

LAW AND RELIGION

Class activities*

Class 1 Jan. 11: Introduction

Discussion questions

- 1) What is religion?
- 2) What is the connection between state and religion?
- 3) What is the connection between law and religion?
- 4) Is religion freedom a human right? Why or why not?
- 5) Identify and briefly discuss some religious legal traditions.
- 6) Discuss the poem

Some keep the Sabbath going to Church

BY EMILY DICKINSON

Some keep the Sabbath going to Church –

I keep it, staying at Home –

With a Bobolink for a Chorister –

And an Orchard, for a Dome –

Some keep the Sabbath in Surplice –

I, just wear my Wings –

And instead of tolling the Bell, for Church,

Our little Sexton – sings.

God preaches, a noted Clergyman –

And the sermon is never long,
So instead of getting to Heaven, at last –
I'm going, all along.

Class 2 Jan. 18: Separation of State and Church



- 1) Who was Thomas Jefferson?
- 2) Why did Jefferson advocate for the separation of state and church?
- 3) What is the Danbury Letter? How has the Danbury Letter been most frequently used in Supreme Court cases?
- 4) What does separation of state and church mean in practice?
- 5) What are the advantages and disadvantages, if any, of the separation of state and church?
- 6) Is there separation of state and church in Canada? Why or why not?
- 7) Look for and discuss US Supreme Court cases about the separation of state and church.
- 8) Does the US Supreme Court' application of the Danbury Letter seem to have limited free exercise of religion? Why or why not?



Read and discuss the following questions

**Virginia Statute for Religious Freedom Draft for a Bill to Establish Religious Freedom in
Virginia (1779) by Thomas Jefferson**

Section I

Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose doctrines he can most perfectly assent to; and is withdrawing from the 1st the very ends of taxation which, proceeding from an appropriation of state property, are an essential fundament to civility and consequent liberty for the advantage of mankind: That no civil rights have an dependence on any religious opinion, any more than on one opinion in physics or geometry: That therefore the petitioning my criteria as contrary the public confidence, by laying upon the tax in support of being united to others of soul and confidence, as well as peace or otherwise that religious opinions, is depriving him of the liberty of those privileges and advantages to which, in common with his fellow citizens he has a natural right: That it tends not to correct the principles of the very religion in question as to its natural right: That it tends not to correct the principles of the very religion in question as to its natural right:

whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependance on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

Section II

We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

Section III

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

Discussion questions

- 1) What is the Highwood Congregation v Wall case about?
- 2) Should there be limits to the law's reach in the Charter era?
- 3) Chief Justice Beverley McLachlin opined that the law had "some claim to the whole of human experience." Do you agree with this statement? Why or why not? What is the impact of this statement on religion?
- 4) Is there any sphere of private life or civil society beyond the power of the courts other than religion?
- 5) Do you agree with the following statement in the case "In the end, religious groups are free to determine their own membership and rules"? Why or why not?
- 6) What is your opinion about the case? How would you rule if you were a Supreme Court judge?

Supreme Court rules in case of man expelled from Calgary congregation, says religious groups can decide own membership

By Jim Bronskill The Canadian Press

Posted May 31, 2018 4:53 pm

A Jehovah's Witness who was expelled from a Calgary congregation cannot take his case to a judge, the Supreme Court of Canada has ruled in a decision that affirms the general right of religious organizations to govern their own affairs.

In a 9-0 decision Thursday, the high court said the Alberta Court of Queen's Bench has no jurisdiction to review the congregation's decision to shun Randy Wall over alleged drunkenness and verbal abuse.

“In the end, religious groups are free to determine their own membership and rules,” Justice Malcolm Rowe wrote in the decision, adding that courts will not intervene in such matters unless it is necessary to resolve an underlying legal dispute.

Religious and civil liberties organizations took an active interest in the case, given questions about the degree to which the courts can scrutinize decisions by faith-based bodies.

Wall, an independent realtor, was summoned in 2014 to appear before the judicial committee of the Highwood Congregation of Jehovah’s Witnesses, a four-person panel of elders.

He admitted to two episodes of drunkenness and, on one of those occasions, verbally abusing his wife — wrongdoing he attributed to family stress over the earlier expulsion of his 15-year old daughter from the congregation.

The judicial committee told Wall, a congregation member since 1980, that he, too, would be expelled because he was not sufficiently repentant. Members who are “disfellowshipped” may still attend congregational meetings, but they are permitted to speak only to immediate family members about non-spiritual matters.

An appeal committee upheld the decision, prompting Wall to pursue the matter in provincial court. He alleged the congregational judicial committee did not give him proper notice, an adequate opportunity to be heard or reasons for its decision.

The congregation argued that Wall’s application for review should be tossed out because a secular court had no jurisdiction to review a religious tribunal’s decision.

In a submission to the Court of Queen’s Bench, Wall said that his real estate clients — about half of whom belonged to Jehovah’s Witness congregations — refused to conduct business with him any longer.

A judge concluded the court had jurisdiction to hear the case on the grounds that being shunned had an economic impact on Wall. The provincial Court of Appeal upheld the decision, and the congregation then took its arguments to the Supreme Court.

In its decision, the high court said the purpose of judicial review is to ensure the legality of state decision-making. However, in this case, the congregational committee was not exercising statutory authority.

“Private parties cannot seek judicial review to solve disputes that may arise between them.” Courts may only interfere to address procedural fairness concerns about the decisions of

religious groups or other voluntary associations if legal rights are at stake, Rowe wrote. Yet there was no evidence that Wall and the congregation had a contractual relationship. Finally, the decision said, it is not appropriate for the courts to make decisions about religious tenets.

The much-needed separation of church and state

HOWARD ANGLIN

CONTRIBUTED TO THE GLOBE AND MAIL

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Is there any limit to the law's reach in the Charter era? Does any sphere of private life or civil society remain beyond the sweep of our judiciary's Sauron-like gaze? What began as a membership dispute in a suburban Calgary church has landed on the steps of the Supreme Court of Canada, and if the court chooses to hear the case (and it should), these questions could make it the most consequential legal decision of the year.

The case, in a nutshell: Randy Wall attended Calgary's Highwood Congregation of Jehovah's Witnesses until April, 2014, when he was expelled – "disfellowshipped," in the church's discordant term – for alleged drunkenness, verbal abuse of his wife and insufficient repentance. Having exhausted appeals within the church, Mr. Wall sought relief from the Alberta Court of Queen's Bench, claiming that his disfellowshipping was not consistent with the principles of fundamental justice. The church responded that Canadian courts have no jurisdiction to second-guess the membership decisions of a private religious body. By a 2-1 decision, a panel of the Alberta Court of Appeal disagreed.

In 1992, the Supreme Court of Canada held that courts may review church membership decisions when concomitant disputes over property rights or other civil rights turned on the fact of membership. While acknowledging that previous limitation, following what it described as a developing line of lower-court decisions in Ontario, British Columbia and

Alberta, the majority in this case went further. It agreed with Mr. Wall that courts may also review internal decisions of religious bodies when no other rights are at stake if a complainant alleges "there has been a breach of the rules of natural justice or has exhausted the organization's internal processes."

Deploying 142 methodical paragraphs and 110 meticulous footnotes, dissenting Justice Thomas Wakeling dismantled the majority opinion. He explained why judges are not empowered to review the internal decisions of purely private actors and that, even if they were, the case does not pose a justiciable question because there is no legal right to church membership. Based on the unusual scope and detail of his dissent, Justice Wakeling appears to have been determined to catch the eye of the Supreme Court of Canada and, perhaps to make the case even more attractive to the justices, to do the heavy lifting of research and analysis for them.

Canadians who value the strength of our civil society should hope the Supreme Court does grant the Highwood Congregation's application to review the case. The constitutionally guaranteed freedom to associate must include the freedom not to associate, and that right cannot be policed by the courts without an unprecedented intrusion on the privacy and autonomy of Canadians. Where no related legal rights are involved, the internal membership and disciplinary decisions of private bodies are no business of the state.

