The Fourth Solitude:

Religious Motivation as an Inconvenient Truth in

Canadian Environmental Policy and Legislation

A Thesis

In the Department

of

Religion

Presented in Partial Fulfillment of the Requirements

For the Degree of Doctor of Philosophy (in Religion) at

Concordia University

Montréal, Quebec, Canada

April 2011

ABSTRACT

The Fourth Solitude: Religious Motivation as an Inconvenient Truth in Canadian Environmental Policy and Legislation

Mary I. Hale, PhD.

Concordia University, 2011

This study is a critical examination of a mythology held by a particular population of the political, economic, cultural and academic elite in Canada that the Canadian political landscape is secular. This mythology also holds that religious worldviews are detrimental, if not antithetical, to a modern, liberal Western democracy. In that context, Canada appears to have a "fourth solitude", a cohort whose religious worldview motivates and, in some cases, informs their political activities. They form a solitude because they operate in the political world, for the most part, without public mention of how and why they are motivated by their religious ideals to take part in the political landscape. This lack of public discourse is not about people being afraid to mention their religious worldviews *per se* but about an atmosphere that makes it difficult to discuss those worldviews as pertinent and rational in the context of the public sphere. The study explores why this might be so and what the societal ramifications of the existence of such a solitude might be. Using environmental legislation as a focal point, this study looks at secularization theories, environmental and legal histories and a case study to identify and analyze the intersection of religious worldviews with the political process, policies and ensuing legislation.

The goal of this research is to show how religious voices within the political landscape of a modern liberal democracy are extant and that they are not inherently detrimental to democracy or to the modern State. In fact, further argument will demonstrate that denying the legitimacy of those voices in the public sphere undermines current ideals of plurality and secularity. Furthermore, it will be argued that the persistence of perpetuating a mythology of secularity that posits the

marginalization of religious worldviews as a core tenet of modernity can have the effect of suppressing or at least by-passing moderate religious voices and thus allow for the voices of extremism to be co-opted by those in power in ways that are not transparent, depriving the polis of the data it may need to make informed choices in the public sphere.

Acknowledgements

One cannot undertake the massive effort of a PhD without a plethora of support and the debt of gratitude I owe to my colleagues, friends and family is incalculable. Dr. Paula Frederiksen at Boston University started me on this journey and while at times I have not known whether to thank or to curse her, in the end thankfulness has won out and I start out my litany of thanks with her. One of the most brilliant and generous scholars I have had the privilege to have studied with, she continues to be an inspiration lo these many years later.

I have been fortunate to have been affiliated with two extraordinary Departments of Religion during the course of this degree—Concordia University at Montreal is home to as gracious and supportive and challenging a group of scholars as any graduate student could wish—not every department has found a way to make its graduate students feel like peers with their professors but Concordia has and we all benefit from this achievement. Dr. Norma Joseph and Dr. Leslie Orr have been consistent in their encouragement and understanding and I am grateful to have been the recipient of their intellectual rigour, good humour and pedagogical modelling. Dr. Michael Oppenheim, also has challenged me to think beyond the tradition in which I was professionally trained and I have benefited greatly as a scholar and as a teacher from his example. My director, Dr. Donald Boisvert is the epitome of an exemplary thesis director. It is not often that grace, good humour, intellectual rigour and good pedagogical methodology combine in one person. I have been fortunate to have found that in Dr. Boisvert. Finally, there is one person to whom all the graduate students in Concordia's Religious Studies Department owe the deepest debts of gratitude and that is Tina Montadon, the Graduate Program Assistant, miracle worker, hand holder, whine stopper and the soul of encouragement. From finding a place where I could nurse my

Finally, to my partner Blake Wright. We are blessed. Madeleine L'Engle referred to her marriage as a two-part invention, after J.S. Bach's contrapuntal musical exercises. Our marriage is such an invention—a meeting of hearts and minds and of sometimes oppositional temperaments that allows for mostly beautiful, if complex, harmonies and the occasional dissonance—always resolved before too much sustained discomfort. The past ten years have been a challenge, a joy, a heartbreak and a testament to what love can endure and still emerge intact and triumphant. Against all odds, we're the big door prize. It is to Blake and to all that we continue to teach one another that this is dedicated.

Table of Contents

<u>Introduction</u>

The subject of this study is a critical examination of a mythology held by a particular population of the political, economic, cultural and academic elite in Canada that the Canadian political landscape is secular. This mythology also holds that religious worldviews are detrimental, if not antithetical, to a modern, liberal, Western democracy. In that context, I put forth the argument that Canada appears to have a "fourth solitude", a cohort whose religious worldview motivates and, in some cases, informs their political activities. They form a solitude because they operate in the political world, for the most part, without public mention of how and why they are motivated by their religious ideals to take part in the political landscape. This lack of public discourse is not about people being afraid to mention their religious worldviews *per se* but about an atmosphere that makes it difficult to discuss those worldviews as pertinent and rational in the context of the public sphere. The study explores why this might be so and what the societal ramifications of the existence of such a solitude might be.

The goal of this research is to show how religious voices within the political landscape of a modern liberal democracy are extant and that they are not inherently detrimental to democracy or to the modern State. In fact, further argument will demonstrate that denying the legitimacy of those voices in the public sphere undermines current ideals of plurality and secularity. Furthermore, it will be argued that the persistence of perpetuating a mythology of secularity that posits the marginalization of religious worldviews as a core tenet of modernity can have the effect of suppressing or at least by-passing moderate religious voices and thus allow for the voices of extremism to be co-opted by those in power in ways that are not transparent, depriving the polis of the data it may need to make informed choices in the public sphere.

Since the Canadian political landscape is vast and a dissertation is supposed to be narrow, the study will use Canadian environmental policy and legislation at the federal level as the context for exploration. The environment is arguably one of the last issues for which it is acceptable to publicly hold a religious point of view while also lobbying for political position. By looking at the ways in which religious worldviews have often combined with political savvy to bring environmental issues to the fore without threatening an imposition of a theocracy, this study hopes to extrapolate that such might be the case in other arenas of the political sphere. Although federal environmental legislation will be looked at somewhat closely as a genre, the study will ultimately focus on the *Species at Risk Act* (*SARA*).

Status of current research:

Some work has been done on the lack of correlation with denominational beliefs and one's stance on environmental issues. No study has been done that examines the crafting and lobbying of and around environmental legislation that incorporates the religious beliefs of the players involved. It is my belief that such a study will reveal a microcosm of the greater whole in Canadian politics. This microcosm, I will show, includes passionate people of faith quietly using their religious scruples and the teachings of their respective institutions as partial motivators for the political work they do.

Beginnings

The problem that led to the formulation of my inquiry lies in the rise of the religious right in the United States in the early 1980's and the subsequent literature addressing a global rise in religious fundamentalism. Martin Marty, the American church historian, has remarked that this rise in fundamentalism took sociologists, religious scholars and historians by surprise and quite a respectable body of research has risen in response. In Canada the

response from the mainstream intellectual elite has been one of surprise and suspicion. A bevy of literature, from theological to sociological, meant to keep the creeping power of the religious right from seeping across our borders, arose that affirmed Canada's inherent secularism—defined narrowly, in Charles Taylor's terms, as the absence of religion from the public sphere. But in the 1990's, a school of thought arose that challenged the notion that "religion has become a matter of purely private concern,"[1] and argued that religion (specifically Christianity) moved "decisively out of the centres of power represented by government and economics, and into civil society".[2] This shift, argues Van Die, has placed religious institutions and voices to the voluntary sector of public life where they remain an enriching entity in our democracy. The current research fails to examine the religious voices and institutions within the centres of power, named by Van Die as government and economics. To be sure, religious institutions no longer form what Van Die refers to as a "shadow establishment", but neither have they been relegated quite so neatly into the voluntary sector. Indeed, non-Christian religions never were part of a "shadow establishment", something that often gets overlooked in the discussion. This notion is intriguing in itself and further work should be done to explore its implications. What is needed now is a model that promotes openness to constructive diversity that is inclusive of religion. Only then can Canada truly be called secular; "… a condition in which our experience of and search for fullness occurs…something we all share, believers and unbelievers alike." [3]

In addition, the current research has not yet looked upon the emergence of environmental policy and legislation as a rich source of understanding how a disparity of communities work together fruitfully under the aegis of a secular society. The only way of knowing whether or not voices raised from within the polis are constructive is for them to

be heard and measured against the communal standards society has set in place. Voices that are not heard or that are devalued before being weighed soberly are lost and their owners disenfranchised without a democratic hearing. It is in the environmental debates and the ensuing legislation and policies that we are seeing public discourse shaped, in part, by religious motivations. Current conventional wisdom says that, in order to have legitimacy in the current political climate, religious motivation cannot be the stated primary motivator. However, that same scientific evidence, from which many people of faith have learned to argue in the public sector, has also been derided and attempts made to de-bunk it. The responses to this derision have been quite interesting: what has happened in some sense is a two-pronged approach with the scientists who claim legitimacy from the venerable institutions of learning untainted by sponsorship money on one flank and on the other, the religiously motivated who have stepped back into the fray as unabashedly religious and have made this a moral issue—supported by legitimate science, but a moral issue nonetheless.

Definitions

There will obviously be terms which will be defined in context; however, some terms that are used with great regularity are defined below in the interest of clarity and ease of reference.

Religion

Definitions of religion abound and each scholar must choose to accept or reject definitions based on their own work, the arguments of others, and their own philosophical school of thought. However, in a work that is fundamentally about religion, a paragraph outlining just what that term might mean in context is warranted. As Bron Taylor remarks in the Introduction to *The Encyclopedia of Religion and Nature, "*Despite (a) reluctance to impose a definition of religion…any study has to be guided by a consistent set of standards and has

to be clear about its subject matter."[4] This is especially so when one is dealing not only with Western religious traditions, i.e. Christianity, Judaism and Islam but with Aboriginal worldviews. At the outset, it must be stated that it is difficult to actually define religion in terms of Aboriginal traditions because the term connotes a type of taxonomy that is foreign to Aboriginal worldviews. That being the case, and the definitions of religion so numerous it is perhaps helpful for purposes of clarification to discuss just what religion is *not* in the context of this study, as well as what it *is*.

The Encyclopedia of Religion and Nature takes its understanding of religion from David Chidester, and, as such, defines it very broadly as "that definition of human experience engaged with sacred norms, which are related to transformative forces and powers and which people consider to be dangerous and/or beneficent and/or meaningful in some ultimate way."[5] While, at first glance, this definition seems to serve the needs of a work that encompasses both Western and North American Aboriginal religious worldviews, it is far, far too broad for the purposes of this study. In terms of Aboriginal worldviews within the context of this study, the above definition, while it certainly addresses the non-linear nature of those worldviews, it is still not specific enough for the purposes of this study. Here, Aboriginal worldviews are examined specifically in the context of embeddedness with the natural world and are defined functionally in the pertinent chapter.

In addition, the above definition is so broad as to encompass phenomenon outside the purview of this study. With this definition, anything from baseball to hockey to market capitalism can claim religious status and be analyzed accordingly.[6] These are all interesting and pithy exercises in social and cultural commentary but again, they are tangential to the heart of the present work, whose primary purpose is to examine traditional Western religious worldviews in the context of the Canadian political landscape to discover whether or not

they are detrimental to the legislative process. Any definition of religion for the purposes of this study must establish firmer parameters in order not to be too unwieldy.

As well, religion in this study is not simply a collective of rituals and symbols. Nor is it merely a concept or series of concepts around which large numbers of people unite—although these are important parts of a religion. It is not merely an ethical system (although it encompasses this) or an economic theory. Nor, for the purposes of this study, is religion defined as a system of faith. Although some scholars do use the terms interchangeably, I argue that this is too limiting for the purposes of this study.[7] Although faith is, most certainly an important *component* in many religious worldviews, to use the terms interchangeably would deny the complex role that religion plays in the spheres of human interaction of which this study is concerned. Faith is, by definition, believing without actually having concrete evidence to support that belief. Religion, as stated above, can be about faith, but it is also about *being* a certain way in the world. And it is also about responding to the larger existential questions mentioned previously.[8]

Religion, in this study, is taken to incorporate the institutions, communities and individual practices that work in concert with rituals and symbols to provide answers to the larger questions of existence (i.e. Why are we here? What is our purpose? Why do we die? What happens before/after this life begins/ends?). It is also taken etymologically: from *Re-* to do again and from *lig-* to tie or bind. In the Aboriginal sense this means the rituals, symbols and beliefs that unite community daily, monthly, yearly—eternally. In the Aboriginal sense, this phenomenon is integral to life itself and therefore cannot accurately be spoken of as distinct from all other aspects of being in the world. From the Western (Christian) perspective, religion has become distinct from other ways of being. But, it is still taken to be a way of being in the world that transcends mundane human existence by proposing

standards of being in relationship that ennoble rather than degrade human potential. This way of being is both communal and individual. That the communal aspect is also, in part, institutional is vital. Traditional Western Christianity is inherently institutional and that aspect plays into the argument of how religious worldviews remain relevant in the modern political landscape. This definition is not all encompassing. But it does serve as contrast to other definitions that are so encompassing as to allow for every activity for which a person, community, or country feels passion to be labeled as "religion"—thus making my job fantastically unwieldy. In this study the phrase "religious worldview" is used extensively. Having outlined what is meant by "religion", I will now turn to an explanation of "worldview".

Worldview

"Worldview" is used here in the sense that Ninian Smart applied it—as a framework of ideas and beliefs through which an individual interprets and interacts with the world.[9] A "religious worldview" is a way of being in the world that is fundamentally religious—that is, religion is an integral component of the way a person conceives of him or herself as an agent in the world. It is understood in this study that having a religious worldview does not preclude one from having other, equally integral worldviews—one can embrace a religious and a scientific worldview, for example. Therefore, a religious worldview is not the *only* component of one's overall worldview, but it is an integral fact of it.[10]

Political Landscape

The term "political landscape" is used to connote the realm of political institutions and those within those institutions who have political power in Canada—including (but not limited to) elected officials, Senators, Members of Privy Council, and political appointees who run, among other things, the Prime Minister's Office and higher-level civil servants

such as deputy ministers.[11] Although the individuals listed above theoretically also inhabit the public sphere in their professional capacities, they will be considered (with two or three exceptions that will be addressed in later chapters) as inhabitants of the political landscape. These institutions, and the political landscape itself, are distinct from the public sphere.

Public and Private Spheres

This work uses the concept of the private sphere to mean, quite simply, that which is not in the public sphere. That is, the spaces in which people live and move and have their being when they are in the relative privacy of their own home and with their family and intimate friends. The private sphere is outside the purview of the State and also encompasses personal concerns as opposed to public ones. It should be noted from the outset that this study posits that the boundaries between the public and the private are permeable and that the actions and concerns held in private often affect the public ones and *vice versa.*

Public sphere is used in two ways in this study. First, it is used to refer to the spaces in society and in one's life that are public. This means interactions with the community, institutions and activities of the state that define society (government, educational institutions, etc.). This will be the definition referred to most often in the work.

The second definition of public sphere is more complex and will be referred to explicitly as "Taylor's construct of the public sphere" when used. This definition is taken from Charles Taylor's discussion in *A Secular Age,*[12] which itself incorporates elements of Jürgen Habermas' *The Structural Transformation of the Public Sphere,*[13] and Michael Warner's *The Letters of the Republic.*[14] Taylor defines the public sphere as "…a meta-topical space, in which members of society (can) exchange ideas and come to a common mind.[15] As such, it (constitutes) a meta-topical agency, but one which is understood to exist independent of the

political constitution of society and completely in profane time."[16] Taylor explains meta-topical as common space that is non-local, meaning that it transcends the physical common space that people may share while participating in a purposeful activity: "…it knits together a plurality of such spaces into one larger space of non-assembly."[17] Thus, Rex Murphy's political editorial on last night's news goes from a late-night discussion with one's partner before bed to someone else's book club conversation the following afternoon to anonymous comments on the CBC's website and so on. There is a common space wherein the topic is being discussed and analyzed, but the places in which those conversations occur are myriad.[18]

The public sphere is also extra-political and therefore distinct from the political landscape. The public sphere is where discussions and debates over issues arise in the common mind. The classical understanding of this is that what arises from the public sphere is enlightened, informed debate that has not been influenced by the will of those in power and is thus truly the will of the people and should be taken seriously by government in a paradigm that posits that the people are sovereign.[19] That this is the actual case (now or at any time since the 18th century when the concept of a public sphere arose) is debatable and not particularly relevant for the purposes at hand. What is important to understand is that the public sphere exists with the idea that "political power must be supervised and checked by something outside."[20] The public sphere, through reasoned debate (in theory), tempers political power[21]—it is "…a discourse of reason *on* and *to* power, rather than *by* power.[22]

That the public sphere exists in profane time is important, in part, because it leads into notions of secularity. Taylor uses the concept of profane time as one way to differentiate what happened with the rise of the public sphere in the 18th century from other occurrences of places and spaces of public discourse. Using a very early definition of secular

9

that referred to something as 'of the age', that is, pertaining to profane time," Taylor argues that the notion of the public sphere that arose in the 18th century incorporated a sense of profane time as opposed to "high time"—that is, time that was outside of the temporal continuum and akin to the notion of eternity.[23] This is significant for it links with the notion that human society did not necessarily need to justify itself in a framework proscribed by either a deity or a system of laws that linked humanity to a higher plane or purpose.[24] Taylor writes, in the context of the public sphere, that "modern 'secularization' can be seen from one angle as the rejection of higher times and the positing of time as purely profane. Hence, the public sphere is not dependent upon the precepts of transcendent legitimators (i.e. God or myths of origin that legitimate societal legal systems) but upon the authority it grants itself by virtue of its social imaginary. In other words, "…common agency (i.e. the public sphere) arises simply in and as a precipitate of common action."[25] This is important in terms of this study for part of the intention of this work is to explore current meanings of the term "secular" in order to determine whether or not the Canadian political landscape is or is not secular. Thus one connotation of secular is that it denotes societies which see themselves as operating firmly in temporal time and space without needing to be legitimized by cultural myths and/or religious authority.[26] Definitions of secularization are key components to the discourse on secularization theory.

