based on alleged unequal treatment under s. 15(1) may be asserted by an individual in the protected areas of minority language education rights and denominational education rights.

In other words, *s.93* of the *Constitution Act of 1867* was specific to the historical context of the 19th century and to the Roman Catholic and French speaking populations. *S.15* of the *Charter* could not be used to challenge the constitutionality of *s.93* and could not be the basis for future equality claims. The Court of Appeal in *Adler* agreed with Justice Anderson of the Divisional Court that *s.93* was a "constitutional anomaly" which represented inequality only in "the popular view" but was without legal effect. It said,

> In my view and conclusion, the funding of Roman Catholic separate schools in Ontario is a constitutional anomaly, with its roots in a historic political compromise made as an incident of the Confederation of 1867. As such, I am not prepared to give it any weight in the disposition of the issues which I must decide. I reach that conclusion aware of what must be the popular view that the anomaly represents inequality and a want of equity. This was fully recognized and dealt with by the judges in the Supreme Court of Canada.

Both the Shapiro Commission and Justice Weiler had proposed a more flexible interpretation of *s.93* which would have opened the possibility for considering the validity of the claims for equal recognition for non-Catholic faith-based schools. However, in *Adler* the Court of Appeal accepted a narrower interpretation its reasoning being based on an interpretation of the role of public education in a democratic society. Linking public education with the public school system and state interests it said,

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

The court upheld the *Education Act* which restricted the legal definition of school to those educational institutions owned and operated by "appropriate boards of education". It did not accept the recommendation by the Shapiro Commission that the definition of school be widened to include independent schools or the claim by the plaintiffs that this distinction infringes their *s.15* rights.

The court made the link between public education and the role of the public school system as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment". The court seemed to assume that privately funded educational institutions were not "schools" in law and that students receiving their education outside public schools were less likely to be awakened to cultural values and less likely to adjust normally to their environment. The point here is that the court rejected the long tradition of resistance to the dominant discourse which had represented the state as the primary stakeholder in the delivery of education and the arbiter of the boundary between public and private religion in Ontario. In *Adler* the court positioned itself in the Egerton Ryerson common school tradition, affirmed in the majority report of the Hope Commission and the *Mackay Report* while the plaintiffs found themselves representing the parallel counter-narrative of resistance going back to the 19th century.

The interpretations of secularism, *s.21* of the *Education Act* and of *s.93* of the *Constitution Act of 1867* by the Court of Appeal in *Adler* have had a number of important results for religious minorities. The most important of these is that the court placed the conflation of the public school system and public education out of legal reach of religious minorities who hold different interpretations of secularism, public education and the role of religion in the delivery of common civic values. However, the dissenting opinion of Justice Weiler provided grounds for a further appeal to the Supreme Court of Canada.

In his dissent, Justice Weiler seemed prepared to accept the possibility that publicly funded services could be delivered in multiple sites. He pointed to trends in health care where, as the result of a number of factors, health care has been increasingly de-institutionalized, saying

> We are all familiar with the fact that health care services in hospitals are available to the population at large. The regulation makes it possible for developmentally challenged children to receive various forms of medical treatment, health services and diagnostic services in their homes or at school. By incorporating references to the *Education Act* into the regulation, however, the regulation denies public health insurance coverage for certain services delivered to a child who is in attendance at a denominational school, as opposed to a public school or a Roman Catholic Separate School. This is because the definition of school in the *Education Act* does not include schools of other religious denominations. Such schools are included within the definition of a "private school".

Justice Weiler went on to describe the trend across Canada of moving people with either physical or mental exceptionalities out of institutions so they could be cared for in community settings without this change in location of care affecting the funding for their services. His dissenting opinion provided a narrow legal window for the religious minorities who were heard in appeal at the Supreme Court of Canada in 1996. However, other features of the 1994 case provide additional data for consideration of the ways in which the courts viewed religion and its role in public education. One of these is the use of regulatory categories as a way to regulate diversity.

Regulatory Categories

One of the issues in *Adler* was how the support services under consideration were to be categorized. The appellants held the view that they were asking for funding for health services to be delivered in their privately funded schools while various respondents, including the Minister of Education held that they were educational services. The distinction was significant because their characterization as health services allowed the children access to government funding through the Ministry of Health available to all citizens while their characterization as education services meant that funding would be contested. The focus in this section is on how the debate over categories determined what voices could be heard and who could be seen by the court.

Justice Wheeler in the Divisional Court in 1992 had not been persuaded by the arguments that children should be denied access to support services because they are enrolled in privately funded schools. On the merits of the stories he concluded that not all the applicants had a legitimate claim since he was not convinced that some of them would have been eligible for such services even if they had been enrolled in a public school. However, he rejected the argument that their eligibility depended on the school in which they were enrolled, adding that the definition of "school" in the *Education Act* itself was problematic and should be expanded.

Justice Weiler, in his dissent in the Court of Appeal in *Adler* in 1994, followed the same line of reasoning. In his opinion, despite their being provided in a school setting the services in question were health care and not educational services and that as such they should be funded through the Ontario Health Insurance Plan and not through the Ministry of

Education. Equal access to health care funded by the government is mandated by legislation, regardless of where services are delivered so the case should be decided on the basis of health care needs and not on the school in which the children were enrolled.

Justice Weiler went on to apply the principle of equal access to students enrolled in privately funded schools, noting that *Charter s. 15* is designed to address the purpose as well the effects of the legislation. In his opinion, while the purpose of the *Education Act* was not to discriminate, its effect was discriminatory. Among the sources from which he drew his legal knowledge was the situation of the children and their needs at the centre of the case, saying

> Religion is one of the enumerated grounds in s. 15. In as much as the services in question are health services, Charter review on the basis of religion under s. 15 is not prohibited by the guarantee of educational rights in s. 93 of the Constitution Act, 1867 and s. 29. These services have nothing to do with the preservation of the denominational character of Protestant or Catholic separate schools as guaranteed in s. 93. These children are a small distinct group who already face greater physical and mental challenges than other children their age. They hardly need to be further challenged by being denied access to health services on account of the fact they attend a religious denominational school which is not Roman Catholic. There is discrimination on the basis of religion with respect to access to health services.

Weiler rejected the arguments linking the funding of the support services in question to the wider issues of funding for private schools and the protection of public education. He referred to immunization programs which are also provided through the Ministry of Health in privately funded schools and quoted Ministry of Health guidelines which designate private schools as "schools" for the purposes of the delivery of health care. In his opinion, the problem was created by regulatory categories in the *Education Act* on the basis of which children's access to health care services was denied because, being enrolled in privately funded schools which are not "schools", the children at the centre of the case did not exist as students under the care of the state.

Because he focused on the health care needs of the children at the centre of the case and not on the wider issues of school funding, Justice Weiler proceeded with a *s.15* equality assessment of which children would have been eligible for support services regardless of the school in which they were enrolled. On that basis he concluded that the *s.15* rights of only one of them, Walter Elgersma, had been infringed and that only he was eligible for funded

support services. In Justice Weiler's opinion the others would not have been eligible for support services even if they had been enrolled in public or separate schools. The key to his argument was his categorizing the services in question as health and not educational services. He said,

> The school health support services regulation is legislation in relation to health, not education. Accordingly, s. 93 of the Constitution Act, 1867 in respect of education had no bearing on the matter, and it was appropriate to consider the applicability of the Charter to the regulation.
> The applicants' children were denied equal benefit of the law. The denial amounted to discrimination on the basis of religion with respect to access to health services. The denial of equal benefit on the basis of religion was not a reasonable limit under s. 1 of the Charter.
> The appropriate remedy was to extend the benefit by reading into the regulation an expanded definition of "school", as opposed to a declaration that the regulation was invalid.

Justice Weiler recognized that the courts were the only option open to Walter and his family to challenge the legislation which denied them access to the services, given their relatively weak political position and the importance of the effects of the legislation on his life. In this, they were in a position similar to the one in which religious minorities found themselves after the *Mackay Report* had been tabled without effect due to their weak political position. In Justice Weiler's view, protection of those citizens in a relatively weak political position is precisely the purpose of the *Charter of Rights and Freedoms*.

However, the Court of Appeal rejected the designation of the services under consideration as health services ruling that these were not health services but "school health support services" and as such were services for which the students in privately funded schools were not eligible, having exercised their religious freedoms by opting out of the public school system. Given the definitions in the *Education Act*, these children were not enrolled in a "school" and therefore, their needs for support services were invisible to the state. The central tenet in the court's reasoning was that public schools are open and accessible to all children and that it was the choice of the parents and not government action which had unfortunate results for the children.

On the level of human interaction the stories offered by the plaintiffs included evidence of extremely difficult personal needs and challenges, not unlike those offered in the testimony of the religious minorities in *Zylberberg* and *Elgin County*. In those cases, the

feelings and emotional needs of children and their parents were important sources of legal evidence with numerous references to the stress, emotional needs and feelings of rejection. However, children and parents received quite different treatment in *Adler*. In his dissent, Justice Weiler carefully described Walter, the one child he considered eligible for support services. He said,

> Walter Elgersma was born with spina bifida and hydrocephalus. He is in a wheelchair. When Walter turned five, he attended a special education program at the Holbrook Public School adjacent to the Chedoke-McMaster Hospital, a designated hospital, where he received medical services including catheterization and physical therapy. Walter presently attends the Calvin Christian School. Ms. Spalding-Martin acknowledged that the health services Walter requires are eligible for funding through the SHSS program and that, assuming his ability to catheterize himself had not improved and his needs for physiotherapy had not changed, he would still be eligible for SHS services if he were enrolled in a public school.

Justice Weiler accepted that the definition of "school" in the *Education Act* was the key reason for Walter being denied the services before the court but for him, unlike the majority of the court, this was a problem not just for Walter and his parents but for society. While Justice Weiler was not persuaded that the other applicants would have been eligible for support services if they had been students in public or separate schools, Walter would have been. For Justice Weiler, the fact of Walter's being a student in a privately funded school was not the deciding factor, having heard the testimony of Walter's parents and seen him as a citizen requiring specialized services. For Justice Weiler, Walter's needs were a collective responsibility that could not be ignored, something recognized in *Big M* and in *Zylberberg* in their consideration of the coercive effect of a dominant Christian presence in Canadian society and in public schools.

The Court of Appeal recognized religion as the key factor in the choices of the plaintiffs and did not concern itself with whether the applicants felt education as religious practice was a matter of choice or a matter of obligation over which they had little or no choice. In the court's opinion their choices, whatever their reasons and whatever the choices may have meant to them, were not the concern of the state, saying,

> Again, the *Education Act* does not impose "obligations, penalties, or restrictive conditions not imposed on others" based on some special characteristic. As stated earlier, it was their religion, and not the statute, that caused the appellants not to send their children to the publicly funded school system.

Adler went to the Supreme Court of Canada on appeal but I now turn to *Bal* since the Supreme Court hearing *Adler* in 1996 relied on *Bal* in its ruling.

5.4.7. "Bal v. Ontario"

a. Introduction

In *Adler* the courts were asked to consider the needs of children enrolled in privately funded schools and decided that, in a legal and regulatory sense, they were not eligible for state funded services. The choices of their parents had been made for religious reasons which put them outside the collective responsibility of society since their religious choices were private ones for which they had to bear responsibility. The reason was that the public school system had been placed out of legal reach of religious minorities, justified by its role as a state instrument in delivering public education. In doing so, the courts in *Adler* left unexamined key issues in the power dynamics in Ontario public education, particularly relating to the role of the state and state actors.

However, *Adler* did this only indirectly since the courts were asked to consider support services for individual children which made the case quite limited in scope if not in impact. The more comprehensive issue of the dominant discourse is more clearly in view in *Bal* when a group of religious minorities challenged the constitutionality of *Policy Memorandum 112*. In effect, they were asking the court to consider the idea that education delivered in institutions other than public schools should be recognized by the state in the form of public funding.

The applicants in *Bal* included members of Christian Reformed communities who had operated Christian schools since the 1950's, members of Muslim communities whose children had been enrolled in Islamic schools from which they had had to withdraw for financial reasons, Christian public school parents whose children had been enrolled in the Sturgeon Creek Alternative Program (SCAP) and members of Sikh and Hindu communities in which there had been growing interest in starting schools which would meet the educational and religious needs of their children,

For each of these groups, *Memorandum 112* and *ss. 28* and *29* of the *Education Act* represented a significant shift in government policy with implications for their educational needs. For example, SCAP had been operating as a Christian alternative program within the

public board in the Fort Francis-Rainy River District since 1977 under an agreement between the Stratton Christian Day School and the public school board. *Memorandum 112* made this arrangement illegal which meant the elimination of their program. The Christian Reformed parents and the Calvinist schools in which they were involved had had a long history of advocating for funding for faith-based schools in Ontario and for them, *Memorandum 112* closed the door to the possibility that they would achieve their objectives. The common ground among them was that all the applicants testified to their experience of a secular school environment as damaging to their children and their communities and identifying education as religious practice.

As with the previous cases, the focus of analysis here is on how the court arrived at its decision in *Bal*. While *Adler* tested the boundaries around public education in relationship to the health and learning needs of individual children, the issues in *Bal* raised broader questions of how religious diversity could be achieved, not just in the social environment in public schools but also in the delivery of academic programs under a more broad understanding of public education. *Bal* directly challenged the interpretation of *Elgin County* by the Ministry of Education in *Memorandum 112* which had directed boards to cease religious accommodation which could be interpreted as sectarian, indoctrinational or coercive.

There is a kind of parallel legal process between *Bal* in the 1990's and *Zylberberg* and *Elgin County* decided a few years earlier but with significantly different outcomes. The differences are explained by two things. First, by adopting the link between religion, indoctrination and coercion established in the earlier cases as well as the definition of secularism as religiously neutral, the court in *Bal* could not accept the arguments that liberal secularism was coercive and indoctrinational. Second, the religious minorities in *Zylberberg* and *Elgin County*, by looking to the state to protect their interests from a Protestant Christian majority allowed the dominant role of the state in the link between public schools, public education and social cohesion to remain unaddressed. In contrast, the applicants in *Bal* identified the state itself as the source of coercion and indoctrination, challenging the religious neutrality of secularism and the idea that liberal secularism could provide a religiously neutral, inclusive common ethos transcending their particular religions. In addition, they were asking the court to reconsider the principle that the public school system

is the only institution in which public education could be delivered. As a result, while there were similarities between the cases, there were fundamental differences between them which explain the success of the religious minorities in the first two and their failure in *Adler* and *Bal*.

In addition, the court in *Bal* was being asked to reconsider the precedents set in previous decisions which had accepted the representation of religion as the source of coercion and indoctrination, a matter of academic interest but not central to the educational process and as a matter of private choice the consequences of which had to be borne by the individual. The court declined to do so, citing the precedents set by *Zylberberg, Elgin County* and *Adler* when it said,

> The seminal decisions in the trilogy are binding on this court. Although the circumstances of the applicants before the court in this case are varied, the principles in those decisions bear directly on these factual circumstances so that, given those decisions, the applicants cannot succeed. I therefore find that Policy Memorandum 112 and ss. 28 and 29 of the regulation do not infringe ss. 2(a), (b) and 15(1) of the Charter. To grant the relief sought in this application would require that the court undo what the Ontario Court of Appeal has decided in Zylberberg, Elgin County and Adler.

The Divisional Court ruling was appealed to the Ontario Court of Appeal which, in 1997, dismissed the arguments in a summary fashion, saying that the issues of school funding, religious neutrality of public schools and crucial role in delivering public education had been dealt with by the lower court in ways that did not require further consideration.

While it considered itself bound by the *Zylberberg, Elgin County* and *Adler* decisions, the Divisional Court in *Bal* did not follow the reasoning in *Big M* and *Zylberberg* which had led to the insight that coercion must be considered from the perspective of those alleging coercion rather than the perspective of those in positions of power. In *Bal*, as in *Adler*, the court did not consider the impact of opting out for religious minorities, agreeing that their decision to opt out of public education was an exercise of their religious freedom rights the consequences of which were their own problem and not, as the Court of Appeal had reasoned in *Zylberberg*, a problem for the entire community. The court in *Bal* also did not consider the significance of opting out provisions which had been retained in the *Education Act*, one form of which was the treatment of attendance in schools as an optional matter. In *Zylberberg* opt out or excusal provisions were considered evidence that coercion was inherent in

Christian school opening exercises while in *Adler* and *Bal*, opting out provisions were considered a protection of the religious freedom rights of religious minorities. In this, the courts in *Bal* and *Adler* followed the reasoning of the Divisional Courts and not the Courts of Appeal in *Zylberberg* and *Elgin County*.

b. "Bal, Memorandum 112 and public schools as secular spaces"

The court's reasoning in rejecting the *s. 2* arguments depended on the view that secularism is religiously neutral and that, as such, it cannot be coercive. It also depended on the view that *Memorandum 112*, based on *Elgin County*, did not prefer one religion over another or that it represented a majoritarian religious view being imposed on religious minorities. The court went on to address the purpose of *Memorandum 112* and the revised *Education Act*, saying,

> The policy memorandum and ss. 28 and 29 of the regulation do not infringe freedom of expression contrary to s. 2(b) of the Charter. Their purpose is to secularize the public school system, not to restrict protected expression. Their effect is to promote secularism in the public schools, not to restrict expressive activities.

Based on its interpretation that the purpose of *Memorandum 112* and *ss. 28* and *29* was to secularize the school system, that secularism is religiously neutral and therefore cannot be coercive, the court dismissed the arguments that the religious freedoms of the applicants were being violated.

One of the claims made by the applicants was that their freedom of religious expression was limited in a secular school system, citing specific examples of teachers and students being denied the right to put up posters of a religious nature or the right to express views of a religious nature in the regime created by *Memorandum 112*. The court rejected these arguments by making a distinction between "expression" and "indoctrination", saying that, while indoctrination is prohibited, expression is allowed for both teachers and students. It stated,

> In reality, no restrictions were placed on the expressive freedom of these applicants. A student is not prevented from speaking his or her beliefs. Indoctrination is limited, but not expression. Though teachers were not parties to the application, there is nothing to preclude a teacher from expressing his or her beliefs outside the school curriculum. The only limitation is that teachers and the school are not to indoctrinate or give primacy to any religion.

The court did not clarify the distinction between the expression of a teacher's religious beliefs and indoctrination, interpreting in quite a different way the importance attached by the Court of Appeal in *Elgin County* to a teacher's role as an authority figure who may, by expressing his or her beliefs, actually influence the students in his or her care. In *Elgin County* the Court of Appeal had reasoned that expressions of belief by a teacher would likely give primacy to his or her religious convictions which could have a coercive and indoctrinational impact on their impressionable young students. However, in *Bal* the court reasoned that in a secular environment free expression of beliefs, even by a teacher, is not harmful to students.

In addition, the court responded to the *s.15* claims of the applicants who alleged that their view of religion and their religious practices were being marginalized by the dominant secular view, saying that all religions are treated equally in a secular environment. The court's opinion was that the issue was not the post-1990 regulation but the religious choices of parents who had challenged the religious neutrality of secularism identifying it as coercive. Based on this reasoning the government was under no obligation to fund the religious choices of the applicants who must assume the costs associated with their decisions to opt out of the system. The court said,

> The policy memorandum and the regulation do not infringe s. 15 of the Charter. It is not the policy memorandum and the regulation which impose obligations, penalties, or restrictive conditions on the applicants and not on others. Rather, it is the applicants' choice of education for their children. The public school system is secular and does not present the opportunity for education in any particular denomination or faith. Should parents desire that their children have a religious education they must assume the cost.