Civil society is an essential element of liberal democracy, acting both as an outlet for individual flourishing and a buffer from state intrusion into the most intimate aspects of personal and social life. Societies without a robust civil society lack the social habits of free association and co-ordination extending beyond traditional kinship circles that make democratic self-government possible in a pluralistic society.

If the Alberta Court of Appeal's assumption of judicial omnicompetence is allowed to stand, it will sweep into the courts' jurisdiction the membership and other internal decisions of all manner of purely private associations – from business and service clubs to amateur sports teams and churches. (Justice Wakeling's dissent uses the example of bridge clubs.) Not only

would this directly violate the Charter rights to freedom of association and religion, it would impose cumbersome and costly new burdens on voluntary organizations to engage legal counsel to oversee their internal processes. It would also tax an already-strained court system, making chambers the final arbiter of previously private disputes and recriminations.

Back in 2002, when Chief Justice Beverley McLachlin opined that the law had "some claim to the whole of human experience," philosopher Jean Bethke Elshtain retorted that, "surely, where the rule of law in the West is concerned, there is a great deal about which the law is simply silent: the 'King's writ' does not extend to every nook and cranny." The Highwood Congregation case throws the debate back to the Chief Justice: Just how far does she believe the King's writ should extend into the internal decisions of private organizations?

Let's hope that, with the benefit of 15 years' reflection, the Chief Justice and her colleagues recognize the problems with that totalizing vision, in which no decision is too private and no dispute too slight to escape the robed and magisterial scrutiny of the law. To safeguard our civil society and our democracy, some nooks and crannies must remain free and private.

Classes 3 & 4: Jan. 25 & Feb. 1: Freedom of religion in the Charter of Rights and Freedoms

Discussion questions

- 1) What is Quebec's Bill 21?
- 2) What is the purpose of Bill 21?
- 3) Do you agree with Bill 21? Why or why not?
- 4) Does it affect some religious more negative than others? Why or why not?
- 5) Does Bill 21 affect some religions more than others? Why or why not?
- 6) What is Justin Trudeau's stance on Bill 21?
- 7) Freedom of religion is guaranteed in the Canadian Charter of Rights and Freedoms. Is that freedom without limits?

- 8) Does the state have the right to set limits on religious practices where they collide with other values held dear by society?
- 9) What did the Quebec Superior Court hold?
- 10) What is your opinion of the Court's following statement "Bill 21 does not violate Canadian constitutional architecture or the rule of law. The use by the legislator of the notwithstanding clauses appears excessive, because it is too broad, although legally unassailable in the current state of the law."
- 11) Lawyers for the Quebec government argued that the law did not impinge on minority rights since people could practice their religion at home. Discuss this argument.
- 12) If the case went to the Supreme Court of Canada and you were a judge on the SC, how would you rule? Why?

Quebec's Ban on Public Religious Symbols Largely Upheld

The ruling exempts English-speaking schools and effectively allows provincial legislators to wear turbans or head scarves, but it angered civil liberties advocates as discriminatory.

New York Times, April 2021

MONTREAL — A Quebec court on Tuesday largely upheld a law barring public sector employees such as schoolteachers, police officers, and judges from wearing religious symbols while at work, in a ruling that human rights advocates said would undermine civil liberties in the province.

But the ruling also made some big exceptions that dissatisfied the provincial government. Both sides said they intended to appeal.

Religious minorities across the province said the decision marginalizes them. While the ban is supported by a majority of Quebecers, it has nevertheless proved deeply polarizing in Quebec society where minority lawyers and teachers, among others, say it has derailed their lives and careers, while fomenting Islamophobia and anti-Semitism.

“The law destroyed my career dreams,” said Noor Farhat, a lawyer who wears a head scarf and aspired to be a public prosecutor. She represented a large Quebec teachers’ union that is one of the plaintiffs in the case. “It is a clear violation of freedom of religion and the government is limiting human rights,” she said.

François Legault, the right-leaning Quebec premier, has said that the law is necessary to ensure that the separation between religion and state is respected in Quebec, a province where secularism holds sway. The law, adopted in June 2019, applies to Muslim head scarves, Jewish skullcaps, Sikh turbans and Catholic crosses, among other symbols.

Lawyers for the Quebec government argued that the law did not impinge on minority rights since people could practice their religion at home. Supporters of the law also argued that it is a force for liberal values, including respect for women and gay people, by preventing religious orthodoxy from encroaching on public life.

But human rights advocates and legal scholars counter that the law breaches the Canadian constitutional right to freedom of religion, while undermining social equality and denying minorities access to jobs in vital fields such as education and law enforcement. They also criticize the law as running counter to Canada's vaunted model of multiculturalism.

"It will drive religious minorities away rather than bringing them into society," said Robert Leckey, dean of McGill University's faculty of law in Montreal and a leading constitutional lawyer. "An inclusive society is surely one where schoolteachers are allowed to look like the kids they are teaching."

In a 240-page ruling, Justice Marc-André Blanchard of the Quebec Superior Court in Montreal said the Quebec government had the right to restrict the religious symbols worn by public sector employees including teachers, police officers, lawyers and prison guards, while they were at work.

But he exempted English schools in the province from the law, saying that the English minority in Quebec had a constitutional right to govern its own schools. He also rejected the part of the law that prohibited members of Quebec's legislature from covering their faces, effectively allowing people wearing turbans or headscarves to serve as elected members of the provincial legislature.

Lawyers for the plaintiffs said they planned to appeal the ruling to Quebec's Court of Appeal and, if necessary, to Canada's Supreme Court. Simon Jolin-Barrette, Quebec's minister of justice, also said Quebec planned to appeal the ruling, saying that the exemptions carved out in the court's decision threatened to effectively create two Quebecs and that the law should apply to all Quebecers.

A legal challenge to the law in the courts has proved difficult because to insulate it from potential court action, the government invoked a rarely used constitutional loophole known as the “notwithstanding clause,” which empowers Canadian legislatures to override some constitutional rights like freedom of religion or expression.

The clause was added to Canada’s 1982 constitution to appease some provinces, which were resistant to including a charter of rights as part of the document.

Ms. Farhat said the law had disproportionately affected visible minorities like Muslim women who wore outwardly conspicuous religious symbols like head scarves. A Catholic cross was less conspicuous since it could be concealed in a blouse or a shirt while at work.

Quebec is hardly alone in imposing such a law. In 2004 France banned religious symbols such as Muslim head scarves at state schools. In May 2018, Denmark banned face veils in public, igniting criticism that the law discriminated against Muslim women.

Identity and religion are sensitive issues in Quebec, a Francophone province surrounded by English-majority Canada. In the 1960s, Quebec underwent a social rebellion known as the Quiet Revolution during which Quebecers revolted against the Roman Catholic Church, which had dominated daily life in the province for decades. The result, sociologists say, is that outward expressions of religious orthodoxy have long been viewed with suspicion.

Julius Grey, a leading Canadian human rights lawyer who has argued frequently before the Supreme Court of Canada, said the decision could potentially open the way for other provinces to defy safeguards of the Canadian constitution by weaponizing the notwithstanding clause.

After the law was passed in June 2019, protests erupted across the province, with some local mayors and school boards in Montreal saying they would refuse to enforce it. The Quebec government passed an amendment appointing inspectors to ensure it was obeyed.

US Supreme Court case

- 1) What is the case Masterpiece Cakeshop v. Colorado Civil Rights Commission about?
- 2) What are the baker's main arguments? Do you agree? Why or why not?
- 3) Do you agree with laws that bar businesses from refusing service based on race, sex, marital status or sexual orientation? Why or why not? Do you think that –non-essential- businesses should be free to provide services to everyone without discrimination? Why or why not?
- 4) Is baking a cake an art? Is the baker an artist? What are the legal implications if the cake were a work of art?
- 5) In this case, there is a tension between religious rights and rights against discrimination of gay people. How can a tolerant society best protect everyone's rights?