Methodology

The study explores the topic from four distinct vantage points: Canadian Church History, Environmental History, Secularization Theory, History of Canadian Environmental Policy and Legislation, and a Case Study incorporating the story of the *Species At Risk Act* and two of the major players in that story.

Canadian Church History

Canada grows ever richer with religious plurality. As well, Canadian religious history is not complete without a judicious exploration of the contributions of a multiplicity of religious worldviews. However, except for an exploration of Aboriginal worldviews—which are inherently what Westerners would call "religious"—this particular study concentrates on Christianity as the focal point of discussions regarding religious worldviews. This is done entirely for the sake of brevity and it is hoped that in a later work the contributions of other religious worldviews can be examined.

The chapter on Canadian Church history will set the foundation for an historical understanding of the Church, in many of its manifestations, in Canada—pre- and post-Confederation. The purpose here is to use an understanding of the position of the Church with the State and with the population at large to undergird a later discussion regarding the ways in which Christian religious worldviews have influenced and continue to influence environmental policy and legislation in Canada. Key components of this chapter will be issues of Establishment and Disestablishment; the fall of the Gallican and the rise of the Ultramontane Church in Quebec; fragmented Prostestantism; the rise and fall of Churches as shadow establishments in Canada; and the fundamental theological threads of dominion and sustainability that inform notions of how humanity relates to the natural world—a key issue in the development of environmental policy and legislation.

Environmental History

This chapter provides background for a context of the development of environmental policy in Aboriginal communities and in the communities formed by Europeans in what later became known as Canada. This portion of the study explores chronologies of environmental policies for the Aboriginal, the (mainly Western) European, and the Canadian communities. The discussion moves within a framework informed, in

part, by environmental history and bioregionalism. The overall contention of the chapter is that culture and space create place and that this notion is inextricably intertwined with ideology in the composing of public policy.[27]

This chapter introduces the notions of "embeddedness" and "disembeddedness" to discuss the relationship human beings have with the natural world. It argues that there are varying degrees of an understanding of human embeddedness in the natural world and that those understandings are profoundly shaped by religion. The argument imagines a spectrum with whole embeddedness on the one end and complete disembeddedness on the other. At the former end are Aboriginal worldviews which envision complete and egalitarian relationships in the natural world. This is a non-hierarchical, holistic model wherein humanity does not stand above, below or outside of the natural world. In this conception, humanity is no more special or valuable than is the rest of the cosmos. This does not mean that humanity does not have particular gifts (such as consciousness) that give it responsibilities that are different from that of Raven or Turtle (for example) but those responsibilities have no more value than those of Raven of Turtle. It is a worldview of radical egalitarianism. On the other end of the spectrum (and embodied by some particular Christian paradigms) is situated a worldview that sees humanity as being, by nature, above the natural world, even as they are doomed to inhabit it. Humanity is in the world but not of it. In this paradigm, the universe operates as a hierarchy where the natural world is conceived as a place of punishment and travail where humanity has been banished until such time as they might find themselves reunited in their "true home" with God. The relationship that humanity has with the natural world in this purview is that of dominator—humanity is seen as having been given the mandate to use the natural world to its own ends, to advance human flourishing. The nuances of these two oppositional points of view, the

12

variety of imagined states of human embeddedness or disembeddedness in the natural world, and the theological notions of dominion and stewardship will also be investigated.

In the context of the discussion of dominion and stewardship, this chapter takes the opportunity to follow, in a very cursory way, the development of modernity through a discussion of Charles Taylor's observations regarding the rise of social imaginaries that stemmed from the Reformation and revolved around issues of creating order out of chaos and maintaining equilibrium while scientific thought and European ethnocentrism developed and intertwined with the rise of modernity. The chapter argues that this modern social imaginary gave rise to a theologically supported worldview of domination that has been dominant in Canadian environmental policy from before Confederation.

Secularization Theory

It is important to note at the outset that the issue of whether or not religion is actually in decline in the West—a key point of contention in the field of secularization studies—will not be addressed in this work. Many fine studies have been done in a variety of fields (religion, sociology, anthropology, history, political science, to name but a few) utilizing surveys and maps and other quantitative data and scholars continue to argue the interpretation of that data. The interpretation and conclusions are important, but outside the purview of this study which is more interested in which (if any) theory of secularization might be most helpful in advancing its exploration. Hence, the chapter on secularization theory is an exploration of a few of the varieties of secularization theory, their history, and the major proponents of each theory.

The categories being explored are the "classical" or what Charles Taylor refers to as the "orthodox"; the neosecularizationists; and the postsecularizationists. Orthodox secularization theory is represented in this study by Steve Bruce (*God is Dead)* who states that

secularization should be defined as the inevitable decline of religion in modern society due to a number of factors. The proponents of this definition do not necessarily agree with the premise that religion will completely disappear, but do argue that religion is becoming and will continue to become less influential, authoritative and relevant in both public and private spheres. This theory sees religion in society as functional. There are nuances to these arguments, of course, that will be explored in depth in the chapter.

Neosecularizationists is a term coined by David Yamane ("Secularization on Trial: In Defense of a Neosecularization Paradigm"), a sociologist at Wake Forest University who builds on the work of José Casanova (*Public Religions in the Modern World*), Mark Chaves ("Secularization as Declining Religious Authority") and Olivier Tschannen ("Sociological Controversies in Perspective") to construct a definition of secular that is founded on the importance of differentiation but limits the definition to differentiation of structures and institutions. Thus, the presumption of differentiation as leading to the decline of individual religious belief and practice is abandoned in this construction, "what has changed," writes Tschannen (72), "is not so much the individual's relationship to religion as the position of religion within the social structure." For these proponents, all in varying degrees with nuances that will be explored, differentiation *is* secularization.[28]

Postsecularizationists, epitomized by Rodney Stark and Roger Finke, refute the contention that religion is declining in response to modernity and argue that the separation of church and state actually increases religious activity. Postsecularizationists are in the line with other scholars, like Jeffrey Hadden, who assert that secularization theory needs to be abandoned as its tenets are false. This version of secularization theory is built, in part, upon rational choice theory and the idea that religion in the Western world can be thought of as its

own supply-side economy where "deregulated" religions compete in a religious market for adherents.

After exploring these three varieties of secularization theories, the chapter will trace the history of secularization as a theory to provide context for discussion of the contemporary field. Charles Taylor's discussion of secularization and secularization theory serves as a bridge at this juncture of the chapter to both analyze the orthodox and the neosecularizationists (the former in light of Steve Bruce, the latter in light of Jose Casanova) and to introduce a further discussion of what secularization means in the context of modernity and the structures of the modern public sphere. A discussion of privatization and the ways in which public spheres might operate differently in late or post-modernity is also included here, relying on Taylor, Casanova, David Martin and Danièle Hervieu-Léger for substantiation and illumination.

The exploration turns again to Taylor with the introduction of the concept of Michel Foucault's term "unthought" and some space is given in this chapter to considering the ways in which this concept might serve to facilitate an analysis of how religion operates as a factor of secularization in the Canadian political landscape. This discussion is part of a larger discussion of the Canadian political landscape and it is here that the study explores if, how and why there is a Canadian elite which accepts an orthodox definition of secularization and what the ramifications of this acceptance might be on Canada's political landscape. Several consequences are introduced: one in regards to what it means to hold such a definition in an increasingly multi-cultural and pluralist society such as Canada. Another consideration might be that such a definition precludes the policing of those who hold political power as holistically as might be needed due to foundational biases that preclude taking religion in the public sphere seriously.

History of Canadian Environmental Policy and Legislation

The purpose of this chapter is to build upon the history and theory of the previous chapters and begin to draw information together for the final analysis in chapter five. Environmental law is a modern concept with roots in 19th century tort law. Environmental legislation, however, begins with property law—the first laws that delineated human relationships with one another and with land. As well, Canadian environmental law cannot be fully discussed without mentioning treaties made between Europeans and Canada's Aboriginal Nations. This chapter also concerns itself with the ways in which Western legal systems in general developed. This last necessitates a brief discussion of Natural Law which will, contrary to most discussions, centre on the works of Hans Grotius and John Locke rather than delve into any detailed analysis of Saints Augustine and Aquinas (although some small space is given to the aforementioned in the interest of intelligibly furthering the narrative). This decision was made mainly in the interests of brevity but also with the understanding that notions of property law that are key to both Grotius and to Locke are more directly relevant to the discussion at hand than those of Augustine and Aquinas.

The chapter will begin by defining environmental law and its function within the Canadian legal sphere. One, if not *the,* paramount issues of Canadian environmental law is that of scope and jurisdiction. As will be seen in chapter five, scope and jurisdiction are the point where environmental groups, via the courts, most often gain traction in environmental matters. This chapter lays the conceptual and legal ground work for that further discussion. As well, although these have historically been seen as federal/provincial issues, Aboriginal voices are becoming increasingly important in discussions around jurisdiction and scope. Another important component of environmental law in Canada is regulatory oversight and some space is given to its consideration.

The next section in this chapter will consider the development of Western legal theory, specifically the points of legitimation and natural law. The question of what makes a legal system possible from a pre-modern and a modern context is explored mostly using Grotius and Locke as points of comparative contact. Natural law is an important consideration in this discussion because points of its development allowed for the eventual consideration that societies could exist independent of a divine mandate or of a divinely-sanctioned legal code. This important turn in history will be briefly discussed in the broader context of the development of modern, Western, legal thought. This then leads to a discussion of authority—once the legitimacy of a system is established, by what right do laws get made and are people governed? The development of British common law is discussed in this component, as well as an exploration of Deism and scientific method and how these worked, with the rise of humanism and individualism to inform the emerging government and legal theories of early modernity.

This chapter also explores a facet of modernity in the context of a discussion around private property—two closely intertwined conceptions that are mutually exclusive but when defined in tandem are more comprehensible. The particular facet of modernity discussed here is that of categorization which itself arises from inductive reasoning, whereby one creates generalizations from particulars. This chapter argues that this particular way of looking at the world is supported by and supports a view of human disembeddedness in the natural world that informs, among other things, a particular philosophy of legal theory and of environmental law. The aspect of right relationship is raised in this section and the ways in which it undergirds the above philosophy of legal theory is investigated.

Private property is brought into the discussion as aspects of the modern state confirmed by Locke and Grotius as natural and necessary for human society. Locke and

Grotius vary slightly in their opinions and that variance is analyzed in order that its implication for modern Canadian society can be extrapolated. The main point derived from this part of the discussion is the impact of individualism and social construct and imaginary that the philosophies of Grotius and Locke had; and, in turn, the profound ramifications that the theological and sociological shift in which they participated had for the crafting and implementation of law, including the crafting and implementation of treaties which will be discussed in this same section of the chapter. In this way, the spectrum of embeddedness and disembeddedness is introduced as a point of contrast between European and Aboriginal systems of legal though and worldviews.

The penultimate section of chapter four examines Canadian environmental law in particular in light of the previous discussions and theoretical frameworks. Situating the discussion in the broader context of one of the themes of modernity and the modern social imaginary which is to create order out of chaos, this section of the chapter asserts that environmental law at its most basic lies at the heart of that conversation.

One way in which order is discussed in this section is by looking at the ways in which the reasons and purposes for environmental laws changed over the course of the twentieth century. This also necessitates a brief discussion of government responsibility and the text looks back to an earlier expostulation of the social gospel in Canada to underpin the discussion.

The final section of chapter four looks at the development of modern (since 1960) environmental law in Canada. Interwoven with the historical information is the notion that environmental law is as reflective of ideas regarding democracy as it is of ideas on how to deal with the environment. The impetus of environmental law is grassroots, by and large, and this section explores what that means even as it looks baldly at the legislation emerging

during this era. Four phases of legislation are noted and discussed in this section: Phase One is the *Fisheries Act* and the tools of property law, criminal law and torts; Phase Two is waste control and clean-up laws; Phase Three is toxins and control laws and a recognition that environmental protection is a long term process; Phase Four is discussed further in chapter five and deals with comprehensive approaches involving environmental assessment and planning and managing regimes. This phase is also concerned with international as well as domestic environmental issues.

Case History: The *Species at Risk Act*

This chapter provides a case study, a microcosm in which the important question of the relevance, import and existence of religious worldviews in the Canadian political landscape can be examined. The first part of this chapter is a discussion of Canadian environmental policy and legislation that will provide the context for the story of the *Species at Risk Act* (*SARA*). The second part examines the story of the *SARA* itself and the third part offers an analysis, via personal interviews, transcripts of standing committee meetings, legal briefs, and writings of two key players in the *SARA* story: the Honourable David Anderson and Ms. Elizabeth May.

Part two of chapter five shows how religious worldviews are present in a general way in the environmental policies of a government. This is done by examining the written policies of the federal Liberals between the years of 1993 and 2004 and by an analysis of the implementation of those policies. The policies of the preceding Progressive Conservatives regarding environmental issues are also examined as a precursor to the more in-depth exploration.

The background of the *SARA* is then explained, beginning with the United Nations Convention on Biological Diversity. The story of the *SARA* is intertwined with the socio-

economic and political climate of the 1990's which saw a shift to the right in terms of social and monetary policy. The recession of this same period also plays a part. As well, the Quebec Referendum of 1995, where Quebeckers were given the opportunity to vote on whether or not to remain part of Canada, looms large in the background story of the *SARA*. It will be seen that questions of national unity and fiscal responsibility in many ways seemed to be more important to the polis than did issues concerning the environment and that general phenomenon and its ramifications for environmental legislation as a whole will be discussed at length as a theme to the entire chapter. The *SARA* is then followed from its introductory White Paper in the early 1990's to its eventual proclamation in 2002.

Following the story of the *SARA*, the chapter introduces Mr. Anderson and Ms. May, explores the *SARA* from each of their perspectives and offers an analysis regarding their individual participation in the public sphere and their religious worldviews. It is hoped that by telling and analyzing the story of *SARA* and two of the characters at the heart of its plot that it will be possible to see that not only are religious worldviews extant, but that when they are acknowledged as overall components of the political whole, they are beneficial rather than detrimental to the Canadian political landscape.

Justification/Application of Theory:

The application of Charles Taylor and José Casanova's commentaries (see above) regarding secularist theory is necessary and appropriate in considering an analysis as set out above. Secularization theory, in general, argues that western culture has become secular (in the sense that public space has divested itself of religion) and, as such, religion is not any more of a serious "player" in the setting of public policy as it once was. Taylor, Casanova and Van Die all caution against this broad sweeping assumption. To take Van Die one step beyond "Religion and Public Life" will serve to show that religion does indeed play a

significant role in public policy—although not in the same institutional way it once did. To introduce religion as a necessary and legitimate voice within the public as well as the voluntary sphere will contribute to the current debate over the relevance of secularist theory and religion in Canadian society by allowing scholars to re-evaluate what is meant by religion, what is its actual place within the public sphere and, what should its place be in an evolving democracy. This, in concert with Charles Taylor's "conditions of belief", could also highlight models of societal discourse already extant that need only to be brought to the fore to encourage the legitimizing by the polis of disparate voices within the Canadian franchise.

Notes

---

[1] Marguerite Van Die, ed., *Religion and Public Life in Canada: Historical and Comparative Perspectives* (Toronto: University of Toronto Press, 2001), overleaf.

[2] Ibid., 16.

[3] Charles Taylor, A *Secular Age* (Cambridge, MA: The Belknap Press of Harvard University Press, 2007), 19.

[4] Bron Taylor, "Introduction", *The Encyclopedia of Religion and Nature, Vol.*, Bron Taylor, ed. (New York: Continuum, 2005), viii.

[5] Ibid., x.

[6] For the baseball argument, see: David Chidester, "The Church of Baseball, the Fetish of Coca-Cola, & the Potlatch of Rock 'n' Roll: Theoretical Models for the Study of Religion in American Popular Culture." *Journal of the American Academy of Religion*. LXIV:4 (1996): 743-765. For a summary and some commentary on the decade-long discussions by scholars of religions and theologians, see Richard Foltz, "The Religion of the Market: Reflections on a Decade of Discussion," *Worldviews: Environment, Culture, Religion* 11:2 (2007): 135-154.

[7] For an example of this interchangeable use, see Foltz.

[8] To be sure, to define a phenomenon—such as market capitalism—in religious terms in order to better understand it and analyze it is certainly a helpful exercise. However, that is outside the scope of this study.

[9] Ninian Smart, *Worldviews: Crosscultural Explorations of Human Beliefs* (New Jersey: Prentice-Hall, Inc., 1995), 2-3.