The court in *Bal* relied on *Zylberberg* for the link between religion and coercion, on *Elgin County* for the link between religion and indoctrination and agreed with *Adler* that the situation in which the applicants found themselves were the result of their own choices and not the result of government action. Their religious freedoms were protected by their right to enroll their children in their own schools but the cost of their exercising their right to choose was theirs and theirs alone. Along with *Adler*, it also accepted that the resolution adopted in *Zylberberg* and *Elgin County* to the issues of coercion and indoctrination was the secularization of the public school system. Finally, it agreed that secularism can provide a

religiously neutral common voice to provide a non-indoctrinational, non-coercive educational environment hospitable to all religions.

Therefore the court in *Bal* rejected the *ss.2* and *15* claims in which the applicants argued that secularism, like majoritarian Christianity before 1990, is an ideology which, when adopted as the unifying ethos of public education, is coercive and exclusive. The applicants also argued that, just as in *Zylberberg* and *Elgin County* the existence of opting out provisions had been accepted as evidence of the coercive, indoctrinational and exclusionary impulses of Protestant Christianity, the existence of alternative faith-based alternative schools reveals the coercive, exclusionary and indoctrinational impulses of secularism since they are also a form of opting out. The court rejected this argument outright, doing so in a way that left no doubt about where it stood on the nature of secularism. Having accepted the framework linking religion with indoctrination and the claim that secularism is religiously neutral, the court could not hear evidence that the applicants experienced secularism as coercive in the same way that the Divisional Courts in *Zylberberg* and *Elgin County* could not hear the same testimony of the applicants before them in regard to Protestant Christianity. Commenting on the difference between *Zylberberg* and *Elgin County* and the case before it, the court in *Bal* said,

> … in Zylberberg and Elgin County there was indirect coercion compelling those children who held different beliefs from the majority to be indoctrinated with the majoritarian views. The public school system is now secular. Its goal is to educate, not indoctrinate. This is very different from the goal in place at the time that Zylberberg and Elgin County were decided. Secularism is not coercive, it is neutral.

The link between religion and coercion was reinforced by the court in its response to the argument by the applicants that the creation of faith-based alternative schools within public boards would be one remedy to the coercive impact of secularism on their children. The applicants described this as an "opt in" solution in which students and their parents could choose to opt in to a faith-based alternative. However, the court rejected this characterization of faith based alternative schools, saying

> I accept -- the characterization of the minority religious schools as "opt-in" schools, with a view to avoiding the decisions in Zylberberg and Elgin County is a misnomer. Such schools are indistinguishable from majoritarian schools except for the fact that they are described as minority schools. As such, no basis exists for their exclusion from the application of Policy Memorandum 112 and the

> regulations. The same principles which produced Policy Memorandum 112, that is, the decisions of the Court of Appeal in Zylberberg and Elgin County are applicable to them. These principles are the product of Charter infringement; how then can they be said, when applied uniformly, to constitute a further Charter infringement? In my opinion, such a contention is untenable.

The court insisted here that all schools under a public board must, by law, conform to the requirements of *Policy Memorandum 112*, saying that allowing them exemptions from *Memorandum 112* would recreate the majoritarian school situation. The term "majoritarian" occurs seventeen times in *Bal*, all of them either directly related to "religious" or "Christian" or to characterize the school system before 1990. The point here is that, in the opinion of the court, it is their religious character that creates "majoritarian" schools rather than the fact that they are controlled by a majoritarian or dominant discourse or by a majority population in a position to dominate a minority group. There was no recognition by the court that secular public schools can be "majoritarian" as argued by the applicants, because they are "secular". Because of this characterization of religion and the secular, the court concluded that the religious freedoms of the applicants had not been violated. However, it went further to suggest that acceptance of their arguments would have represented a re-introduction of harm to Ontario public education and Ontario society in the form of majoritarian religious indoctrination and coercion from which they had been relieved in 1988 and 1990.

Bal was appealed to the Ontario Court of Appeal which, in 1997, dismissed the case in a two page judgement agreeing with the reasoning of the lower court. In effect, this was the end of the legal road for religious minorities challenging the privileged role of the public school system in delivering public education.

5.4.8. Adler, religious minorities and the assessment of risk and harm

However, I now return to consideration of *Adler* at the Supreme Court of Canada in 1996 which affirmed the lower court decisions rejecting the claims for government funded support services for disabled children enrolled in privately funded-faith based schools. This analysis focuses on the dissenting opinions of Justices McLachlin and L'Heureux-Dubé which, while agreeing that the support services in question should be funded, did so for reasons which actually shed additional light on the dominant discourse regarding religion and minority religious groups. While Justices McLachlin and

L'Heureux-Dubé recognized the claims by the religious minorities before them, they did so in a way that suggests ambivalence about the role of those same groups in society and their educational enterprises. On the one hand, Justices McLachlin and L'Heureux-Dubé were committed to the religious freedom and equality rights of religious minorities but, on the other hand, they were also concerned about the implications of the exercise of religious freedom for social harmony. One way this tension expresses itself is in the assessment of potential harm to society of funding for non-Catholic faith-based schools and it is from that perspective that this analysis proceeds.

By 1996 the Supreme Court of Canada had access to an important body of legal thought on the role of religion in modern, secular public schools as it considered the appeal of the Court of Appeal decision of *Adler*. Basing its opinion on *Zylberberg, Elgin County, Bal* and earlier *Adler* decisions, the Supreme Court, dismissed the appeal and agreed with earlier decisions that the government's refusal to provide support services for students enrolled in privately funded faith- based schools did not infringe *ss.2* and *15* of the *Charter*. However, the dissenting opinions of Justices McLachlin and L'Heureux-Dubé provide additional perspectives on the way religious minorities and their privately funded faith-based schools are represented in the dominant discourse in Ontario public education.

In her dissent, Justice McLachlin agreed with the *Bal* and earlier *Adler* decisions that *s. 93* of the *Constitution Act of 1867* is a "comprehensive code", meaning that it was the result of a unique historical event and a constitutional anomaly. She also agreed that *s. 93*, as a historically unique event and a constitutional anomaly, did not provide the basis for *Charter ss 2* and *15* religious freedom and equality claims. She described *s.93* as "a child born of historical exigency" which "does not represent a guarantee of fundamental freedoms.", and that it is not a "small bill of rights for the protection of minority religious groups". However, she did not agree with the 1992 and 1994 *Adler* decisions which had justified the infringement of the *ss.2* and *15* rights of the religious minorities under *s.1* of the *Charter*. In her opinion, the complete withholding of funds was not justified because such a policy exceeded the standards of "minimal impairment" because the rational connection between the achievement of a "more tolerant multicultural society" and the refusal to extend some level of funding was "more problematic" in her view. Her reason was that "the cost of

extending these school health services is not great and denying these services to disabled children in non-funded schools adds to their burden of coping".

Justice McLaughlin was engaged in an assessment of harm to "a more tolerant multicultural society" and her conclusion was that harm resulting from supporting handicapped children in privately funded faith-based schools would be minimal and could be tolerated. However, her opinion indicated that her standard of assessment of harm and risk was the viability of the public school system and its protection. Therefore her opinion was not based on recognition of privately funded faith-based schools as legitimate instruments to deliver public education and, while she did recognize the needs of the children at the centre of the case, she assessed those needs in a framework of tolerance of religious minorities. While her conclusion was different from the majority of the court, her reasoning indicated fundamental agreement with the representation of religious minorities in public education.

Justice L'Heureux-Dubé agreed with assessment of harm by Justice McLaughlin and the Shapiro Commission, saying

> Clearly, the loss of 3 percent to 6 percent of the students currently enrolled in public schools would not undermine the primary objectives of creating a large, universally open public school system, where people of varying beliefs and backgrounds will come together. In fact, the source of the 3 percent estimate, the Shapiro Report, concluded that some funding to independent schools could be extended without significantly impinging on the larger public system.

In her opinion, the *ss.2* and *15* rights of plaintiffs had been infringed and that the infringement of their rights was not justified under *s.1*, agreeing with Justice McLaughlin that there was not a clear rational connection between the complete withholding of public support and "the objectives of providing universal education without discrimination". Denying disabled children enrolled independent schools access to support services would not, in any significant way, "further enhance the social diversity and harmony in the public school system".

Justice L'Heureux-Dubé agreed with the opinion in *Big M* that the protection of religious freedom is a broad social concern and that it is the state's responsibility to create the conditions where real choice is possible. She said

> State action which discriminates on the basis of religion cannot be excused on the grounds that religion is a choice and that the individuals may choose to avoid the negative impact which arises from the state's response to their religious

> identity. Discrimination on the basis of religion would become an empty concept.

She also disagreed with the majority opinion that secularism cannot be coercive. She related the situation of the plaintiffs before her to that of other religious minorities who had suffered discrimination on the basis of religion. For her, Protestant Christianity and secularism have the same effect if they dominate the ethos of the society in that both can represent a threat to religious and cultural minorities. Therefore, she directly challenged Ontario's school funding policy and the *Education Act* which, based on the idea that secularism is neutral and non-coercive, contradicted the intent of multiculturalism and *s.15* of the Charter. She said,

> Denial of any funding to the appellants constitutes not only a financial prejudice, but also a complete non-recognition of their children's educational needs and the children's and parents' fundamental interest in the continuation of their faith. In applying s. 15 in the context of the denial of funding for education to those who cannot access it for religious reasons, s. 27 of the *Charter* (dealing with the preservation and enhancement of a multicultural heritage) supports a finding that the interests at stake, the preservation and continuation of the communities in question, form interests fundamental to the purposes of the *Charter*. The *Education Act* funding scheme represents a *prima facie* violation of the s. 15 guarantee of equal benefit of the law.

In her opinion, *s.21* of the *Education Act* dealing with attendance had effects on religious minorities similar to the excusal provisions which had attracted the critical attention of the Courts in *Zylberberg* and *Elgin County*. *S*he said,

> The exemption for religious parents contained in s. 21 of the *Education Act* does not constitute the accommodation necessary under s. 15 to ensure equal access in real terms. Rather, it addresses the potential coercive aspect of mandatory secular education alone, and thus allows the impugned legislation to meet the requirements of s. 2(*a*). In a case of unequal benefit, accommodation will mean taking the steps necessary to ensure access of these parents without discrimination.

In many ways, Justice L'Heureux-Dubé heard the arguments of the plaintiffs quite differently from the way they were heard by the majority of the court and if her opinion had been in the majority, the plaintiffs would likely have considered themselves successful. However, the point here is not to examine success or failure in a legal contest. Rather, it is to examine the reasoning of the courts and how religion and religious groups were represented in the arguments and opinions. Justice L'Heureux-Dubé would have granted the remedy claimed by the plaintiffs, but her reasons for doing so would have had unintended consequences for

them in the same way that the victories in *Zylberberg* and *Elgin County* had unexpected results for Jewish and Christian minorities. One consequence would have been increased scrutiny of faith-based schools for evidence that they remain within the bounds of tolerance and avoid perceptions of doing harm however defined by the majority. This is the political and social reality for the Roman Catholic separate school system, currently under scrutiny for evidence that they might be violating majoritarian standards for the management of gender diversity. The point here is not to argue that schools should not be accountable for their professional practices. Rather, the point is that faith-based schools face different levels of scrutiny because of their religious identities.

Examination of her reasoning indicated that for Justice L'Heureux-Dubé, religious minorities are marginal, in need of protection from the majority and not full-fledged members of Ontario society. She described the plaintiffs before the court as "dissentient", "discrete", "insular" and vulnerable in the face of the forces of secularization. The term "insular" occurred ten times in her opinion in each case describing the plaintiffs, saying,

> These communities also constitute discrete and insular minorities, as their attempts to maintain a religious life leads them to distance themselves somewhat from the secular institutions of the larger society around them. While some may say this is their choice, we must remember that, in evaluating discriminatory effects of state action, we are concerned with its potential impact within the broader societal context. Insularity has become necessary to maintaining the religious lifestyle practised by the appellants by virtue of the powerful economic and other forces of secularization in society. Such insularity clearly carries with it the danger of such a group's interests being overlooked. The questions which I concluded above to be indicative of the vulnerability of a particular group to discrimination would all be answered in the affirmative for the appellants. They constitute a group which is most clearly intended to receive *Charter* protection under s. 15.

In her opinion, the appellants before her were somehow different with a "religious lifestyle" which was vulnerable to the influences of mainstream society. While they may have been somewhat peculiar in their insular religious lifestyle it was important to Justice L'Heureux-Dubé that their needs not be "overlooked" in a democratic society. These were people "seeking to survive" forces alien to themselves and it was the role of the *Charter of Rights and Freedoms* to recognize and protect them "from the discriminatory will of the majority as expressed through state action." Not to do so "strikes at the very heart of the principles underlying *s.15*", contradicting the most important values in a free and democratic society.

In her opinion, "we cannot imagine a deeper scar being inflicted on a more insular group by the denial of a more fundamental interest; it is the very survival of these communities which is threatened".

Justice L'Heureux-Dubé recognized the subtle and not so subtle ways in which minorities experience power differentials due to their weak political position, expressing concern for issues of discrimination by pointing to the dangers of "stereotyping, social prejudice and/or marginalization" to the adversely members of "discrete and insular minorities" who might already be victims of "historical disadvantage.". The point is that Justice L'Heureux-Dubé framed the issue as one in which the religious groups before her needed protection but that they needed it because they were not completely Canadian in the full sense of the term.

However, there was no actual evidence that the plaintiffs before the court saw themselves as "insular" or that they lived on the margins of Ontario society. Both the Jewish and Christian Reformed communities had long histories of successful economic, social and political engagement in Canada. As the groups repeatedly asserted in subsequent debates in 2003 and 2007, they were contributing members of Canadian society sharing the values of democracy, modernity and social diversity. They have expressed consistent support for a strong public school system, strong public education and an orderly democratic society. They were on the front lines in challenging the dominant role of Protestant Christianity in Ontario public education since the 1950's when they were also marginalized.

However, Justice L'Heureux-Dubé, essentialized them as marginal and insular because their religious practice of education and their choosing educational options outside the public school system, representing them as religious minorities struggling for survival on the outer edges of the social mainstream. In that sense her opinion, while it supported the claims of the plaintiffs, reflected a similar view of religion to that expressed in *Zylberberg*, in which religion was represented as a quaint way of knowing and experiencing the world but essentially out of step with a modern secular society.

The view that religion diminishes agency or the capacity to choose was evident in *Zylberberg* where the court adopted a secularization historiography which represented religion as anachronistic in the modern world. The dissenting opinion of Justice L'Heureux-Dubé reflected the same view in considering the claims of the appellants before her. While

she accepted the important role of religion in the lives of the appellants, she seemed to assume that as members of a marginal, insular minority they did not really have a choice about whether or not to participate in their faith-based schools. In her view the problem for the court was that "We must determine whether the individual in question, in the circumstances, would consider him- or herself to have a choice". She concluded that "the appellants, this is clearly not the case. What might be termed an objective choice of a particular religion from the court's point of view will, from the religious adherent's perspective, entail a moral imperative."

Her opinion reinforced the representation of religion and religious communities as uniquely vulnerable in a wider secular society who on the basis of principles of multiculturalism should be protected. She also assumed that the range of choices available to the appellants was limited by their religious insularity. However, this view is at the heart of the opposition to religion in general and faith-based schools in which the appellants were involved so, while she argued that they should receive the public support for which they were advocating, her reasoning reinforced the representation of their religious practices as harmful to their children and out of step with a modern, diverse and secular society. While her assessment of harm to society was different from that of the majority of the court, her reasoning and her representation of religion in education and society was actually similar.

Therefore, while her conclusions were different from the majority of the court, her consideration of religion and religious communities was consistent with that of the majority and of the previous court cases and was similar to the ways in which Roman Catholic separate schools were represented by Egerton Ryerson, the Hope Commission and the Mackay Committee. In this discourse, groups identified as religious minorities may be realities on the ground which must be accommodated but are marginal and potentially harmful to the educational enterprise of socializing students which occurs in the public school system.

While Justice L'Heureux-Dubé was guided by the concept of minimal impairment of the rights of religious minorities she accepted the premise that the protection of the public school system as the most effective vehicle to foster tolerance in a democratic society was the primary concern of the state. The demands of religious minorities, therefore, must be assessed for their potential harm to the public school system. In this Justice L'Heureux-Dubé's opinion reflected the dominant discourse and while she proposed consideration of

funding for services delivered in faith-based alternative schools, did so through the lens of assessing risk and harm to the public school system in a way similar to the recommendations by the Shapiro Commission in 1985. She said

> A rational connection was established between funding choices and the maintenance of universally open and religiously tolerant schools. Full funding for dissentient schools was shown to be linked to the possible outflow of a large number of students from the public school system. The legislation, however, did not minimally impair the rights in question. Complete denial of funding is the most excessive impairment possible and not one of a range of permissible alternatives. Partial funding could be provided without affecting the objectives of the legislation and would ensure a less severe impairment. It could ensure some recognition of these communities and assist in their continuation, all the while maintaining the generally secular, universal and socially tolerant nature of the public school system. Finally, the salutary effects of the legislation, being essentially financial in nature, did not outweigh the deleterious impact.

For Justice L'Heureux-Dubé the issue was never that such schools are possible mechanisms for the delivery of public education. In fact, she accepted the distinction between public schools, described as "universally open and religiously tolerant" with "dissentient schools". She accepted the narrative that full funding for "dissentient schools" would likely result in the "possible outflow of a large number of students from the public school system", doing unacceptable levels of harm.

Part of her risk assessment was based on the situations in other Canadian jurisdictions where partial funding for independent and private schools similar to the ones under consideration in *Adler* were being funded with no deleterious effects on the overall health of the delivery of public education and social harmony. About the objective of establishing a tolerant, multicultural society, she said, "I note that this same objective is no less pressing and substantial in the education systems in the five other provinces of Canada where independent religious schools receive partial funding, as indicated by the respondents' evidence". Rather than causing harm, she seemed to agree with Bernard Shapiro that, based on the experience of other provinces, "partial funding would actually further the objective of providing a universally accessible education system and promote the value of religious tolerance in this context where some religious communities cannot be accommodated in the secular system". Therefore, some level of funding would enhance Ontario's identity as a tolerant, multicultural society without harm to one of its most prized institutions.

In the end, however, Justice L'Heureux-Dubé agreed with the majority opinion of the Supreme Court in *Adler* that the issue of school funding was a political problem to be resolved by the legislature. The courts, having tested the legal issues raised by religious minorities, concluded that, while there was no legal compulsion on governments to fund non-Catholic independent schools, neither was there a legal reason why they could not do so. This was a two edged opinion for groups holding a minority position on any question because, while it referenced the democratic process, also put minorities in the position of having to confront the power of a majority.

One purpose of the *Charter of Rights and Freedoms* is to establish basic rights for all citizens so they would be protected from the power of a "smug majority" in the words of *Big M*. This principle was used to good effect for religious minorities in *Big M*, *Zylberberg* and *Elgin County*, identifying and unseating Protestant Christianity from its dominant role in Ontario public education. However, in *Adler* and *Bal*, religious minorities were advised that their problem was political, denying them constitutional protections successfully claimed by religious minorities in previous cases.

5.4.9. Conclusions

Examination of the cases between 1985 and 1997 demonstrates the persistence of a dominant discourse in Ontario public education, also evident in the election of 2007 and other moments in the history of Ontario public education. This discourse is pervasive but, except for periodic controversies in which it is revealed, is usually hidden. One of the ways in which it remains hidden is through the foregrounding of religion as an essential and unbridgeable fault line separating a traditional, coercive and indoctrinational past from a modern, non-coercive and free-thinking future. However, this has largely left an important nexus of power out of the reach of critical examination.