Baker who refused to make same-sex wedding cake wins U.S. Supreme Court case

In 7-2 decision, justices said Colorado Civil Rights Commission showed hostility to religion
Thomson Reuters · Posted: Jun 04, 2018 10:35 AM ET | Last Updated: June 4, 2018

The U.S. Supreme Court on Monday handed a victory on narrow grounds to a Christian baker from Colorado who refused for religious reasons to make a wedding cake for a gay couple, stopping short of setting a major precedent allowing people to claim exemptions from anti-discrimination laws based on religious beliefs.

The justices, in a 7-2 decision, said the Colorado Civil Rights Commission showed an impermissible hostility toward religion when it found that baker Jack Phillips violated the state's anti-discrimination law by rebuffing gay couple David Mullins and Charlie Craig in 2012.

The state law bars businesses from refusing service based on race, sex, marital status or sexual orientation.

The ruling concluded that the commission violated Phillips' religious rights under the U.S. Constitution's First Amendment.

But the court did not issue a definitive ruling on the circumstances under which people can seek exemptions from anti-discrimination laws based on their religious views.

The decision also did not address several of the claims raised in the case, including whether baking a cake is a kind of expressive act protected by the constitution's guarantee of free speech.

Two of the court's four liberals, Stephen Breyer and Elena Kagan, joined the five conservative justices in the ruling authored by Justice Anthony Kennedy.

"The commission's hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion," Kennedy wrote, referring to the First Amendment of the U.S. Constitution. But Kennedy also stressed the importance of gay rights while noting that litigation on similar issues is likely to continue in lower courts.

"Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth," he wrote.

"The outcome of cases like this in other circumstances must await further elaboration in the courts, all in the context of recognizing that these disputes must be resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market," Kennedy said.

Of the 50 states, 21, including Colorado, have anti-discrimination laws protecting people in the LGBTQ community.

Government hostility toward people of faith has no place in our society, yet the state of Colorado was openly antagonistic toward Jack's religious beliefs about marriage.

The closely watched case before the Supreme Court, which in 2015 legalized same-sex marriage nationwide, pitted gay rights against religious liberty. President Donald Trump's administration intervened in the case in support of Phillips.

Mullins and Craig were planning their wedding in Massachusetts in 2012 and wanted the cake for a reception in Colorado, where gay marriage was not yet legal. During a brief encounter at Phillips's Masterpiece Cakeshop in the Denver suburb of Lakewood, the baker politely but firmly refused, leaving the couple distraught.

They filed a successful complaint with the state commission, the first step in the six-year legal battle. State courts sided with the couple, prompting Phillips to appeal to the U.S. top court. Phillips has said a backlash against his business has left him struggling to keep the shop afloat.

The outcome of the case hinged on the actions of the Colorado commission. In one exchange at a 2014 hearing cited by Kennedy, former commissioner Diann Rice said that "freedom of religion, and religion, has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the Holocaust."

'Openly antagonistic'

Kennedy also noted that the commission had ruled the opposite way in three other cases brought against bakers in which the business owners had refused to bake cakes containing messages they disagreed with that demeaned gay people or same-sex marriage.

The court reversed the Masterpiece Cakeshop decision based on concerns unique to the case, but reaffirmed its longstanding rule that states can prevent the harms of discrimination in the marketplace, including against LGBT people.

"Government hostility toward people of faith has no place in our society, yet the state of Colorado was openly antagonistic toward Jack's religious beliefs about marriage. The court was right to condemn that," said Kristen Waggoner, a lawyer at conservative Christian group Alliance Defending Freedom, which represents Phillips.

She added that the decision "makes clear that the government must respect Jack's beliefs about marriage."

ACLU lawyer Louise Melling, who represents Mullins and Craig, said that high court had made it clear that businesses open to the public must serve everyone.

Faith or discrimination

Phillips' lawyers argued that his cakes are an art form — a "temporary sculpture" — and being forced to create one to commemorate a gay wedding would violate his rights under the U.S. Constitution to freedom of speech and expression and free exercise of religion.

Mullins and Craig, represented by the American Civil Liberties Union, said Phillips was using his Christian faith as pretext for unlawful discrimination based on sexual orientation. The ACLU said the baker was advocating for a "licence to discriminate" that could have broad repercussions beyond gay rights.

The case became a cultural flashpoint in the United States, underscoring the tensions between gay rights proponents and conservative Christians.

The litigation, along with similar cases around the country, is part of a conservative Christian backlash to the Supreme Court's gay marriage ruling. Phillips and others like him who believe that gay marriage is not consistent with their Christian beliefs, have said they should not be required to effectively endorse the practice.

Gay rights advocates said the case is just one part of a bigger struggle seeking greater legal protections for gay, bisexual and transgender people, including in the workplace, even as they fight efforts by conservatives to undermine gains secured in recent years.

Class 5 Feb. 8 Revenge



Discussion questions

- 1) What happened in the film?
- 2) What kind of justice is shown in the film? Do you agree with taking the law into your own hands? Why or why not?
- 3) Is revenge ever justified?
- 4) What kind of society is depicted in the film? Give specific examples.
- 5) Is it fair to convict someone when the only evidence is the victim's testimony? Should victims' testimony always be believed? Why or why not?
- 6) Is our desire for vengeance God-given?

- 7) Read Romans 12:19. What does it mean to “leave room for God’s wrath”? How would that change the way you respond to someone who hurts you?



Religion and dress code in South Africa

- 1) What is the OGD vs six public schools case about? What is your opinion?
- 2) What are the constitutional provisions about religious freedoms in South Africa? What are the differences and similarities with the Canadian rights?
- 3) What is the MEC for Education: Kwazulu-Natal v Pillay, 2007 case about? What is your opinion?
- 4) In this case, the Department of Education argued that “there can be no case for discrimination where it cannot be said that there is a “dominant group” that is treated better than a minority group”. What do you think about this argument?
- 5) What is reasonable accommodation? How does it work in South African law?
- 6) What does secular state mean? How does it work in South Africa?
- 7) Is Canada a secular state? Why or why not?
- 8) Discuss the creation vs evolution debate and its connection with school curriculum in Canada and abroad.

Religious Dress in Schools: Not a Parade of Horribles, but a Pageant of Diversity

by Daniela Ellerbeck

23 June 2017

By **Adv Nadene Badenhorst**, FOR SA Legal Counsel and **Daniela Ellerbeck**, FOR SA Legal Advisor

What is the place of religion in schools?

This is the question the Court will have to decide in the case of **OGOD vs six public schools**, in which OGod (an atheist organisation) is effectively asking the Court to remove Christianity from the 24,000+ public schools in SA. Judgment in this case which was heard in the Johannesburg High Court in May (and in which FOR SA's Legal Counsel assisted one of the "Friends of the Court"), is currently still pending.

The same question regarding the place of religion in schools, made news headlines in a different context earlier this month. In this case, Northcliff High School (a prominent public school in Johannesburg) came under fire for not allowing Muslim pupils to wear a religious headscarf during Ramadan, without carrying "concession cards" allowing changes to their school uniform. Parents of Muslim pupils were up in arms about this practice and likened the "cards" to the discriminatory *dompas* black South Africans had to carry during Apartheid. The School initially defended the practice by saying that the "cards" were necessary so as to distinguish between pupils who want to change their uniform for no reason, and those who have genuine reasons. Following intervention by the Gauteng Education MEC however, the School agreed to unconditionally withdraw the "concession cards". (For more information, see <https://mg.co.za/article/2017-06-05-northcliff-high-concession-cards-likened-to-apartheid-dompas>).

In another case the very next day, the Western Cape Education Department instructed the school principal of De Grendel School of Skills (a special needs public school in Cape Town) to allow a Muslim pupil to wear a hijab during Ramadan, after the school initially refused this 'deviation' from the school uniform – on the basis that the school's research into the matter, did not reveal any rule or recommendation that proved that wearing a hijab was compulsory during Ramadan; and allowing the pupil to wear it would mean allowing an influx of other religious requests in terms of dress code. (For more information, see <https://allafrica.com/stories/201706070158.html>).

What does South African law say?