[10] Ninian Smart discusses this in "The Epistemology of Pluralism: The Basis of Liberal Philosophy" in *Ninian Smart on World Religions: Volume 2: Traditions and Challenges of Modernity,* John J. Shepard, ed. (Burlington, VT: Ashgate Publishing Company, 2009), 296-297.

[11] As this study concentrates mainly on issues at the Federal level, the examples I offer are from that context.

[12] Charles Taylor, *A Secular Age,* 185-196.

[13] Jürgen Habermas, *The Structural Transformation of the Public Sphere*, Thomas Burger, trans. (Cambridge, MA: MIT Press, 1989).

[14] Michael Warner, *Letters of the Republic,* (Cambridge, MA: Harvard University Press, 1990).

[15] Theories regarding what is or is not the public sphere abound. I am using Taylor, in part, because his definition does not exclude marginalized groups and leaves open possibilities for the theories arising out of an analysis of internet technology and social media as well as those that hold an interest in Foucault's theories on biopolitics and how those may affect our analysis of the distinctions between public and private. A good discussion of Habermas' theory of the public sphere can be found in *Habermas and the Public Sphere*, Craig J. Calhoun, ed. (Cambridge, MA: MIT Press, 1992). A lively discussion incorporating Foulcault and the public sphere can be found in Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire*, (New York: The Penguin Press, 2004).

[16] Taylor, 96.

[17] Ibid., 187.

[18] Gerard Hauser's work on public spheres being defined by discourse and rhetoric is also informative here. See, especially, Gerard Hauser, *Vernacular Voices: The Rhetoric of Publics and Public Spheres,* (Columbia, SC: University of South Carolina Press, 1999).

[19] Taylor, 188-189.

[20] Ibid., 190.

[21] Habermas, 82.

[22] Warner, 40-42.

[23] Taylor, 195.

[24] Ibid., 192-194.

[25] Ibid., 194.

[26] Ibid.

[27] Yi-Fu Tuan, *Space and Place: The Perspective of Experience,* (Minneapolis: University of Minnesota Press, 1977), 4-6.

[28] C.J. Sommerville, "Secular Society/Religious Population: Our Tacit Rules for Using the Term 'Secularization'," *Journal for the Scientific Study of Religion* 37:2 (1998): 251

Chapter One: Church and State in Canada

To understand the ways in which Christian religious worldviews have influenced environmental policy and legislation, it is necessary to understand the history of the Church in Canada and its relationship with the populace in general and with the State in particular. What becomes apparent is that the mid-18th century marks a watershed whereby the elite in both Upper and Lower Canada (somewhat less so in Atlantic Canada and the Northwest) struggle in earnest to redefine the place of institutional religion within the State. This is not to say that the general polis is uninterested or uninformed in or about the debate. Rather, that the conversations that have immediate impact on the workings of government (and of course, to which we are privy) in terms of power and the shaping of policy and legislation happen, for the most part, from the top. This is hardly a remarkable observation, but it is imperative that it be understood for this lays groundwork for a later argument that religion continues to matter for both the general polis and for the elite on into the present day. Establishing missions to the Aboriginals, the continual waxing and waning of authority over the general populace of New France and then Lower Canada by the Catholic Church, the struggle by that same body against the establishment of the Church of England after the British Conquest, the fragmented Protestant churches' resistance to that same establishment, the demise of the Gallican and the rise of the Ultramontane Church, the development and demise of the churches as shadow establishments are all key components to understanding the relationship Christian churches have had with the State during Canada's history. A history of the Church in Canada also assists in the understanding of the ways in which the fundamental theological threads of dominion and sustainability made their way across the Atlantic. While this section will deal almost exclusively with the question of Church and European established governments within Canada, there will be a brief discussion of the

ways in which Aboriginal worldviews and the Church had contact, collided and formed relationships.[1]

The modern nation of Canada is the product of two western European powers each with their own religious establishment. Incorporated into that is the history of the relationship each power had with Aboriginal nations before Confederation and the ongoing negotiations after Confederation. Traditionally, churches in Canada have functioned as shadow establishments, or informal as opposed to formal, establishments sanctioned by the State.[2] These churches have traditionally held strong links to the political, economic and cultural elites within Canada, even though Canada has no official establishment church. To be sure, sectarianism has played a role in Canada's history—Methodism and the thwarting of the Church of England's claims to religious priority are but one example—but the large churches have dominated the landscape from at least the eighteenth century. The Roman Catholic Church is the largest of these and this exploration will begin with that story, in particular the history of ultramontanism.

Roman Catholicism

According to the 2001 census data, 43.2% of Canadians who profess to be either Roman Catholic or Protestant (72%) identify themselves as Roman Catholic. In Quebec, especially the Roman Catholic Church, enstated by the Crown in the Quebec Act of 1774 and the Constitution Act of 1791, held a sort of "moral monopoly" until the mid-20th century. Conservative and ultramontanistic, the Church reigned as a virtual theocracy in Quebec, its influence fading slightly in the last and first decades of the 18th and 19th centuries and then coming clearly back into power after 1837 to reign once more until the Quiet

Revolution in the 1960's.[3]   The importance of the Catholic Church for Canada as a whole can be glimpsed in a recounting of some earlier history.

The first settlers in New France were Roman Catholic. In the early 16th century, Jaques Cartier had erected a cross on the banks of the St. Lawrence and read the gospels to the natives of Hochelaga—indications that his voyages were, in part, in the interests of winning converts amongst the Aboriginals. But it was not until Samuel Champlain's voyages and settlements that the Church set solid, permanent foot on Canadian soil.

In order to understand the Catholicism that came to Canada with the settlers of New France, one must look to Europe, the Protestant Reformation, the Council of Trent and to what is commonly called Tridentine Catholicism or Catholicism of the early modern period. Father Robert Bireley, S.J., a Jesuit Historian and President of the American Catholic History Association argues that this period "can best be understood within (a) pattern of the Church's regular need to accommodate to a changing world".[4] This is significant, for the changes in the social imaginary of Europe in this period were reflected in the changes within the church and had real repercussions for the ways in which Catholicism took root and was practiced in New France.

The Protestant Reformation was arguably central in the shift of the social imaginary of Europe in the 16th century.[5] Reformers promoted the exclusivity of scripture (*sola scriptura*) as God's revelation to humanity and the duty of individual Christians to read and interpret the Scripture with the aid of the Holy Spirit. The centrality of God and God's magnificence and grace were magnified while the belief in the capacity of human beings to influence their salvation by rituals or religious customs was soundly rejected. The hierarchy that had been put in place by the Church that gave primacy to clergy and religious orders in the eyes of God was also rejected for the ostensibly more egalitarian belief that salvation was

available to the lay person in the world at large. In addition, the Reformers elevated the state of marriage to one of spiritual dignity, disdaining the claims that celibacy was closest to Godliness. Preaching of the Word was central to worship as discernment of the Word was in everyday life. But most important to the point at hand was the rejection of ecclesiastical authority: pope, council, bishop, priest.[6] The radical nature of this rejection can be seen when it is remembered that the Church heretofore had been acknowledged as the voice of God on Earth and Christ's sanctioned vehicle for salvation. To be sure, the behaviour of the upper echelons of the Church hierarchy had not endeared them to the masses, nor been in any way exemplary enough as a body to command the respect that had been given by the people in earlier times. However, the Church as institution was still seen as a divine presence and belief in its ultimate authority as an institution did not fade easily from collective memory. The aftermath of the rejection of that authority is the thread that will be followed in the ensuing discussion.

The convening of the Council of Trent in 1545 coalesced into a general plan of reform for the international Catholic Church and was in many ways the Catholic response to the Protestant Reformation.[7] Doctrinal issues were addressed and disciplinary reforms undertaken that encompassed liturgy (including preaching), training and residency of clergy and bishops. Bireley also points out that these changes were not only attempts to make Catholic Christianity more relevant, but also to establish order out of the chaotic beginnings of the 16th century.[8] This is important in that it shows Catholics as well as Protestants had this desire to create order out of chaos—assuring that there was both a French and an English impetus along these lines. Different ecclesiologies still resulted in a fundamental theology that recognizes a divine mandate for order—as well as an understanding that this order must be imposed from the top down. This translates later into particular prescriptions

and requirements for defining property rights, ownership and policies over how the natural environment is to be viewed and treated.

As Choquette (and others) have pointed out, these reforms were hard to implement for a variety of reasons[9]--the intractability of some clergy, the low-level of religious education among the laity, and the lack of autonomy of the Catholic Church.[10] Political, if not ecclesiastical, power over the churches was wielded by the monarchs.

However, the Church was not completely without the clout of a nation-state. As the nation-states began to consolidate and centralize power over their geographical area, the Catholic Church did the same. Pope Nicholas V saw the need for a well-organized, established papal state and made that so in 1450 by establishing residence in Rome. The church was losing income through the loss of its holdings in Europe (as the other nation-states consolidated their power) and compensated by imposing taxes within the papal state. Jean Delumeau reports that "by 1600 the popes disposed of a state that administratively was the equal, if not the superior of any other state in Europe."[11] This bolstered the Papacy's status and power within the Church but that did not translate to actual power within the other States of Europe. One chief reason for this was the Church's need for the support of those states "first against conciliarism and then against the Reformation"[12] The States had the power, still, to nominate their own bishops, thus assuring loyalty to the State first and secondly, to Rome.[13] The power to nominate bishops (and to assign clergy) was not inconsiderable and was a key political tool; one which was vied for vigorously during Canada's early development, especially after the British Conquest.

The Catholic Church in France was caught up in a revival movement in the 17th century in the years between the Wars of Religion (1559-1598) and the Thirty Years' War (1618-1648). This was at the same time that the decrees from the Council at Trent were

being implemented in France. Two central players in the revivals were François de Sales and Pierre de Bérulle, each of which came from disparate ends of the theological spectrum. De Sales taught "the possibility of becoming saintly in all walks of life by the mere fulfillment of one's duty, providing it was done in the love of God and neighbour."[14] Bérulle developed a more austere school centred on "the sovereign majesty of God". Fulfillment of one's duty in love was not enough to achieve salvation, as God was removed from the grasp of humanity and could only be reached via His son Jesus Christ. "The spiritual road required much self-denial and asceticism in order for the disciple to become worthy…"[15] New religious congregations sprung up at this time that reflected the reforms. Of these, the Gentlemen of Saint-Sulpice (Suplicans) joined with the Jesuits, the Recollet Friars and the Capuchins as the four major male religious congregations active in early New France. In addition, Duke Henri de Lévy's secret society The *Compagnie du Saint-Sacrement* (1627-1665) produced many of the leaders of the early Canadian church. This group was made up of "influential, wealthy and devoted men and women, both clerical and lay, who wanted to work discreetly in the interests of the Catholic Church."[16] The revivals and implementation of reforms and the new religious congregations are reflective of people within an institution struggling to engage and shape that institution to their own needs and to the perceived needs of society as a whole. And, as Choquette points out, the Catholics were fundamentally united in "authority and discipline around the teachings and the church structures endorsed by Rome…"[17] The disagreements were mostly centred on conflicting interests and jockeying for position by these groups within the Church. But the authority of the institution as such was not in question—even if there was a question as to whether Rome or the national church headed by the monarch was the ultimate authority. This contrasts deeply with the decentralized Protestant movements where the ecclesiastical authority was

not Rome interpreted through the ruler of the nation state but rather the Church sanctioned and established by the State[18] and interpreted (except in the case of Anglicanism)[19] by a variety of congregations. It was also at this time (1632-1657) that a state-supported church with essentially a Jesuit monopoly was in operation in New France.[20]

It is important to note that the settlers of New France were, for the most part, Roman Catholics and not Huguenots or other Protestants. This is significant, for it solidified the religious divide between French and British Canada, a fact upon which I will expand below. Protestants and Catholics had both been a presence in New France from 1604 (founding of Acadia) until 1627 when Cardinal Richelieu's government excluded Protestants from New France under the creation of the Company of New France. After Cardinal Richelieu revoked the Edict of Nantes in 1685, the effort to eradicate Protestants from New France became more concentrated—especially under the Jesuits. As well, the heightened persecutions encouraged Huguenots to look elsewhere and North American immigration concentrated in South Carolina, New York and Massachusetts. This is significant, again, because it solidified a religious component to the divide between French and British that was historically fraught and undergirded nationalism on both sides. To be sure, the Protestant presence was still in New France, but it was comparatively miniscule until the mid-18th century.

While the Jesuits had a mandate to eradicate religious dissenters in the form of Protestants, they also, along with the other religious congregations, had a duty to evangelize the Aboriginal population.[21] This missionary zeal was not only borne out of the fundamental Christian dictum to "make believers of all people"[22] but also out of the firm belief that Europeans were superior to the Aboriginals. This European superiority, came not only from their conviction that they had cornered the market on spiritual "truth", but from

29

their demonstrated ability to create order out of chaos and what they saw as their advanced technology. This technology, they believed, was such that it enabled them to understand the world more clearly than the Aboriginals and therefore it was intuitively obvious that they understood God most completely. For the very mind of God could be discerned by the observation of the natural world. This observation had enabled the European to develop technologies that allowed them to subdue the natural world in ways that they believed to be superior to the Aboriginal understanding.

It is here that the discussion regarding population numbers of the Aboriginals becomes important. Canada in the 17th century was not as densely populated as it had been a century before. It is quite likely that the French did not observe any signs of wide-spread agriculture or what we would refer to as systematic resource management. This perceived inability of the Aboriginal peoples to use the natural world in ways that would be akin to those of the Europeans only exacerbated the disdain for the Aboriginal worldview.[23] Thus, what Choquette calls the "powerful, aggressive, and conquering religious force" that was the Catholic missionary presence in New France can be seen as being supported by a dominion theology that insists on cultivating and civilizing not only the natural world but the peoples within it. The Aboriginals were seen as embedded in the natural world and, as such, were conceived of as savages.[24] Thus, collision of cultures in the form of an environmental crisis (disease brought by the Europeans) had ramifications for the ways in which the natural world of Canada was perceived. The reduction in numbers decreased somewhat the visible impact of Aboriginals on the land and, in part, enabled the Europeans to see them as they did (uncivilized and ill-equipped to manage the tremendous heritage of natural resources bestowed upon them).

For the Europeans, the wilderness of Canada, the mythological "forest primeval" attracted people with its romanticism and parallels with the Garden of Eden, but also frightened them with its hidden mysteries and (presumably) demons. Cultivation of the land was necessary not only for economic but spiritual reasons—God had mandated humanity to till the land and reap the riches therein. To leave it in a state of what they would have perceived as unruliness was to go against everything they had been taught about God's wishes and their own newly found capabilities for mastery. That they included the Aboriginal peoples of Canada in this program of cultivation is not unremarkable as, in some ways, they were seen as part and parcel of the unruliness that filled the New World. In fact, the desire to "civilize" the Aboriginal populations of New France is not so very far from the early reformers' need to subdue carnivals and other religious festivals of the Middle Ages in order to create a more ordered society.[25]

As has been mentioned, the Church in France at the time of the establishment of New France was operating in the mode of Gallicanism. Gallicanism, according to Choquette was

> …the particular form of nationalism of French Catholics, an attitude that amounted to the belief that the Catholic Church in France was French before being Roman, insuring thereby the autonomy of the Church of France before Roman authority, but simultaneously entailing dependence of the church on the French State.[26]

In addition, Gallicanism of the 17th and 18th century was perceived as being intertwined with a particularly strict and harsh form of Catholicism promoted by Cornelius Jansen.[27] Jansen's teachings arose out of a kind of determinism that was sceptical of free will and which held a very dim view of humanity's ability to emerge from their sinful predilections—even with God's help. The teachings, as a consequence, prescribed harsh and rigorous discipline.[28] It is important to point out, however, that the teachings of de Sales in the 17th century revivals

countered and at some points overcame the darker and more pessimistic understanding of human nature proffered by the Jansenists.

Jansenist ideology was present in Canada, although unofficially, in the persons of some of the Church hierarchy. The second bishop of Quebec, Jean Baptiste de Saint-Vallier produced a compendium of church teachings rife with the "theological and spiritual pessimism and rigor" of the movement.[29] It was also present in the Sulpician fathers and contributed to the animosity between them and the Jesuits.

Gallicanism was perceived to be inextricably intertwined with Jansenist ideology, and groups that opposed the pessimism and low anthropology[30] of the Jansenists used the movement to assert their own agenda of centralized authority in Rome in addition to a more optimistic theology that promoted the fundamental goodness of redeemed Christians.[31] The most prominent of these groups was the Jesuits.

The political history of the Gallicanist factions and what later came to be known as the ultramontanist factions is fascinating but too lengthy for the purposes of this study. Suffice it to say that the appointment of bishops and the implementation of the tenets of the Council of Trent became integral in the positioning of each faction and in the eventual outcome of the clash of ideologies. The Church was responsible for the education and social welfare of the settlers (not to mention their spiritual welfare) and the influence that they had was considerable.[32]

Historians divide the history of the French Church in Canada between the years before and after 1663, when the monarchy in France revoked the charter of the Company of New France and made New France a French province. New France under the Company and under the Jesuits who themselves were supported by the colonial governments was a place still populated by Europeans with enchanted worldviews. This was a time, as

Choquette writes, of "miracles, martyrs and mysticism"; God spoke through a variety of ways, including natural disasters.[33] The fact that New France was not densely populated and that the settlers were on the whole more rural than urban played an important part in this as well. It should also be noted that the authority of the church was upheld by the colonial government and vice versa. This hierarchical social imaginary was also supported by the seigniorial system that had been transplanted from France.