Martin Sable (1999) examines the power dynamics inherent in the *Drew Regulation* and Christian school opening exercises. He acknowledges the difference in the treatment of the religious minorities in *Elgin County* and *Zylberberg* and in *Adler* and *Bal*, the former being given legal protection by the courts while the latter were advised to engage the political process. However, his analysis of the difference is weak, saying of the religious minorities in *Adler* and *Bal* that "their time had not yet arrived." (1999, p. 322). His critical analysis

ends with *Zylberberg* and *Elgin County*, his conclusion being that the rights of religious minorities were achieved by the removal of Protestant Christianity as the dominant ethos in public education. He suggests that the difference in outcome of the two groups of cases was incidental to a progressive narrative which represents religion as an historical anachronism marginal to public affairs.[35] However, I argue that the difference is vitally important because the *Zylberberg* and *Elgin County* plaintiffs were advocating for a reform within public education which did not challenge basic power structures. While the minorities in *Zylberberg* and *Elgin County* were challenging the discourse which foregrounded religion as the source of coercion and indoctrination, the role of the public school system as a state actor delivering public education was left unexamined and unchallenged. They were therefore, within the bounds of what could be tolerated while the claims of the religious minorities in *Adler* and *Bal*, challenging the nexus of power in Ontario public education, could not be tolerated.

Lois Sweet (1997) expresses her uneasiness over the implications of *Adler* which, if the courts had ruled in favour of the plaintiffs, would have opened up the possibility that many schools would be funded. While she acknowledges some persuasive arguments supporting some form of government funding for faith-based schools, she also poses questions regarding the risks she considers inherent in any policy to do so saying,

> The public funding of independent religious schools has enormous social implications. Inherent in it are such questions as "How do we best raise children to be contributing citizens in a pluralistic society, respectful of the rights and differences of others? Through religious apartheid, or forced integration or other means?" (1997, p. 119)

While Sweet expresses some sympathy for religious minorities arguing for public funding as a right, she echoes the sense of risk which must be managed in any policy designed to do so, heightened by the term "enormous social implications". She also reinforces the idea that religion creates deep social fault lines by problematizing the debates polarized between "religious apartheid" or "forced integration". Although the actual experiences of funding

[35] It is important to be fair by pointing out that this was not Sable's primary project. He was examining the *Drew Regulation* and its role as an explicit expression of the dominance of Protestant Christianity in Ontario public education. However, his analysis does indicate that, for him, the issues were the boundaries of inclusivity within the public school system and that he therefore misses other important power dynamics.

independent faith-based schools in other jurisdictions is not so dramatic, the language of risk to the public school system, civic values and society is typical of the debates in Ontario.

Dramatic language and a heightened sense of risk tend to suit those invested in hegemonic power by emphasizing the dire implications of social change. This was true of the groups opposing Jewish voices calling for a re-evaluation of the *Drew Regulation*, the idea being that the loss of Protestant Christian control of public institutions would result in dramatic and negative consequences. It was also true in 2003 and 2007 when opposition to the EETC and the John Tory proposal deployed language suggesting the imminent collapse of the public school system with dire consequences for public education and for Ontario society if the measures he envisioned were enacted.

S.M. Corbett (1997) expresses support for *Adler*, arguing that the courts were working within the constitutional framework established in 1867 while preventing further funding to other faith-based schools. However, he recognizes that this inconsistency is the result of an historic compromise which was understandable in the 19th century but regrettable now because it prevents the creation of a truly secular public school system. In his essay, "Adler v Ontario: The troubling legacy of a compromise", he says,

> It is unfortunate that an historically conditioned compromise at the time of Confederation continues to haunt debates over school funding in an era when a truly secular system of education requires all the support that it can muster. (1997, p.69)

Corbett argues that although the common school movement was considered "secular" before 1990, the use of the term "secular" masked the dominant role of Protestant Christianity representing itself as the common, inclusive religion. The resistance of Roman Catholics was understandable since they were not fooled by the religion lurking behind the mask of secularism. However, after 1990, the public school system was made truly secular which rendered invalid the claims of the religious minorities in *Adler* that they were being subjected to coercion and indoctrination. In Corbett's view the courts in *Adler* made the right decision, the only unfortunate thing being the inconsistency of the funding policy which included Roman Catholic separate schools being protected by an outdated constitutional provision. Corbett's argument is similar to the one offered by Egerton Ryerson when he explained the constitutionally protected funding for Roman Catholic separate schools as providing the Roman Catholic minority "protection from insult" by a majority with a view of religious

minorities similar to that held by Justice L'Heureux-Dubé. In Corbett's view "protection from insult" has been achieved by the change in language from Protestant Christianity to liberal secularism to describe the dominant ethos in Ontario public schools.

Jeff Spinner-Halev (2000) opposes public funding of faith-based schools because, in his view, they perpetuate "illiberal views" and tend to undermine "the liberal virtues". In a way similar to the representation of religious minorities and faith-based education in Ontario public education discourse, he sees a fundamental fault line between the education delivered in public liberal and private religious schools. He acknowledges that educational quality is not the issue since religiously affiliated schools can be good schools and sometimes even better than public schools. Nevertheless, they represent a presence that is always potentially threatening.

Examination of the case law between 1985 and 1997 shows that the courts accepted the role of the public school system as the only institution able to deliver public education and, by extension, social harmony. In doing so, they could hear only the voices of those whose advocacy for religious freedom did not challenge that dominant discourse. In addition the courts accepted a representation of religion as anachronistic in a modern society. As a result, the arguments of religious minorities testifying that they were being harmed by the public school system were rejected and their insights into the organization of public education were ignored. Their advocacy for religious freedom went to the heart of the regulation and practice of religion in public education which is the subject of the next chapter.

Chapter Six *Education about religion*

6.1. Introduction

The previous chapters have traced the development of competing discourses regarding the role of religion in Ontario public education. Religion and education have been interwoven in Ontario public education throughout its history and resolution of the conundrums and complexities inherent in the relationship has always been elusive. This is because education and religion occur at the nexus of deeply held convictions and interests which often exist in a relationship of creative tension with each other. At the centre of any educational endeavour is the child in whose future parents, religious communities, professionals, the wider civic community and the state have profound and often competing interests. Therefore any educational program in religion is the result of a complex, dynamic process of development and ongoing compromises in design and delivery. Education about anything and particularly about religion is never a straightforward matter of information delivered in a scholarly and objective manner; it is a complex and nuanced process of nurture designed to achieve a well-adjusted human being prepared to contribute to society.

Education about religion, identified in Ontario public policy as the way to deliver religion in public schools, reflects the complexities and conundrums inherent in the role of religion in education. Education about religion is the result of compromises designed to define the proper role of the school and the educational process in religion while establishing limits on the power of any one religion from dominating the educational space. It is an educational strategy, one goal of which is literacy about religion but this goal is embedded in social and political goals so that descriptions and explanations of the academic program are invariably couched in the language of social harmony and civic values. The purpose of this chapter is to examine and perhaps, to some degree untangle the nexus of educational, social and political purposes intertwined in education about religion. It builds on the critical analysis in earlier chapters, proceeding in a spirit of respect for the sensitivity expressed by the state in Ontario for religious minorities but also recognizing that the educational remedies adopted in 1990 have their own biases and blind spots.

In formalizing the concept of education about religion as law in Ontario in 1990, the Court of Appeal in *Elgin County* was responding to citizens being harmed by religious

instruction but its remedy was only one among a number of possible options it could have chosen (Glenn, 1988, 2000, 2011; Jackson, 1997, 2004; Bader, 2007; Jödicke, 2013). By adopting the language of science and critical thought as the only public way to engage religion in schools, education about religion in Ontario public education is seen by some as a strategy to train students to take critical distance from their own sectarian religious traditions in the interests of social harmony or "togetherness". In addition it is strategy designed to protect students being harmed by educational practices shaped by a majoritarian religion. However, by others it is seen as state strategy to detach students from their religious traditions in favour of "Canadian values that transcend all religions and traditions (Glenn, 1988, 2000, 2011, 2012; *Memorandum 108*, 1989; *Memorandum 112*, 1991; Bader, 2007; Zine, 2007, 2008). Education about religion reflects social, political and educational purposes because while it is described in terms of information about religion delivered in objective and scholarly ways, these more limited educational outcomes cannot be easily separated from the delivery of particular social attitudes about religion and civic loyalties which go beyond information about religion.

6.2. Education about religion in the Ontario curriculum

Education about religion is delivered in three ways in Ontario public schools. The first way is through the optional World Religions course offered in grade 11. Because the course is optional not every student takes it and schools are not required to offer it. Moreover the content of the course, which is beyond the scope of this thesis, is focused on World Religions, an approach which has been identified as problematic by some scholars of religion (Jackson, 1997; Puett, 2014).

The second way education about religion is delivered is throughout the curriculum in an integrated approach in which information about religion is included throughout the academic program. Ministry guidelines say that "Almost all areas of the existing curriculum can serve as a springboard for education about religion" (1994, p. 16). However, there is a great deal of latitude for boards of education in the delivery of education about religion, the Ministry of Education saying "Boards of education will need to decide first how the program will be incorporated into the curriculum" (1994, p. 14). The Ministry of Education further advises the boards to "form an advisory or consultative committee to undertake broad based

consultation. Initially, the role of such committees would be to assist boards in making an informed policy decision about whether or not to introduce the study of religion into their schools" (1994, p. 19). In addition, while the same document identifies learning outcomes, these are "suggested" and not mandatory (1994, p. 12).

A third way in which education about religion is delivered is through recognition of things unique to various religions such as religious festivals and rituals in special classroom and school events. They make a valuable contribution by enriching the social diversity in a school with students becoming aware of and familiar with religious and social practices of their fellow students. However, they have also been characterized as a kind of "tourist" religion which can actually trivialize religion (Zine, 2008, p. 40).

Examination of the Ministry of Education guidelines suggests a high degree of latitude about the content of education about religion, most of it being optional to be decided by local boards, including the fundamental decision about whether to include teaching about religion at all. What students actually learn about religion itself seems less important than their attitudes about religious diversity which seems curious given the importance of literacy as an important outcome of any educational program. Literacy is a mark of a successful education program but while that seems a straightforward matter, closer examination reveals that defining literacy is not so simple. What students need to know is the key question about literacy. What is not clear from the 1994 Ministry of Education document is what religious literacy includes since the program is optional and the learning outcomes are suggested rather than mandated. The only non-negotiable outcomes are those attitudes and civic values which could also be delivered in any other program. This means that the purpose of education about religion is actually less clear as an educational program than it is as a program about socialization into acceptable attitudes and civic values.

However, the Ministry of Education approach to the academic outcomes of education about religion becomes less curious if one considers education about religion as a mix of programs and activities in which educational, social and political goals are intertwined**.** Although it is represented as part of the academic program, the vagueness around the educational language in the 1994 document is suggestive and deserves further consideration particularly when seen in contrast to the clarity around the social and civic language. One thing it suggests is that clear definition of educational outcomes would conflict with social

goals since they would foreground religious differences and trigger conflict among groups interested in the outcomes of a clearly defined educational program. Governments in Ontario have recognized the implications of clarity since the founding of the common school movement which was why religious instruction had not been included in the academic program and why it was so controversial when it was introduced in 1944. Clarity in educational outcomes would also conflict with social and civic goals because the public school system would no longer be able to claim that it treats all religions equally since establishing clarity would involve deciding what would be included and what would be excluded from the program. In addition, governments have also recognized the challenges of delivering one clearly defined academic program in religion, given the great geographical and social diversity in the province.

The public school system is not to be faulted for its caution about clarifying the educational outcomes in education about religion since the problem it faces is inherent in its mandate to be an inclusive, common school system. In addition, education is never just about the delivery of "information" and academic programs in any school reflect social, political and educational goals which give them a context of meaning. All schools make choices about the educational outcomes of their programs and public schools share with others the challenges inherent in making those choices. However, in Ontario public policy the complex, nuanced issues inherent in delivering education about religion are masked by the language of scientific, objectivity and inclusive, religious neutrality which places the public school system and its programs about religion in binary opposition to other educational models which are said to deliver sectarian, exclusive indoctrination.

6.3. Education about religion and the politics of togetherness

Three things are evident in the literature about religion in Ontario public education; first, religion and religious diversity are important in the lives of Ontario citizens and in Ontario society; second, religion and religious difference are potentially disruptive forces, both to individual self-realization and also to social harmony. Therefore, the wrong kind of religion and the wrong attitudes about religion matter in Ontario and are important state interests. Third, public schooling is the key state strategy to integrate students into a

harmonious, tolerant society around common values that transcend sectarian religious interests.

Following the 1988 and 1990 *Zylberberg* and *Elgin County* decision, in 1993 the Ministry of Education issued a program document titled "Opening or Closing Exercises for Public Schools in Ontario 1993" which includes an extensive passage on the role of school opening exercises. While it is concerned with school opening exercise and is not a statement on education about religion, the document refers repeatedly to the political purposes of the public education system. It is careful to point out that it was describing "school opening exercises" and not "religious opening exercises", but its explanation of their importance depends heavily on the language of civic values and patriotism. For example,

> Policy/Program Memorandum No. 108 identifies two interrelated purposes for opening or closing exercises. One is educational — to contribute to the social, moral, and spiritual development of students; the other is patriotic — to nurture esteem for and loyalty to Canada. The memorandum also identifies as integral to these purposes the function of "reinforcing the positive societal values" that Canadians share.

It is explicit in identifying its "Patriotic Purpose", describing the nation building purpose of school opening exercises in a section titled "Reinforcing of Shared Values" when it says that the

> values Canadians share "transcend cultures and faiths, reinforce democratic rights and responsibilities, and are based on a fundamental belief in the worth of all persons" ….. Opening or closing exercises that affirm shared values, including the celebration of diversity, fulfil the desires of many religious and secular communities that have traditionally supported the public schools. Such exercises translate the unique experience of each community into shared understandings of common experience and belief.
>
> ….
>
> Opening or closing exercises can enhance the ability of the public schools to fulfil this commitment and can provide a daily reminder of the vision Canadians and Ontarians are seeking to realize. The following section explores some aspects of that vision.
>
> (Ministry of Education "Opening or Closing Exercises For Public Schools in Ontario 1993")

The point is that any consideration of education about religion cannot be understood without recognizing that programs about religion are not only about the transmission of information. Rather than being one program, education about religion is a mix of attitudes, programs and activities resulting from educational, social and political goals in a state of creative tension

with each other. It is this creative tension which explains the vagueness of the learning expectations relating to religion and the fact that programs relating to religion are optional. Seen in contrast with the non-negotiable nature of the statements regarding civic values the vagueness suggests that the main point of education about religion is not religion itself but attitudes about religion. A reasonable conclusion would be that religion itself is actually not that important from a public policy perspective except as a factor of social diversity which must be managed. The point of public policy about religion is to prevent it from becoming a problem by foregrounding civic values to be achieved through education about religion and backgrounding religion itself. The overall message of the way the program is arranged and the way the learning outcomes are phrased is that the details of religion or what students actually learn about religion are less important than its political and civic goals which are the topic of the next section.

6.4. Education about religion and historical narrative as a political strategy

The public school system has been an important state instrument in Ontario designed to manage religious diversity through an education process which includes education about religion. An important goal of education about religion is the education of citizens whose primary public commitment is to Canadian values which transcend all other religions and traditions. However, education about religion has inherent creative tensions which usually remain unexamined because of the position occupied by public education in a progressive narrative. In Ministry of Education documents, education about religion is situated in a narrative constructed around rhetorical binaries designed to portray the current reality as socially more progressive than the institutions, modes of thought and practices of a previous age.

Critical discourse analysis of selected primary sources and the political rhetoric in Ontario public education indicate a historiography constructed around a number of binaries. These include; religious and the secular, private and public, sectarian and common, indoctrination and education, collective and individual, coercion and freedom, emotional and rational, traditional and modern, social disruption and social harmony and finally, religious education or instruction and education about religion. Broadly speaking, Ontario public education is narrated in what could be described as a form of secularization thesis, the overall

effect of which is to make education about religion seem like a logical culmination of developments in a narrative of progress. Thus religious education is seen as harmful to both individual self-realization and social harmony, having been associated with a previous, less developed stage of human development. Education about religion is represented as a secular way of talking about religion and, as such, its adoption by the courts and by the Ministry of Education is seen as a sign of social and educational progress.

The link between secularization and progress can be seen in an interpretation of secularism and secularization that depend on essentialized definitions of religion and the secular. A secularization meta-narrative, in which religion is represented as having essential characteristics which hold true in all times and places, is evident in the links between religion, indoctrination and coercion in *Big M*, *Zylberberg* and *Elgin County*. As a result religion is represented as always having coercive and indoctrinational impulses in contrast with secularism which is not coercive and indoctrinational. As a further result the educational practices in faith-based schools are seen as essentially coercive indoctrination while secular schools are engaged in true education. Gaps between the ideals of public education and actual achievement in public schools are seen as incidental problems of practice in an overall progressive process while education in faith-based schools, while tolerated in a liberal democratic society, is seen as static and inherently flawed.

Secularization as an essentialized meta-narrative has received widespread critical attention by scholars who suggest the use of the concept in more descriptive and nuanced ways (Casanova, 1994; Asad, 2003; Dobblelaire, 2004; Heelas and Woodhead, 2005; Knott, 2005; Martin, 2005; Taylor, 2005; Beyer, 2006; Berger, Davie and Fokas, 2008; Hurd, 2008; Barker, 2010; Woodhead and Cato, 2012). There is a great deal of support for James Beckford's contention that the terms religion and the secular are socially constructed and that the boundaries between them are dynamic, contested and porous (2003). Challenges to secularization meta-narrative provide evidence to suggest that the characterization of education about religion as a secular and therefore the only public way to engage religion in contrast with religious education is questionable on theoretical grounds. Therefore, I argue that while there are different ways to legitimately engage religion in education, an essentialized distinction between religious and secular ways of doing so is not a meaningful way to do so.

Michel Foucault expresses three doubts about historical narratives which depend on binaries contrasting a current historical era with a previous one. While Foucault is examining the history of sexuality, his formulation provides insight into narrative accounts of progress in Ontario's public schools, particularly in analyzing the binary "education about religion" and "religious education".

> Foucault's first doubt is,
> Is sexual repression truly an established historical fact? Is what first comes in view – and consequently permits one to advance an initial hypothesis – really the accentuation or even the establishment of a regime of sexual repression beginning in the seventeenth century? (1990 p. 10)

Adapting Foucault's first doubt I ask "Is religious coercion and indoctrination in the pre-1990 world of Ontario public education truly an established historical fact?". This is not to suggest that coercion and indoctrination did not take place, the evidence supporting the complaints of the religious minorities before 1990 being persuasive that it did. Rather, the point is the use of coercion and indoctrination in the rhetoric which link them exclusively to religion and which does not admit of coercion and indoctrination in Ontario public schools after 1990 when similar evidence submitted by religious minorities was rejected. In other words, is the contrast between the pre-1990 coercive and indoctrinational and post-1990 non-coercive educational worlds, an established historical fact? And, more specific to an examination of "education about religion" the question is if the binary contrast between education about religion and religious instruction is an established historical fact.