The starting point in this matter, is the South African Constitution and in particular, the Bill of Rights which guarantees certain basic rights to human beings simply because they are human beings. One of these basic human rights, is **the right to religious freedom** (section 15). This right includes not only the right to hold such

internal belief as one chooses, but the right to practice and give outward expression to that belief. (Constitutional Court in **S v Lawrence, 1997**).

The Constitution also specifically includes, as part and parcel of the human right to religious freedom, **the right to religious observances in State-aided institutions** (section 15(2)), including public schools. While “religious observances” are not defined by the Constitution, the South African Charter of Religious Rights and Freedoms (“the Religious Charter”), certain policy documents and case law give some guidance as to what may be included in, and is therefore protected by, this right.

According to the **Religious Charter**, a religious-legal document that expresses what the right to religious freedom means to believers (of different faiths) in South Africa and already endorsed by religious leaders and signatories representing 22 million believers in South Africa:

“Subject to the duty of reasonable accommodation ..., every person has the right to the private or public, and individual or joint, observance or exercise of their convictions, which may include but are not limited to reading and discussion of sacred texts, confession, proclamation, worship, prayer witness, arrangements, attire, appearance, diet, customs, rituals and pilgrimages, and the observance of religious and other sacred days of rest, festivals and ceremonies” (s 4).

In terms of the Charter therefore, and subject to the duty of reasonable accommodation (to which I will return in a moment), South Africans have a (basic, human) right to wear religious attire in private or in public (for e.g. in public schools, at the workplace, etc).

The right of pupils to wear religious attire in schools, is also specifically recognised in the **National Policy on Religion and Education** (issued in terms of the National Education Policy Act, 1996). In terms of the Policy, “religious observance” may “*entail other dimensions such as dress, prayer times and diets, which must be respected and accommodated in a manner agreed upon by the school and the relevant faith authorities*” (s 58 of the Policy).

A case in point, is that of **MEC for Education: Kwazulu-Natal v Pillay, 2007**. In this case, the Constitutional Court had to decide whether Durban Girls’ High School was right in refusing a Hindu pupil permission to wear a tiny gold nose stud to school, on the basis that the stud violated the school’s Code of Conduct which prohibited the wearing of all jewellery other than a certain type of earring and a wrist-watch. For the girl, the stud, although not obligatory or a religious rite, was an expression of Hindu culture.

In an important judgment, the Court found that it did not matter that the wearing of a nose stud was not an obligatory practice of the Hindu faith – the only question was whether for the particular pupil it was an outward expression of her sincerely held religious or cultural beliefs. In other words, both obligatory and voluntary practices are

constitutionally protected. The Court found further that it did not really matter whether the practice stemmed from a religious, as opposed to a cultural, belief. Again, both are protected by the Constitution.

In this case, the Court was satisfied that for the Hindu girl, the nose stud was an outward expression of her sincerely held religious or cultural identity. The only question therefore was whether the school could (and should) have reasonably accommodated her by allowing an exemption from the Code of Conduct?

Reasonable accommodation in this context means that sometimes the community (whether the State, a school or an employer) must take positive measures and possibly even incur additional hardship or expense in order to allow all people to participate and enjoy their constitutional rights equally. Reasonable accommodation is, in a sense, a proportionality exercise that will depend intimately on the facts. In this case, the Court found that allowing the Hindu pupil to wear the stud, would not have imposed an undue burden on the school and that reasonable accommodation would have been achieved had they done so. The effect of the judgment was therefore not to abolish the school's policy on school uniforms and jewellery, but simply that exemptions should be made.

(The Court did point out that there may be specific schools or practices where there is a real possibility of disruption if an exemption is granted, and also that the position may be different in private schools although unfair discrimination even in those contexts is impermissible. A mere desire to preserve uniformity, absent real evidence that permitting the practice will threaten academic standards of discipline, does not however suffice).

Importantly, the Court found that "*the display of religion and culture in public life is not a parade of horrors, but a pageant of diversity which will enrich our schools and our country*". Neither the Constitution, nor the Equality Act, requires identical treatment (in this instance, of pupils). What is required, is equal concern and respect for all.

Conclusion

It is often stated or assumed that South Africa is a "secular" State. A reading of the Constitution makes it clear, however, that we are not. Unlike the USA who maintains a clear "wall of separation" between State and religion, South Africa has adopted a co-operative model between State and religion which allows for religious observances (including religious attire or dress) in public schools.

In the case of De Grendel above, the problem was that the school did not allow the Muslim pupil to observe her religion by wearing a hijab during Ramadan, at all. This is plainly unconstitutional and unacceptable in our open and democratic society. In the case of Northcliff, the school did allow Muslim pupils to wear religious dress during Ramadan (in other words, did grant an exemption from the school's uniform policy),

but the problem was the way in which they did it and which made Muslim pupils to feel inferior.

While a school may have a legitimate objective in only allowing pupils to deviate from the school uniform policy on good grounds (including their religious or cultural beliefs), it may not do so in a manner that unfairly impacts on them or makes them feel disrespected. Schools have an obligation to put policies in place that not only allow for exemptions (and make clear the process by which one can apply for such exemption, and how the exemption will practically be enforced), but will have an affirming rather than undermining effect on pupils' dignity. In the case of Northcliff, a better way of distinguishing between pupils who have good grounds for deviation and those who don't, may have been to make an annotation in each pupil's file and inform their teacher accordingly. In this way, pupils are not embarrassed and do not feel that they are labelled or ostracised because of their religious beliefs.

Returning then to my initial question regarding the place of religion in our schools, it is clear that far from being excluded from or feared, religion should be respected and protected and religious diversity celebrated and promoted in schools. The more pupils feel free to express their sincere religious (and cultural) beliefs in school, the closer we will come to the society the Constitution envisages – one that “*does not tolerate diversity as a necessary evil, but affirms it as one of the primary treasures of our nation*” (**Pillay** case).

Our Constitutional Court has in various instances already pointed to the intimate link between religious freedom and human dignity. As Christians, we understand that each person, whether Christian, Muslim, Hindu or atheist, is made in the image of God and therefore has immense dignity and worth. While we do not necessarily have to (and will not) agree on everything, we have a Biblical responsibility to love all people, and treat them with dignity and respect as Jesus Christ Himself did.

Class 6 Feb. 15: Covid-19 measures and religion

Discussion questions



1. What did pastor Pastor Artur Pawlowski do during the pandemic? Was he right? Why or why not?
2. Why did officials go to his church in during Holy Week to inspect it for COVID-19 compliance? Was it really necessary to enter with arms during a worship service? Why or why not?
3. The pastor accused the Canadian government officials of being "Nazis"? What does he mean? Do you agree? Why or why not?
4. Why was the pastor arrested? How? What is your opinion of the arrest?
5. Can the states prohibit the congregation of the faithful during a pandemic?
6. What did churches do during the pandemic in the Sault? Do you agree with their decisions? Why or why not?
7. What was Jesus' attitude toward the sick? What does the following mean? "Heal the sick, raise the dead, cleanse lepers, cast out demons. You received without paying; give without pay (Matthew 10:8).
8. Is telling church to require proof of vaccination as a condition to attend a religious service a violation of Charter provisions?
9. Discuss Prince v. Massachusetts, 321 U.S. 158 (1944). What are its consequences and implications for Covid-19 vaccine mandates and policies?
10. What is the Emergencies Act? Why did the government invoke the Act? Do you agree with its enactment to repress the current demonstrations against the government? Why or why not?



Canadian pastor arrested on tarmac over COVID rules says police confiscated luggage, snooped laptop

The pastor believes Canada is targeting clergy for a reason

By Jon Brown | Fox News

The Polish-Canadian pastor who has been repeatedly arrested for holding church services in Calgary, Alberta, said Canadian border police confiscated his belongings and apparently broke into his personal computer.

When Pastor Artur Pawlowski landed back in his home city of Calgary on Monday following a four-month tour of the United States, customs officials were waiting to cuff him on the tarmac for two criminal charges, he told Fox News in an interview.