Between 1663 and 1673, the population of New France doubled—some of this being achieved by the importing of a bevy of women into the colony and an ensuing baby boom. The number of clergy also dropped. But, as Choquette and others have noted, the Catholicism practiced by the colonists in New France was not entirely clergy-driven, as the worldview was still not dis-enchanted. Festivals, relics, pilgrimages were all part of the daily lives and understandings of the people—who saw these as necessary attributes in a life that was controlled by unseen forces who could only be kept at bay by an omnipotent God. In addition, as it moved into the 18th and 19th centuries, the Jansenist pessimism and Gallicanism began to be replaced by a more benign view of God, even as the authoritarianism present in the monarchical hold over the church gave way to a pontifical centralization. From the beginning, the Church in Canada was intertwined with the State— whether it be the French monarchy, Rome, or the British Empire. Even as ultramontanism became entrenched on Canadian soil, the Church still maintained its ties and influence with the government of the day; all the while ensuring its firm embeddedness with French Canadian nationalism.

Ultramontanism is, in part, a reaction to modernity. The term itself means "beyond the mountains" and was applied, at first, to French Catholics who looked beyond the Alps to Rome for the answers to their church's problems and questions.[34] In their desire to separate

the Church in France from what they saw as stifling government control, the persons in this movement sought to make Rome the ultimate in church authority. They hoped that in this way the Church would not be influenced or subjugated by the government and that the taking on of ecclesiastical authority by Rome would effect a balance of powers, giving the church more say and influence then they felt it now had. The movement had started out slowly, in the seventeenth century and gained momentum after the French Revolution and the "various horrors" associated with it during the 1790's.[35] The first leader of the movement during mid-nineteenth century ultramontanism was Father Félicité de Lamennais. Father Lamennais was critical of individual reason, rationalism, and atheism and strongly in favour of a strong, autonomous Church.[36] He saw Catholicism as the Universal Church and believed in the necessity for humankind of a theocracy. The way to ensure these, he believed, was to free the Church from government auspices, establish freedom of religion (or, more specifically, freedom for the Church to run schools in the way they saw best), and champion freedom of the press. All liberal ideas. But not meant in any way, shape or form to liberalize society. What he wanted, and what his followers wanted, was the freedom to create a theocracy outside the purview of the modern nation state. The ideal towards which Lemannais and his followers strove was not that much different than the ideal of Calvin—which could only have been made manifest from the interior of a disestablished Church. Autonomy would lead to theocracy, if Lemannais had anything to say about it. And he had a great deal to say. What is so interesting here is that Lemannais embraces the tenets of liberalism for very conservative ends. But, in the beginning, he was so misunderstood that, to his shock, Pope Gregory XVI condemned his thoughts in 1832. When Lemannais produced a book in answer to Gregory XVI's condemnation—stating that the Pope's

authority did not include the political sphere, Gregory condemned that in 1834 and Father Lemannais abandoned the Church and eventually, Christianity.

Choquette makes an important observation when he notes that Gregory XVI's condemnations—in the form of encyclicals, firmly established the Roman Catholic Church as being against the liberal ideology that ensued from the American and French Revolutions. The Roman Catholic Church had taken a stand on liberalism and modernity—against republicanism and the conception of what it meant to be an autonomous citizen of a modern nation-state.[37]   Thus, the hallmarks of ultramontanism were: anti-liberal and conservative, theocratic and hence, pope-centric—as the Pope was the Vicar of Christ on Earth and His voice of authority, anti-scholarly, pietistic, aggressively missionary, intolerant and censorious. In addition, this form of Catholicism taught a rigid moral code, based on the firm belief in the depravity of human beings where "obedience was the foremost virtue, and sexual misbehaviour the leading sin." [38] In the end, the ultramontane Church adopted a "Roman" style of worship that was elaborate and ornate. It became hostile to modern ideas and insisted upon the privileged place of the church in society.[39]   Some other precepts of ultramontanism were: that the church should be free from the authority of the state, that the pope was infallible, that education should be controlled by the church, that citizens should be obedient and that Catholicism should come before patriotism in the hearts and minds of the people.[40]   It was this ideology that Jean-Jacques Lartigue brought with him as the first bishop of Montreal.

Ultramontanism took root in Lower Canada between 1820 and 1830 and was fully entrenched by the second half of the century—taking hold, in part, due to the fallout of the 1837 Rebellion. It arrived in the person of Jean-Jacques Lartigue the first bishop of Montreal and was perpetuated by his eventual successor, Ignace Bourget. Lartigue established a

cathedral and a seminary in which ultramontanism was preached and taught. Although Lartigue was not officially recognized as bishop until 1836, due to a variety of political machinations, he was able to influence a generation of priests who in turn spread the ideology to their congregations. In that time he laid the foundations for the success of ultramontanism in Canada.

The power relationship that existed between church and state under Gallicanism was less unequal that that experienced between the Catholic Church of Lower Canada and the British Crown and, as such, was more conducive to an agreeable working relationship. The Gallican church had status and a position in the state (keeper of the spiritual health of the nation, and providing for the care of the sick, the poor and the uneducated of society). The state had resources and power and the capacity for providing security.

Under the British crown, the Church had no status as their belief system was seen as heretical and their religious practices as superstition and idolatry. Their position was less dignified because they lacked the moral or historic authority that they had held under the French system. In this paradigm, the Church had a much more difficult time refusing to do the bidding of the state for fear that they would lose everything.[41] Under the Gallican system, the power to excommunicate was as real as the political connections one might have formed at court or the family alliances one might have.

Bishop Lartigue took up his bishopric (in title, if not in recognition by his entire flock or of the government) on the heels of Bishop Plessis' alliance with the crown against the *Parti Canadien* and by the Lower Canadian's proven loyalty during the War of 1812. And this was the reality of the political situation. The Catholic Church in Lower Canada was not independent, it was subject to the whims and will of the British crown. The British government had to be consulted and had to approve the appointment of priests and of

bishops.[42] When Bishop Plessis wished to divide the diocese of Quebec, he not only had to convince the Vatican, but the British crown as well. To be sure, this subjugation to the crown was not new, but the power dynamic inherent in the new system was. The Church existed by the grace of the British and because it was politically expedient *for the moment*. This lack of independence from the State fostered a disconnect between the Church hierarchy and the populace. In addition, it also made for fertile ground for the kind of ultramontanism that eventually flourished.

The 1837 Rebellion was a turning point for the Catholic Church in Lower Canada. The *Parti Canadien,* a group of middle-class French Canadians who wanted to take power away from the Catholic Church and from the Anglophone merchant elite, were seeking legislative and fiscal reform. They also, as Choquette writes, "…fought for greater political rights and an increased role in society for (themselves), thereby supplanting the clergy in its role of intermediary between the people and the colonial government."[43] A variety of incidents led to a full-fledged rebellion which was subsequently put down by the British.

Lartigue spoke against the rebellion, from his ultramontane convictions that to rebel against legitimate authority was wrong. Whether or not the rebels saw the crown as legitimate authority was immaterial to Lartigue.

Again, the philosophical discussion between the Gallicans and the Ultramontanists was perpetuated by the political situation in which the French Roman Catholic Church found itself after the British Conquest of New France. The Articles of Capitulation for both Quebec and Montreal grant "the full exercise of the Roman religion"[44] but the Treaty of Paris goes on to state those freedoms are granted "as far as the laws of Great Britain permit."[45] Since the Catholics of Great Britain had yet to be emancipated, this statement was confusing at best and at the very worse, rather ominous. Further legal study by the law

officers of the crown resulted in a relief of the ambiguity—treaty law trumped statute law and, as such, Canada's Catholics were free to practice their faith without fear of reprisal.

All of that was, of course, on paper. In actuality, the first governors of Lower Canada were enjoined by the crown and by the Anglican Church to Anglicanize the population of Lower Canada as quickly as possible. These entreaties went largely unheeded, however, as many of the governors found it more politically tactful to work at building alliances with His Majesty's reluctant new subjects.

The Church hierarchy was aware of this motive, of course, and walked a fine line themselves, between deference to the new ruling class and maintaining an identity as a people and a Church. The plight of the Acadians was fresh in collective memory and Lower Canada did not want to suffer the same fate.

When New France was taken over by the British Crown, Roman Catholicism was integral to its very being. At the time, of course, Roman Catholics in Britain were under proscription and the Canadians waited warily to see what the Crown would decide. What emerged was a policy of pragmatism that was to serve the country and the Roman Catholic Church well. The various documents from 1759 to 1762 clearly grant Roman Catholics the freedom to practice their religion, although as mentioned, the clause "as far as the laws of Great Britain will permit" made the church's freedoms seem somewhat tenuous. In fact, General Murray was instructed by the Crown to lay the groundwork for the establishment of the Anglican Church in Quebec and for the conversion of the population. Murray disregarded these instructions, preferring to err on the side of political stability and domestic tranquility. Carleton, his successor did the same. On the Roman Catholic end, the Church prayed for the British monarch in its liturgy, went into official mourning upon the King's death and sang the Te Deum in honour of the marriage and coronation of King George III.

Carleton stressed this spirit of loyalty and cooperation displayed by the Canadians and lobbied the Crown to enshrine this freedom of religion in the Quebec Act of 1774 in order that His Majesty's royal person and government might gain their continuing affections.[46] The Act did grant freedom to practice Roman Catholicism and the right to collect tithes from the Catholic population—a provision that put the Roman Catholic Church on somewhat of the same footing as any other established church.[47] Most importantly, however, the Quebec Act revoked the policy of Anglicization. Although an edict was issued to Carleton in 1775, revoking many of the privileges and reinstating the policy of Anglicanization, Carleton simply ignored it and the Roman Catholic Church went about its business. The goodwill built up between the governor and the Canadian Roman Catholic church paid off handsomely for the Crown in 1774/1775 when the first American Congress asked the Canadians to join in their rebellion. That same Congress had issued a bitter retort to the Quebec Act, accusing the Crown of granting emancipation to a detestable religion. When that same Congress promised freedom of religion to the Canadians if they agreed to help, the Canadians understandably said "no". Furthermore, when Carleton became alarmed at the early effectiveness of the rebellion he enlisted the aid of the Church. Sermons were preached and a directive ordered that the Canadians repay King George's gentle government by remaining loyal to the Crown. In addition, the clergy threatened to excommunicate any Canadien found to be supporting the rebels. The full power of the church was integral in routing any hope the Americans had for support in Canada for their revolution.

However, it must be pointed out that while the Church hierarchy worked hand in glove with the British, not all of the Canadiens were so sanguine. Despite pastoral letters to the contrary, some of the Canadiens had stood with the American forces or, at the very least, showed a marked lack of interest in supporting the British against the Americans. Although

Bishop Briand denounced those who had been disobedient as mostly "poor wretches, beggars and drunkards,"[48] he was dismayed at the blatant disregard for his authority. Gil Chausse writes in *A Concise History of Christianity in Canada* that, although this disregard for Briand's wishes was not reflective of "…a wish to call into question their adherence to Catholicism…(a) breath of freedom had touched them."[49] This "breath of freedom"—in the form of letters from the American Congress and an appeal by the Comte d'Estaing—writes Chausse, ensured that the Canadiens would from then on prove to be reluctant in their defence of king, country or in their obedience to Church leaders in this regard.[50] This is significant in that it shows the Canadiens as less servile to the Church than is often thought. The significance for the purposes of this study are that it shows a tradition or trend of independence of thought of the polis and a gap between the understandings and desires of the elite within the Church and the State and those who are being governed. This gap in understanding between what the elite think the polis *ought* to believe and what the polis itself *does* believe widens with time.

In addition to the issues of authority, the Catholic bishops had other problems. The Anglican bishop of Québec, Jacob Mountain, was intent on forcing the issue of establishment and worked tirelessly towards that end from his arrival in 1793. He was supported by a small number of key British officials who also were eager to subjugate the Catholic Church in favour of the Church of England. Mountain was keen for the governor to enforce the rules of establishment in Quebec. He and his cohorts attempted to establish Protestant schools and also endeavoured to have the governor appoint clergy.[51] These attempts and others might eventually have worked, but another war changed the fortunes of the Catholic Church and thwarted Mountain's efforts at Anglicization. The War of 1812 and the unflagging loyalty of Bishop Plessis was rewarded in the end by his being recognized as

the "bishop of the Roman Catholic Church of Quebec" and being given a seat on the Legislative Council.[52] The consequence of this was that the British government in essence acknowledged that the Roman Catholic Church was, in fact, the Church in Quebec. This acknowledgement had many ramifications—one of which was that the Catholic Church (especially after Confederation) had an ear of government and for years stood shoulder to shoulder with the Anglican Church as a shadow establishment, rather than in the shadow of the Church of England.

Thus, although the aforementioned practice of compromise and cooperation was not the only facet of church/state relations, it was one aspect that in part went a long way towards securing the future of the Canada we know today. It also made way for a social imaginary that had within it an element of pragmatism towards religion. The early governors were keenly aware of the power religion held over the polis. They were skilled in using that power in a way that was politically savvy. If they had discounted the strategic importance of religion, Canada might look very different today. From the beginnings, religion was a key element to keeping peace and maintaining political stability—it was a force to take seriously and to reckon with. What often gets lost in this analysis, though, is the fact that religion was such a powerful force that people believed in the transcendent good of their religious principles. The laws set down by the government were seen to be reflective and derivative of God's laws. This ideal was a perception that remained with the populace, even as religious practice itself became more of a personal choice and less of a social given.

The struggle for power between the Catholic Church in Lower Canada and the lay intelligentsia is another key component in understanding the relationship between Church and State in Canada. Influenced strongly by the precepts of the Enlightenment and by the French Revolution, many leaders of the Legislative Assembly had a vision for Lower Canada

that differed from that of the Catholic Church. Fiercely egalitarian, they were committed to a society in which lay voices, not clergy, held authority in temporal matters.[53] To this end, they introduced both the Assembly Schools Act of 1829 (which created a system of schools that were under the auspice of the Assembly, not the Church, and which were supervised by trustees who were democratically elected), and the Parish Councils (or Notables) bill of 1831 which gave landholders positions on parish councils. This last was to give the laity leverage and say in their own governance and "…thereby lessen the influence of the clergy in the running of parish councils and among the people with a view eventually to gaining the upper hand over the church."[54] The church hierarchy bitterly opposed these measures, concluding rightly that taking the education and governance of the people out of the hands of the Church would deprive that institution of its ability to mould society as it saw fit.

The struggle for the right to represent the general populace and to craft a society that would best suit them escalated until its conclusion in 1837. Driven by the leadership of Louis-Joseph Papineau, the leader of the Patriote Party in Montreal, the political leadership strove to separate themselves from British colonial rule. Worried that Papineau's rhetoric would result in armed conflict against the British crown, Bishop Lartigue intervened and pleaded cooler heads to prevail and armed revolution to be eschewed. He issued a pastoral letter based on moral grounds reminding the faithful, among other things, that "Catholics were forbidden to oppose with force the legitimate authorities, to whom they owed respect and obedience."[55] The rebellion that followed was quashed and the leaders discredited by the spectacular failure of the endeavour. Chausse raises two very important points here: First, that Bishop Lartigue was against independence because he believed that an independent Lower Canada would become "puppets of their American neighbours" and that could not be good for Catholics.[56] Second, that the effects of the Bishop's actions towards

42

the rebellion, while not good for church numbers in the short run, was a tremendous success for the Church in the long run. The Church supported the people who had been thrown into prison during the rebellion, and intervened with the British authorities on the question of united Upper and Lower Canada. "Through its good deeds," wrote Bishop Bourget, "the Church managed to restore that trust in their clergy which the people had lost for a while."[57] Most importantly, the Church re-established itself as the voice of authority with the government, as it had been pre-1791. It had also assured Britain of its loyalty, an important factor in maintaining the newly re-acquired voice of authority.   As well, this period saw the beginning of ultramontanism as the church firmly took hold of power and eschewed the tenets of liberalism and democracy in favour of an authoritarian, theocratic, French nationalistic model.

Even as new religious congregations were formed, they were populated almost exclusively by men and women of "ultramontane conviction". They staffed the schools, ran the hospitals, preached to the faithful and engulfed the religious revival that began in Montreal in 1840 with the popular and wildly successful Bishop Forbin-Jansion who preached to thousands, inviting them to come to Jesus and the Church. These Roman Catholic revivals were continued by the hierarchy, even after Forbin-Jansion moved along and reportedly led to the conversion of tens of thousands of people.[58]

The new pietism included more public celebrations of feast days, more pilgrimage sites. The liturgy became more elaborate as did the churches themselves. People wore the signs of their devotion on their clothing and erected small, household shrines to their favourite saints. The vestiges of this can still be seen in the proliferation of Marys-in-a-bathtub that can be seen from the road in parts of Quebec and New Brunswick—family

shrines to the Virgin Mother, almost all of them still bright inside their annually white-washed enclosure, tenderly surrounded with cheerful perennials and small offerings.