Foucault's second doubt draws attention to the representation of power being exercised in the history of sexuality, when he says,

> Do the workings of power and in particular those mechanisms that are brought into play in societies such as ours, really belong primarily to the category of repression? Are prohibition, censorship and denial truly the forms through which power is exercised in a general way, if not in every society, most certainly in our own? (1990, p.10)

Foucault's analysis of power includes examination of repression but, more important, he theorizes that power is primarily productive. An adaptation of his second doubt to Ontario public education is, "Do the workings of power in the pre-1990 world really belong to the category of repression of religious freedoms and equality rights?" The point is not that repression of religious freedom and equality was not part of the exercise of power in Ontario

public education when its language was that of a form of Protestant Christianity. As with coercion and indoctrination, the evidence was persuasive to the Courts of Appeal in 1988 and 1990, resulting in significant changes to educational policy and practice. However, did the remedy to coercion and indoctrination generated by the courts serve only to repress its sources or did the remedy produce something else?

Not only did the remedy repress the domination of Protestant Christianity but it produced three things. First it produced another language which was secularism claiming exclusive rights to education about religion in public education in the same way that Protestant Christianity had claimed religious instruction before 1990. Second, it reinforced the conflation of the public school system and public education in delivering the language of social cohesion and the role of the state as the primary stakeholder with a dominant role in establishing the unifying ethos in public education and in Ontario society. Third, the remedy generated by the courts placed the public school system and public education out of legal reach for religious minorities.

Foucault's third and final doubt in examining the history of sexuality is about the masking of power through discourse which, while critical of one ethos, allows other forms of power to remain opaque. He asks,

> Did the critical discourse that addresses itself to repression come to act as a roadblock to a power mechanism that had operated unchallenged up to that point, or is it not in fact part of the same historical network as the thing it denounces (and doubtless misrepresents) by calling it repression""? Was there really a historical rupture between the age of repression and the critical analysis of it? (1990, p. 10)

A question adapted from Foucault's third doubt is, "Did the critical discourse of education about religion that addresses itself to coercion serve as a remedy to a power mechanism that had operated unchallenged up to 1990, or is it not part of the same historical network as the religious education it denounces (and mis-represents as indoctrination) by calling it coercion and indoctrination? Was there really a historical rupture between the age of religious education and the critical analysis of it that produced education about religion?"

Critical genealogical analysis reveals that there is more continuity than change between the periods in Ontario public history divided by the 1990 *Elgin County* decision. However, the continuity is masked by the foregrounding of religion and by the discourse linking religion, coercion and indoctrination to produce "religious coercion and religious

indoctrination". The discourse leading to the 1990 decision was critical, providing a valuable service in unmasking the harmful dominant role of Protestant Christianity. However, the discourse was critical in selective ways that allowed the courts in *Zylberberg* and *Elgin County* to hear the religious minorities before them but that also allowed the courts in *Adler* and *Bal* to deny the evidence submitted by, in some cases, the same religious minorities.

What has remained opaque by the selective use of critical analysis is the power of the state and the privileged role of the public school system as the only social site considered eligible to deliver public education, including education about religion. What has remained unexamined are the epistemological assumptions in the claims that public education identified as secular and education about religion are religiously neutral. Allowing those epistemological assumptions to remain unexamined is an essential strategy in the historical narrative structure based on binary opposites which proposes an historical rupture represented by the *Elgin County* decision adopting education about religion as a legal concept.

While the language deployed by the courts and in Ministry of Education documents suggests that education about religion is radically different from the religious instruction it replaced, there is more continuity than change when attention shifts away from the role of religion as the source of educational and social harm and toward a more comprehensive analysis of power. The dominant discourse in Ontario focuses on religion as the source of coercion and indoctrination but this serves as a distraction shifting attention away from the consideration of way state power is deployed in the delivery of public education. For example, nowhere do the courts examine common or public schools as a state actor one purpose of which is to create a unified citizenry under a state authorized religion or ethos. The unifying language until 1990 was a kind of inclusive Protestant Christianity delivered by religious instruction, replaced after 1990 by "transcendent Canadian values which we all hold in common" delivered by education about religion. However, the role of the state and state actors has remained unexamined as sources of hegemonic power in Ontario public education.

6.5. Epistemological issues in education about religion

Another issue which has remained relatively unexamined are the epistemological assumptions in Ontario's interpretation of education about religion. Religious minorities were unsuccessful in their claims that secularism has its own coercive and indoctrinational impulses in much the same way as had the Protestant Christianity it replaced in 1990. The courts in *Bal* and *Adler* rejected the possibility that secularism is itself an ideology with its own coercive impulses, ruling that it is religiously neutral and non-coercive. The courts' uncritical acceptance of a religious-secular binary and a secularization narrative had the effect of putting the public school system out of legal reach of religious freedom claims by religious minorities.

However, a secularization narrative which represents education about religion as a radically new progressive innovation replacing religious instruction depends on three epistemological assumptions. They are that education about religion is an expression of secularism or is a secular way of talking about religion, that secularism and education about religion are represented as religiously neutral and that secularism and education about religion, because they are neutral and not coercive, provide the mediating public voice that speaks for all religions in public spaces.

The claims made for education about religion are not different from the claims made for the Christian religious instruction which it replaced. Both education about religion and religious instruction represent themselves as being based on ways of knowing superior to all their competitors. The *Education Act (1980)*, using the language of a common, universal Protestant Christianity as the language of togetherness said that the purpose of religious instruction was,

> ...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 religions and even nonreligious interests are to be ignored. Rather it is hoped that *moral, ethical and religious consensus which they hold in common with Christianity* will be the primary content in any religious education program in the public schools. *Regulation 262, s. 28(4)* of the *Education Act (1980)* (emphasis added)

Protestant Christianity was represented in the *Education Act* (1980) as the way of knowing which incorporated the best of all other religious systems. The *Hope Commission Report* assumed that this form of Protestant Christianity was the most reasonable and the most advanced basis for individual and collective morality without which a true education could

not be achieved. All other forms of religion were represented as sectarian with a limited epistemological framework.

However, by the mid 1980's, religion came to be represented as an anachronistic way of knowing in the modern world. Reflecting the secularization narrative described above, the Court of Appeal in *Zylberberg* said this about religion;

> In an earlier time, when people believed in the collective responsibility of the community toward some deity, the enforcement of religious conformity may have been a legitimate object of government, but since the Charter, it is no longer legitimate. With the Charter, it has become the right of every Canadian to work out for himself or herself what his or her religious obligations might be.

The *Mackay Report* (1969) called for a new basis for education in a modern world, referring to "scientific principles" developed by various experts in the social sciences. There was a growing consensus that critical thought and religion were mutually exclusive and that faith-based education was not education at all but indoctrination. Education about religion was based on a new scientific and religiously neutral model of knowing. The Court of Appeal in *Elgin County*, overturning the sections of the *Education Act* known as the *Drew Regulation*, described education about religion which was to replace religious instruction, but it used a series of opposing characteristics to establish a binary, oppositional relationship between them.

The Divisional Court in *Bal* took pains to describe a clear binary opposition between the secular school environment established by *Zylberberg*, *Elgin County*, *Memorandum 112* and the religious environment they had replaced saying,

> …in *Zylberberg* and *Elgin County* there was *indirect coercion compelling* those children who held different beliefs from the majority to be indoctrinated with the majoritarian views. *The public school is now secular*. Its goal is to educate, not indoctrinate. This is very different from the goal in place at the time that *Zylberberg* and *Elgin County* were decided. *Secularism is not coercive. It is neutral*. (emphasis added)

The idea of religious neutrality is a key to establishing the language of secularism as the universal public language to overcome religious sectarianism and in 1988 and 1990 the category of religion had been conflated with Protestant Christianity along with all other religions. Secularism has come to be associated with freedom, the defining cultural marker of modern, democratic societies. The Divisional Court in *Bal,* rejecting the testimony of

religious minorities who were alleging that liberal secularism was creating a coercive and indoctrinational education system, said,

> The purpose of *112* is to "secularize the public school system, not to restrict protected expression. Their effect is to promote secularism in the public schools and not to restrict expressive activities which promote the interests or values underlying the freedom of expression. The stated objective is the protection of minority rights."

The Ministry of Education related education about religion to common Canadian values when it describes the program implications of *Memorandum 112* when it said,

> The -- amendments to *Regulation 262* are to be understood within the context of the *long-established vision* of public elementary and secondary schools as places where people of diverse backgrounds can learn and grow *together*. The public schools are *open to and accessible to all on an equal basis* and founded upon the positive societal values which, in general, Canadian hold and regard as essential to the well-being of our society. *These values transcend cultures and faiths* (emphasis added), reinforce democratic rights and responsibilities and are founded on the fundamental beliefs in the worth of all persons." (Education about religion in Ontario public elementary schools, 1994)

In the same way that the *Education Act* of 1980 asserted the universal claims of Protestant Christianity embedded in religious instruction, *Memorandum 112* and the 1994 document used the language of secular Canadian values embedded in education about religion as if they are religiously neutral and universal. However, while religious instruction as formulated in the *Education Act* of 1980 and in the *Drew Regulation* had its own largely unexamined epistemological assumptions, the same could be said of education about religion and the liberal secularism through which it is interpreted.

Two things suggest that the religious neutrality of secularism and education about religion is debatable. The first is the fact that its religious neutrality in public education has been challenged by a significant minority of Ontarians. Among the legal arguments in *Bal* and *Adler* presented by religious minorities in pressing their claims for public recognition and public resources was that they experienced secularism as exclusive, coercive and indoctrinational. Many of them have opted out of public schools in favour of other school systems to meet their needs. This is not to support the claims of these religious groups. The point, rather, is that the claims that secularism is religiously neutral are debatable and are debated by a significant minority of Ontario citizens.

The second reason is more theoretical, the possibility of religious neutrality being questionable on epistemological principles. Epistemological systems are socially constructed in historical and cultural contexts and any claims to neutrality are a strategy to gain moral, intellectual and political superiority. Epistemology arises out of an aesthetic (Berger, 2010) or a social imaginary which provides a "hermeneutic clue to understanding the real" (Taylor, 2005, p. 7). This applies to any religious system claiming pride of place in a society but it is equally true of secularism. While it claims ownership of critical thought (Asad et al., 2009) and education about religion, those claims are based on the debatable prior claim that it is a religiously neutral mediating voice standing above the cacophony of religious confusion in a religiously diverse modern and secular society. The point is that the privileging of the language of secularism in public education on the basis that it is religiously neutral is debatable on epistemological grounds.

The Court of Appeal in *Elgin County* proceeded on the assumption that education about religion is the way to address the role of religion in a public school setting, thereby resolving creative tension between religious diversity and social harmony while protecting the religious freedom and equality of religious minorities. The idea was that teaching about religion would encourage tolerance of religious differences through the process of familiarizing students with "all religions" or "what all people believe" or "various beliefs" but doing so in a religiously neutral way that did not indoctrinate, press for acceptance, seek to conform, convert or attempt any of the other effects associated with the religious instruction it replaced in 1990. In fact, the court and subsequent Ministry of Education documents depended heavily on the distinction between education and indoctrination, associating education with what goes on in public schools and indoctrination with what goes on in faith-based schools.

However, the binary distinctions made in *Elgin County* have their own assumptions about religion which reflect a kind of secular protestantism. For example, the distinction between belief and practice may be meaningful in protestantized forms of religion in which religion is seen as belief in a more individual, propositional sense but it does not work for all forms of religion (Sullivan, 2005; Fitzgerald, 2007; Zine, 2008; Mahmood, 2009). The wide acceptance of this framework suggests that the public form of religion in Ontario is no longer a particular religion but protestantized forms of religion while those for whom religion is a

more comprehensive category rooted in traditions and including much more than "belief" are in the minority. Seen through this lens, secularism is not religiously neutral but is a form of protestantism which crosses boundaries among religions as a form of religion which transcends all other religions and traditions. Winnifred Sullivan describes "protestantism" in this secularized sense, saying, "Religion –'true' religion some would say on this modern protestant reading, came to be understood as being private, voluntary, individual, textual and believed". In contrast, 'public, coercive, communal, oral and enacted religion … was seen to be 'false' … iconically represented historically in the United States, for the most part by the Roman Catholic Church (and by Islam today) was and perhaps still is, the religion of most of the world" (2005, p. 8). Education about religion, adopted by Mackay and the *Elgin County* Court of Appeal from developments in the United States, reflects the contrast between "true" and "false" religion in Sullivan's analysis.

The court's description of education about religion in *Elgin County* assumed, as did the *Mackay Report* in 1969, that religion is something that people learn about but that cannot provide a meaningful context for learning in a modern educational setting. However, these assumptions put the public school system in the same situation as it was before 1990 in relationship to religious minorities. Religious minorities had long held that the treatment of their religions in religious instruction programs was inadequate and even offensive, despite the claims in the 1980 *Education Act* that Protestant Christianity provided a universal language of religion speaking for the best in all religions. In the same way, a significant minority of Ontario's citizens in the post-1990 Ontario public education environment continue to reject the principle that the secular protestantism underlying education about religion speaks for them.[36]

However, critical assessment of the idea of religious neutrality does not mean complete rejection of the reasoning of the Court of Appeal in *Elgin County* in arriving at education about religion or of the Ministry of Education regulation of religion that followed. By restricting the power of Protestant Christianity in public education and the public school

[36] This thesis examines historical, political and educational issues through the limited lens provided by documents. It does not examine how students, parents and teachers in public schools understand and experience the treatment of their religions in the program of education about religion. This would be a worthwhile research project to fill in some of the research gaps in my methodology and theoretical framework.

system the court was addressing a long overdue social problem regarding abuses of power in an educational setting. This analysis and the argument that religious neutrality is not possible do not imply rejection of the professional obligations of teachers and schools to recognize the issues of power inherent in their relationships with students. The identification of indoctrination and coercion as forms of educational harm was an important and positive development in public education.

However, issues of power are not unique to religion and faith-based schools but are inherent in any educational environments. The term "neutrality" as it is used in Ontario public education is ideological which shields the state and its use of public school practices from critical scrutiny. Programs and teachers delivering them in public schools are imagined to be neutral, meaning that their educational activities are less likely to be harmful than those delivered by teachers in faith-based environments who are represented as not neutral. However, this is a questionable assumption given the evidence that teachers and schools operate with their own aesthetics about religion which shape their professional practice. Neutrality is a politically loaded ideological term and confusing when applied to education and religion.

Rather than the term neutrality, Rajeev Bhargava's idea of "principled distance" is more useful in constructing boundaries around the exercise of power (Bhargava, 2008, p. 493; Sikka, 2012). He uses it in the context of theorizing the role of the state in relationship to religion but it is equally applicable to the school situation. However, "principled distance" as a professional educational matter can and should be debated among all educators, regardless of the religious orientation of the schools in which they are working. Seen this way, critical distance is useful in discussions about power relations, professional attitudes and the structures within which they occur in all educational institutions.

The language of neutrality can also mask unspoken biases which can influence students in ways that are hard to identify. This is evident in the language of the 1994 Ministry of Education document on education about religion in Ontario's public elementary schools. While, along with *Memoranda 108* and *112,* the document asserts that religion is important to Ontario citizens the treatment of religion in the program suggests something quite different. This can, itself, be a form of indoctrination in that it creates an aesthetic about religion but does so through mixed messages. On the one hand the document suggests the

importance of religion but in its vague learning outcomes, limited space in school schedules and the optional nature of all educational aspects of the program, it teaches that religion is a marginal and unimportant matter in real terms.

Another way to think about educational neutrality is from the perspective of meaning, neutrality being assigned to things without much meaning and purpose. In education something that is not particularly meaningful is not going to get much attention which seems to be the case with religion as suggested by the treatment of the program and the expected learning outcomes in the Ministry of Education documents. However, treating religion as something that does not mean very much is also education about religion, if in a negative sense. Seen in this way, education about religion as a religiously neutral idea reinforces the idea that religion as a way of knowing the world exists on the edges of educational legitimacy.

6.6. Education about religion and critical thinking

The issue in this section is education about religion as a form of critical thought. Among other criteria, educational legitimacy in Ontario is measured by the exercise of critical thought. The skill of thinking critically about religion is an essential theme in education about religion and in the dominant discourse one which public schools are uniquely equipped to offer, in contrast with faith-based schools which are represented as engaging in indoctrination rather than education. The idea of religious neutrality is essential to seeing education about religion as the educational strategy designed to create a form of critical religious literacy appropriate in a modern, diverse and secular society. More broadly, education about religion is a form of critical thinking imagined as a way of equipping students to distinguish between good and bad religious ideas and practices while protecting their own freedom of choice in establishing their own conceptual frameworks. However, although the political rhetoric suggests otherwise, education about religion and critical thought have their own epistemological assumptions and limitations as did the form of Protestant Christianity under critical scrutiny in the case law between 1985 and 1997.

This is not to suggest that critical thought does not have an important place in education, critical awareness, critical distance from one's subject matter and critical thinking skills being important in education. However, this analysis examines the issue of critical thought and its role in boundary construction in Ontario public education through three lenses. The first of these is the link made between critical thought and freedom or agency.

The second lens is consideration of critical thought and its representation as being religiously neutral. The third lens is the assumption in Ontario public education that critical thought and its variant, education about religion, can be delivered only in the public school system. The point here is that these links are important in the representation of public schools as uniquely positioned to deliver education about religion as a form of public education. This lens shifts attention back to the conflation of the public school system, public education and social cohesion which is at the heart of the dominant discourse on religion and education in Ontario public education.

6.6.1. Critical thought, indoctrination and the freedom to choose

In Ontario public education, critical thought is linked to freedom in two ways. The first is the idea that the fully realized individual equipped with the skills of critical thought is considered truly free. The second is that protection of individual freedom of choice is considered a key characteristic of a liberal democracy so that the free thinking individual and the achievement of liberal democratic values are linked. The education offered in faith-based schools in which religion is foregrounded in school culture and learning is characterized as indoctrination, represented as a source of harm to individuals and to a liberal democratic society. The issue here is freedom of thought, the assumption being that religion reduces free thought while liberal secularism creates and protects it. The *Mackay Report*, for example, referred to

> ……our belief that in a democratic society every adult and every young person has the right to choose freely the spiritual and moral values he wishes, or, indeed, to reject them. A central object of education is to further the search for truth and to enable the learner to make informed judgements. (p. xv)

Mackay suggested that teachers in public schools should always be alert to any pedagogical strategies which could be interpreted as indoctrinational, saying

> We have tried to make clear that the teacher ought to be more concerned with the quality of thinking that produces a particular moral judgement or decision than with the behaviour itself. (p.46)

The point in *Mackay* was that a process of moral reasoning would address the dangers of indoctrination and would lead to the students adopting positive civic virtues. While the *Report* indicated the preferred behavioural outcomes of free thought, its real goal was the

development of "free choice arrived at by a process of cognitive reasoning of a high order". It said,

> Nothing in what we have just said should be interpreted as our wilful criticism of good behaviour as such, as a plea for permissiveness, or as our reluctance to commend virtuous conduct for its own sake wherever it can be found. But good deportment can be the direct result of conditioning, just as easily as it can stem from free choice arrived at by a process of cognitive reasoning of a high order. (p. 47)

Disposing of the arguments by religious minorities advocating for accommodation of faith-based education in the public school system the Divisional Court in *Bal* emphasized freedom of expression as a key result of a secular school system when it said,

> The purpose of *112* is to "secularize the public school system, not to restrict protected expression. Their effect is to promote secularism in the public schools and not to restrict expressive activities which promote the interests or values underlying the freedom of expression. The stated objective is the protection of minority rights.

Despite the testimony of the religious minorities to the contrary, the court insisted that their religious freedom of expression was protected rather than restricted. Taking a different approach to the testimony of religious minorities than had the Courts of Appeal in *Big M*, *Zylberberg* and *Elgin County*, the court in *Bal* treated them as though they did not fully understand their situation wanting to set them straight because they misunderstood liberal secularism. The suggestion was that their thought was not fully developed, something reinforced in the dissenting opinion presented by Justice Heureux-Dubé in *Adler* when she described religious minorities.