"They have fallen to a new low," Pawlowski said of the Canadian authorities. "Our lawyers contacted them and asked them if there are any pending warrants for me when I was in the states. They said that there are no pending warrants, there is nothing outstanding."

Pawlowski had been traveling throughout the United States over the summer to spread his warning that Western governments increasingly resemble the communist regime in Poland he fled as a young man.

His tour followed the international attention he received in April when officials went to his church in Canada during Holy Week to inspect it for COVID-19 compliance. Because they entered the sanctuary armed and uninvited during a worship service, Pawlowski refused to speak with them.

Instead, he accused them of being "Nazis" and shouted them down until they agreed to leave. Video of the encounter went viral.

Three weeks later, officials returned with a court order authorizing them to access Pawlowski's church and arrest him if he failed to comply. Again he demanded they leave the church property and contact his lawyer.

On May 8, a motorcade of Calgary police vehicles pulled over Pawlowski and his brother to arrest them in the middle of a highway on their way home from church.

This time, Pawlowski speculated that they misled his lawyers before activating criminal charges against him Monday while he was in the air.

The first criminal charge, Pawlowski explained, was levied against him for failing to wear a mask in public, despite a medical exemption from his doctor. The second was for organizing an illegal church gathering. Both were related to offenses in March and June.

In an interaction he characterized as an ambush, Pawlowski recounted how three officers demanded that he and his pilot step out of the plane. He said he heard one of the officers tell the pilot to surrender his phone, though the pilot refused and managed to record the incident.

Particularly troubling to Pawlowski was that he was not allowed to greet his family, who were waiting to see him for the first time in months. His wife, he said, was notified of his arrest by reporters.

"That was the most brutal thing," he said. "That was Nazi-style, communist-style. Trying to break a man and his family and children by not allowing me to just even say hi after being away for so long."

'I'm not a terrorist'

Pawlowski said authorities confiscated his luggage after they arrested him. Even after his lawyer secured his release during the early morning hours on Tuesday, he said police first denied they knew where his possessions were, though a reporter told him he saw his belongings being packed into a police cruiser.

When he ultimately recovered them at the police station, he said his things had been marked with labels suggesting that authorities had rummaged through them. There were also indications that his personal laptop had been accessed. Normally locked by a passcode, he said it was open when he got it back.

A spokesperson for the Canada Border Services Agency (CBSA) said the agency is bound by Canada's Privacy Act not to comment on specific individuals or situations but directed Fox News to a website explaining the policies governing the CBSA's ability to examine electronic devices. CBSA's website says agents are authorized to inspect electronic devices, and travelers are obligated to comply to the point of surrendering passwords. Instances of electronic devices being examined are extremely rare, however, and the CBSA's own statistics claim it has happened to only .014% of those who passed through Canadian ports of entry from Nov. 20, 2017, to June 30, 2021.

"I don't know what they were looking for," Pawlowski said. "I'm a pastor. I'm not a spy, and I'm not a terrorist. Everything that I do is public."

'The government wants to become God'

Sarah Miller, one of Pawlowski's attorneys, said his treatment has been "unusual."

"There was no need to do that at the airport," she said, adding that police could instead "call him in advance, tell him that they were coming over to lay criminal charges, meet him at his house, give him opportunity to access legal counsel and sign paperwork without having any detention.

"I think that would be the ordinary way to do it," she added. "But if you've been following Artur Pawlowski's story, there's nothing ordinary about the way he is treated by officials."

Since the pandemic, other churches in Canada and Alberta have faced imprisoned pastors, locked facilities, steep fines and continued interference from government officials.

Pawlowski believes churches and clergy are being targeted because they have historically opposed tyranny. "Jesus Christ is very clear," the pastor said. "He says, 'Who comes to me is free indeed.' We preach freedom. We preach hope. When you don't have hope in society, then the people are turning for that hope to the government. I think the government wants to become God, to be worshiped. And anyone else or anything else that competes with that has to be destroyed."

‘They will come for you’

Pawlowski faces a court date on Oct. 13 regarding separate civil charges against him related to his church gatherings. His civil and criminal charges carry a maximum sentence of six years imprisonment, though his lawyer said such an outcome is "highly unlikely."

During his last hearing, prosecutors for Alberta Health Services (AHS) were seeking 21 days in jail and a fine of \$2,000, plus \$15,000 in legal costs.

Pawlowski is unsure of how the ruling will play out, but even if he has to return to prison, he remains hopeful.

"I am optimistic that this story is going to end well for me because of the pressure right now that the government has," he said, noting how his case has drawn the eyes of many Americans.

Canadian pastor says Soviet-style tyranny is drawing eerily close after another arrest

Canadian pastor Artur Pawlowski spoke about his latest arrest on Wednesday's "Ingraham Angle" and reiterated a prior warning to Americans: totalitarianism is rearing its ugly head in the West.

"Pawlowski went viral when he protested Canada's insane COVID mandates. And now authorities are arresting him again," host Laura Ingraham said. The pastor was arrested by

Canada Border Services Agency when he returned to his home country and was charged with "failure to wear a mask."

"I came to the United States with a simple warning," the pastor told Ingraham about his recent trip abroad.

"You're next," he said. "If they came for me, be sure of it, they're coming for you as well."

He called the individuals who arrested him "masked gangsters," that he "couldn't even consider them officers of the law."

Pawlowski, head of Calgary's Street Church in Alberta, Canada, first gained international attention when he confronted local inspectors on Easter after he said they entered his church without a warrant. The inspectors were there to ensure the church was abiding by COVID-19 guidelines, which called for an indoor maximum capacity of 15%, social distancing, and mask-wearing.

"Get out of this property," he shouted to the police during the confrontation. The pastor proceeded to call the police "Nazis" and "Gestapo," referring to Nazi Germany's secret state police. "Nazis are not welcome here," he shouted again.

Pawlowski told Fox News in April he was raised under Soviet communism in Poland. "It was a disaster," he said about his childhood. "Police officers could break into your house five in the morning, they could beat you up, torture, they could arrest you for no matter what reason they would come up with ... So, it was like a flashback when those police officers showed up at my church. Everything kind of came back to life from my childhood, and the only thing I could do is to fend off the wolves as a shepherd ... We as lions should never bow before the hyenas, and that's what they're right now."

"You came to freedom," Ingraham said about the pastor's journey to Canada. "This is feeling very Soviet to me," adding that the process was increm

The pastor responded that he believed "What they're doing today is identical to what I remember growing up."

Pawlowski was arrested in May for "organizing an illegal in-person gathering" after court-imposed restrictions. "The service organizer acknowledged the injunction, but chose to ignore requirements for social distancing, mask-wearing and reduced capacity limits for attendees, and continued with the event," police said

The pastor claimed he was facing up to four years of prison for the charges, and possibly more. "I was handcuffed like a common criminal, like a terrorist," he said. "They wanted to break me. They wanted to show the whole world 'You see what we do to those who dare to speak against our tyranny? If you will follow ... you'r



N.S. pastor behind church event linked to deadly COVID-19 spike fined \$2,422

'To me, it's not enough,' Premier Tim Houston said during Wednesday's COVID-19 update
CBC News · Posted: Nov 17, 2021 2:25 PM AT | Last Updated: November 17



The pastor responsible for a multi-day religious event linked to a recent spike in COVID-19 cases and three deaths in Nova Scotia has been fined under the province's Health Protection Act.

In a news release, the province said it issued a fine of \$2,422 Wednesday to Robert Smith, pastor of Gospel Light Baptist Church in Amherst, N.S., who hosted a gathering of faith groups from across the province Oct. 25 to 29. Three people have died of COVID-19 in the past week — one at a group home in Amherst and two at a long-term care home in Pugwash, N.S. — and the province has said those cases trace back to the Gospel Light event.

Smith came under fire this week after a video surfaced of him telling his parishioners that while what happened was "unfortunate," it was all a part of God's plan. The video was later removed from Facebook.