The ultramontanist Church also cleaved to French Canadian nationalism, in deep resonance and accord with the Romanticism of the mid-19th century. In the end, as Choquette writes, "…for more than a century Catholicism and nationalism would constitute the twin pillars that supported French Canada's national identity. They were two faces of the same French Canadian coin."[59]

This is evidenced by another turning point for the Ultramontanist Church in Lower Canada that came with the Union of the two Canadas. The intention of this Union was to Anglicize Lower Canada or Canada East, as it was then known. It is at this point that the Ultramontane Church does something very interesting. The ideology that insists on obedience to authority and preaches for independence from the State becomes itself a spokesperson for a French-Canadian nationalism and works against the government status quo. Using a political strategy that posited responsible government as a device by which to defeat the Anglicizing purpose of the Union, ultramontane church people and clergy were allying with Reform politicians.[60] This alliance, writes Moir "…became an operative force in Canadian life thereafter, thanks to the conjunctions of ultramontane and French-Canadian national ambitions."[61] In this way, then, a conservative, reactionary movement within the Church is utilized as a legitimate tool for liberal democratic processes.

In this sense, then, ultramontanism can be seen as a political ideology if political ideology is defined as a collective of integrated assertions, theories and aims regarding how people should be governed. Although it was always a product of French Canadian Catholicism, Quebec Ultramontanism became ever more inextricably intertwined with French Canadian identity.[62] Therefore, its political ideology—its aims, assertions and

theories—are shared, at points, with that identity. Ultramontanism asserts the absolute independence of the Church from the state. Not in the American sense of separation of Church and State—but, in a loose sense, in the American system of separation of powers. Ultramontanism sees the Church as a pivotal and vital arm of society that legitimately informs and instructs and has a voice at the Rawlsian table. That independence also speaks to how people should be governed by viewing the state's role as "…simply to provide funding and generally to support the church in its social endeavours."[63]

In addition, as Choquette points out, in the ultramontane paradigm, the church is perfect and, therefore, infallible. Thus, when the interests of the state—even if the state is a democracy—conflict with those of the Church, the Church will prevail.

As Clark points out, ultramontanism led to the view that the Catholic Church was a society "complete unto itself".[64] Ultramontanism did not set out to accomplish this end; it was very quickly thwarted from its original liberal principles to one of a reactionary anti-modernism. The ideal transformed into a vision of a universal Catholic communion, united under the authority of the Pope—not a remnant of the faithful as a religious and linguistic minority within a vast confederation.

That being said, the Church expanded the vision of Ultramontanism to incorporate the needs of the people at the time. The subculture was nurtured by the structures that the church traditionally had maintained—education, hospitals, and orphanages. Under the aegis of being an independent agent distinct from the State, the Church constructed a parallel culture that was "untainted" by English Protestantism.[65]

The hold that ultramontanism took on the Canadian Catholic church was important for an understanding of Church-State relations in Canada for several reasons. One of them was that it provided for the infrastructure that enabled the development of a distinct society

within Quebec. As Perin points out, the minority status of the French in the civil government after Confederation placed the Church in the perfect position to become the keeper and definer of French language, customs and culture in Quebec.[66] In the mid-20th century political-economic reasons—in part having to do with the financing of the church-run social institutions—necessitated a shift that placed "…the provincial state (as) the instrument through which French-Canadian culture would develop."[67] Another aspect of it that is important is in what it tells us about the role people with religious worldviews believe that religious institutions should have in society. To be sure, the more radical elements of the ultramontane movement envisioned a theocracy and a universal cleaving to Roman Catholic Christianity, and this remains on the very radical edges of both Catholicism and Protestantism. But the moderate element shows that, like evangelical Protestantism, the belief in the separation of church and state has a fluid definition. In the ultramontane point of view, such a separation empowers the Church to move in the public sphere unencumbered by any claim the state may have upon it—whether it be one of power or economics, or both.

Protestants

Despite small English-speaking settlements in Atlantic Canada and Newfoundland, there was not a significant Protestant presence in Canada until the mid-18th century.[68] In 1749 and 1750, 5,000 Protestants from Britain, Germany and Switzerland arrived in Halifax and settled, for the most part in Lunenburg. From 1760 the lure of free land and religious freedom brought settlers from New England and the British Isles to all parts of what is now Atlantic Canada and also to Newfoundland and Labrador. They were Anglicans and Protestant dissenters as well as Catholics (Catholics not being emancipated in Britain at the time). By 1775, it is estimated that there was a population of 18,000 in the region.[69] The

American War of Independence let loose a floodgate of Protestant migration to Canada.[70] According to Choquette, 7,000 of the Loyalists settled in Canada and 30,000 in what would become New Brunswick. This immigration from the south continued until the War of 1812.[71] This is significant not only because it gave Protestantism a critical mass that had heretofore been missing, but also a tradition of democratic governance (inherited from the Loyalists that migrated from New England) that was distinct from the system they found in Lower Canada.[72] It is also important to note that Anglophone merchants, soldiers and government officials had formed "pockets" in sections of Montreal, Quebec and Trois Rivières—this, combined with the later migration of the Loyalists from the United States led to the 1791 division of Quebec into Upper and Lower Canada.[73]

By the mid-18th century, Protestantism—whether in the form of Anglicans, Methodists, Congregationalists or Presbyterians in Lower Canada or the more diverse denominational melange in Upper Canada[74]—began to loom larger in the Canadian religious landscape, crafting its own character and wielding political influence. Terrence Murphy highlights that an important point to be considered when looking at the history of the relationship of churches with the State in Canadian history is the relative autonomy of the Protestant faithful in Canada in the 18th century. As migration to British North America was not an organized colonization program—as it had been with New France and with New England—the institutional infrastructure of the churches did not migrate as a whole with a group of settlers. This meant that the religious needs of the community had to be addressed by the community itself and arose out of community impulse and desire. This lack of clergy and/or institutional leadership from the beginning meant that the responsibilities and leadership roles ordinarily ascribed and assigned to the professional clergy were often taken up (or assigned by the community) by lay persons with a certain degree of standing within

the community. Murphy observes that such arrangements were, as a rule, temporary and that communities eventually recruited clergy persons to come minister to them. The initiative shown by the communities, especially those communities for which a central authority appointing clergy was the practice, gave those elites within the communities a certain amount of ownership, a sense of establishing for themselves the social institutions that they thought necessary for a civilized society.[75] It is significant, though, to note that even though infrastructure was put into place, overall practice before 1815 might not have been universally fervent, at least according to the standards of the missionaries and clergy reporting on their charges.[76] The point must not be lost, also, that a community without a church would have been unthinkable at this point in western history. The church still served as a social structure, just as much as one geared for the spiritual well-being of the faithful.

Another pertinent component of this puzzle that is Protestantism in Canada is a general spirit of tolerance that developed. I have already touched upon the religious tolerance showed by Murray and Carleton towards the French Catholics after the Conquest. This tolerance was firmly rooted in the rationalism of the Enlightenment and, especially after the rush of Protestant immigration, necessity. The rational intellectualism of the Enlightenment affected the church in myriad ways. One of these was to eschew any extremism or emotionalism that would be tinged by an excess of emotion. As Murphy notes, "(r)eason fostered restraint and moderation, and there was a deep distrust of religious enthusiasm, which was associated with fanaticism and conflict."[77] A result of this was a Christian conversation that strove to strip the religion of extraneous doctrinal dissent in order to discern the commonalities. What emerged was a few Christian tenets upon which everyone could agree: existence of God as Creator of the universe, the divinity of Christ, the providential ordering of history, the immortality of the soul and punishment for sin and

48

reward for virtue.[78] As noted earlier regarding ultramontanism, morality was especially important and agreements over moral stances were also seen as essential. Of course there was infighting and dissent but those were exceptions rather than the rule.[79]

This spirit of mutuality was supported by what Murphy calls the "18th century social utility of religion"[80] that worked in tandem with the basic morality it was felt that all Christians were called to embrace. Christians had a duty to exhibit upright and moral behaviour, beginning with obedience to civil authority.[81] In both the Roman Catholic and the Protestant paradigm, society mirrored the static face of a divinely mandated hierarchy. "The social order, like the natural creation, was thought to be arranged in an unchangeable pattern of higher and lower forms."[82] Thus the Church (Protestant and Catholic) embraced conservative social doctrines that maintained a societal status quo. This was mutually beneficial for both Church and State, as seen in the eventual triumph of the Catholic Church in its bid to be the established Church of Quebec by virtue of its hierarchy's vocal and active support of the British Crown in 1776 and in 1812. Hence, even the denominations which had no hope of establishment in Canada (i.e. Protestant denominations other than the Church of England) were concerned with maintaining a social order that was also desired by the State. Rebellion against legitimate civil authority came to be seen as akin to religious apostasy.[83] The champion Protestant Church for maintaining the status quo was the Church of England.

The Anglican Church in Upper Canada did not fare as well in terms of membership as did the Roman Catholic Church, although it was mighty in influence.[84] It had been a looming presence since the 1763 Treaty of Paris and officially recognized as *an* established church by the Constitutional Act of 1791.[85] This was controversial, as many felt that the Church of England should have been *the* established church.[86] However, this policy has

been cited by many as an integral component in withstanding revolution, republicanism and representationalism.[87]   A consequence of this was, as O'Toole writes that, "despite legal, social and economic advantages, Anglicanism never evolved into the naturally acknowledged Church of Canada envisioned by a British elite in the wake of U.S. independence."[88]   And indeed, such establishment was a faint hope at best. By giving religious freedom to the Roman Catholic Church, if not always in statute then certainly in practice, the Crown and many of its agents (i.e. Murray and Carleton) through political expediency laid the groundwork for a multiplicity of religious establishments in British Canada. As mentioned above, the Methodist movement in Upper Canada felt empowered to lobby against official special status for the Anglican Church. The Church of England (so called in Canada until 1955) did, in practice, retain a "certain social status and elite influence"[89] but the disestablishment via the Clergy Reserves Act of 1854 made official what had already been tacitly acknowledged—the "denominational character of Canadian religious life" made a monolithic State church untenable.

Official disestablishment by way of the abolition of the clergy reserves was official recognition of a practical reality in English Canada. The removal of government support and recognition of special status was the end of an era. But it was not the end of religious involvement in the public sphere. Evangelical Christians, riding the wave of the Second Great Awakening in the United States and in Britain had campaigned hard to remove the church from what they saw as the corrupting influence of the State. They accused the established churches and traditional denominations of becoming enamoured of what we would now classify as modernity—individual human autonomy, a degree of rationality that removed all mystery from nature (glimpsing here a link with Romanticism) and that placed

God beyond human reach, need or comprehension (deism), and a love of intellectualism that discouraged an experiential relationship with God.

This rise of evangelical Protestantism and the parallel rise of ultramontane Catholicism were important components in the development of the Canadian religious landscape. Although evangelical Protestants and ultramontane Catholics have profound doctrinal differences, they did share

> "…a strong faith in God, an understanding that Christian faith was primarily defined as assent to God as first truth (a more Catholic than Protestant phasing), a passion for God's truth, a holistic understanding of Christianity, impatience with intellectualism, and a resolute determination to evangelize society through missionary outreach, confessional schools, temperance campaigns, and control of the public agenda."[90]

The relative religious tolerance (in terms of European traditions) in practice that had been extant in Canada since the time of the British Conquest did not satisfy the evangelical Protestant contingent. Intent upon transforming the Dominion of Canada to the Dominion of the Lord, they set their sights on an English, Protestant Canada. Myriad societies sprouted up—all with Protestant affiliations and conceived as components in a plan designed to form Canada into their ideal society.[91] In addition, the zealousness with which the evangelical movement pursued their goals was often marked by aggressiveness and intolerance. In the Canada of their conception, French Catholics there well may be, but French Catholics confined strictly to Quebec. The two sides were frequently at odds, sometimes even violently. Protestants attempted to thwart Catholics at every turn, especially when it came to establishing Catholic schools.

As mentioned above, attempts were made to establish the Church of England as the state Church, but—with the exception of Atlantic Canada and in spite of the institution of the clergy reserves—this was not a successful venture. As Choquette remarks, "(t)he policy of establishment ran aground on the shoals of political, ethnic, social, economic, and

51

religious diversity."[92]   The diversity of Protestantism did not lend itself well to the establishment of a single State church. This is not to say, however, that Protestants were disinclined to have churches influencing the State. On the contrary, as will be shown below, the concept of the separation of Church and State was seen to be one that enabled churches to engage in the business of the State while maintaining their autonomy from it. As well, they were opposed to an establishment church for the very practical reason that an established, S tate-sponsored church meant that the established church was supported monetarily by the State and, as such, had a distinct advantage when it came to evangelizing and providing infrastructure for church growth. For those Protestants who had come up from the United States, the establishment of a state Church was offensive to democratic and egalitarian ideals. There was also the issue of political power. Unlike the Presbyterians, the Methodists and the Baptists (who were mostly concentrated in Atlantic Canada), [93] members of the Anglican Church were drawn from the ruling elite—although their base did widen until they were the largest denomination in Upper Canada by the mid-19th century.[94]

The various Protestant denominations in Canada were voluntarist. They were self, as opposed to state, supported. This is important to remember when looking at the triumphant spirit that is displayed by 19th century Canadian Protestants. Many of them were convinced that they were on a holy mission from God and part of that proof lay in the fact that they survived and flourished despite the great odds that pitted them against a state-supported Anglican Church.[95]   The development of a more evangelical Protestantism in the 19th century speaks to this and influenced the ways in which Protestant denominations interacted with the State.

Evangelical Protestantism has its antecedents in 18th century Great Britain and the rise of rational supernaturalism that developed during the Enlightenment. Part and parcel of

the dis-enchantment of Western Christianity, reasonable Christianity arose out of the notion that God could be understood rationally and scientifically without the trappings of supernaturalism and mysticism. The concept of Deism comes to the fore in this period.[96] In response to this rationalism, movements like German pietism and British evangelicalism and the growth of Methodism developed and spoke to people's emotions rather than to their intellects[97] Murphy also observes that the Great Awakenings served as a deep contrast to natural religion and "glib moralism" in favour of asserting revelation via *sola scriptura* and justification by faith, not works.[98] Movements were demonstrated in North America (concentrated at first in the United States) through what is known as the Great Awakening and the Second Great Awakening. The Great Awakening was a movement concentrated at first in New England that eventually became widespread and arrived in Nova Scotia in 1775 with Henry Alline who led a revival movement called the "New Light" movement. Baptists and Methodists were attracted to the Great Awakening, and the evangelical fervour it sparked rose and fell throughout the 19th century.

In terms of Church and State, evangelicalism marks a shift in the social imaginary. The more established churches (especially the Church of England) denounced evangelicalism as radical and anti-intellectual and accused their religious "extremism" of spilling over into political extremism. In Canada, at least, these accusations were false. Especially in the First Great Awakening, the leaders urged their followers to be mindful of spiritual things and to rise above politics. William Black is quoted as saying "What have the ministers of Christ to do with the administration of civil government? Christ's kingdom is not of this world. We are neither magistrates nor legislators."[99]

At least one very important ramification for church and State relations in Canada can be drawn from Murphy's excellent discussion: there was an implicit challenge to the social order in the Great Awakening:

> "Elite conceptions of society rested on distinctions of rank, deference to authority, the power of coercive institutions, and the obligation to obey traditional norms. Evangelical religion encouraged individual self-assertion, voluntary association, the definition of status in terms of virtue and achievement rather than birth and inheritance, and the maintenance of order through popular consent. Revival movements offered not only an alternative view of the world but autonomous forms of corporate organization and bonds of social cohesion that were outside the control of the governing classes. Their effect was not to destroy the fabric of society but to guarantee religious and cultural diversity."[100]

This diversity stands upon and intertwines with the earlier pragmatic tolerance of the early to mid 18th century and this speaks to, among other things, the growing impossibility of an established church. The pragmatism of the State and its need to sway a diverse populace towards societal order under the Crown trumped any notion of one established religious institution.[101] What is apparent here, also, is that the relationship between Church and State is shifting and that the underlying theology of some of the population is involved in that shift. Heretofore the relationship had been one of establishment church deeply entwined with and supportive of the State and its established hierarchy undergirding a set social imaginary.

During the Great Awakening, evangelical Protestantism, while inherently politically conservative, unwittingly planted the notion of a more egalitarian relationship between the polis and the people in power. In some ways it could be seen as a wresting away of power from the elite Reformers who strove to do away with carnivals and such. The revivals, as Murphy states, "were outside the control of the governing classes."[102] The order that had been sought by the Reformers in the 16th century and by governments from any century was

still extant, but it was being changed to fit a paradigm that was beginning to be moulded by the lower classes.