The representation of religion as a hindrance to free, critical thought is evident in academic literature. Examining the role of religion and religious citizens in liberal, secular diverse societies Jeff Spinner-Halev (2000) creates a "religious conservative" in contrast with liberal secular citizens when he says,

> Many religious conservatives, however, do not want to encourage their members to express and foster their individuality. The want their members to follow their customs, as informed by God and their leaders. They do not want their members to examine their lives critically; they want their members to obey the dictates of their religion. (2000, p. 3)

He makes a distinction between "religious liberals" and "religious conservatives" based on their abilities to think critically. Critical thinking about religion gives citizens the opportunity

to live freely and without restrictions, something for which the religious conservative longs but cannot give himself the freedom to attain. Spinner-Halev says,

> We live in a permissive and consumerist society, yet many religious conservative live a life full of often intimate and constant restrictions. The lure of mainstream society is relentless. (2000, p.5)

Spinner-Halev's representation of religious conservatives is similar to the description of religious minorities by Justice Heureux-Dubé. Neither Spinner-Halev or Heureux-Dubé are hostile to religious conservatives and religious minorities and, in fact, they are engaged in thinking seriously about how such people could be protected in a dominant, secular society marked by seductive free choice. However, they seem puzzled by religious minorities, imagining them to be overwhelmed by modernity and alien to it. Religious minorities seem to make choices, to be sure, but their choices do not reflect what *Mackay* would have considered a "process of cognitive reasoning of a high order". In ways similar to the Court of Appeal in *Zylberberg*, religious people were represented primarily as members of a group and not fully realized individuals. Spinner Halev says,

> Still, the religious conservative is not the model Millian character; he may choose his life but he has little individuality. This person is autonomous but only in a limited way. He has chosen a life but it is a life of little choice, at least in many important spheres. This has some disturbing implications for liberal theory, particularly for liberal citizenship which must be considered, but liberalism is about autonomy, not individuality. (2000, p. 5)

Spinner-Halev, Justice Heureux-Dubé and others are not arguing against the right of religious conservatives to exist and in fact they agree that the rights of religious conservatives must be protected. Spinner-Halev, for example, argues for the right of religious conservatives to operate their own schools but he argues against public funding for faith-based schools. He argues that public schools, unlike faith-based schools, "encourage a diverse liberal citizenship that promotes autonomy and they play an important role in equality of opportunity", qualities which are, in his view, not characteristic of religious conservatives (2000, p. 118). In fact, although "some private schools, including certain religiously affiliated schools, are good schools., funding private schools means giving funds to some private schools that aim to undermine liberal virtues" (2000, p. 119).

In Ontario the same language of harm assessment is evident in which indoctrination as educational harm is seen as an educational strategy deployed by religious communities to

reduce freedom of thought. Freedom and the protection of freedom are recurring themes throughout the debates over religion in education, increasingly after the 1960's. The case law between 1985 and 1997 shows the effects of a change beginning with the *Hall-Dennis Report* tabled in 1968 when freedom of choice became a central concern in public education. Although the *Mackay Report* (1969) expressed ambivalence over the implications of freedom of choice with its hope that free choice would lead students to adopt the civic virtues assumed by the authors, the concept of individual freedom was identified as a key indicator of a modern liberal society. In educational terms, education is placed in binary opposition to indoctrination, education being characteristic of public schools and indoctrination characterizing the teaching-learning process in faith based schools.

This is not an argument against the idea of freedom and against educational strategies which create safe space for students to engage ideas using the skills of critical thought to do so. However, what is questionable is the assumption that freedom can be defined only in secular terms. Freedom is not in the first place an abstract concept invented and protected within secular traditions of thought. Freedom is socially constructed within particular contexts and the experience of freedom, while it is shaped by political and cultural institutions and patterns of thought, is highly subjective. Claims by any group, religious or otherwise, to a prior claim to the definition and protection of freedom within the language of any one tradition of thought are evidence of a political project rather than being conceptually defensible (Hurd, 2013a, 2013b).

Other models of freedom and how it can be achieved include those arising out of religious traditions. Freedom is a central theme in religious traditions in which the achievement of freedom is considered a defining goal. In Christian tradition, for example, the theme of freedom is seen in the theology of grace as a way of overcoming the demands of law. The implications of the theology of grace available to all are expressed in a wide range of social and theological constructions by different Christian religious traditions. However, definitions of freedom in a political context was important in the earliest formulations of Christianity in which Jewish tradition was constructed as the coercive and indoctrinational other, while in Jewish tradition the exodus from Egypt and freedom from heathen slavery is an iconic narrative that provided the religious language of liberation in the American Civil Rights movement, including speeches by Martin Luther King, Jr.

The language of freedom is important in Muslim thought and in Muslim education, the principle being that students will find their freedoms by staying on the "straight path" (Zine, 2008). While this may be represented as restrictive in liberal secular terms, in Islamic thought freedom from the tyranny of the self through spiritual disciplines is important as it is in many religious traditions. Saba Mahmood's description and analysis of the mosque movement includes a process of bodily discipline as a way for women to achieve freedom within Muslim tradition. Based on Aristotelian thought, her formulation challenges a Western protestantized tradition which places propositional forms of religion and cognitive processes as the most effective and developed ways of achieving self-actualization. She proposes bodily experience and disciplines as a way of shaping the mind and beliefs rather than the other way around (2005).

Jasmin Zine (2008) also argues for multiple ways of knowing in the educational process, suggesting that Muslim parents and students who opt out of public schools in favour of Islamic schools do so out of concern that Western rationalist epistemologies have their own limitations to freedom by neglecting the "position of the heart". She refers to Sharifi (1979) who argued that Islamic educational epistemology is based on "revelation" and intuition which are neglected in Western educational epistemologies. Sharifi argued that, "when this dimension of the self is neglected 'the very centre of the human being, that which can realize the truth in education, amounts to the forgetfulness of the transcendental dimension of human life, to imprisonment in our limited sense perceptions and our worldly being forever, to confinement in areas which are by no means appropriate to our Intellect and real nature (*fitrah*). This aspect of spiritual knowing is also referred to as intuition." (Zine, 2008, p. 27).

For Sharifi and Zine reduction of learning to individual, cognitive and rational processes actually traps the individual into limited, materialistic views of the world which limit the ways of knowing available to students. In fact, Islamic education has a mission that goes beyond the protection of individual students from a seductive, secular society. Zine refers to Safi (1999) who said that "the mission of Islamic education is to reintegrate the fragmented consciousness of modern man by once again repositioning divine revelation at the core of human consciousness, the binding and nurturing core which the secular project has managed to destroy" (2008, p. 27). In this epistemology freedom is achieved through

placing religion and religious principles at the centre and not at the margins of the educational process.

Zine's challenges to the privileging of a secular epistemological path to freedom are echoed in the literature of the Roman Catholic separate school system and of other faith-based school movements. Writing in a neo-Calvinist framework, John Bolt begins with the crisis in public education and in liberal secular society, arguing that Christian schools make important contributions to the wider society, not in the first place because they protect children but because they keep alive a religious story which can address a culture which has, in his view, lost its way (1993).

While Ontario Ministry of Education documents recognize the importance of religion and religious ways of knowing in the lives of students, these are relegated to what are represented as the private areas of life, including religious institutions and families. However, the distinction between public and private domains is strategic, serving a political purpose of claiming space through a strategy of marginalizing competing discourses to a private realm. The progressive narrative in Ontario public education equates the achievement of freedom with the privatization of religion and the replacement of Protestant Christianity with secularism as the language of critical thought and individual freedom.

Talal Asad's examination of the Danish cartoon controversy through the lens of blasphemy and free speech addresses the question of who defines the shape of free speech and the boundaries of freedom (Asad et al, 2009). Narrated by secularized and Christian Europeans the controversy was represented as a clash between progressive European values and regressive Muslim restrictions of free speech. Free speech is associated with "democracy" which has its roots in Christian civilization, finding its penultimate development in a process of secular enlightenment. Its dark other is the Muslim, represented as intolerant of diversity and free thought and speech, held back by a religion which has missed or not yet achieved "enlightenment".

At the heart of this formulation of history is the representation of Western identity as the protector and promoter of freedom and the "self-owning liberal subject" (Asad et al, 2009, p. 29) in fundamental conflict with less developed groups, benighted by unenlightened religions. The cartoons depicting the prophet Muhammed were represented as expressions of free speech but they took on quite different significance when seen in the context of the

imagined "culture wars" or "clash of civilizations" (Huntington, 1993). Seen this way, they were an aggressive declaration of ownership of space in which one of the primary civic virtues identifying Western civilization as more advanced is "freedom of speech" and the concept of "blasphemy" is represented as an archaic anachronism is a truly advanced and secular society.

One expression of free thought and speech has been the emergence of "secular critique as modern theology" rooted in the Kantian formulation of reasoned and reasonable theology unique to Christianity as opposed to the non-rational theologies of non-Christian religions, in particular Islam (Asad et al, 2009, p. 52). In this formulation, Western enlightened religious people can take critical distance from their religions, debating differences in rational and persuasive way, unlike the Muslim who has not been enlightened and must rely on force or coercion as the primary mode of engagement of differences. However, Asad points out that critique in the West has its own disciplinary restrictions created and enforced in a wide variety of ways (2009, p. 54).

Asad examines some of the contradictions in the link between liberal secularism and freedom, pointing out the limitations of the self-owning liberal subject, by economic circumstances, embedded in social relationships and in political systems which shape thought and restrict activity (2009, p. 29). The point is that no one is "free" in an abstract sense and all societies and groups within society have multiple ways of ensuring social cohesion and ways of managing transgressive behaviours. However, the representation of liberal secularism as the ultimate language of freedom is a Western preoccupation or even obsession which Asad suggests might have more to do with an insecurity born of the suspicion that the self-owning liberal self may not be as free as often represented. In fact, freedom in the sense often imagined in Western discourse may be unattainable, something Asad argues when he says,

> .... there is certainly something complicated going on beyond the rational defense of political freedom, something that may have to do with reassuring the limitless self by making a distinction between good and bad violence, with a desire that is impossible. (2009, p. 56)

Through Asad's analysis the Ontario public school system could be seen as a strategy to discipline critical thought so that it remains with limits prescribed in socially constructed boundaries. This is the significance of the courts and the Ministry of Education restricting

their representation of coercion and indoctrination to religion, thereby avoiding critical scrutiny of ways in critical thought is shaped and restricted in state institutions. The point is that the link between freedom and critical thought within a secular framework in service of the creation of the "self-owning liberal subject" has strategic purposes. In public school narrative, the achievement of this link has been represented as the result of key legal and educational decisions overcoming a coercive and indoctrinational religious past. While Asad's subject was the Danish cartoon controversy and the representation of Muslims in the European context, his analysis provides insight on a more general representation of religion in binary opposition to secular modernity in Ontario public education.

Others have also argued that freedom defined in terms of secular individualism has come with high social and personal costs. Robert Nisbet links the rhetoric of freedom with "alienation" due to strategic erosion of non-state social relationships in favour of state loyalties (1976). Writing about the "malaise of modernity" Charles Taylor identifies the loss of meaning associated with detachment from "older moral orders" characterized by "patterns of family life and traditional notions of hierarchy" (1999, p. 2). Danièle Hervieu-Léger (2000) argues that the loss of religious tradition to forces of individualism linked with capitalism has wider effects of social disruption and dislocation as a result of the breaking of "chains of memory".

This is not to deny the valuable contribution to the human community of Western tradition which foregrounds cognitive processes of thought or to argue that the language of secularism has not created a valuable way to formulate freedom. However, the idea that freedom and critical thought can be conceptualized, taught and exercised only in a secular environment is questionable. The marginalization of multiple epistemologies and the representation of religion thought as harmful to the freedom of students is a political strategy designed to represent secularism as the only mode of thought for public discourse, including in public education.

6.6.2. Critical thought and religious neutrality

Critical thought is closely linked to freedom but is equally represented as a religiously neutral, scholarly and objective approach to learning. As such, it is considered the "lens for learning" in Ontario public education by the "Literacy and Numeracy Secretariat of Ontario"

(2009). However, its religious neutrality is questionable and, as an ideological construct in the language of secularism and freedom, it is equally a strategy designed to create social harmony by detaching people from their religious traditions.

Saba Mahmood addresses the religious neutrality of critical thought through the lens of relationality in her examination of the Danish cartoon controversy. Her focus is the misunderstanding between Muslims who were outraged by the representations of the Prophet and those who defended the satirical representations on the basis of free speech. Referring to traditions of iconography in various religious traditions including Christianity, she says, "What interests me in this iconophile tradition is not so much the image as the concept of relationality that binds the subject to the object of veneration." Mahmood traces Western intellectual developments which separate subject from object, elevating that mode of thought as a superior way of knowing. However, in Muslim tradition the centrality of the relationship with the Prophet has been "reconfigured under conditions of new perceptual regimes and modes of governance" (Asad et al, 2009, p. 77). Relationship with an object of veneration and the practices arising from that relationship can be misunderstood (and often are) by the Western outsider, interpreted as coercion or an inability to think critically in much the same way Western missionaries misunderstood the religious practices of people they encountered as "heathen".

In contrast, rationalist secular critical thought is represented as providing students with the ability to transcend prior relationships in order to think objectively. In Western rationalist tradition the point of critical thinking skills is to create a fully realized human being, represented as one who can think "objectively", with the ability to privatize personal, religious beliefs in order to engage in public discourse. This objectively thinking, detached individual is constructed as a way of imagining an educational process superior to those offered in competing discourses about education. In a way similar to Edward Said's observation that while "others" have culture and are embedded in a culture, critical thought and education about religion are represented as equipping the fully functioning individual to think about religion without having a relationship with it (Said, 1994).

However, others question whether education in any meaningful sense can be achieved outside a context of relationship between the learner and what is being learned. Considering a framework for Christian education, John Bolt uses the metaphor of narrative to establish

relationship as an essential element of education. He argues that Christian schools tell a story which becomes meaningful as students see themselves and their lives as part of a narrative larger than themselves. Students are members of communities with their own histories which help them position themselves in time and space. He worries about the "cultural amnesia" associated with an educational approach that begins with a vague idea of "universal reason", arguing that "The underlying theme of modernity…was a loss of narrative unity, of a common story and of a unified cultural memory" (1993, p.156). However, stories are never neutral. Rather, they are built around movement engaging their audience in moral problems and drawing them into taking moral positions. The point for Bolt is that imagined neutrality cripples story-telling and effective education.

Arguing along similar lines J. Edward Chamberlin (2003) referred to John Polanyi's observation that,

> It is not the laws of physics that make science possible but the unprovable proposition that there exists a grand design underlying the physical world. And not just any old 'grand design' but one that is accessible to the limited sense and modest reasoning powers of the species to which we belong. (2003, p. 146)

While Bolt more clearly positions himself within a particular faith tradition, he and Chamberlin agree that stories are told by people as a way to make sense of the world and their place in it. The marginalization of some story tellers and their traditions is strategic as Chamberlin so eloquently demonstrates in his accounts of encounters between indigenous peoples and Europeans arriving in their territory. The point is that all human beings tell stories but, equally important, they live out of stories with their own limiting and illuminating perspectives.

The religiously neutral moral reasoning proposed by the Mackay Committee and adopted by the courts deciding the role of religion in Ontario public education between 1985 and 1997 therefore misses an important element in any educational process. Rather than moral reasoning as the cornerstone of an education program John Bolt proposes that the concept of a "moral imagination" be adopted. He quotes Nicholas Wolterstorff in challenging the moral reasoning framework of Kohlberg, on whom Mackay depended for its developmental expertise. Wolterstorff observes that Kohlberg's concern was with "moral reasoning, not the content" (Bolt, 1993, p. 166). However, moral reasoning without adequate consideration of its content was a source of uneasiness in the *Mackay Report* which expressed

the hope that as a result of a process of moral reasoning students would adopt positive civic and personal virtues. In fact, the Mackay Committee, while being critical of the Protestant Christianity dominating public education, was uncritical of its own secular protestant framework in promoting a preferred outcome as the result of a moral reasoning process. It is not to be faulted for doing so, the point being that its preferred outcomes suggest that it was not operating on the basis of religious neutrality.

In his critique of American higher education Alan Bloom observes that, contrary to the belief that a secular education is neutral, his students were entering his classes with unexamined presuppositions which amounted to a secular orthodoxy. He says,

> There is one thing almost every professor can be absolutely certain of; almost every student entering university believes, or says he believes, that truth is relative. If this belief is put to the test, one can count on the students' reaction; they will be uncomprehending. (1987, p. 25)

He goes on to say

> Every educational system has a moral goal that it tries to attain and that informs its curriculum. It wants to produce a certain kind of human being. This intention is more or less explicit, more or less a result of reflection; but even the neutral subjects, like reading and writing and arithmetic take their place in a vision of the educated person. (p. 26)

Bloom's book is an essentialist contribution to the debates over trends in education, his point being that education has moved away from the Western canon of great literature and ideas. The point here is not to agree or disagree with his overall thesis but to draw on his insight that the idea of a neutral stance in education is impossible. All schools tell a story into which they want to draw their students, including the stories they tell "about religion".

6.6.3. Critical thought in Ontario public education

The dominant discourse in Ontario public education which links critical thought with secularism has a long history. Wendy Brown, tracing the development of the concept of critique in Western thought, observes that the heritage of Protestantism through Marx and through Habermas, "has…. overdetermined the imbrication, indeed the identification of critique with secularism in the tradition of Western critical theory". The link between secularism and critical thought has had important implications for the representation of religion. Brown said, "Within this tradition, critique has for more than 150 years been bound to an apprehension of a set of human arrangements that generate religious illusion,

even when religion is not the express target of critique" (Asad et al, 2009, p. 13). In this argument, religion and people for whom religion provides a way of knowing the world are, at least in the framework of Western rationalism, operating on the basis of "illusion" rather than real knowledge.

In their analysis of the role of religion in public education the courts in 1988 and 1990 drew heavily on the *Mackay Report* (1969) which theorized that the proper role of public schools was to introduce students to "religious information" detached from any one religious framework in order to avoid indoctrination. The courts accepted the detachment of morality from religion in the report's belief that students could achieve a moral framework through a religiously neutral process of moral reasoning, basing its conclusions on what it identified as modern, scientific principles of education. However, most relevant to this analysis of the epistemological assumptions underlying education about religion was the *Mackay Report's* opinion about ways of knowing, when it said, "To reason morally is to think logically, not emotionally. To think emotionally is not to reason at all." (p. 67). The *Report* recommended that religious information was to be presented in a "scholarly and objective fashion and every effort should be made to avoid either giving undue emphasis to a particular form of religious practice or to minimizing the contributions of a particular creed or religion" (p. 72).

The remedy proposed by the Mackay Committee and adopted in *Zylberberg* and *Elgin County* was that a secular, scholarly, rational and objective way of knowing would avoid the harm created by sectarian religious indoctrination. It would equip students to come to their own moral decisions through a process of moral reasoning and would create the basis for tolerance of diversity by equipping students to take critical distance from their own religious positions. Education about religion, religious information and moral reasoning were introduced as the educational expressions of secular, scholarly, rational and objective ways of knowing.