Pastor Robert Smith gives a sermon at Gospel Light Baptist Church in Amherst, N.S., on Sunday. A recent gathering hosted by the church has been linked to three COVID-19 deaths. One name has been censored from this video to protect their personal health information. 18:51

Premier Tim Houston said during Wednesday's COVID-19 briefing he thought Smith's comments were "disgusting" and doesn't believe the fine, the maximum under provincial law, is sufficient. "To me, it's not enough," said Houston.

Public health officials have said more than 100 people attended the event and were not asked to show proof of vaccination, a violation of public health orders.

Why the delay in laying charges?

Houston said he had a lot of questions about why Amherst-area police did not investigate Smith for violating public health measures, and said "we will get to the bottom of the enforcement delays and we will fix it."

The Amherst Police Department said Monday it had forwarded a complaint about not masking at the gathering to Public Health, but was awaiting a response on how to handle it.

Houston dismissed the idea that police forces should wait for the province or Public Health to tell them to take action.

"Law enforcement should do their job. They should enforce the laws. They don't need guidance from any elected official, any bureaucrats, anybody in the civil service. They should just enforce the laws that are on the books," Houston said.

Amherst police Chief Dwayne Pike said in an email Wednesday that he couldn't comment on the specifics of the investigation.

"I can confirm that we are still actively investigating and working with our partner agencies on this matter," he said. "As you can imagine, we have been busy over the last few weeks and are working diligently on this matter as well as other recent incidents."

'Police should be doing their job'

The fine was laid by the Department of Environment and Climate Change, not Amherst police. Houston said that government body was a "backstop" when law enforcement didn't act.

"I can't understand, honestly, why the police haven't advanced their investigation," Houston said. "The police should be doing their job."

Nova Scotia's chief medical officer of Health, Dr. Robert Strang, said Wednesday he'd made the same point to police chiefs.

But on Nov. 5, Strang said he didn't think enforcement was the right action for the religious gathering.

"Well, that was at the very beginning of this, and at the very beginning, we're in the process of establishing a constructive working relationship with the number of faith organizations that were involved," he said Wednesday.

"But as time has gone on, we've learned more. Clearly we're seeing impacts from the non-compliance, and quite frankly remarks that were made yesterday, which were entirely outrageous, pushed people into a corner and we needed to take stronger enforcement action."

Houston said he hoped more people from the gathering were fined and raised the idea of a fine for each day of the event. "I do not think the fine is sufficient and we're going to be looking at ways to change the fines going forward," he said.

He added officials were looking into if they could charge organizations, and not just individuals, after such an event.

Rankin calls for proof of vaccine for faith services

Proof of vaccination is not required at regular religious services in Nova Scotia, but is required at other events hosted by faith groups. Masking is also mandatory at all religious services.

Iain Rankin, leader of the provincial Liberal Party, said every faith service should require people to show their proof of vaccination.

"We need to be consistent with the policy," he said Wednesday. "No one's saying you can't go worship. You just need to have your vaccine if you chose to enter a building or you could be putting other people at danger."

Rankin said he followed Strang's advice when he was premier, but said that's not the same as setting policies.

"He provides advice. I did always follow the advice, and then I made a determination on the policy that was implemented to keep people safe. That's what the premier needs to do," he said. "The vaccine passport policy needs to have no exceptions."

Strang said Wednesday that there was no epidemiological reason to make faith services require proof of vaccination.

"If you look at every week, how many regular services are there are churches, synagogues, mosques, temples: we are not seeing those regular services as any significant drivers of transmission of the virus," Strang said.

Strang said most faith organizations are trying hard to follow health advice.

Before the Law

- Who is Franz Kafka?
- What is the story about?
- What does the author want to show with this story? What purpose does he seek?
- What is your interpretation of the story?
- What legal theory predominates in the story?
- What are the main symbols in the story? What do the gate, the gatekeeper, and the man symbolize?
- What would you have done if you were the man before the law?
- Suppose you are the lawyer representing the man's heirs. You file a lawsuit against the gatekeeper for having denied you the right to access to the law. Outline your legal arguments. Be as specific as possible.



Class 7 March 1 Test



Classes 8, 9 & 10: March 8, 15, and 22 Presentations

Read the following short story and discuss the following questions

GOD SEES THE TRUTH, BUT WAITS

By Lev Nikolaevich Tolstoi

IN the town of Vladímir lived a young merchant named Iván Dmítritch Aksyónof. He had two shops and a house of his own.

Aksyónof was a handsome, fair-haired, curly-headed fellow, full of fun, and very fond of singing. When quite a young man he had been given to drink, and was riotous when he had had too much, but after he married he gave up drinking, except now and then.

One summer Aksyónof was going to the Nízhny Fair, and as he bade good-bye to his family his wife said to him, 'Iván Dmítritch, do not start to-day; I have had a bad dream about you.'

Aksyónof laughed, and said, 'You are afraid that when I get to the fair I shall go on the spree.'

His wife replied: 'I do not know what I am afraid of; all I know is that I had a bad dream. I dreamt you returned from the town, and when you took off your cap I saw that your hair was quite grey.'

Aksyónof laughed. 'That's a lucky sign,' said he. 'See if I don't sell out all my goods, and bring you some presents from the fair.'

So he said good-bye to his family, and drove away.

When he had travelled half-way, he met a merchant whom he knew, and they put up at the same inn for the night. They had some tea together, and then went to bed in adjoining rooms.

It was not Aksyónof's habit to sleep late, and, wishing to travel while it was still cool, he aroused his driver before dawn, and told him to put in the horses. Then he made his way across to the landlord of the inn (who lived in a cottage at the back), paid his bill, and continued his journey.

When he had gone about twenty-five miles, he stopped for the horses to be fed. Aksyónof rested awhile in the passage of the inn, then he stepped out into the porch and, ordering a samovár[1] to be heated got out his guitar and began to play.

Suddenly a tróyka[2] drove up with tinkling bells, and an official alighted, followed by two soldiers. He came to Aksyónof and began to question him, asking him who he was and whence he came. Aksyónof answered him fully, and said, 'Won't you have some tea with me?' But the official went on cross-questioning him and asking him, 'Where did you spend last night? Were you alone, or with a fellow-merchant? Did you see the other merchant this morning? Why did you leave the inn before dawn?'

Aksyónof wondered why he was asked all these questions, but he described all that had happened, and then added, 'Why do you cross-question me as if I were a thief or a robber? I am travelling on business of my own, and there is no need to question me.'

Then the official, calling the soldiers, said, 'I am the police-officer of this district, and I question you because the merchant with whom you spent last night has been found with his throat cut. We must search your things.'

They entered the house. The soldiers and the police-officer unstrapped Aksyónof's luggage and searched it. Suddenly the officer drew a knife out of a bag, crying, 'Whose knife is this?'

Aksyónof looked, and seeing a blood-stained knife taken from his bag, he was frightened.

'How is it there is blood on this knife?'

Aksyónof tried to answer, but could hardly utter a word, and only stammered: 'I -- I don't know -- not mine.'

Then the police-officer said, 'This morning the merchant was found in bed with his throat cut. You are the only person who could have done it. The house was locked from inside, and no

one else was there. Here is this bloodstained knife in your bag, and your face and manner betray you! Tell me how you killed him, and how much money you stole?'

Aksyónof swore he had not done it; that he had not seen the merchant after they had had tea together; that he had no money except eight thousand roubles[3] of his own, and that the knife was not his. But his voice was broken, his face pale, and he trembled with fear as though he were guilty.

The police-officer ordered the soldiers to bind Aksyónof and to put him in the cart. As they tied his feet together and flung him into the cart, Aksyónof crossed himself and wept. His money and goods were taken from him, and he was sent to the nearest town and imprisoned there. Enquiries as to his character were made in Vladímir. The merchants and other inhabitants of that town said that in former days he used to drink and waste his time, but that he was a good man. Then the trial came on: he was charged with murdering a merchant from Ryazán, and robbing him of twenty thousand roubles.