The Second Great Awakening was an example of a rising up of the fervour planted during the Great Awakening. It began in the early 19th century and again spread from New England up to Canada. This wave of Evangelical Protestantism is important in the history of Church and State in Canada not because the majority of Protestants in Canada were or are evangelicals, but in the influence evangelicalism in general and the Second Great Awakening in particular had on Protestantism as a whole. The Second Great Awakening saw the introduction of institutionalism in the evangelical community, a desire to codify the worldviews that emerged during the revivals and camp meetings.[103] The hallmarks of evangelicalism in the Second Great Awakening were simple. For the evangelical Protestant, redemption came at the moment of conversion and from then on one was empowered to lead this life of holiness by the presence of the Holy Spirit. Evangelicals also stressed the importance of a personal relationship with Jesus Christ. Protestants set great store by individual holiness and believed strongly in salvation by personal conversion—an acceptance of one's broken, sinful nature and the acceptance of Jesus' redemptive gift in atoning for one's sins. Integral as well was the belief in the sole authority of the Bible and in the Bible as the inspired Word of God. Evangelicals also embraced a belief in a God that cared about individuals and who intervened in history and in human affairs. They believed in the power of prayer and in miracles. Mostly, they "believed in the transforming power of faith in Christ, thus standing apart from the Christian rationalists of their day…"[104]

Inherent, too, in the Second Great Awakening was a shift in soteriology which saw human endeavour after acceptance of God's redeeming act of grace in Jesus Christ as playing a small role in one's ultimate salvation.[105] As well, there was an understanding that

with redemption of the individual came the responsibility for redeeming society. Piety, hard work, perseverance and frugality were values highly prized by the evangelicals and Murphy points out that this was highly conducive to an economy shifting from subsistence. Ethical conduct and philanthropy and missionary work were seen as the fruits of the Spirit.[106] Evangelicals also led the Protestant missionary movements and were key players in the movements to abolish slavery, provide education to the poor, pass laws that protected women and children, to strictly keep the Sabbath as a day of rest, and to limit or prohibit the distribution and imbibing of alcohol.

Thus, this missionary streak, one that had not been at all strong in the Protestant tradition in Canada before the Great Awakenings, manifested itself in many ways, not the least of which was social reform. Indeed, the seeds of the Social Gospel movements in both the United States and Canada had their beginnings in the Evangelical fervour of the Great Awakenings. Eventually tempered by time and by adoption of the social reform principles by the more established denominations, evangelicalism informed the entire spectrum of Protestant Christianity in Canada. The similarity in theology and soteriology held by Evangelicals did not result in the unity of all Protestants under that banner, however. Despite the tradition of agreeing most of the time and then agreeably agreeing to disagree that had been supported by the rationalism of the Enlightenment, doctrinal, ethnic, economic and social differences made for a fractiousness that was not conducive to absolute unity and Evangelicalism blossomed under the denominational banners of Methodists, Presbyterians, Baptists, Congregationalists, to name the larger groups.[107] These groups were still united in one sense, though, in that they (like the French Catholics in Quebec and the Irish Catholics in Upper Canada) were opposed to the establishment of any church by the

State. The rhetoric that they developed in their joint opposition enabled them to find ways to work across denominational lines on other issues as well.

However, the distinctions that set evangelicals apart from their more "rational" co-religionists fomented dissent within denominational ranks and from without. In the 1840's and 50's, the Protestants or "dissenters" took up the rhetoric of liberalism and religious voluntarism and used it to undermine the authority of the "established" churches.[108] Part of the reason for this was demographic; the influx of immigrants from Great Britain after 1815 expanded the population and put a strain on material and human resources. Another reason was an attempt to find a place for less established Protestant traditions within a social milieu that was re-defining the place for religion in the public sphere.

Draper writes that this rhetoric opened up an "evangelical Protestant discourse that found a new legitimation for religious authority."[109] This discourse, he goes on to say, expresses itself in a creed that is "noncredal".[110] Instead, this creed provides a consensus of belief that does not require unanimity of doctrine. In a very real way, this continues the earlier pact of the non-evangelical Protestants to find common denominators. Murphy concurs, writing about the Second Great Awakening—which laid the foundations for the aforementioned precept—that it "resulted in a reconstitution of the movement, as bonds of fellowship resting on common spiritual experience were increasingly channelled into formal structures."[111] Thus, Protestants can work together across denominational lines and be in agreement. The ideals of Biblicism, conversionism, crucicentrism, and social activism were hallmarks of this belief.[112] Also included in this creed is the belief that true religion was internal, individual, between a person and their God. This internal religion was shown to be true in the actions of the person. Religion could not be regulated from the outside, nor could faith.[113]

57

As the Evangelical and/or non-Anglican Protestants became more and more successful, they began to chafe under the restrictions placed upon them by the Constitutional Act of 1791 which gave privilege to the Church of England. The issues of educational exclusivity, the right to perform marriages and to form parish corporations were all disputed but the largest issue came to be the clergy reserves.[114] The egalitarianism and relative autonomy of congregations that was implicit in the non-Anglican Protestant denominations became a springboard of sorts for a heightened interest by the churches in temporal matters of the State particularly where they directly affected church affairs. "Methodists in particular," writes Murphy, "became—at least temporarily—overtly political and increasingly indentified with the cause of constitutional as well as social reform."[115] And thus began an exceedingly important phase in the history of the Canadian Churches' relationship with the State. The battles were at once internal to the churches and external with the State.[116]

The internal battles could be divided roughly into two camps—on the one hand, those of the ruling elite and those of High Church Anglican persuasion (personified by Jacob Mountain and John Strachan) who were convinced that maintaining even vestiges of Church establishment were crucial to the continuance of social order and morality and the maintenance of imperial ties.[117] On the other side were political reformers who wished to depose the "rule of the local oligarchy" and those voluntarists who wished to see a clean separation between Church and State.[118] These last formed what Murphy calls a "broad alliance" between the politically and the religiously motivated against the established Anglican Church. The battle escalated from 1815 onwards, with the Anglican establishment gradually losing ground until, in 1840, a deal was struck to divide the proceeds of the clergy reserves (albeit unequally). Although they had, by and large, disparaged State support in

favour of a purely voluntary system, all major Protestant denominations, save the Baptists, accepted the revenue.[119] The clergy reserve issue was not truly settled until 1854, but this compromise shifted Church-State relations. More importantly, as Murphy observes, "(i)t revealed a trend in British North America towards the division of state support, as opposed to an American-style 'wall of separation' permitting no state support for religious bodies or institutions."[120] This trend is important to note because it points to one of the arguments of this study in general that, at least in Canada, church and state are not seen as being at odds per se. That is, that the conflicts that arose had less to do with the free exercise of religion than with the State's giving preference and monetary support to one church at the expense of the other.[121] While some still pressed for a United States-like strict separation of Church and State, the reality developed into a tradition that acknowledged religious institutions as integral to the well-being and political stability of society and the preference by the State of one over the other as the true danger to stability. This point of view is well-illustrated by the introduction of common schools.

The schools issue loomed large in the delicate balance between Church and State. After 1840, the effort to establish common, non-denominational schools erupted into sectarian battles. The Protestants lobbied hard for the teaching of basic, shared principles of Christianity without pausing to consider the myriad Christian perspectives on what was "common". The Roman Catholics in Quebec were against the use of anything but the Vulgate and against students reading independently from the scriptures. The Ultramontane Church was soon involved in the matter, exercising its belief that the State had no place in the education of its children.[122] Separate school boards were then set up, with the non-denominational schools set aside for the Protestants and the Catholic board for the

Catholics. However, as Murphy points out, the "non-denominational" education provided was Anglo-centric and heavily imbued with the tenets of evangelical Protestantism.[123]

With the repeal of the Clergy Reserves in 1854 (and in Atlantic Canada in 1850) the way for an evangelical Protestant consensus was opened.[124] Without the State-established church, a vision for Canada could be formulated and propagated without fear of censure or reprisals. This vision took shape as one that was exclusively Protestant and Anglo-centric. Clarke again points to the rhetoric of the time as positing Britain as "…a new Israel, chosen to spread true Christianity over the globe, and through the imperial connection Canadians would participate in the great work of the empire to free humanity from ignorance and sin."[125] To be sure, there was sectarianism and sectarian violence and anti-Catholicism ran high, especially amongst the Irish Protestants against the Irish Catholic. However, the overall social imaginary (outside of Quebec) that was professed remained as the over-arching general Protestant ideal.

The power dynamic experienced by the evangelical Protestants in Canada at this period was not like the one experienced by the Catholic Church. To be sure, Protestant denominations were not accorded any real political voice, but then their situations were vastly different from those of Catholics in Quebec. They saw their mission as one of evangelizing the world, not as defending a people from the tyranny of a government that they experienced as completely legitimate. Like the Ultramontane movement, though, evangelical Protestants had little time or patience for those who would thwart their plans.[126] Unlike the Ultramontanists who saw their church as perfect and the Pope as infallible and therefore the final arbiters of what was right and just in society, evangelical Protestants saw the creation of a Christian society as one that would come about through a reformation of

60

life and habits. They aimed to change each individual citizen and in that conversion, convert society at large.

It is in that context of anti-establishmentarianism and an evangelical Protestant sense of unity and destiny that the idea of God's Dominion arose. God's Dominion is a political ideal in that it has aims, theories and assertions of how people should be governed. In this period, it is based upon a liberal democratic understanding of society as composed of individual liberty and responsibility. As noted above, the aims of God's dominion were to reform the lives and habits of individuals within society—echoing the impetus of the 16th and 17th century desire to bring order out of chaos. Those reformations included preserving the Sabbath, the control of alcoholic beverages, education of the poor, the reclamation of prisoners and 'fallen' women. They formed voluntary organizations (YMCA, Sunday School, WCTU, Bible societies) in order to further their ideology. They also lobbied hard in Upper Canada against the Catholic efforts to establish confessional schools. This effort at quashing separate schools was repeated systematically in New Brunswick, Manitoba and the Northwest Territories.[127]

The evangelical Protestants of this era in Canada wanted to bring about a Protestant society. A society that was the epitome of Victorian religious scruples and morality.[128] They believed strongly in the need for personal conversion and that individuals, once converted, would form a society that would shine like the Kingdom of God. In that sense they were not unlike their ultramontanist brethren in Quebec. Ultramontanism emphasized a moral life, a temperate life, a life in obedience to God. It had a vision of a society that would act in perfect obedience to its religious leaders, and thus be a society that would also be reminiscent of the City of God.

In terms of social welfare, Protestants looked upon it as a means to an evangelical end. If people needed help, it was because they were sinful and only Jesus could truly lift them out of their poverty. A strong Calvinist streak of predestination ran through some efforts at social outreach, a belief that one was poor because of one's moral fibre.[129] The organized, systematic infrastructure needed to provide a holistic social welfare program like the one proffered by the Ultramontane Catholics in Quebec was not yet on the horizon for the Protestant contingent in Canada and wouldn't appear until the Social Gospel movement and a shifting of theology around the issue of poverty as a societal rather than a personal failing.

For the ultramontane and the evangelical Protestant in both the 19th century and in the present, religion has an integral spot in the public sphere. Separation of church and state only exacerbates that influence—when the Church is free of political influence, it has the legitimacy and moral authority to hold the government accountable to its most noble purposes.

Most importantly for the purposes of this study is this: that the church sought independence from the state. It is a vital distinction. The battle was NOT to separate the state from the church. The damage, in this paradigm, was being done TO the church BY the state and the consequences to society were grave. Far from being interested in becoming disentangled with the affairs of the state, the church and its membership sought autonomy in order to be more effectively entangled. This ideological end is key. From their perspective, the intertwining of church and state not only put the church in danger of falling under the thrall of modernity but also restricted the church's prophetic voice. The intention of the evangelicals was never to separate the churches from the public sphere, disestablishment was a way of (hopefully) reclaiming the authoritative voice of God so as to become the

government's real, authoritative conscience. What the evangelicals in English Canada really wanted was what the ultramontane Catholics in Quebec *had*—power to sway the government. Not only did the Catholic Church enjoy support of the people in terms of numbers, but it also wielded the power of the transcendent—the power to excommunicate, the power to impart to the people what the Pope, God's Vicar on Earth, would prefer them to do. Evangelical Protestants did not see the church as leaving the public sphere. Nor did the more traditional, moderate denominations envision this. Their vision was one of total influence over society in order that the fulfillment of God's purposes on Earth be achieved. The separation was not conceived as a separation from influence or relevance (although that did happen) but as a disentangling of priorities, that the transcendent and hence everlasting voice be heard amid the cacophony of temporal assertions and manipulations of power.

Meanwhile, at the end of the 19th century, while Protestants and Roman Catholics were trying to sort themselves out, modernity marched onward bringing more and more change in its wake. The churches continued to be the centre of community life in many cases and also provided education and a semblance of a social safety net. Church membership that seems to actually reflect real involvement and commitment grew.[130] Murphy observes that the churches "…had increased not only their institutional strength but also their formative influence on people's lives…(n)ow they could concentrate on working from within to transform community life and shape a social environment that would reflect fundamental Christian values."[131] One way in which this transformation was attempted and embraced was through the Social Gospel.

The idea of the Social Gospel began to take hold in earnest as the idea that souls could only be won when the temporal person was fed, clothed, housed, sober and rudimentarily educated. The Social Gospel is pertinent for the study for a couple of reasons.

First, it is an important development in Canadian Church history in and of itself. Secondly, it ultimately provided a template for social justice that future politicians and political groups used to formulate public policy—thereby providing an example of the ways in which church and State intertwine in Canadian history. Thirdly, it is an historical measurement whereby one can begin to demarcate where and when the traditional institutional churches ceased to be integral voices in the public sphere with collective influence. In other words, what constitutes secularism in Canada, and when did it start?

Part of the debate around secularism in Canada (as indicated above) has arisen from the shift in the institutional focus from personal salvation to the social gospel. The dates of this shift and whether or not this shift was indicative of the beginning of Canadian secularism is contested, with one side arguing for a date inclusive of the WWII years[132] and another arguing for the beginning of the Social Gospel movement as the start of the descent into secularism: "By abandoning the transcendent of the immanent in a highly social gospel," Ramsay Cook avers, "the mainstream churches of Canada 'set off down the path to the secular city'."[133]

The writings of Albrecht Ritschl and Walter Rauschenbusch were foundational to the Social Gospel movement in both the United States and in Canada. They articulated the theology of the movement, evangelical fervour of the age and a shift in anthropological sensibilities that began to emphasize the perfectibility rather than the hopeless depravity of the human creature—if only social structures could be put in place to facilitate that process. The movement evinced disenchantment with *laissez-faire* liberalism and a belief in the new social sciences as a way to analyze and solve society's problems. It also served as another point of cohesion for the Protestant denominations, laying part of the groundwork for the eventual development of the United Church of Canada.[134]

The Canadian Social Gospel movement has its antecedents in Christian Socialist movements of Great Britain and Europe as well as in the United States. These two traditions converged in Canada to be transformed into the Canadian Social Gospel. The Social Gospel was a complex movement of Christian theology and social reform which first arose in the late 19ᵗʰ century. It was a particularly Protestant movement that came about in response to a variety of economic, social and intellectual phenomena.

The Social Gospel arose out of a background of individualism that had its roots in the 17ᵗʰ century. Both liberal and conservative Christians held an individualistic view of the cosmos—individual salvation and responsibility lay at the heart of society. To reform society, you must first reform the individual. By the end of the 19ᵗʰ century, that individualism was being re-thought. The growing economic disparity, the depression of the 1890's and the deplorable conditions that existed for the poor in the slums of the industrial centres of Britain and North America were proof to some people that *laissez-faire* liberalism was not working. The ideas of collectivism arose and with it a belief that God could be found both in and through society. As touched on before, the understanding among Protestants began to be that individual salvation could only come if an individual's material needs were first met. This last is important to understand, as the Social Gospel movement is often criticized for not paying heed to individual salvation. While it is arguably true that the later Social Gospel movements became more about enacting one's faith in the world than about drawing people into that faith, at its roots the Social Gospel was concerned about individual salvation. But, again, the understanding began to shift from onus on the person in misery to the structures that had originally facilitated that misery. In that sense, as Choquette writes, "…social justice became the way to sanctification, rather than the result of it." [135]

Richard Allen, the first chronicler of the Social Gospel movement in Canada "…defines the "social gospel" in terms of intellectual changes within Protestantism itself."[136] He also calls it a religious movement that was not "based primarily upon economic or social factors."[137] Christie and Gauvreau object to the constraints of this definition and insist that the movement cannot be defined apart from "…the wider transatlantic context of the reinterpretation of liberalism in the early twentieth century."[138] Christie and Gauvreau's point is important in that it adds a heretofore ignored dimension to the understanding of the Social Gospel. The Social Gospel movement was instrumental, they argue, in establishing social work and sociology in Canadian universities. In addition, Protestant clergy were instrumental in applying sociological methodology to social problems and to resulting legislation, "…helping transform the scope and responsibilities of the modern state."[139] The Social Gospel movement, millennial and evangelical in tone and revivalist in orientation, worked hand in hand with the proponents of a "new liberalism" which emphasis on service rather than avarice provided a great appeal to Protestant ministers.[140]

This "new liberalism" was a reaction to traditional *laissez-faire* liberalism which was proving unable to rise to the challenges of the social problems brought about by the industrial revolution (among other forces). This new liberalism, as stated above, advocated service as the dominant principle underlying social relationships and as such emphasized the mutual dependence of individual and society.[141] It is important to note the rejection by these proponents of the new liberalism of Hegelian general will, "…as it negated individual freedom, and they preferred to discern in the progressive movement of society towards cooperation the greatest realization of individual moral action."[142] Collective action was stressed, but as a "…harmonious convergence of the goals of individuals and their

society."[143] Thus, the Social Gospel movement embraced a new economic understanding which was expressed in the reform programs of the Protestant churches.[144]

It is important, however, when looking at the components of the practical—economic applications, social scientific reforms—to also highlight the intellectual and religious background of the Social Gospel in Canada. The religious background of the Social Gospel can be seen to be firmly grounded in the aftermath of the Great Awakenings that occurred in the late 18th to mid 19th centuries. Revival meetings were still sweeping across the continent and, according to Allen, laying the groundwork for the social gospel movement.[145]

According to Allen, the revivals did three things that lay this groundwork: First, they fostered the idea that change was possible. This spoke directly to a theology of predestination, assuring the faithful that if they but took the initiative to approach God, salvation was not only possible but assured. Of course, Calvinism was not the only theological understanding held by the droves that came to listen to the revivalists, but it was a strong Protestant tradition. For those not holding predestinarian views, the revivalist message served to reinforce the notion of salvation by grace and God's innate power to transform. In this groundwork lay the seeds for transforming an understanding of individual hope for change into one of societal hope for change.