Mackay opposed "logical" and "emotional" reasoning, positioning logical reasoning at the apex of an epistemological hierarchy. However, Saba Mahmood, commenting on the conceptual opposition between modes of thought in the context of the imagined unbridgeable divide and its effects in law between Western rationality and Muslim religiosity in the Danish cartoon controversy, says,

> The legal critics I cite do not simply misrecognize the kind of religiosity at stake in Muslim reactions to Danish cartoons; they also echo the presumptions of the

> civil law tradition in which the epistemological status of religious belief has come to be cast as speculative and therefore less "real" than the materiality of race and biology. (Asad et al, 2009, p 81)

Her observation comes in the context of her analysis of the conflict over free speech and the misunderstanding between opposing forces over depictions of the Prophet, but similar logic has been at play in Ontario public education in which religion and the multiple ways of knowing in religion are marginalized as "private". Arguing along similar lines from a feminist perspective, Dorothy Smith observes that

> Rationality is a normative practice organizing and prescribing determinate modes of action within the bureaucratic or professional form. Responses that do not conform to these modes of action, by virtue of how they are excluded from these domains, are constituted residually as a distinct mode of or response and being. They are defined by contrast with what excludes them, the rational mode of action. (1987, p. 65)

Although Ontario public education claims to create space for all religions, it does so selectively. While there is *social* space for religious diversity, the foregrounding of "critical thought" as the lens for learning throughout the curriculum actually reduces space for *educational* religious diversity. As a result, the religious minorities in *Bal* and *Adler* testified that students, teachers and parents who engage the world with multiple ways of knowing encounter the power of the boundaries of what is and what is not acceptable. The Ministry of Education program document, "Education about religion in Ontario public elementary schools, 1994" makes a clear distinction between what can be taught in public schools and in private spaces, saying,

> The court rulings and Ministry of Education and Training policy emphasize that the public schools do not have a mandate to instruct students in one faith to the exclusion of others or to encourage students to believe in or profess a particular faith….. These kinds of teachings are the prerogative of the family and the different faith communities, not of the public schools. (p. 9)

The Ministry of Education formulation of its program assumes that a faith-based education is exclusive in a way that a secular education is not. At the heart of this position is the idea that critical thinking, the lens of learning in public schools and its variant, education about religion, are religiously neutral. Critical thinking is represented as a uniquely public way of knowing in contrast with "emotional" or religious knowing which is private. Critical thinking is represented as "objective" and learning in public school is imagined to be

objective, based on scientific principles (Mackay, 1969). In her feminist critique of sociology Dorothy Smith says,

> In taking up the scientific attitude as that mode in which their work is done, sociologists have sought to practice an objectivity constituted in relation to an "Archimedian" point – that is, a point external to any particular position in society. (1987, p. 71)

In her view this has implications for sociological practice, since "the scientific attitude sometimes enforces an exclusion of concerns and interests – an exclusion that seems artificial, strange and wrong" (p. 71). However, while scientific knowing is represented as normative, Smith argues that, "The relation between the knower and the object of her knowledge (constituted as such in the relation) is a socially organized practice. The cognitive domain of science is itself a social relation." (p.72). She observes that sociology organized around rationalist principles imagines itself to be objective, observing social phenomena from an Archimedian point and therefore detached from social entanglements. As such, it claims to provide an inclusive, mediating and universal voice detached from specific time and space and therefore, speaking for all other voices in society. However, Smith says,

> What sociology teaches is precisely this mode of relating to the society in which it is practiced, but this mode of relating to others is not for everyone. It does not represent an impartial and general knowledge whose knower is truly Archimedian, not does it represent knowers who might be any member of the society. We have found already that women are outside the frame and do not enter as its subjects. It is a partial view that originates in a special kind of position in the society. (1987, p. 75)

Lori Beaman makes a similar argument about the role of rationality in her examination of the treatment of Bethany Hughes in law and medicine. She argues that an imagined rationality created an authority which marginalized the kinds of knowing Bethany and her mother brought in testimony supporting Bethany's refusal to accept the treatment recommended (and enforced) by medical and legal authorities. Identifying the rhetorical use of binaries opposing rational and irrational ways of knowing, Beaman says,

> L.H. (Bethany's father) is constructed as sensible, the credible family patriarch who abandons his irrational religious beliefs and embraces rationality. A.H. is portrayed as out of control, uncooperative ("the behaviour of some around her"), deceitful ("incorrect information") and dogmatic – the bad mother. (2008, p. 133)

Beaman's point is that there is a dominant discourse in medicine which depends on the privileging of Western rationality for its authority while marginalizing other forms of knowing the human body. However, she observes that the faith in a rationalist approach to medicine and healing is based on dubious evidence when she says,

> What has been most striking is the tenuousness of the reported findings, or their remarkable contrast to the knowledge we have previously perceived as medical fact. Despite detailed genetic mapping, the human body remains a marvellous, frustrating and painful mystery. I am also struck by the human arrogance – although our medical "truths" have frequently been disproven, we continue to valorize and prioritize medical knowledge over other types of healing methods. Indeed we go to great lengths to disprove alternative approaches. (2008, p. 148)

There is a similar pattern of thought in Ontario public education in which religious people, when they speak with their religious voices, are seen as less able than their secular fellow citizens to think in rational and public ways. Alternative frameworks for critical thought and rationality and alternative methods of delivering education are discounted, held up to greater scrutiny and marginalized through a variety of means of control. They are designated as "private" or "sectarian" as opposed to "common" and "public", despite the fact that a large minority of Ontario citizens engage in alternative to an education system based on a secular epistemology. Ontario public schools are represented as "educational" institutional sites, delivering true education as opposed to the coercive indoctrination imagined at faith-based schools.

Critical thought links Ontario public schools to a broader narrative of Western civilization. Critical thought linked to secularism is a marker which legitimizes Ontario public education as modern, based on secular, scientific principles. Challenges to Ontario public schools by religious minorities were in part based on their understanding of critical thought, not as an educational strategy but of the context in which it is interpreted in Ontario public education. Critical thought in Ontario public education is a strategy in a "project of modernity" designed to have religious citizens re-order their conceptual hierarchies around "Canadian values. Resistance is interpreted not just as presenting alternative modes of thought but through a screen of civic loyalty and disloyalty. In her analysis of medical harm Lori Beaman says,

> The identified or named risk is the death of Bethany Hughes. But the unspoken risk is the threat she poses to the responsibilized citizen. The non-compliant

> citizen plays into larger fears. At this moment in history, resistance or non-compliance that is religiously motivated is especially suspect. (2008, p. 142)

In a similar way to the dynamics theorized by Beaman in the case of Bethany Hughes, religious minorities are seen as marginal, non-compliant and, indeed, threatening to social and political goals that go beyond the transmission of religious information in public education. While the language of the courts was more measured than the rhetoric during the election of 2007 or the 2003 debates over the EETC, there is a consistent pattern linking the claims of religious minorities in Ontario public education to social harm. The courts in *Adler* identified the learning disabled students enrolled in privately funded faith-based schools as potential sources of harm, not when they remained within the boundaries constructed for them in public policy but when they emerged as transgressive presences to challenge those boundaries.

Both the courts and supporters of public schools saw themselves as protecting public schools, public education and Ontario society. One of the themes in both genres of language was that people who choose alternative institutional sites for the delivery of education are outside the normal range of behaviour because they think differently. "*They* indoctrinate while *we* educate" was, and continues to be an important narrative theme, along with a heightened sense of risk created by the link between religion and indoctrination.

6.6.4. Critical thinking as a project in process

Jeff Spinner-Halev (2000), while acknowledging challenges in achieving an ideal public school environment and accepting that public schools do not in fact achieve that ideal, continues to assert the superiority of schools based on liberal principles, saying,

> Sometimes the best we can expect is a public school with diverse ideas and practices. While a school with a student body that is diverse by both race and income would be better, a school with diverse ideas and practices could still encourage its students to think creatively and critically. It could encourage the virtues of liberal autonomy and citizenship. (2000, p. 113)

In ways similar to the 1994 Ministry of Education program document outlining the guidelines for education about religion in Ontario public schools, his focus is on a way of thinking and attitudes as the key contribution of public schools rather than any particular content or knowledge about which they might think. Spinner-Halev goes on to suggest that

> Religiously affiliated schools that are established to preserve a community need not be homogeneous. They can allow for diverse ideas; they can encourage their students to think critically about many issues. (p. 113)

However, he persists with his claim that liberalism and schools based on liberal principles are, by their nature, superior in achieving civic values, saying "still the diversity in this sort of school will be less than in a common school" (p. 113). Like the discourse in Ontario public education, he conflates schools based on liberal principles with common schools and that, because they are based on liberal principles they are better equipped to deliver the civic virtues required in a modern, democratic and diverse society.

However, the delivery of liberal values is an ideal as much as it is a reality. Language suggesting that public schools have not yet reached their potential is common throughout the literature in Ontario public education. Government reports between 1950 and 1990 fret over evidence that public schools are operating below their potential to achieve an ideal educational environment, as did the courts and other commentators. The gap between ideal and reality energizes successive reports each of which represents itself as identifying the key to an improved future.

In ways similar to the pattern identified by Lori Beaman in her reading of medical news, the evidence that the ideal of a public school system delivering the civic virtues imagined by the courts is inconsistent, something widely acknowledged even by its staunchest supporters. Reflecting on reporting of medical issues such as SARS, West Nile Virus or the role of Vitamin D in the body, she says,

> What has been most striking is the tenuousness of the reported findings or their remarkable contrast to the knowledge we have previously perceived as medical fact….. I am also struck by human arrogance – although our medical "truths" have frequently been disproven, we continue to valorize and prioritize medical knowledge over other types of healing methods. Indeed we go to great lengths to disprove alternative approaches. (2008, p. 148)

In similar ways there is little evidence that public schools are more effective than faith-based alternatives in delivering civic values, and as Bernard Shapiro observed, there is equally no evidence that a diverse student population will automatically generate positive civic virtues in public schools. The public school system is an ongoing project with elusive results but it operates with the faith that it is the norm in achieving positive civic virtues, including the

ability to think critically. One of the strategies in maintaining that faith is the construction of faith-based alternatives as the dark and harmful other.

The point here is not that schools and school systems should not be engaged in a continual process of developing best practices based on new research on how students learn and on how to achieve an optimal learning environment. Nor is the argument that there is somehow some kind of hypocrisy at work in the recognition of a gap between the ideal and reality because education consists of a dynamic of practices enriched by scientific research but never scientific in practice. Educational processes are not a series of controlled experiments in which the outcomes can be predicted with complete confidence; rather they occur in the creative tension between hope and reality. Ongoing research and development is inherent in the life of any organization designed to deliver a professional service, including public schools, based on the recognition that there are always gaps between ideal and reality. However, in public school narratives, faith-based schools are represented as inherently flawed so that, in Skinner-Halev's words, they may be good schools but they will never be as diverse as or as able to deliver the civic values considered essential in a modern society as public schools. Public schools, on the other hand, are represented as inherently sound with some flaws in the delivery. While public schools are represented as dynamic and changing in response to new challenges and research, faith-based schools are represented as fixed entities with essential characteristics, one of which is that they are in defensive strategies adopted by marginal faith communities struggling against the effects of modernity or that they are based on a fundamental hostility to modernity and to Canadian values.

The representation of public schools as dynamic, innovative educational sites in contrast with static, defensive faith-based schools is related to the image of religion as a private, essentially fixed mode of human experience. While there are differences between the language of the courts, government reports and election rhetoric, a common theme among them is that religion is an individual private mode of human experience. Consequently, schools which foreground religion as their primary source of meaning are represented as either defensive strategies designed as protection from a powerful, seductive secular modernity or as threats to the project of modernity. Either way, religion and schools that foreground religion are not seen as partners in examining and engaging modernity. Faith-based schools are not seen as "modern" and are, in the Ontario public school narrative, seen

as hostile threats to modernity while secular schools are seen to be on the forefront of modernity, preparing students for the future.

In Ontario public school narrative the future is seen in terms of secularity and secular modes of thought. The public school system does not declare itself to be hostile to religion as a feature of human life going forward, but it does see itself as re-shaping religion or a truth about religion that fits a modern, secular and diverse world. Critical thought and education about religion are strategies in the reshaping of a truth about religion which fits a social project that goes beyond schools and school systems.

Rather than being religiously neutral, critical thought and education about religion are socially constructed in the context of Ontario public education discourse as part of a project with a narrative about religion. Talal Asad theorizes that "Secularism as a political doctrine arose in modern Euro-America….What is distinctive about 'secularism' is that it presupposes new concepts of 'religion', 'ethics' and 'politics' and new imperatives associated with them" (2003, p. 1-2). Secularism and the idea of a secular society is closely associated with the modern nation state (Nisbet, 1976; Glenn, 1988, 2000; Taylor in Bhargava, 1998) and is the language of the imagined political community in modernity (Anderson, 2006). Secularism, says Asad, "is not simply an intellectual answer to a question about enduring peace and toleration. It is an enactment by which a *political medium* (representation of citizenship redefines and transcends particular and differentiating practices of the self that are articulated through class, gender and religion" (2003, p. 5). (italics in original)

In Ontario public education, the phrase "Canadian values that transcend all other cultures and traditions" was used in *Policy Memorandum 112* (1991) to introduce a new, secular way of thinking about religion in public schools. Subsequent legal and political contests reveal that forms of religion claiming public space for their own interpretations of critical thought are seen as transgressive, sometimes triggering strong reactions. Intense debate is not unusual in a diverse democratic society in which people hold strong views on any number of things. However, the reaction to claims for public space by alternative educational practices, especially those based on religion, suggest outrage and alarm about more than intellectual differences. The persistent rhetorical strategy which places indoctrination in binary opposition to education as a way of marginalizing faith-based

education and privileging secular public schools suggests that critical thought is important territory in an ever evolving social and political project.

6.6.5. Delivery of critical thought

Rather than being simply a mode of thought, critical thought is actually contested social territory. The ability to think critically is seen as a skill identifying the modern citizen who is well-adapted to a diverse, secular society. However, critical thinking is defined in secular terms, the implication being that religious people, when they engage in education, are not thinking critically. They are engaged in indoctrination which actually reduces agency, choice and the intellectual freedom associated with critical thinking. The public pursuit of truth through a process of critical thought is defined in secular terms with other, particularly religious frameworks for formulating truth, being seen as personal or private journeys.

Because they are defined as secular institutions offering a secular educational path, public schools are imagined to be uniquely positioned to deliver critical thought. Public schools are represented as institutional sites where students of different backgrounds can meet on the basis for equal status to freely share ideas, engage and debate issues, and through that process, learn to respect differences and live successfully in a modern, diverse society. Faith-based schools, because they are identified as private, sectarian or denominational, are seen as homogeneous and isolationist institutions in which students come to have their or their parents' religious preconceptions reinforced as superior to all others. Public schools, it is said, bring people together, while private schools divide them. Public schools encourage critical thinking while faith based schools indoctrinate.

However, seen through the lens of secularism as a modernist project, the claim by public schools that they are uniquely positioned to deliver critical thought can be problematized in a different way. In the first place, consideration of any instrument developed by public schools has educational purposes which cannot easily be disentangled from its social and political goals. Therefore, while there are educational reasons to question the claims of the public school system, its claims to be the only institution able to deliver critical thought deserve critical attention. Critical thought can be seen as a strategy used to detach students from their religious particularities so they can learn to see those particularities as subservient to the transcendent values captured in the phrase "Canadian values".

This can be seen in *Elgin County* where one of the complaints by the Millikens was that their daughter, having sat at the feet of the kindly, persistent and engaging Mr. Plum for a number of years, was beginning to question their religious beliefs and practices. This was unfair, they said, since she was a captive audience in a situation with obvious power differentials between teacher and students. While the Divisional Court agreed that this may have been the case, it disagreed that it was a problem, given the fact that opting out provisions protected her religious freedoms. However, a more significant part of the court's reasoning was that Mr. Plum and the school were doing exactly what they were mandated to do which was, through a process of education, detach students from their religious particularities in favour of Canadian values, defined before 1990 in Protestant Christian language. In other words, students were encouraged to engage in a process of critical thinking which, in the case of young Ms. Milliken, was effective. It is clear from the language of the Divisional Court that it saw Canada as a Christian country and that public schools were instruments to prepare citizens for participation in that country.

The point is that the role of public education as a state sponsored social practice has not changed and that critical thought, as a strategy to detach people from their religious particularities is not new although the language in which is represented has changed from Protestant Christian to a form of secularism. The issue for the religious minorities in *Adler* and *Bal* was basically the same as it was for the Millikens in *Elgin County*. In both, public schools were seen as uniquely positioned to deliver the civic values and modes of thought appropriate for a diverse, democratic society. However, the achievement of the civic values of tolerance for diversity involves training students to take critical distance from their own religions and traditions in favour of transcendent Canadian values. Religious minorities who reject this process by opting out of public education are viewed as living on the edges of the social mainstream.

The people who opt out of public education have a wide variety of reasons for doing so (Arai, 2000; Van Pelt, Allison and Allison, 2007). However, like the religious minorities opting out of religious instruction or other activities offensive to their religious sensibilities prior to 1990, private schoolers and home schoolers are represented as outsiders who operate on fundamentally different principles than public schoolers. Jeff Spinner-Halev describes them and their decisions by saying,

> …fundamentalist parents are increasingly taking matters into their own hands by yanking their students out of public schools and sending them to private ones or by home-schooling their children. – few, if any liberal virtues are taught in fundamentalist schools or by fundamentalist parents. (2000, p. 112)

His use of the term "yank" suggests violence inherent in the decision to choose educational alternatives but equally significant is the suggestion that the values taught are fundamentally different from those taught in liberal public schools. His use of the term "fundamentalist" further reinforces the otherness of the parents and religious communities who opt out. About public schools, he said,

> Liberal diversity taps into the liberal virtues; diversity is usually grounded in the idea that people ought to be exposed to different ideas and different practices so they better understand their fellow citizens. Exposure to different ideas, though, is important in all liberal societies…. This ideal is embedded in the idea of a liberal arts education. People receiving this kind of education learn about different ideas and different ways of thinking about the world. (2000, p.119)

Spinner-Halev's representation of public schools as radically different from privately funded faith-based schools is familiar territory in Ontario public education discourse. Usually privately funded faith-based schools operate out of sight and religious differences do not make a great deal of difference in Ontario. However, when privately funded schools threaten to transgress public – private boundaries, the reaction is strong and decisive with one of the strategies being to represent religious people as thinking in fundamentally anachronistic ways in a modern, secular society. More than a clearly defined educational concept, critical thinking is an important marker in a process of boundary construction and maintenance in binary opposition to religious indoctrination.

However, the assumption that critical thinking skills can be taught only in a secular setting is questionable on a number of grounds. First of all, it is, in principle a conceit for any one philosophical system or any organization to lay exclusive claim to a particular thinking skill in the same way that it is a conceit for any religious system to lay claim to truth. The idea of a conceptual hierarchy the peak of which is occupied by secularism is offensive and has been subjected to convincing critique in a wide body of scholarship.

Second, the characteristics of secular critical thought and the virtues it is imagined to produce sounds remarkably similar to the Protestant Christian apology for public education before 1990. In fact, the similarities suggest that the secularism adopted in Ontario public education and the modes of thought based on it are forms of Protestant Christianity and are,

therefore, deeply embedded in a religious tradition with its own gifts to the world and its own blind spots. In other words, secularism is a socially constructed imaginary with its own historic tradition which, although it has successfully emerged as a dominant discourse, is not the universal language for critical thought.

In addition, there is convincing evidence that faith-based schools engage in their own modes of critical thought with their own traditions. The Catholic District School Board of Eastern Ontario has a detailed document titled "Critical and Creative Thinking" as part of a series of publications titled "Targeting Achievement for All" (2013). It includes descriptions of critical thinkers and the qualities of critical thinking saying,

> Critical thinkers: gather information from all senses, verbal and/or written expressions, reflection, observation, experience and reasoning.
> Critical thinking: is based in intellectual criteria that goes beyond subject-matter and includes clarity, credibility, accuracy, precision, relevance, depth, breadth, logic, significance and fairness.