His wife was in despair, and did not know what to believe. Her children were all quite small; one was a baby at her breast. Taking them all with her, she went to the town where her husband was in gaol. At first she was not allowed to see him; but, after much begging, she obtained permission from the officials, and was taken to him. When she saw her husband in prison-dress and in chains, shut up with thieves and criminals, she fell down, and did not come to her senses for a long time. Then she drew her children to her, and sat down near him. She told him of things at home, and asked about what had happened to him. He told her all, and she asked, 'What can we do now?'

'We must petition the Tsar not to let an innocent man perish.'

His wife told him that she had sent a petition to the Tsar, but that it had not been accepted.

Aksyónof did not reply, but only looked downcast.

Then his wife said, 'It was not for nothing I dreamt your hair had turned grey. You remember? You should not have started that day.' And passing her fingers through his hair, she said: 'Ványa dearest, tell your wife the truth; was it not you who did it?'

'So you, too, suspect me!' said Aksyónof, and hiding his face in his hands, he began to weep. Then a soldier came to say that the wife and children must go away; and Aksyónof said good-bye to his family for the last time.

When they were gone, Aksyónof recalled what had been said, and when he remembered that his wife also had suspected him, he said to himself, 'It seems that only God can know the truth, it is to Him alone we must appeal, and from Him alone expect mercy.'

And Aksyónof wrote no more petitions; gave up all hope, and only prayed to God.

Aksyónof was condemned to be flogged and sent to the mines. So he was flogged with a knout, and when the wounds made by the knout were healed, he was driven to Siberia with other convicts.

For twenty-six years Aksyónof lived as a convict in Siberia. His hair turned white as snow and his beard grew long, thin, and grey. All his mirth went; he stooped; he walked slowly, spoke little, and never laughed, but he often prayed.

In prison Aksyónof learnt to make boots, and earned a little money, with which he bought *The Lives of the Saints*. He read this book when there was light enough in the prison; and on Sundays in the prison-church he read the lessons and sang in the choir; for his voice was still good.

The prison authorities liked Aksyónof for his meekness, and his fellow-prisoners respected him: they called him 'Grandfather,' and 'The Saint.' When they wanted to petition the prison authorities about anything, they always made Aksyónof their spokesman, and when there were quarrels among the prisoners they came to him to put things right, and to judge the matter.

No news reached Aksyónof from his home, and he did not even know if his wife and children were still alive.

One day a fresh gang of convicts came to the prison. In the evening the old prisoners collected round the new ones and asked them what towns or villages they came from, and what they were sentenced for. Among the rest Aksyónof sat down near the new-comers, and listened with downcast air to what was said.

One of the new convicts, a tall, strong man of sixty, with a closely-cropped grey beard, was telling the others what he had been arrested for.

'Well, friends,' he said, 'I only took a horse that was tied to a sledge, and I was arrested and accused of stealing. I said I had only taken it to get home quicker, and had then let it go; besides, the driver was a personal friend of mine. So I said, "It's all right." "No," said they, "you stole it." But how or where I stole it they could not say. I once really did something wrong, and ought by rights to have come here long ago, but that time I was not found out. Now I have been sent here for nothing at all. . . . Eh, but it's lies I'm telling you; I've been to Siberia before, but I did not stay long.'

'Where are you from?' asked some one.

'From Vladímir. My family are of that town. My name is Makár, and they also call me Semyónitch.'

Aksyónof raised his head and said: 'Tell me, Semyónitch, do you know anything of the merchants Aksyónof, of Vladímir? Are they still alive?'

'Know them? Of course I do. The Aksyónofs are rich, though their father is in Siberia: a sinner like ourselves, it seems! As for you, Gran'dad, how did you come here?'

Aksyónof did not like to speak of his misfortune. He only sighed, and said, 'For my sins I have been in prison these twenty-six years.'

'What sins?' asked Makár Semyónitch.

But Aksyónof only said, 'Well, well -- I must have deserved it!' He would have said no more, but his companions told the new-comer how Aksyónof came to be in Siberia: how some one had killed a merchant and had put a knife among Aksyónof's things, and Aksyónof had been unjustly condemned.

When Makár Semyónitch heard this, he looked at Aksyónof, slapped his own knee, and exclaimed, 'Well this is wonderful! Really wonderful! But how old you've grown, Gran'dad!'

The others asked him why he was so surprised, and where he had seen Aksyónof before; but Makár Semyónitch did not reply. He only said: 'It's wonderful that we should meet here, lads!'

These words made Aksyónof wonder whether this man knew who had killed the merchant; so he said 'Perhaps, Semyónitch, you have heard of that affair or maybe you've seen me before?'

'How could I help hearing? The world's full of rumours. But it's long ago, and I've forgotten what I heard.'

'Perhaps you heard who killed the merchant?' asked Aksyónof.

Makár Semyónitch laughed, and replied, 'It must have been him in whose bag the knife was found! If some one else hid the knife there, "He's not a thief till he's caught," as the saying is. How could any one put a knife into your bag while it was under your head? It would surely have woken you up?'

When Aksyónof heard these words, he felt sure this was the man who had killed the merchant. He rose and went away. All that night Aksyónof lay awake.

He felt terribly unhappy, and all sorts of images rose in his mind. There was the image of his wife as she was when he parted from her to go to the fair. He saw her as if she were present; her face and her eyes rose before him; he heard her speak and laugh. Then he saw his children, quite little, as they were at that time: one with a little cloak on, another at his mother's breast. And then he remembered himself as he used to be -- young and merry. He remembered how he sat playing the guitar in the porch of the inn where he was arrested, and how free from care he had been. He saw, in his mind, the place where he was flogged, the executioner, and the people standing around; the chains, the convicts, all the twenty-six years of his prison life, and his premature old age. The thought of it all made him so wretched that he was ready to kill himself.

'And it's all that villain's doing!' thought Aksyónof. And his anger was so great against Makár Semyónitch that he longed for vengeance, even if he himself should perish for it. He kept repeating prayers all night, but could get no peace. During the day he did not go near Makár Semyónitch, nor even look at him.

A fortnight passed in this way. Aksyónof could not sleep at nights, and was so miserable that he did not know what to do.

One night as he was walking about the prison he noticed some earth that came rolling out from under one of the shelves on which the prisoners slept. He stopped to see what it was. Suddenly Makár Semyónitch crept out from under the shelf, and looked up at Aksyónof with frightened face. Aksyónof tried to pass without looking at him, but Makár seized his hand and told him that he had dug a hole under the wall, getting rid of the earth by putting it into his high-boots, and emptying it out every day on the road when the prisoners were driven to their work.

'Just you keep quiet, old man, and you shall get out too. If you blab they'll flog the life out of me, but I will kill you first.'

Aksyónof trembled with anger as he looked at his enemy. He drew his hand away, saying, 'I have no wish to escape, and you have no need to kill me; you killed me long ago! As to telling of you -- I may do so or not, as God shall direct.' Next day, when the convicts were led out to work, the convoy soldiers noticed that one or other of the prisoners emptied some earth out of his boots. The prison was searched, and the tunnel found. The Governor came and questioned all the prisoners to find out who had dug the hole. They all denied any knowledge of it. Those who knew, would not betray Makár Semyónitch, knowing he would be flogged almost to death. At last the Governor turned to Aksyónof, whom he knew to be a just man, and said:

'You are a truthful old man; tell me, before God, who dug the hole?'

Makár Semyónitch stood as if he were quite unconcerned, looking at the Governor and not so much as glancing at Aksyónof. Aksyónof's lips and hands trembled, and for a long time he could not utter a word. He thought, 'Why should I screen him who ruined my life? Let him pay for what I have suffered. But if I tell, they will probably flog the life out of him and maybe I suspect him wrongly. And, after all, what good would it be to me?'

'Well, old man,' repeated the Governor, 'tell us the truth: who has been digging under the wall?'

Aksyónof glanced at Makár Semyónitch, and said 'I cannot say, your honour. It is not God's will that I should tell! Do what you like with me; I am in your hands.'

However much the Governor tried, Aksyónof would say no more, and so the matter had to be left.