The second notion put forth by the revivalist was that God was a tangible presence in the temporal, mundane world. This again, was not new, but the revivalist reiterated it to the crowds, engendering a collective awareness. God was not only present but available, "…an immanent being available to man and working in the process of reformation."[146] If God was working to transform the individual, it was not a big leap to speculate that God could work to transform the collective. It is not untoward to speculate that the ideas being

generated by the new liberalism and the ideas being perpetuated by the evangelists would converge to create a new movement within Christianity that embraced the ideal of the collective above the individual. This would become a point of contention between the Social Gospellers and the evangelicals in Canada.

Third, the revivalist was a "crucial mediator".[147] This role of mediator, of arousing God's grace and human repentance was easily transmitted into a pattern for social activism that "evoked the impulses of social reform, reorganization and reconstruction."[148]

The intellectual impetus of the Social Gospel movement is also key to understanding its precepts. I have already noted above the contribution of social sciences and economics to the movement. Reformers like Arnold Toynbee and Alfred Marshall were having an effect, as were J.A. Hobson and Sidney and Beatrice Webb.[149] It is in this milieu that the radical concept of an individual as a product of his/her environment began to arise.

The concepts of Darwin, also, heavily affected the early Social Gospel movement. Not the social Darwinism formulated by Herbert Spencer and critiqued by Lester Ward but the observations of Henry Drummond and Kropotkin that species survived as a collective not so much by competition as by cooperation.[150] The last was very important because it lent scientific credibility to the notion that society was progressing towards its logical end, cooperative society, envisioned by the Social Gospellers as the Kingdom of God.[151] This last also was undergirded by, and in turn supported, the evangelical millennialism that was prevalent in the Protestant movements both in Canada and in the United States.

In addition, Allen points to the science of Biblical criticism as foundational to the Social Gospel movement. In a sense, it was also to eventually alienate some of the more fervent evangelicals—e pecially in the US where the idea that the Bible could be studied as if it were just another historical text contributed to the backlash fundamentalist movement.

Biblical criticism was used in the Social Gospel movement, not as a way to discredit the scriptures, but as a way of giving primacy to the prophetic tradition found in the Hebrew Bible.[152] The reading given to the prophetic tradition in this paradigm stripped away the conception of the prophets as announcements for the messiah and instead located them as leaders within the Hebrew community. The prophets were put forth as biblical proof that the faithful have a duty to be involved in public affairs, to be the voice of justice in society, to render the Word of God in such a way as to bring about societal, not personal, conversion.

The above, in concert with Hegelian notions of societal progression and with an anthropology that saw humanity as essentially good and sin as not brokenness, but selfishness, informed and inspired the early proponents of the Social Gospel tradition in Canada.

The men and women who were the earliest proponents of the Social Gospel movements were not limited to theologians and scholars. However, the movement was, in its beginnings, staunchly middle-class and urban. To be sure, the movement caught on in the rural areas, and the voluntary organizations that rose up in response to the call of the Social Gospellers for reform of society were not limited to the urban areas. But the focus of much of the work was trained on the cities where the need was seen by many to be greatest. Social welfare institutions sprang up funded by the churches and by various missionary societies.

As these institutions arose, concern began to be voiced as to how best to allocate resources and how best to help those in need. The need for trained social workers became apparent and departments of sociology and social work began to be planned and implemented.

At the same time, organizations like the Women's Christian Temperance Union (WCTU) lobbied hard to bring about national prohibition. The Lord's Day Alliance worked hard to make Sunday a required day of rest.[153] These movements, allied with the Social Gospel movement, worked steadily towards the end of creating the Kingdom of God (in a Christian Protestant sense) in their respective countries.

Another area of import for the Social Gospel movement was that of immigration. Immigrants were seen in both countries as being in need of "civilizing" and "evangelizing". The churches soon found that they alienated immigrants when they tried to convert them away from their own beliefs. As such, the churches eventually found that the most success they had with immigrants was in "Canadianizing" them, explaining the franchise and giving classes in civics.

The Canadian Social Gospel movement was unique and informed Canada in ways that some scholars posit have to do with Canadian exposure to Enlightenment thought. In this view, the Christian humanism and Christian socialism that are imbedded in the Social Gospel movements are less humanist and socialist and more Christian in Canada than they were in the United States. There could certainly be some veracity in this assessment. The Canadian Social Gospellers worked hard to ensure that "…the institution of the church would not only insinuate itself into the reform network…but also that it would directly fund, manage and define the agenda of the national and provincial platforms for social amelioration."[154]

An interesting observation in regards to the development of the Social Gospel in the United States and in Canada is that the influence of corporate interests served to keep the United States government from whole-heartedly embracing the ideal of a welfare state as proposed by the Social Gospel movement in Canada. Canadian politics were not devoid of

such influences, but were more amenable to partnering with the Churches in this regard, most assuredly because of the tradition of Church and State working hand in hand *in Canada.* As has been seen, the tradition of State-sponsored, Church-run social institutions was already deeply entrenched in Quebec. The Social Gospel movement in Canada continued to influence public opinion and policy until the 1960's.[155]

Christie and Gavreau argue that the institutional influence of the churches does not end until after World War II in English Canada and not until the 1960's in Quebec when the nature of influence changed with Vatican II and the Quiet Revolution.[156] It is also important to note that the influence of traditional religious institutions loomed large with tragic consequences in the First Nations communities. The formal agreement between the government of Canada and the Anglican, Roman Catholic and United Churches in regards to the residential schools did not end until 1969. It is safe to say that while secularization in the guise of attempting to annihilate aboriginal religious traditions was certainly foisted upon these children, to claim that their experience of government intervention was devoid of religious influence or context would be ludicrous. It can be shown, then, that the influence of religious institutions on the public sphere (certain aspects of it, at least) continued longer in some spheres than in others, at least in terms of official public policy.

In English Protestant Canada, the overt influence of the churches ended when the State took over the institutions and precepts of the social gospel. Since this was, in large part, the way in which the Protestant church had defined itself in the context of modernity and the modern state there was again a necessity to review and renew its status in general and its status in relation to the state. This process is ongoing and it is obviously affected by and affects the socio-political-economic context of society at large. As will be shown in a later discussion, religious worldviews as such still play an important role in the individual lives of

many Canadians. However, the overt role of church as shadow establishment has been replaced by the more amorphous role of the individual as representative of the institution within the work of the state. That is, although the churches as institutions do take stands on issues of morality and justice (often through lobbying groups, if not as entire ecclesiastical bodies), these stands are not received by the State with the same gravitas that they were when the institution had status as a shadow establishment. Where the churches as institutions still have sway and direct impact on the state are when they are represented by the individuals who embrace the tenets of a religious worldview and bring that worldview (unavoidably) to the legislative or policy table.

The beginnings of this can be seen in the development of some of the political parties in Canada in the early 20th century. Individuals took their religious worldviews into the organized space of party politics, in part, to promote their vision of what a Christian country should look like. What follows is a brief exploration of the role Christianity played in the development of these parties as one example of how the relationship of church and state shifted during the decline of the shadow establishments.

Christianity and Political Party Formation in the Twentieth-Century

CCF

The Canadian Commonwealth Federation was a left wing political party that was started in 1932 by a conglomerate of progressive, socialist and labour leaders. It is too facile to say that Christianity played a role in the development of the CCF simply because the founding members were almost universally Christians. It is fair, though, to say that Christianity can be held to have been influential by looking at the stated ideology of the organization in question and asking: 1. If there are elements within that ideology that are *uniquely* Christian or 2. If not, are there elements within that ideology that resonate with a

Christian worldview, but are couched in non-religious terms? Of secondary relevance is the background and confession of the framers of that ideology. The confessed beliefs of the ordinary members of the organization who ratify and agree to abide by the ideology are relevant but not deterministic, that is, their religious worldview was foundational to their activism but not completely definitive of the organizations with which they chose to affiliate. Thus, it is quite likely that a member of the United Farmers of Alberta did not much care that JS Woodsworth was a Social Gospeller who had turned to socialism. What might matter to the farmer is that the CCF was a big enough entity to put forward his practical needs in Parliament and have those needs heard and met. This is not to say, for example, that the Regina Manifesto (the founding document of the CCF) would have been irrelevant to the common membership. Rather, it is to say that the Manifesto was not directly reflective of the common membership, but of the ideals expressed by the framers—ideals that the framers *believed* would reflect the views of the general membership—but the framers' ideals, nonetheless. Therefore, in order to explore the place of Christianity within the party politics of the State, I will examine the stated ideology of each political party and briefly touch upon a sample of the framers of these ideologies in order to determine whether or not Christianity influenced the formation of these parties.

A quick read of the Regina Manifesto shows a glaring absence of any mention of faith or of God. It reads, in short, like a political manifesto of its time and place. In order to determine whether or not there is a Christian influence in the Regina Manifesto, it is important to look at the kinds of Christianity one might expect to find therein. The CCF was a group of like-minded organizations bent on governmental reform through the auspices of the collectivist spirit of socialism and/or new liberalism. The Christians who would be attracted to such an organization would more likely than not hail from the Social Gospel

tradition of Protestantism or the social welfare tradition within Catholicism. A tenet of Fundamentalist or Ultramontane Christianity is one of conservatism, obedience towards authority and an absolute adherence to the absolute sovereignty of God. The CCF was not organized around the principles that would be conducive to attracting a more conservative kind of Christian into its fold. That being said, it is not out of the range of possibility that such conservatives did populate the CCF, but if they did so they would have done so in adherence with a professed ideology that was antithetical to their own theology.

That being said, there are no statements within the Regina Manifesto that are uniquely Christian. However, there are statements within the document that resonate with a Christian worldview, if that Christian worldview is that put forward by the Social Gospel movement. Article 13 on Social Justice is especially telling even as it insists on social work professionals to administer this component. Professional social workers were an increasingly important component to the Social Gospel tradition when J.S. Woodsworth was involved with the movement. Article 10 regarding world peace is more a personal tenet of Woodsworth, a well-known pacifist, but a component of a collectivist Christian spirit, as well. In fact, the entire manifesto, couched as it is in socialist terms is reflective of Christianity as expressed by the Social Gospel movement. In that sense, then, the CCF can be seen to have been influenced by Christianity in its foundational ideology.

NDP

The New Democratic Party was formed in 1961 and is a union of the CCF and the Canadian Labour Congress. The NDP adopted the Winnipeg Manifesto of 1956 as its foundational ideology. The Winnipeg Manifesto is less socialist and more social democratic than was the Regina Manifesto. It affirms the centrality of democracy and freedom of the individual—as has been discussed, these are values that were implicit in the impetus of the

non-Anglican Protestant denominations to oppose and defeat Anglican establishment. Written in such a way as to assuage the hostility to socialism occasioned by the Cold War, the Winnipeg Manifesto affirms the need for a planned society but accedes to the need for both public and private corporations. In short, this Manifesto reiterates much of the values of the CCF while acknowledging the primacy the Canadian public puts on the democratic process and individual freedoms.

Again, there is nothing uniquely Christian within the Manifesto. Interestingly enough, though the Manifesto (or Declaration) asserts the "…belief that society must have a moral purpose"[157] this is a tenet that is held by both conservative and liberal Christian alike. In fact, this is an example of the Enlightenment virtue of finding common denominators within the tradition at large with which everyone can agree. This is not to say that the Christian philosophy that can be read between the lines of the Winnipeg document is in line with a conservative Christian stance. It is not. Human potential is still at the apex of the ideology outlined here and, as such, the Christianity that can be seen within its pages is again reflective of the Social Gospel movement.

The above cursory analysis does not prove beyond argument that Christianity played any sort of role in the formation of these parties. Given the tone of the professed ideology, however, and the belief systems of several of the framers (Woodsworth, Douglas, Ivens) it would be difficult to assert that the foundations of the parties were without religious scruples or ideals. The political parties that arose from this period were not just political manifestations of the Social Gospel tradition, however. There was a conservative, populist side to the equation as well.

Social Credit

The Social Credit Party was founded in 1935 by the evangelist William Aberhardt. It was based on an obscure and somewhat convoluted economic theory developed by a British engineer, Major CH Douglas.[158] Aberhardt seized on Douglas' idea as a way of alleviating the devastation of the Depression and urged his substantial radio audience to adopt it as a tenet of faith. Aberhardt was elected Premier of Alberta on the "SoCred" ticket and lasted in that office until he died in 1943 and his protégé; Ernest Manning took over both his ministry and his political office. Manning held that office until 1971. Under Manning, however, the "SoCreds" reverted from the social credit doctrines of their founders and operated under an ideology of social and financial conservatism.

Social Credit was a populist party the foundations of which were laid in a peculiar, but not far from socialist, economic theory and in fundamentalist, evangelical Christianity. While producing no manifesto, the Social Credit party under Aberhardt and Manning was socially conservative, in keeping with their theological convictions. And those convictions reflected the classic themes of Canadian Protestantism and the ideology of God's Dominion, temperance (no alcohol was allowed to be served on airlines flying over Alberta), and Sabbath laws. The language/culture barriers of English Protestantism and Catholic Quebeckers also played a role in the national party, with Ernest Manning stating categorically that he would never accept a Francophone Catholic as national leader. So the ideology that is reflected in the operations of the Social Credit Party is one of a staunch, conservative, God's Dominion Protestantism untouched by the teachings of the Social Gospel and entrenched in the doctrine of individualism, Anglo-centrism, and transformation of the souls of society through legislation of morality.[159]

Preston Manning is the son of Ernest Manning, evangelist and former premier of Alberta. He is the author and founder of the former Reform Party of Canada, which joined with the Canadian Alliance and the former Progressive Conservative Parties to create the Conservative Party of Canada. The Conservative Party came into a minority government in February, 2006.

Like the Social Credit Party of his father, Preston Manning's Reform Party was a populist movement sparked by a number of political issues raised by the Mulroney Tory government. These issues (Meech Lake, the Charlottetown accords, the GST, NAFTA, etc. and, of course, the National Energy Program earlier under Trudeau) contributed to a feeling of Western alienation, a feeling that Manning had been planning for and leapt to exploit when he saw the time was ripe. The party was hugely successful in splitting the conservative vote and in providing Westerners with a voice that they felt had been lacking.

It is difficult to assess just how much Christianity may have influenced the building of the Reform Party's professed ideology. Preston Manning and his people crafted a very careful, very circumspect platform for the 1993 election and Mr. Manning is very close-mouthed about the religious convictions that might have come to play, had the merger not taken place and the populist Reform Party been able to form a government at the federal level. Books about the conservative movement that entwines Reform, Alliance and PC are carefully neutral on the subject of Christianity or any fundamentalist influences that may be exerted from within the party faithful. Mr. Manning insists that the Reform party was purely populist and all moral issues were to be decided democratically. This is, indeed, a big move from the Social Credit party which reflected classic Canadian conservative Protestant values in its unabashed move to legislate morality for the good of the Dominion. Manning, Sr. was

a well-known pre-millennial dispensationalist whose religious convictions were never separate from his political endeavours.

This is not to say that there is any hidden agenda within the Reform or Conservative ideology, merely that the lack of a platform plank suggesting a moral or ethical stance is unusual, even in a populist movement and especially in one founded by a confessed evangelical Christian and led by a professed evangelical Christian. It could, of course, mean that there is no religious influence whatsoever in the party's ideology, but that belies the very nature and definition of evangelical and begs the question as to just what kind of relationship we are now going to see between Church and State in Canada. Traditionally, we have been a country with overtly religious motivations. The careful crafting, packaging and marketing of the past Reform and current Conservative governments signifies a shift in that transparency. Stephen Harper, the current leader of the Conservative Party and Prime Minister of Canada under the minority government, is notoriously tight-lipped in general and even more so when it comes to the place religious worldviews have in the party. Whether it is simply in self-defence—not wanting to get painted with the tarry brush of the American Religious Right—or a true statement of a conviction that Church and State are separate, remains to be seen.

Conclusion

The history of the relationship between church and state in Canada lies somewhere between that of Great Britain and the United States.[160] Although both the Catholic Church in French-speaking Canada and the Anglican Church in the Maritimes were established (*de facto* and legally, respectively), the more persistent ethos in English speaking Canada is of an informal religious establishment that embraced a type of Protestant pluralism.[161] In French speaking Canada, as well, until the 20th century, the Catholic Church was the keeper of

culture and of society, running the educational, medical and charitable organizations. The state in this instance worked hand in glove with the Church to maintain this status quo, in essence taking a subordinate position within society as mandated by an ultramontane world view.

