

## **CRAIG JONES OPENING REMARKS**

Well, thank you for the kind introduction and for inviting me here today. My participation here actually grew out of a fascinating lunch discussion I had with Iain who is keenly interested in topics like the one we're discussing tonight, and I think he suggested me to Myra as I might want to participate here, and I'm certainly happy to be here and grateful to be invited. I'm going to come at this discussion from the position of a civil libertarian, which is the only real position I know, and I'll try to explain our position on it because a lot of people see us as a group that sort of flip-flops from supporting one point of view to supporting another and I'll try to explain why I believe that isn't so.

But maybe to get started I should say that civil libertarians are by nature the kind of people who in elementary school, when everyone was picking teams in sports, would vie for the position of referee. Someone asked me the other day: "Why did the Canadian chicken cross the road? To get to the middle." The civil libertarian is something like that, sort of a centre seeker.

I should say, though, something of a disclaimer, that when this topic came up and I was discussing it with some of my colleagues and the Executive of the Association, I found quite a marked variety of views on the topic. And we don't have an actual position on it, haven't had our meeting on this topic yet, of conscientious objection, per se. So I should caution everyone by saying that the views I'm going to represent tonight are more my own than those of the Association with respect to that particular topic.

Secondly, I should say that I think I'm here tonight more to listen than to talk and, hopefully, more to learn than to teach because this is a new area for me, one that I find very interesting but certainly not a field of my expertise.

And, as a civil libertarian, I guess I come here as well with some contradictory positions, or at least positions, which might seem contradictory. I am an atheist but one who has been a fairly vigorous defender of religious freedom. On the question of abortion, I believe that a woman should have the right to choose to terminate a pregnancy under almost any circumstances; yet I have also defended in public and in the courts the right of students at UBC to say abortion is morally and fundamentally wrong.

Finally, I should say that, while I believe strongly in the separation of church and state, I also recognize separation can bring a moral vacuum that can at times be profoundly harmful.

A few years ago I took it upon myself to research an old American case that's familiar to a lot of you. Its called *Tennessee v. Scopes*, and it's invoked a lot of the time for, what I think, are all the wrong reasons. That was the trial of John T. Scopes who was a teacher in Tennessee, who taught evolution, and Tennessee law forbade this and so he was prosecuted in a big show trial.

And on one side of this debate was Clarence Darrow, representing the American Civil Liberties Union coming at it from a very sort of modernist, northern US, civil libertarian

perspective and a very secular perspective too; and on the other side was, among others, William Jennings Bryan, who was another very famous progressive American lawyer, someone who I tremendously admire and someone that I always felt with respect to the *Scopes* trial was just plain wrong, that he in that case couldn't get over what I had deemed to be his religious prejudices to consider the issue on its merits.

So when I started looking at the case, that's really what I expected to find confirmation of, that William Jennings Bryan was -- as I think H. L. Mencken called him, the tin-pot pope of the Coca-Cola belt -- sort of defender of prejudice and ignorance and Clarence Darrow was the champion of all that was smart and progressive.

But I was really aided in my research by being able to get a copy of a book called *A Civic Biology* by a fellow named George W. Hunter, which is the book that Scopes was actually teaching, that he was prosecuted for teaching; the evolutionary text, if you will. And I was surprised that although the book contained a fairly straightforward account of evolution, as it was then understood, it was also mixed with a pretty nasty message of pure social Darwinism.

One passage said that, of the seven world races, the white race of Europe and America was most highly evolved and was using evolution in that case to support racism. Another suggested that sterilization was the only humane way of dealing with those people, who were at the time called imbeciles, so that they wouldn't pass on their genes. And there was one passage in the book that I remember still that said if these people were animals, we would just put them to death but our humanity doesn't permit us to do so, so we should just sterilize them.

So it was, in short, a nasty, racist, eugenicist book which would have been completely at home in the curriculum of Nazi Germany but was also at home in North America where racism was the institutional norm and eugenics laws prevailed through most of the century, including here in British Columbia. That was what passed for secular education in 1925. That was what Clarence Darrow was defending, and that was exactly what William Jennings Bryan feared would lead to a worldwide catastrophe. In retrospect, Bryan was right.

So now I'm faced with a conundrum and, basically, my inclination when looking at contemporary cases like the Surrey School Board, for instance, is to say as Darrow might have done, despite what the community thinks or what the school board thinks you have to teach the curriculum as the rest of the province, through the representatives, decree.

But then I think of John Scopes in 1925 and *A Civic Biology* by George W. Hunter. If a teacher looking at that text in that era had realized the danger and said on moral grounds that racism was wrong, that eugenics was wrong, that the science which Hunter used to back up his bigotry was bad science, if that teacher refused to teach it, should he or she be punished? And if I allow such a teacher to refuse on secular grounds, would I also allow another to demur on grounds which were religious as with, for instance, William Jennings Bryan?

And after a lot of thought on the school curriculum, I suppose my answer would be that, the dangers notwithstanding, society should have a right to set the curriculum in public schools. I believe the dangers that might be created by relinquishing central control would be greater than those of exerting it would. I do not, however, adopt this position glibly or without reservation. Any such central control must -- and I emphasize must -- be accompanied by a system sufficiently open and democratic so that those opposed to the mainstream may have their voice heard by the majority, and, if they are right, to persuade the majority of that.

Sometime after the Surrey School Board case was launched by members of the Gay and Lesbian Educators and after the BCCLA had committed to intervening on the side of those GALE teachers on the "church and state" issue, another problem, that you may be aware of, arose: a group of parents who were disenchanted by the mainstream curriculum being taught in their schools sought to discourage teaching on issues which the parents considered morally sensitive. The document that they circulated, which I believe was called a Parents' Bill of Rights, was in the form of petition to the schools.