The document draws on current research on the brain and the learning process and its implications for differentiated instruction and learning across the curriculum. It also situates educational and brain research, learning outcomes and pedagogical guidelines in the wider context of Roman Catholic theology and tradition, including an interpretation of the story of the outpouring of the Holy Spirit in a way that opens up ways of thinking about multiple ways of learning and knowing. In other words, while this Roman Catholic board does not identify critical thinking as the "lens for learning" in Roman Catholic schools, neither does it ignore critical thinking. Rather, critical thinking is one of a number of ways of knowing.

Jasmin Zine engages the issue of critical thought in her examination of Islamic schools, developing what she describes as a "critical faith-centred epistemology" which transcends sectarian differences. The issue for her is that, contrary to descriptions of faith-based schools as homogeneous, the Islamic schools in her study are highly diverse with students from many different countries, ethnicities and Islamic sub-groups in one classroom. Her project includes development of a faith-centred epistemology based on four "discursive anchors"; peace, social and environmental justice, unity and accountability (2008, p. 51). She draws on Islamic tradition and texts for the basis of the four elements, elaborating on them and on their implications for education in seven key principles. She describes three types of knowledge; traditional knowledge acquired from communal and individual interaction with sacred and historical texts, empirical knowledge acquired through "close

observation" and revealed knowledge, acquired through "dreams, visions and intuitions" sought after through "vision quests, fasts and ceremonies as well as through the wisdom of Elders" (2008, p. 66–67).

Zine observes that a critical faith-centred epistemology contributes to an "anticolonial discursive framework" and an "antiracism perspective" which "seek to unmask the power relations embedded in the structures of schooling that reproduce social inequities and to redress the marginalization of subaltern groups' knowledge and experiences within the 'official knowledge' of schooling" (2008, p. 69). Rather than positioning a faith-centred education project on the margins of society, Zine places it at the centre of an important cultural debate. The development of a critical faith-centred epistemology is not in the first place a strategy to protect a marginalized group from being overwhelmed by a superior and seductive secularism. Rather, it provides a voice of resistance based on the assertion that a faith-centred epistemology can expose important hegemonic power which normally remains opaque. In her expansion on a faith-centred epistemology, Zine says,

> Where it challenges the colonization of knowledge in schools through the hegemony of the Eurocentric world view, the anticolonial discursive framework intersects with the critical faith centred framework; both confront the privileging of secular Western knowledge as the exclusive vantage point for teaching and learning. (2008, p. 70)

This is, therefore, critical thinking but one which assumes a different look and shape from the perspective in Ontario public education. It is critical thinking more along the lines of that proposed by Paolo Friere's "pedagogy of the oppressed" which is explicitly designed to empower oppressed and marginalized people.

In Zine's analysis, religion is central to a critical perspective rather than marginal to or even hostile to critical thought, providing an integrative language of meaning and purpose. Rather than isolating students, a faith based education is designed to equip students for social and political engagement. She says,

> the critical faith-centred perspective recognizes that religion and spirituality are central to the understanding of various academic disciplines an subjects and are valid and legitimate sites for analysing social, existential phenomena. Islamic education, therefore, provides an entry point for faith-centred knowledges and understandings to become valid ways of knowing and making sense of the world and for faith-centred voices to become integral to social, academic and political processes. (2008, p. 230)

Zine argues that the project of detaching students from their religious traditions through a process of educational assimilation has been damaging to Islamic students by denying them access to their primary language. Islamic schools provide a valuable service, not as isolationist ghettos but as safe havens from which to develop civic values and personal identities in an educational process that does not require them to make a choice between their religious and their civic selves (Zine, 2007).

Other faith groups have engaged in similar projects of developing faith-centred epistemologies arguing along with Zine that religion and spirituality can be inspirations for the imagination and for critical engagement with the world. Writing from a Protestant Christian perspective, Doug Blomberg speaks "of the potential that a biblical perspective on wisdom has to function as an alternative to the dominant ideology of Reason,…." arguing that "Wisdom perspective, with its roots not only in the East but in revelational encounter in the history of the Hebrews, enables a different perspective on life and educational issues" (2007, p. 2). He positions himself in a Christian historical tradition, reconsidering ancient wisdom in a postmodern context and observing that "philosophy is commonly conceived as an undertaking outside time and independent of revelation" (2007, p. 2).

Blomberg theorizes that western rationalism itself emerged out of and in response to specific historical circumstances but that it was and continues to be an attempt to establish an epistemological foundation that transcends time and space. In contrast, the wisdom perspective he proposes incorporates critical thought but goes beyond it to a "realization of values" (2007, p. 5). "Realization" is the "understanding and implementing of what ought to be accomplished." adding that "theory is only one among a number of modes of imagining possible futures". Education is never a neutral process undertaken by disinterested parties because all education endeavours to inculcate wisdom based on deeply held views of what the future should look like. He says, "…. Education will be a value-laden undertaking, in which aims and goals must be regarded not as predetermined and incontestable, but as being at the center of the process".

Therefore Blomberg argues in favour of educational pluralism since there are multiple ways of wisdom which should flourish in a democratic society, saying,

> there is not only a directional plurality of values, characterized by different visions of the good life, whether Christian, Islamic or liberal humanist. There is

> also a structural plurality, by which I mean that there are various "ways of wisdom--." (2007, p. 5)

Blomberg is not disputing the importance of critical or rational thought processes but he embeds its role and significance in a broader concept of wisdom which can be expressed in multiple ways. He, like Jasmin Zine, refers to the work of Paolo Freire arguing that a wisdom centred curriculum provides an alternative conceptual basis for critical thought and social and political engagement. He says,

> An integral curriculum oriented to the promotion of wisdom will thus be critical and I propose that at its core will be the practice of problem-posing (a concept I owe initially to Freire). Problem-posing suggests a disjunction between what is, what will or ought to be. It is rooted in playful immersion or engagement with the world so that disengagement cannot be a constant state, but rather a momentary possibility and potential. Its outcome, I suggest, should be "purposeful response", an informed and committed engagement in action. (2007, p. 5)

His purpose, similar to Zine's, is to develop educational theory and practice based on a "wisdom epistemology" but there is no hint in his work that his framework is normative for all faith communities or that it could be the mediating voice for other ways of wisdom. It also does not suggest a defensive stance of survival but rather is a proposal of a credible, engaged contribution to public education offered in multiple institutional sites.

Sonia Sikka, considering the idea of religious education in an Indian context, argues that teaching Indian traditions within a Western conceptual framework is "pernicious" because it threatens to"eliminate patterns of thought and practice that form a valuable alternative to 'religion' in the modern Western sense, and a resource for thinking otherwise about the matters that we classify under this term". She observes that "religious education organized around this idea may have the negative consequence of reinforcing colonial constructions of religion that not only misconstrue the nature of pre-colonial Indian worldviews, but alter that nature through their effect on social and political processes" (2013, p. 2).

In a similar way, the imposition in law and regulation of one epistemological framework for education about religion reduces the educational space for religious diversity in Ontario. This was true before 1990 when the framework within which religious instruction was delivered was a form of Protestant Christianity but equally so after 1990 within a secular

framework. Critical examination of education about religion and critical thought reveals that the boundaries between education and indoctrination are less clear than represented in public school discourse. However, clear boundaries between education and indoctrination serve an important strategic purpose which is to protect the privileged role of the public school system in delivering public education.

6.6.6. Education about religion and critical thought-Conclusions

Education about religion is one application of critical thought, the educational, social and political goals of which are embedded in the assumption that critical thought in the study of religion will allow students to take critical distance from their own religious traditions in the hope that critical distance will encourage religious tolerance. However, juxtaposed on "education about religion" in the context of Ontario public policy, it can also be seen as a strategy to detach students from their traditions and their religious identities. This was the testimony of the religious minorities in *Bal* and *Adler* for whom a secular environment was coercive and indoctrinational. In fact, their arguments closely resembled the testimony of the religious minorities in *Zylberberg* and *Elgin County* who testified that the religious instruction offered in their public schools were causing their children to question their religious beliefs and values.

The issue here is not that social and political purposes are woven into educational programs or that such intersections are unique to Ontario public schools. No educational program is about "information" detached from context and larger issues of meaning and purpose. Zine, Blomberg, Friere, David Purpel and Bloom all position educational programs in a context of meaning, some of which are expressed in the language of religion without relying on religious neutrality to claim public legitimacy. Language situating Ontario public education in a wider social and political context is woven throughout Ministry of Education documents, court documents and political rhetoric which gives meaning to regulatory and educational practices. The issue is that "education about religion" is represented as being objective and religiously neutral which provides the basis its being privileged in public policy while marginalizing competing educational perspectives. The overall result for Ontario public education is that there is reduced access to the wide religious diversity which characterizes the province's population.

There is value in training students in critical thinking skills associated with scholarly work in an education process which includes the principles of rational and systematic processes of thought. However, the assumption that it is the only or even the most important way of knowing or that it can be "objective" is questionable. Western rational thought, like any other tradition of thought, is socially constructed with its own traditions which, while foregrounding some aspects of human experience, backgrounds others. Further, the rhetorical binary which opposes "rationality" against "irrationality", marginalizing ways of knowing based on processes other than left brain, linear and scientific in a kind of hierarchy of legitimacy needs critical assessment. There is little consideration in the *Mackay Report*, in *Zylberberg* and *Elgin County* that scholarly and rational processes of thought are expressions of an epistemological aesthetic (Berger, 2010) or a "social imaginary" (Taylor, 2005) with their own biases and blind spots. By presenting education about religion in binary contrast to religious instruction, the courts and the Ministry of Education claims that it is uniquely able to provide opportunities for critical examination of all religious traditions but is itself out of reach of critical thought. Education about religion, as interpreted in Ontario public education, serves to protect the nexus of power which privileges the public school system as the only delivery mechanism for public education. However, in doing so it also reduces religious diversity in public education and marginalizes a significant minority of Ontario citizens.

Chapter Seven *Conclusions*

This thesis began with the Ontario Election of 2007 and the question of why religion served as an effective wedge issue in a province thought of as a modern, diverse and secular society which prides itself on the protection of religious freedom. Ontario citizens normally live together in neighbourhoods, participate in social activities and share civic values and practices associated with harmonious cultural diversity. Religious difference usually does not make a great deal of difference in Ontario society. However, during the Election of 2007, religion was foregrounded as an important social fault line which proved to be decisive in the electoral outcome.

One factor contributing the intensity of the reaction was that the policy proposal which became the focus of the election was about the role of religion in Ontario public education, John Tory and the Progressive Conservatives having included in their election platform the idea that the issue of provincial funding for non-Catholic faith-based schools should be included in public policy. While Tory may have thought he was participating in a process of expanding an already inclusive public education tent, his Liberal opponents portrayed his proposal as an attack on the public school system, public education and on Ontario society. Despite what Tory may have thought he was doing, the debates and the election results show that a significant number of Ontario citizens agreed that funding for non-Catholic faith-based schools was a dangerous idea and harmful to Ontario children, the public school system, public education and to Ontario society. It is clear that the Liberal counter-strategy had widespread support among Ontario citizens and among professional commentators.

Critical discourse analysis of interventions in the election revealed that the Liberal counter-strategy depended on a link being made between the fortunes of the public school system as an institution, the delivery of public education as a social practice and the social harmony and stability of Ontario as a modern, secular and diverse society. In fact, the terms "public schools" and "public education" were linked interchangeably to the transmission of common civic values considered an essential basis for diverse social harmony. During the election, the public school system was seen as the state instrument transcending sectarian differences through a common education experience designed to create a unified, harmonious and educated citizenry. As a result of these often unexamined linkages, the John Tory

proposal represented a challenge to the Ontario public school system which was interpreted as an attack on public education and, by extension, on Ontario society.

Faith-based schools were identified as harmful to Ontario citizens and Ontario society in three ways. First, they were seen as harmful to the public school system by causing "outflight" of students, resulting in fewer tax dollars for public schools. The erosion of the public school system through reduced access to public funding was seen as having direct, inevitable negative consequences for the delivery of public education and for Ontario society. Second, they were represented as the source of dangerous or outmoded ideas, attitudes and practices, both in what they teach and by isolating students in "religious ghettos" from the mainstream of society. While references to "creationism" to characterize the educational model for teaching science in faith-based schools may have been inaccurate, they served as essentialized examples of dangerous ideas. In addition, references to unacceptable attitudes regarding gender including attitudes about women and gender diversity served to reinforce the characterization of faith-based schools as "religious ghettos" out of touch with or opposed to progressive ideas. Third, by their very existence faith-based schools were seen as an alien social presence in a modern, unified and secular society. They were not seen as part of the provincial "togetherness" and, although tolerated, were not seen as partners in the delivery of public education.

At the same time, during the election there were voices protesting the portrayal of faith-based schools as harmful to society. They argued that religious citizens are good citizens and that faith-based schools deliver good education, preparing students for success in a modern, diverse society. Further, they challenged the link between the public school system and public education, arguing that faith-based schools perform a valuable public service. They disputed the key role of the state as the primary stakeholder in the public school system and the delivery of public education, arguing that Ontario's public policy in education creates an institutional monopoly which bypasses parents and communities in the nurture of children through education. While they foregrounded the religious identity of faith-based schools, supporters of faith-based schools argued that religious differences in education do not represent harm to a harmoniously diverse and modern society. Faith-based schools do not exist primarily to protect vulnerable, insular minorities from insult and injury but rather, they exist as expressions of positive, credible educational models which can make

valuable contributions to the religious diversity in public education. Religion, in this discourse, is not out of step with modernity.

This is an important issue for two reasons. The first is that the election of 2007 was a missed opportunity for thoughtful dialogue about the role of religion in the delivery of public education and reconsideration of the ways in which religious diversity in public education could be enhanced. The second is that the interests of attaining political office and the protection of the public school system were served at the expense of religious minorities who were represented as threats to Ontario society. Although it served a short term political purpose, the election of 2007 featured language of othering which drew on prejudices and negative perceptions of immigrants and religious minorities while also serving to entrench a largely unexamined nexus of power relations in public education. It was in this sense that the election exposed darker sides of the politics of togetherness.

The election of 2007 was a case study of a highly charged conflict over the role of religion in society but examination of other events and periods in Ontario public education history showed that it was not an isolated historical event. Critical genealogical analysis of selected reports by government mandated commissions and committees revealed that the election of 2007 was a moment in a much longer history of conflict over the role of religion in public education and the delivery of common civic values. While the reports tabled in 1950, 1969, 1985 and 2003 each had their own unique features, the continuity among them is equally significant and can be identified in debates since the establishment of the Ontario common school system in the 19th century.

Although the language of common civic values has changed from a form of Protestant Christianity to a form of secularism, there is continuity in two areas. The first of these is that, while the change from Protestant Christianity to secularism has been narrated as a radical development in religious freedom, the actual civic values and view of religion changed very little in 1990 when education about religion was adopted by the Court of Appeal in *Elgin County* as a secular, religiously neutral replacement for religious instruction. Secularism in Ontario public education privileges religious forms which accept religion as a matter of personal and private belief on the margins of public discourse. Its privileged role in law and regulation has marginalized other forms of religion as being out of step with history and as sources of harm to both individual citizens and to Ontario society in the same

way that Protestant Christianity did before 1990. The second area of continuity is that, from the 19th into the 21st Centuries, the conflation of the public school system as a state institutional instrument and public education as an essential social practice to deliver common civic values has remained the dominant discourse which normally remains out of view.

However, along with the dominant discourse there have been equally persistent counter-discourses based on three fundamental principles. The first of these is that a common ethos as the basis for common civic values is impossible to achieve and that the attempt to impose it results in the marginalization of religious minorities through coercion and indoctrination. Before 1990 there was resistance to the language of common Protestant Christianity and after 1990 there has been similar resistance to the language of liberal secularism.

The second principle challenges the role of the state as the primary source and arbiter of common civic values through the use of public education delivered in a common school system. While there is disagreement among the voices of resistance about who should be primarily responsible for the delivery of education, there has been agreement that the state should not be institution exclusively privileged to do so. The language of resistance has been remarkably consistent from the 19th through the 21st Centuries and, while the Roman Catholic church has had the greatest impact on public policy, other religious minorities have entered the debates opposing the idea of a common religion and the state as the primary stakeholder in the delivery of education.

The third principle in the counter-narratives is that social cohesion does not depend on a state imposed common ethos, one corollary being that citizens adhering to non-standard religions are not a threat to society. Outside of periodic controversies, they live in and contribute to a diverse, democratic society sharing common values with their fellow citizens.

One of the ways in which religious minorities have pressed their claims has been in the courts and in Chapter Five the thesis examined the role of law in the discourses over the role of religion in education. The Roman Catholic establishment has used the courts to protect and extend constitutionally protected state funding for separate schools but the focus in this thesis has been on other religious minorities in four Charter cases between 1985 and 1997. They were analyzed in two groups of two, the first being *Zylberberg* and *Elgin County*

and the second being *Adler* and *Bal*, all of them being *ss.2* and *15 Charter* cases. The focus was on the difference in the treatment of the two groups by the courts, religious minorities in *Zylberberg* and *Elgin County* being successful in their claims while religious minorities in *Adler* and *Bal* were unsuccessful despite the fact that some of the same minorities appeared in both groups using similar arguments. The key to understanding the difference in outcomes was the interpretation of religion as the source of educational harm in the form of coercion and indoctrination along with the uncritical acceptance of the secular as religiously neutral. The courts in *Bal* and *Adler,* having decided that the public school system had become secular as a result of the *Zylberberg* and *Elgin County* decisions, ruled that the public school system could not violate the *ss.2* and *15* religious freedom and equality rights of the minorities appearing before them.

In addition, the courts in *Adler* and *Bal* accepted the conflation of the public school system as a state instrument as uniquely privileged to deliver public education as an essential social practice to establish common civic values. The religious minorities in *Zylberberg* and *Elgin County* were challenging the dominance of Protestant Christianity in public education which, by the 1980's had become the focus of widespread critical attention. However, by linking coercion and indoctrination to religion the courts avoided considering other forms of coercion, including state coercion through its control of public education and the public school system. This was the issue in *Adler* where religious minorities asked the courts to consider the possibility that students in non-public schools should be recognized for health support services and in *Bal* where minorities alleged that their religious freedom and equality rights were being violated by the dominance of liberal secularism in the public school system.

The courts rejected their arguments, affirming the role of the public school system as the only institution able to deliver public education and common civic values that transcend all other religions and traditions. Focussing on religion and religious difference, the courts had failed to pay critical attention to the dominant discourse in Ontario public education. In fact, the foregrounding of religion as the source of social harm in the form of coercion and educational harm in the form of indoctrination actually served as a distraction from power exercised by the state and state actors in their control of education. Lastly, the courts accepted the principle that a state imposed ethos through the public school system is essential for the protection of a modern, diverse and harmonious society from citizens engaged in

educational alternatives. Even the judges writing dissenting opinions that some public funding should be allocated for non-Catholic faith-based schools or for the students enrolled in them did so cautiously with great attention to risk assessment and the potential harm that any such mechanisms might have on the public school system. In other words, the courts rejected the key principles on which the counter-discourses in Ontario public education are based.