That night, when Aksyónof was lying on his bed and just beginning to doze, some one came quietly and sat down on his bed. He peered through the darkness and recognized Makár.

'What more do you want of me?' asked Aksyónof. 'Why have you come here?'

Makár Semyónitch was silent. So Aksyónof sat up and said, 'What do you want? Go away, or I will call the guard!'

Makár Semyónitch bent close over Aksyónof, and whispered, 'Iván Dmítritch, forgive me!'

'What for?' asked Aksyónof.

'It was I who killed the merchant and hid the knife among your things. I meant to kill you too, but I heard a noise outside; so I hid the knife in your bag and escaped out of the window.'

Aksyónof was silent, and did not know what to say. Makár Semyónitch slid off the bed-shelf and knelt upon the ground. 'Iván Dmítritch,' said he, 'forgive me! For the love of God, forgive me! I will confess that it was I who killed the merchant, and you will be released and can go to your home.'

'It is easy for you to talk,' said Aksyónof, 'but I have suffered for you these twenty-six years. Where could I go to now? . . . My wife is dead, and my children have forgotten me. I have nowhere to go. . . .'

Makár Semyónitch did not rise, but beat his head on the floor. 'Iván Dmítritch, forgive me!' he cried. 'When they flogged me with the knout it was not so hard to bear as it is to see you now . . . yet you had pity on me, and did not tell. For Christ's sake forgive me, wretch that I am!' And he began to sob.

When Aksyónof heard him sobbing he, too, began to weep.

'God will forgive you!' said he. 'Maybe I am a hundred times worse than you.' And at these words his heart grew light, and the longing for home left him. He no longer had any desire to leave the prison, but only hoped for his last hour to come.

In spite of what Aksyónof had said, Maker Semyónitch confessed his guilt. But when the order for his release came, Aksyónof was already dead.

(Written in 1872.)

- 1) Who is Tolstoy? Where was he from?
- 2) Some universities around the world are banning readings from Russian authors, including classics such as Tolstoy, because of the current situation in Ukraine. What do you think of this? Should we not read a short story or an article because it was written by a Russian author? Why or why not?
- 3) What is the story about? What does the author want to show with this story? What purpose does he seek?
- 4) What is your interpretation of the story?
- 5) Why is the story called “God Sees the Truth But Waits”?
- 6) How does God see the truth?
- 7) Near the end of the story Makar confesses his crime. Does he deserve Aksyónof’s forgiveness? Why or why not?
- 8) What advice would you give Aksyónof?
- 9) Suppose you are Ivan Aksyónof’s lawyer. Write the appeal to God using legal arguments.
- 10) Write your own ending to the story.

Grizzly Bear Spirit case

- 1) What is the case about?
- 2) What are the main arguments?
- 3) What did the court rule? Why?
- 4) Do you agree with the court’s decision? Why or why not?
- 5) Do an online search of similar cases and discuss them.

<p>Top Canadian court rejects indigenous case against new ski resort</p>

<p>Supreme court rules that public interest outweighs religious rights of the Ktunaxa Nation of British Columbia</p>
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Canada's highest court has given developers the green light to build a 6,250-bed ski resort on land considered sacred by an indigenous community in British Columbia, in a landmark court case that pitted religious rights against the controversial project.

The case centred around a proposal for a year-round ski resort on the site of an abandoned sawmill in south-eastern British Columbia. Plans for the Jumbo Glacier Resort include as many as 23 ski lifts, a gondola to ferry visitors into the soaring mountain peaks as well as accommodation for thousands of overnight guests.

The project met with stiff resistance from the Ktunaxa Nation, whose traditional connection to the land stretches back millennia. For hundreds of generations they have revered the area, which they call Qat'muk, as home of the Grizzly Bear Spirit.

The community worried that development would drive away the spirit – who figures prominently in their religious beliefs – turning their prayers and ceremonies into empty gestures. They pursued the issue in court, arguing that the destruction of their sacred site was a violation of their religious freedom.

Some in the community drew parallels with manmade places of worship such as churches or temples. “I wouldn’t even get through the gates if I was to show up at the Vatican with plans for a resort,” Joe Pierre said in an interview for a 2015 documentary against the backdrop of the region’s rugged, snow-capped mountain peaks. “It’s preposterous, right?”

The case was dismissed by several courts in British Columbia before arriving at the supreme court of Canada.

In a decision released on Thursday, the supreme court ruled that the project could proceed on the grounds of public interest. The majority of the judges found that the community’s freedom of religion had not been breached and noted that it is not the state’s duty to protect the Grizzly Bear Spirit.

“Rather, the state’s duty is to protect everyone’s freedom to hold such beliefs and to manifest them in worship and practice or by teaching and dissemination. In short, the Charter protects the freedom to worship, but does not protect the spiritual focal point of worship,” the ruling noted.

While two judges agreed that the project interferes with the Ktunaxa’s religious beliefs and practices in a way that is “more than trivial or insubstantial”, the court said that if it were to side with the Ktunaxa, it would “effectively transfer the public’s control of the use of over fifty square kilometres of land to the Ktunaxa.”

Doing so would enable the community to dictate the use of the land, setting a precedent that could run counter to public interest. “A religious group would therefore be able to regulate the use of a vast expanse of public land so that it conforms to its religious belief.”

The developers had made efforts to accommodate the Ktunaxa’s concerns, the court added, noting that plans for a recreational area and ski lifts in areas frequented by grizzly bears were removed from the project.

The Ktunaxa Nation said on Thursday that they were disappointed by the decision. “With this decision, the supreme court of Canada is telling every indigenous person in Canada that your culture, history and spirituality, all deeply linked to the land, are not worthy of legal protection from the constant threat of destruction,” said Kathryn Teneese, the Ktunaxa Nation council chair.

“We’re not opposed to people experiencing that place, we’re not opposed to people going there,” she added. “And I want to make that very clear – we’re not saying it’s off limits, we’re just saying it’s off limits to development.”

Those managing the project said they welcomed the decision but were not overly surprised, given the previous rulings by lower courts. “In our view it would have required a significant change of thought in order to overturn the lower court rulings,” said Tom Oberti, vice-president of the Pheidias Group.

While the government of British Columbia gave its approval to the project in 2012, he was unsure of what the timeline of the project would be. “Basically we’ve been on standby and now that there’s a decision, the board of Glacier Resorts needs to take steps forward.”

A rally in remembrance of the missing and murdered women and girls in Vancouver’s Downtown Eastside. ‘The celebration of occupation of stolen land is really hard to wrap my head around.’

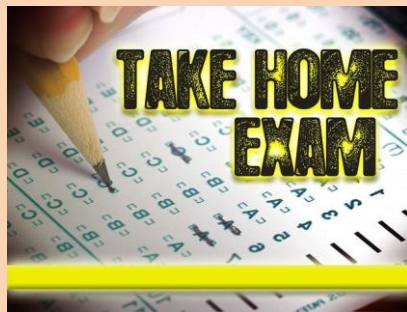
The decision comes amid Canada’s fledgling efforts to confront its historical mistreatment of the country’s indigenous population, a reality acknowledged by the country’s highest court on Thursday. “We arrive at these conclusions cognizant of the importance of protecting Indigenous religious beliefs and practices, and the place of such protection in achieving reconciliation between Indigenous peoples and non-Indigenous communities,” it noted in its ruling.

Teneese of the Ktunaxa Nation said the court’s actions failed to lived up to this promise. “Reconciliation is more than words, it is actions,” she said.

Lawyers for the Ktunaxa noted that the ruling made no mention of the United Nations Declaration on the Rights of Indigenous Peoples which highlights the obligation of states to protect places of spiritual importance. Canada signed on to the declaration last year.

She pointed to the court's argument that their decision was grounded in the public interest. "Are we not part of the public? Are we something so separate that our views need to be in another box? I would hope not. I would hope that's not what this country is about."

Class 11 March 29: Review and feedback Distribution of final take-home



Class 12 April 4: Submission of final take-home



* TRIGGER WARNINGS



Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content.

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