Then some of the same teachers who launched the case over children's books and [led] support in that respect filed a Human Rights complaint against the parents group saying that they were discriminating against them. Now, the BCCLA is on the other side defending the right of the parents to free expression, free association, and the right to petition government.

This is why I often say a civil libertarian never keeps friends for very long.

Another case, which arose about the same time also, found us on the opposite side of our traditional allies in the gay and lesbian community, and that was the case of Trinity Western University when we intervened on the side of Trinity Western.

When I was approached with tonight's topic of conscientious objection, I tried to determine how I feel about it. I spoke to lawyers in our labour and employment groups and the health-law field at our firm. I suppose that believing in free speech means I'm in favor of objection of almost any sort. I have defended in the past civil disobedience as a principle. But conscientious objection is not -- in the case of, say, nurses, pharmacists, or teachers - - civil disobedience in that no law is being broken. Neither is conscientious objection of the traditional type when dealing with the Doukabours, Hasidic Jews, or others who wouldn't choose military service because there is no conscription. People are free to choose other careers in ways that soldiers often are not.

There has never been a recognized right to pursue one's own chosen occupation. No one has a right to be a lawyer, not just because he or she wants to be; but at the same time we do recognize a right to be free from discrimination on certain grounds. You can be prevented from becoming a lawyer because you're stupid - although some still seem to slip through - but you cannot be prevented from being a lawyer because you are black, female, or Christian.

Employment laws try to deal with the situation from the point of view not as a right, which rests in the conscientious objector but, rather, a duty which burdens the employer. One has a duty to reasonably accommodate the religion of one's employees; generally that means to accommodate to the point of undue hardship.

With respect to the provision of public services, though, there are also some social ends which must be served. If society believes, for instance, that abortion is a medical procedure that should be available to every female citizen who chooses it, then in a small town permitting conscientious objection among doctors or nurses may have the result of denying that right. Now, we can contrast that with Vancouver with numerous hospitals including some, which, because of their religious convictions, do not perform abortions. In the city, in other words, conscientious objectors may move to another hospital and still find gainful employment.

Of course, whether there is reasonable accommodation can vary from one situation to the next. There are some religious groups who strongly oppose blood transfusions or organ

transplants on religious grounds. Are they to be allowed to 'opt out' of participating in these procedures?

Consider also the complications with abortions themselves. The fact is that almost everybody, on religious grounds or otherwise, draws the line in a different place. For every nurse who opposes abortion outright, there may be another who will assist in the procedure but only in the first trimester, there may be another who will not perform in late-term abortions, and another whose conscience only allows her to assist in abortion in cases of rape, incest, or threat to life. So you can imagine the difficulty then faced by a hospital in putting together the surgical team.

My father was fond of saying that "For every complex problem there is a simple solution, and it is always wrong." And I am not, therefore, here to offer a simple solution to this complex conundrum. I will listen with attention and interest to any and all suggestions offered on how these competing interests might be reconciled. I thank you for your time and I look forward to this evening.

## **CRAIG JONES FOLLOW UP**

As I promised, I've learned an awful lot already. I just wanted to address a few things Iain said because I think he and I agree with one another in a lot of the details of what was said but I think conceptually we've got perhaps one difference or perhaps a misunderstanding.

He was speaking with respect to school boards about the community and the students and parents and teachers driving the bureaucracy which, in turn, drives the ministry which, in turn, drives the government; and that was the way he thought it should go, from a community driven perspective opposed to a top down sort of dictatorial system.

And he talked a lot about the relationship between the state and the individual and invoked Thomas Paine who, of course, was writing in a day when the state was not at all representative of the individuals in either the United States or England.

And I think that's the difference, we have to be careful when we're invoking Paine or some of the Enlightenment period writers because the idea of the sovereign citizen, the idea of the modern democratic citizen is that the state is the citizen, the citizen is the state.

So when we're talking about top down control, it's not some faceless Crown up there doing it, it's not a king on a throne; it is, in effect, the citizens of the country. So whether or not the commands, if you will, flow from the bottom up or the top down, the effect should be similar in that it will still be a citizen driven effect.

The question with respect to school boards in particular is the localization, whether or not - - because if it's top down driven by the citizens dictating, if you will, from above, then what you're going to get is a greater degree of homogeneity, similarity across the province, across all the school boards, and to an extent I think that's desirable. And to the extent it's bottom driven, you're going to get a diversity that reflects the individual communities, and to an extent that's desirable as well. But I think we have to step back from saying that one is preferable over the other, so that's the point I make on that.

And I'll also point out, I suppose, from historical perspective a lot of the stuff we're discussing here, of course, isn't new. This velvet glove oppression, as Iain referred to it, is not a new development. The public education, education in general, has always reflected a more or less dictatorial view that's established from society. I would suggest that it's much less so nowadays than it has been at several times past.

And likewise the breakdown of the objective moral good that Iain talked about in religions is something that people have been talking about for thousands of years too. I'm reminded of Socrates' conversation with Euthyphro where he asked 'is something impious because the gods disapprove of it or do the gods disapprove of it because it's impious?'

These are age-old questions that we're still grappling with today, maybe more effectively or maybe less effectively. But we have to be careful, I think, not to see all of our problems as something brand new that's emergent here. This is an ongoing process and we come to it, generation after generation, as neophytes, but I think we can learn a lot from history.