The last chapter focussed on the phrase "education about religion" which was adopted by the Court of Appeal in *Elgin County* as the remedy to religious indoctrination by one religious group of religious minorities in public schools. Critical discourse analysis of selected Ministry of Education documents was used to examine education about religion from three perspectives. The first of these was the political and social goals woven together with educational goals in education about religion in two ways. In Ontario public education, education about religion is interpreted as a public, religiously neutral way to talk about religion which can occur only in the liberal, secular and religiously neutral public school system. In this way, education about religion serves to protect the privileged role of the public school system in delivering public education. In addition, education about religion has been adopted as a state sponsored way to deliver a common, transcendent ethos to serve as the basis for a socially diverse, harmonious society. Education about religion, like the religious instruction it replaced in 1990, serves to detach students from their religions and traditions in favour of loyalty to transcendent Canadian values.

The second perspective on education about religion focussed on its epistemological claims to religious neutrality. Contrary to claims in Ministry of Education documents, education about religion has its own epistemological assumptions, biases and blind spots and, as such, it works in much the same way as did the religious instruction it replaced. Education about religion is a form of critical thinking which has been adopted by the Ministry of Education as the lens for learning in Ontario public education. Critical thought and education about religion are positioned in binary contrast with indoctrination and religious instruction, the former being characteristic of the educational activities in public schools in contrast with the latter, which are said to occur in faith-based schools. The binary opposition between religiously neutral, secular critical thought and religiously sectarian indoctrination is reinforced by a secularization narrative which assumes a trajectory of history portraying

religion as an historical anachronism in a modern society to be practiced in the private realms of home and religious institutions. Education about religion delivered in public schools is thought to have a broad, inclusive religiously neutral stance in contrast with religious instruction delivered in religious settings with narrow, sectarian perspective promoting private interests.

The third perspective in the analysis of education about religion was on the educational issues associated with education about religion. The claim that education about religion and critical thought can be delivered only in secular public schools is questionable. Faith-based educational models have their own frameworks for critical thought and education about religion which equip students for successful engagement in Canadian society alongside their fellow citizens. In addition, critical discourse analysis of selected Ministry of Education curriculum documents revealed the vagueness of educational outcomes in education about religion programs indicating that the intent of education about religion is not just about the transmission of information. Throughout the history of Ontario public education, religious minorities have asserted that the purpose of an education about religion program in public schools is to redirect their loyalties from their religions and traditions to the nation in the language of transcendent Canadian values. This less explicitly identified purpose of education about religion was identified by religious minorities in *Zylberberg* and *Elgin County* when the language of transcendent values was a form of Protestant Christianity and again by religious minorities in *Adler* and *Bal*.

There is evidence of a dominant discourse which represents as normal the public school system as the state institutional instrument to deliver public education in the establishment and transmission of an ethos which transcends sectarian religious particularities. The John Tory proposal in 2007 was seen as a threat to the public school system, to public education and, by extension, to Ontario society by re-introducing sectarian religion into the very institution designed to overcome religious differences. However, the representation of the public school system as a privileged microcosm of Ontario society under threat from sectarian division was not new in 2007, having been part of the dominant discourse since the 19th century and the founding of the common school movement. While this is taken as a common sense truth in Ontario, critical analysis of definitions of religion, the boundaries between the religious and the secular and the boundaries between tolerable

and intolerable forms of religion reveal that they are socially constructed in response to particular historical circumstances as a way of managing religious diversity. The public school system has been a valuable institution in delivering public education but persistent voices of resistance provide evidence that a significant minority of Ontario citizens feel that it is not serving their needs. This thesis encourages those in positions of power to listen with new awareness to religious minorities and re-evaluate Ontario's public funding policy in education so that it more truly reflects the educational and religious diversity in Ontario society.

Further research

This thesis is a contribution to a much needed dialogue on the way religion is represented and regulated in Ontario public education. A more productive dialogue could open new possibilities for drawing in more religious voices as partners so that public education more truly reflects Ontario's diversity. However, three issues deserve attention they did not receive in this thesis. The first of these is more precise research into the politics of public education in Ontario. What the references in the thesis to the broad category of "the state" do not examine is the role of the actors in the public school establishment. The state is, of course, not one thing and state actors, including professional organizations, the public school trustees association, some of the larger school boards such as Toronto and Ottawa and other interest groups have been instrumental in deciding provincial elections, court cases and other conflicts in public education. While the focus in this thesis has been in the way religion is defined and represented, what is not addressed are the interests of powerful groups in protecting representations of religion and the secular in ways that serve to rationalize the conflation of the public school system, public education and social harmony. In similar ways, religious groups have their own political agendas and strategies which have contributed to the ways in which debates about religion in public education have unfolded. There are multiple ways in which the privileged role of the public school system is protected and contested that deserve more careful analysis than what is provided here.

The second issue relates to how parents, students, teachers, administrators and school trustees live within the boundaries for religion in public education created by the regulations in Ontario. The thesis does not address questions of how people who identify

with a particular religion understand the intersection of their religions and the secular environment within which they find themselves. Examples are Christians subscribing to a creationist perspective or some form of intelligent design responding to or resisting the evolutionistic framework which is assumed in the public school system, Muslim students and parents dealing with views of history influenced by "orientalism", science teachers who identify as religious working in an intellectual environment which conflicts with their values and perspectives, parent and community action to resist and reshape program and policy proposals by the Ministry of Education such as the response to changes in the sex education curriculum, the distribution of religious literature and provision for religious activities such as prayer space. Conflict over the role of religion in public education is ongoing and, while public schools are described as secular and hospitable to religion, what that actually means in the lives of students, parents, community groups, teachers and administrators is dynamic and contested. In other words, how is religious diversity actually negotiated and lived on the ground in public schools?

The same questions could be asked of faith-based schools which are often represented as homogeneous but which actually often serve very diverse populations. How do students, parents, teachers and administrators create room for social and educational diversity in faith-based schools? In short, in both public and privately funded schools, participants encounter religious diversity which must be negotiated in classrooms, in the halls and in the supporting communities. How is it done within the regulations established by the institutions in which they find themselves?

A third issue involves comparative work with other jurisdictions in Canada relating to the regulation of religion in public education, modelled on the research done by Charles Glenn and others comparing various models in effect in Europe and the United States. There are different mechanisms in other provinces in which faith-based schools are incorporated into public funding inviting examination of two questions; first, what are the histories of those resolutions to religious diversity in education and second, what is the impact of those models on student outcomes, funding and the viability of the public school system? Comparisons with other jurisdictions occur throughout the Ontario debates but they are chosen to make a particular case. A more disciplined and detached examination would add depth to the debates in Ontario.

A final suggestion for further research is examination of religion in Ontario education through another theoretical framework. This thesis has analysed the role of religion in Ontario public education through the theoretical framework of social constructionism which focusses on the way key social categories are constructed in response to particular historical circumstances. However, another theoretical approach with particular attention to faith-based schools in a global context would reveal different aspects of the way religion shifts over time in response to the effects of globalization. An example is Peter Beyer's examination of religion in the context of globalization (2006) in which he analyzes the dynamic interplay between global and local forces in creating and shaping religions. Rather than thinking of globalization as a one way or monologic force undermining local identities, Beyer suggests a dialogical model in which the global and the local or the universal and the particular engage to change each other. Many of the schools established after the 1940's were projects of immigrant communities and are, therefore, examples of globalization and the movement of people groups who go through a process of adapting to and changing their host societies in a (sometimes conflictual) dialogic process. Education is at the forefront of issues relating to the movement of people groups as immigrants develop strategies to successfully adapt to their new homes while retaining religious and cultural memory and community solidarity. However, their memories and solidarity change over time as they engage with other groups in new circumstances and further research would reveal how faith-based schools serve as both agents of change and of resistance to change. This research would build on the work done by Joanna Van Dijk (1998, 2001), J. L. Hiemstra (2005) and Jasmin Zine (2007, 2008) in education and immigrant groups and by Peter Beyer, Lori Beaman and others in the changes in religious experience and identity among generation 1.5 immigrants.

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8. Appendices

Appendix 1

Policy/Program Memorandum No. 108

Date of Issue: January 12, 1989

Subject: Opening or Closing Exercises in Public Elementary and Secondary Schools

Applications: Chairpersons of Boards of Education
Directors of Education of Boards of Education
Principals of Public Elementary and Secondary Schools

1. Background

The decision of the Ontario Court of Appeal, dated September 23, 1988, struck down subsection 28(1) of Regulation 262 concerning religious exercises in public elementary schools. This subsection, and the decision of the Court relating to t, did not apply to schools operated by Separate School Boards.

The spirit of the decision of the Court of Appeal was essentially that one religion must not be given a position of primacy and that the content of opening exercises must reflect the multicultural realities and traditions of Ontario society.

Subsequent to the Court ruling, an interim policy, dated September 28, 1988, was established, whereby opening or closing exercises were made optional for school boards. In schools where such exercises were to be held, however, "O Canada" and content that reflected the spirit of the ruling of the Court of Appeal were required. This interim policy was intended to remain in effect only until policy considerations were finalized and amendments to Regulation 262 were adopted.

2. Amendments to Regulation 262

A copy of the amendments to Regulation 262 relating to opening or closing exercises accompanies this memorandum. The amendments provide for a new section 4. Subsection 28(1), (2) and (3) and subsections 29(1), (2) and (3) as well as other references to "religious exercises" in sections 28 and 29 are deleted. The following points summarize the content of the new section 4: All public elementary and secondary schools in Ontario must be opened or closed each day with the national anthem. "God Save the Queen" may be included.

1.The inclusion of any content beyond "O Canada" in opening or closing exercises is to be optional for public school boards.

2.Where public school boards resolve to include, in the opening or closing exercises in their schools, anything in addition to the content set out in item 1 above, it must be composed of either or both of the following;

1.one or more reading that impart social, moral or spiritual values and that are representative of our multicultural society. Reading may be chosen from both scriptural writings, including prayers, and secular writings;

2.a period of silence.

3. Parents who object to part or all of the exercises may apply to the principal to have their children exempted. Pupils who are adults may also exercise such a right.

Appendix 2

Ontario Education Act, 1990 ss 28, 29 and 51

28(1) A board may provide in grades one to eight and in its secondary schools an optional program of education about religion.

28(2) A program of education about religion shall,
(a) promote respect for the freedom of conscience and religion guaranteed by the Canadian Charter of Rights and Freedoms; and
(b) provide for the study of different religions and religious beliefs in Canada and the world, without giving primacy to, and without indoctrination in, any particular religion or religious belief.
28(3) A program of education about religion shall not exceed sixty minutes of instruction per week in an elementary school.
29(1) Subject to subsections (2) and (3), a board shall not permit any person to conduct religious exercises or to provide instruction that includes indoctrination in a particular religion or religious belief in a school.
29(2) A board may enter into an agreement with a separate school board or the Roman Catholic sector of The Ottawa-Carleton French-Language School Board that permits that separate school board or the Roman Catholic sector to use space and facilities to conduct religious exercises or provide religious instruction for the purposes of the separate school board or the Roman Catholic sector.
29(3) A board may permit a person to conduct religious exercises or to provide instruction that includes indoctrination in a particular religion or religious belief in a school if,
(a) the exercises are not conducted or the instruction is not provided by or under the auspices of the board;
(b) the exercises are conducted or the instruction is provided on a school day at a time that is before or after the school's instructional program or on a day that is not a school day;
(c) no person is required by the board to attend the exercises or instruction; and
(d) the board provides space for the exercises or instruction on the same basis as it provides space for other community activities.
29(4) A board that permits religious exercises or instruction under subsection (3) shall consider on an equitable basis all requests to conduct religious exercises or to provide instruction under subsection (3).
51(1) Subject to the regulations, a pupil shall be allowed to receive such religious instruction as the pupil's parent or guardian desires or, where the pupil is an adult, as the pupil desires.
51(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 the pupil's parent or guardian, or by the pupil, where the pupil is an adult.

Appendix 3

Policy/Program Memorandum No. 112

Date of issue December 6 1990 effective: January 1, 1991 (revoked 2009)
Subject: Education About Religion in the Public Elementary and Secondary Schools
Applications: Chairpersons of Boards of Education, Directors of Education of Boards of Education, Principals of Public Elementary and Secondary Schools
1. Background
On January 30, 1990, the Ontario Court of Appeal unanimously struck down subsection 28(4) of Regulation 262 concerning religious education in the public elementary schools. The court ruled that the subsection infringed on the freedom of conscience and religion guaranteed by section 2(a) of the Canadian Charter of Rights and Freedoms. Neither the subsection nor the court decision applied to schools operated by the Roman Catholic separate school boards.
Section 29 of Regulation 262, regarding provisions of religious instruction by clergy or

designates in the public secondary schools, was not before the court, and the court's ruling did not apply expressly to that section, However, subsequent advice by legal counsel indicates that the principles outlined in the decision make section 29 equally untenable.
In its decision, the court made it very clear that subsection 28(4) of the regulation was invalid because it permitted the teaching of a single religious tradition as if it were the exclusive means through which to develop moral teaching and behaviour. The court also ruled that education designed to teach about religion and to foster moral values without indoctrination in a particular religious faith would not contravene the charter.
In distinguishing between religious indoctrination and education about religion, the court made the following statements:

While this is an easy test to state, the line between indoctrination and education, in some instances, can be difficult to draw. With this in mind, it may be of assistance to refer to the following more detailed statement of the distinction:

- The school may sponsor the study of religion, but may not sponsor the practice of religion.
- The school may expose students to all religious views, but may not impose any particular view.
- The school's approach to religion is one of instruction, not one of indoctrination.
- The function of the school is to educate about all religions, not to convert to any one religion.
- The school's approach is academic, not devotional.
- The school should study what all people believe, but should not teach a student what to believe.
- The school should strive for student awareness of all religions, but should not press for student acceptance of any one religion.
- The school should seek to inform the student about various beliefs, but should not seek to conform him or her to any one belief.

Subsequent to the court's ruling, an interim policy for public elementary schools, dated February 28, 1990, was established, whereby boards were permitted to provide programs in education about religion in the time previously used during the school day, as long as these programs were in accordance with the court's ruling. Boards of education were also advised that they could continue to provide space outside the school day, as they do for various community-related activities, if parents requested that their children be taught religion by clergy or designates. This interim policy for elementary schools was intended to remain in effect only until policy considerations related to the public elementary and secondary schools were finalized.
II. Permanent Policy
The Ministry of Education will amend section 28 and 29 of Regulation 262 to reflect the following permanent policy, which will apply to the public elementary and secondary schools:
1. Boards of education may provide programs in education about religion in Grades 1 to 8 during the school day for up to 60 minutes per week.
2. Boards of education may continue to provide optional credit courses in World Religions in secondary schools, as specified in the curriculum guidelines entitled History and Contemporary Studies, Part C: Senor Division, Grades 11 and 12, 1987. The program

descried in the guideline meets the court's definition of permissible education about religion.
3. Schools and programs, including programs in education about religion under the jurisdiction of boards of education must meet both of the following conditions:
a) They must not be indoctrinational.
b) They must not give primacy to any particular religious faith.
4. Boards of education may continue to provide space before the beginning or after the close of the instructional program of the school day for indoctrinational religious education. Given the provisions for equality of treatment in the Canadian Charter of Rights and Freedoms, boards choosing this option must make space available on an equitable basis to all religious groups.
This policy will come into effect on January 1, 1991.
III Purpose
The purpose of programs in education about religion is to enable students to acquire knowledge and awareness of a variety of the religious traditions that have shaped and continue to shape our world. The programs enable individuals to understand, appreciate and respect various types of religious beliefs, attitudes and behaviour.
The purpose of these programs is not to instill the beliefs of any particular religion. It is the prerogative of individual pupils and their families to decide which religious beliefs they should hold. Indoctrinational religious education has no place in the curriculum or programs of public elementary and secondary schools of the province.
IV. Content
Since the world's religions are many and varied, a particular program in education about religion cannot be expected to include every one of them. As a minimum, programs in any grade should include a balanced consideration of world religion that have continuing significance for the world's people.
Both content and method should be appropriate to the ages and levels of maturity of the pupils. IN developing programs of education about religion, consideration may be given to various organizational frameworks.
V. Resources
The Ministry of Education will develop a resource document to assist boards of education in developing programs of education about religion for elementary schools.
Programs for the secondary schools will continue to be developed in accordance with History and Contemporary Studies, Part C: Senior Division, grades 11 and 12, 1987.
VI. Context
This permanent policy and the forthcoming amendments to Regulation 262 are to be understood within the context of the long-established vision of the public elementary and secondary schools as places where people of diverse backgrounds can learn and grow together. The public schools are open and accessible to all on an equal basis and founded upon the positive societal values which, in general, Canadians hold and regard as essential to the well-being of our society. These values transcend cultures and faiths, reinforce democratic rights and responsibilities and are found on a fundamental belief in the worth of all persons.

Appendix 4 ***Constitution Act of 1867 Section 93***
Education

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:--
(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
(2) All the Powers, Privileges and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:
(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.(50)
93A. Paragraphs (1) to (4) of section 93 do not apply to Quebec. (50.1)

Appendix 5
Constitution Act of 1982, Sections 1, 2, 15, 21, 22, 23
Part I
Canadian Charter of Rights and Freedoms
Whereas Canada is founded upon the principles that recognize the supremacy of God and the rule of law:
Guarantee of Rights and Freedoms
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.
Fundamental Freedoms
2. Everyone has the following fundamental freedoms:
(*a*) freedom of conscience and religion
(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other means of communication.
(*c*) freedom of peaceful assembly; and
(*d*) freedom of association.
Equality Rights
15. (1) Every individual is equal before the and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are

disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.
I include sections 21, 22 and 23 because they are designed to protect minority language rights and are referenced in the cases at the centre of my analysis.
21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.
22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.
Minority Language Educational Rights
23. (1) Citizens of Canada
(*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
(*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province
(*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
(*b*) includes, where the number of children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Appendix 6
Education Act 1980 ss 28, 50
Statutes and Regulations
Religious exercises in public schools are governed by s. 28 of O.Reg. 262/80 (the Regulations) made pursuant to s. 10(1), the relevant parts of which provide:
"Religion exercises and religious education in the public schools".
28.-(1) A public school shall be opened or closed each school day with religious exercises consisting of the reading of the Scriptures or other suitable readings and the repeating of the Lord's Prayer or other suitable prayers. (Page Four)
(2) The readings and prayers that form part of the religious exercises referred to in subsection (1) shall be chosen from a list of selections approved for such purpose by the board that operates the school where the board approves such a list and, where the board does not approve such a list, the principal of the school shall select the readings and prayers after notifying the board of his intention to do so, but his selection is subject to revision by the board at any time.

(3) The religious exercises under subsection (1) may include the singing of one or more hymns."

…

"(10) No pupil shall be required to take part in any religious exercises or be subject to any instruction in religious education where his parent or, where the pupil is an adult, the pupil applies to the principal of the school that the pupil attends for exemption of the pupil therefrom.

(11) In public schools without suitable waiting rooms or other similar accommodation, if the parent of a pupil or, where the pupil is an adult, the pupil applies to the principal of the school for the exemption of the pupil from attendance while religious exercises are being held or religious education given, such request shall be granted.

(12) Where a parent of a pupil, or a pupil who is an adult, objects to the pupil's taking part in religious exercises or being subject to instruction in religious education, but requests that the pupil remain in the classroom during the time devoted to religious exercises or instruction in religious education, the principal of the school that pupil attends shall permit the pupil to do so, **if he maintains decorous behaviour**. (Emphasis added in the Court record).

……

The statutory authority for religious exercises in public schools is found in s. 50 of the Education Act, R.S.O. 1980, c. 129 (the Act) which reads as follows:

Religious Instruction

50(1) Subject to the regulations, a pupil shall be allowed to receive such religious instruction as his parent or guardian desires or, where the pupil is an adult, as he desires.

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."