Two major underlying tenets of Church-State relations in Canada are, then, tolerance of doctrinal difference for the sake of political or societal order, and a working relationship where neither party feels particularly threatened by the power of the other as long as an egalitarian spirit prevails, whereby no one religious institution or doctrine is seen to be actively promoted by the State. In short, Canada has a history of recognizing religion as an important component of society and of viewing it pragmatically as a tool for social order or for orderly social change, and not for out-and-out rebellion. Even when religious worldviews challenged the status quo with the progressive notions of the Social Gospel, the State itself was not being challenged, but rather the duty of the State towards the polis. The perception of this duty has, of course changed over the course of the twentieth century and the next chapter explores an aspect of that change.

A discussion of secularization theories is the next step in understanding the history of Church and State in Canada and how religion fits into the twenty-first century State. In light of Canada's strong history of recognizing religion as integral to culture (whatever that culture may be), the discussion of secularization theories assists in unpacking the complex ideological framework that underlies the Canadian political landscape.

Notes

[1] I have chosen not to discuss the topic of Residential Schools in depth in this study. It is true that the intersection of State, Church and Aboriginal culture collided most horribly over the Schools. It is also true that the subsequent loss of culture, identity and dignity did have drastic effects on the geography and feeling for place of the Aboriginal peoples. However, the issue of the schools themselves, while certainly indicative of a supercessionist mind-set, are more peripheral than central to the main thrust of this study. In short, the policies of the Residential Schools are reflective of dominion theology which has been discussed and will be taken up again in the discussion over treaties.

[2] Marguerite Van Die, ed. *Religion and Public Life in Canada: Historical and Comparative Perspectives* (Toronto: University of Toronto Press, 2001),7.

[3] Roger O'Toole. "Religion in Canada: Its Development and Contemporary Situation" *Social Compass* 43:1 (1996).

[4] Bireley, Robert, S. J., "Early-Modern Catholicism as a Response to the Changing World of the Long Sixteenth Century." *The Catholic Historical Review* XCV:2 (April 2009):220.

[5] See Bireley, 221 n.3 for a synopsis of that argument.

[6] See Robert Choquette, *Canada's Religions: An Historical Introduction,* (Ottawa: University of Ottawa Press, 2004) p. 162 for a brief discussion of how the Church of England differed in polity from the Catholic Church, even as it retained the structure of Church government.

[7] Choquette., 37.

[8] Bireley., 222.

[9] Choquette.,37. Indeed, France did not implement the reforms until the 17th century.

[10] Ibid.

[11] Bireley., 223, n. 7.

[12] Ibid.

[13] Although the bishops were supposed to visit Rome regularly, their obvious loyalty would lie with the power that appointed them.

[14] Choquette., 39.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] The notion of a State without an Established religion would have been entirely incomprehensible, even ludicrous, until the 18th century when, of course, it happened.

[19] The question of whether or not Anglicans are Protestants or a singular category in and of themselves is highly charged and controversial. The ecclesiology is certainly more akin to Roman Catholicism (apostolic succession and the like) than many other Protestant denominations. The relevance for the immediate purpose is this—that Anglicanism asserted the same type of authority as did the Roman Catholic Church but, in the end, lacked the political capital to assert itself in the same way as the Roman Catholic Church did in Quebec via ultramontanism. The figure of the Pope and the centrality of Rome are, I believe, central to understanding a particular type of authoritarianism that is noticeable in a compare and contrast of New France and Britain.

[20] Choquette., 121.

[21] For a very interesting discussion of the Jesuits and the dubious efficacy of their missionary efforts see Carole Blackburn, *Harvest of Souls: The Jesuit Missions and Colonialism in North America, 1632-1650* (Montreal: McGill-Queen Press, 2000).

[22] Matthew 28:19; parallel Mark 16:15.

[23] CharlesTaylor, *A Secular Age,* (Cambridge, MA: The Belknap Press of Harvard University Press, 2007), 101.

[24] Or, of course, romanticized as Noble Savages-unspoiled innocents whose affinity with an enchanted world made them laudable, if not completely human.

[25] Taylor., 103-104.

[26] Choquette.,102.

[27] I say "perceived" because it is clear that not all of the Gallican Church embraced this worldview. In fact, the Jesuits (who were, of course, loyal to Rome—but at the time were Gallican perhaps for the sake of political expediency) held a very different anthropology and soteriology than did the Jansenists.

[28] Choquette, 104. See also Dale K. Van Kley, "Civic Humanism in Clerical Garb: Gallican Memories of the Early Church and the Project of Primitivist Reform 1719-1791." Oxford University Journals *Past and Present* 2008 http://past.oxfordjournals.org/cgi/content/full/200/1/77.
Accessed 14 February 2010:77-120.

[29] Choquette.,104.

[30] To hold a low anthropology is to hold a pessimistic view of human sinfulness and brokenness. It is associated with a high Christology, as the sinful nature of the creature is only seen to be redeemable through divine action, necessitating a Christ that is fully human and fully divine. This has its roots in the early Christological controversies of the Church. For more on this see Georgy Florovsky, "The Christological Dogma and Its Terminology" in *Christ in East and West*, Paul Fries and Tiran Nersoyan, eds. (Macon, GA: Mercer University Press, 1987),45-48. For a perspective that differs from this somewhat see Rita Nakashima Brock "Pacific, Asian, and North American Asian Women's Theologies" in *Feminist Theologies: Legacy and Prospect*. Rosemary Radford Ruether, ed. (Minneapolis:Fortress Press, 2007), 52-54.

[31] Choquette.,104.

[32] It is perhaps pertinent to note that the particularly Jansenist anthropology that was embraced by some of the Gallican religious congregations appears to have asserted itself most wretchedly in the Residential Schools run by some of those same congregations. The issue itself is more complex than this single component; it is worth mentioning as such a component. While the treatment of the Aboriginals is inexcusable, the possible theological stances of some of those complicit in the unspeakable physical abuse is not unimportant. The more heinous abuses certainly lie beyond what the tradition prescribes, but the underlying theological motivation for harsh discipline and physical deterrents and the grim prognosis of the ability of the Aboriginal child to be at all "right" in the eyes of God do seem to echo the teachings of Jansenism.

[33] Choquette.,121-122.

[34] Ibid., 176.

[35] Choquette., 174.

[36] Ibid.

[37] Against this backdrop, the concept of "The Jewish Question" seems ludicrous. At the same time the loyalty and enfranchisement of the Jews in France was being heavily debated, the Roman Catholic Church clearly stated a position regarding where the ultimate loyalty of Catholics should lie—not with the State but with Rome.

[38] Ibid., 176. Thus, also, a component of Jansenist theology is embedded in the ultramontanism.

[39] Ibid.

[40] John S. Moir, *The Church in the British Era: From British Conquest to Confederation.* Volume Two of "A History of the Christian Church in Canada," John Webster Grant, ed. (Toronto:McGraw-Hill Ryerson, Ltd., 1972),97.

[41] Which is not to say that refusal did not happen—see Moir, 104—105.

[42] Even though this was so, Murray and Carleton set into place the tradition of allowing the bishop to appoint priests to parishes. This was a massive irritant to Jacob Mountain, the Church of England bishop in Quebec, who was unable to avail himself of the same privilege.

[43] Choquette, 177.

[44] Ibid., 145.

[45] Ibid., 147.

[46] Ibid., 154.

[47] Terrence Murphy, Roberto Perin, and Gille Chausse, eds. *A Concise History of Christianity in Canada* (Oxford: Oxford University Press, 1996), 135.

[48] Murphy, et al., 74.

[49] Ibid., 75.

[50] Ibid.

[51] Choquette, 207-208.

[52] Murphy, et al., 88-89; Choquette, 208.

[53] Ibid., 97.

[54] Ibid., 98.

[55] Ibid., 101. n. 195.

[56] Lartigue, of course, was well aware of the anti-Catholic bias in the United States. Not only would the Lower Canadiens become puppets of the United States, the sectarian nature of the religious landscape "down south" would certainly have concerned Lartigue as it was accompanied by a zeal for evangelizing that could have resulted in irrevocable divisions.

[57] Ibid. 105, n. 208.

[58] Ibid., 247.

[59] Ibid.

[60] Moir., 168.

[61] Ibid.

[62] Ibid. See also John Webster Grant, *The Church in the Canadian Era: The First Century of Confederation,* Volume Three of "A History of the Christian Church in Canada". John Webster Grant, ed. (Toronto: McGraw-Hill Ryerson Ltd, 1972), 69.

[63] Murphy, et al., 270.

[64] Ibid.

[65] Ibid., 271.

[66] Murphy, et al., 257-259.

[67] Ibid., 259.

[68] Murphy, in fact, demarcates the English-speaking, Protestant presence in Canada from the 16th and 17th century "…presence of clergymen who officiated briefly among small pockets of English-speaking inhabitants and the real beginnings of a continuous institutional presence for the principal denominations." *A Concise History.*, 111.

[69] Murphy et al., 108-189.

[70] Not all of the settlers were Protestants, there were also Aboriginals, Catholics and Jews included in these numbers.

[71] Choquette., 160.

[72] The issues of the seigniorial system vs. the common soccage and the clergy reserves will be elaborated in the discussions on environmental policy.

[73] Murphy., 112.

[74] Where the aforementioned denominations were augmented by the presence of Lutherans, English-speaking Roman Catholics, Baptists, Mennonites, Tunkers, Moravians and Quakers. See Murphy, 113.

[75] Murphy., 115.

[76] Murphy., 121. This echoes Taylor's comments regarding Protestant desires to reform society by bringing the masses under control and into conformity.

[77] Ibid., 123.

[78] Ibid.

[79] Ibid. For a discussion of the particular ways in which Protestants worked to get along with one another and with Catholics see Murphy's entire discussion, 123-125.

[80] Ibid., 125.

[81] Ibid.

[82] Ibid.

[83] Ibid. This contrasts with the United States, where rebellion, of course, did break out and was, in some instances, supported by a variety of Christian denominations. Presumably the Loyalists who fled to the north brought with them religious scruples of a non-rebellious nature.

[84] From the mid-18th century in Atlantic Canada and Newfoundland/Labrador, the Anglican Church was successfully established as the State Church. Official policy was to tolerate Protestant dissenters and outlaw Catholics. This policy continued until British Parliament emancipated the Catholics in 1829. See Choquette., 163.

[85] The 1791 Constitutional Act provided for special privileges for the Anglican Church, among them the right to perform marriages by license and a monopoly on military chaplaincies (Murphy, 126). In addition, and most controversial, was the provision of 1/7th of all Crown land grants to be reserved for the support of Protestant clergy. The Church of England assumed that "Protestant" referred exclusively to them, while other denominations argued that they, too, were entitled to the income from these lands.

[86] See Choquette., 153. The attorney-general of Québec and the Board of Trade and Plantations (which served the interests of the British merchant class) each opposed the conciliatory relationship. The Board was able to make its desires known by the revocation of much of the Québec Act in 1775—instructions which Carleton largely ignored.

[87] O'Toole.

[88] Ibid.

[89] Ibid.

[90] Choquette., 426.

[91] Ibid., 231.

[92] Choquette., 165.

[93] Ibid.

[94] Ibid., 167.

[95] It must be acknowledged that the Protestant Churches in Canada (even the Church of England) thrived in no small part because of the support given them by missionary aid agencies in Britain, the United States and Europe. While not wholly providing for them, the agencies did offer a modicum of support that eventually allowed them to flourish on their own. (Murphy, 117).

[96] In essence, Deism is the idea that God created the world/universe and then completely removed his/herself from the creation. It arose, in part, out of the conviction that creation *ex nihilo* was impossible to comprehend in the face of a creation that was obviously so meticulously well-designed and ordered.

[97] It is important to note, though that the intellect was not discounted by the Great Awakening. To be sure, the preaching was intended to touch the heart and soul, but one's mind was what one used to then direct one's actions towards a holy life. John Wesley's "strangely warmed heart" was crafted into action by what became known as the Wesleyan quadrilateral: the Christian life was informed by scripture, tradition, experience and reason.

[98] Murphy, 127.

[99] Murphy., 133.

[100] Ibid.

[101] Ibid.

[102] Ibid.

[103] Murphy., 133.

[104] Ibid., 169.

[105] Ibid.

[106] Ibid.

[107] Ibid.

[108] Murphy, et al., 151.

[109] Ibid., 154.

[110] Ibid.

[111] Ibid., 142-143.

[112] Murphy, et al., 50.

[113] See Murphy on this as well, especially in terms of the overlapping of missionary societies and charitable organizations from different denominations,144-145.

[114] Murphy, et al., 160.

[115] Ibid.

[116] This was concentrated in Upper and Lower Canada, the Maritime situation was somewhat different in that education became the flashpoint. The result was the same, though, in that the officially established church lost its legal exclusivity, the Catholic Church was emancipated and the Church became a shadow establishment.

[117] Murphy, et al., 162.

[118] Ibid.

[119] Ibid.

[120] Ibid.

[121] I am not unaware that the framers of the United States Constitution were possibly more concerned with avoiding an establishment church than they necessarily were with creating a tolerant, pluralistic society—but the interpretation has historically leaned on the "free exercise of religion" interpretation and so I use that here.

[122] Murphy, et al., 183.

[123] Ibid., 184.

[124] Murphy, et al., 270.

[125] Ibid.

[126] See Choquette, 231 and 249 for a discussion of the Guibord affair.

[127] Choquette., 232.

[128] Murphy, et al., 174.

[129] Murphy, et al., 310.

[130] Murphy, et al., 188.

[131] Ibid.

[132] Nancy Christie and Michael Gauvreau, *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada 1900-1940* (Montreal: McGill-Queen's University Press, 1996),p xi-xiv.

[133] David Martin. "Canada in Comparative Perspective" *Rethinking Church, State and Modernity.* David Lyon and Marguerite Van Die, eds. (Toronto: University of Toronto Press, 2000), 10.

[134] Murphy, et al., 324.

[135] Choquette., 333.

[136] Christie, xiii.

[137] Allen., 11.

[138] Christie., xiii.

[139] Ibid.

[140] Ibid., 91.

[141] Ibid.

[142] Ibid.

[143] Ibid.

[144] Ibid.

[145] Richard Allen, ed., *The Social Gospel in Canada* (Ottawa: National Museums of Canada, 1975), 12.

[146] Ibid.

[147] Ibid.

[148] Ibid., 13.

[149] Christie, 91; Allen 28-29.

[150] Allen., 29.

[151] Ibid., 30.

[152] This still is true today in Social Gospel circles. Jim Wallis, the founder and editor of "Sojourners" magazine tells a story of how, when he was in seminary, he and some colleagues decided to remove all of the passages having to do with God's directions to help the poor and the marginalized. The result? A Bible so full of holes that it could not stay together.

[153] Choquette., 337.

[154] Christie., 106.

[155] Christie., Introduction.

[156] Ibid.

[157] The Regina Manifesto. http://www.prairiecentre.com/pdf/2003/manifest.pdf. Accessed 10 August 2010.

[158] For a good, albeit condensed explanation of Social Credit, see The Canadian Encyclopedia. http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0007518

[159] The movement did not exist only in English Canada, however. In the 1960's 26 of the 30 Social Credit Party members elected to Parliament were from Quebec. The Quebec leader, Réal Cauette was leader of a strong Créditiste presence in Quebec, where the principles of social credit were still embraced, which was untrue in the English wing of the Party. In 1963, the Party split into English and French wings.

[160] Martin, David. *A General Theory of Secularization* (Oxford: Blackwell, 1978), 35.

[161] Ibid.

Chapter Two: Secularization

<u>Introduction</u>

The underlying assertions being challenged in this study are that the Canadian political landscape is secular and that religious worldviews are in some way detrimental to the legislative process. Just what is meant by "secular" will be explored in this chapter. As well, this chapter will explore theories of secularization, including the history of the theories, and make some assertions regarding the applicability of secularization theory to the Canadian political landscape. The beginning of the chapter will concern itself with some definitions and move into a discussion of what is meant by secularization. The discussion will then turn to a brief exploration of modern secularization theories, discussing several core branches of the current scholarly discussion. The final portion of the chapter will explore secularization theory in the context of the Canadian political landscape and, to some extent, the contexts of the public and private spheres of Canadian society.

<u>Secularization Theories</u>

From the outset it must be stated that this study begins with the premise that religious worldviews are extant in Canada at myriad levels of society and that these worldviews manifest themselves in both the private and the public spheres—either explicitly or implicitly. In other words, the fact that Canadians hold religious worldviews is not being questioned and is considered as a fact. The *extent* to which Canadians are religious, or whether or not religious institutions are declining or expanding, is tangential to the larger discussion. Therefore this chapter will not examine data pertaining to the decline and/or fall of the religious worldviews of Canadians as individuals or of religious institutions. What this chapter (and the study overall) is concerned with is how religious worldviews are manifest in the Canadian political landscape and whether or not this manifestation has been,

or has the potential to be, detrimental to the legislative process. Secularization theories belong in this discussion because their very essence is the investigation of the interaction of religion with and in the public and private spaces of western, liberal democracies.

At its essence, classical secularization theory argues that "as a society becomes increasingly modern (usually as knowledge expands through the processes of scientific rationality), religion becomes less and less important to that society."[1] Secularization theory rose as a sub-category of the social sciences—driven by the desire to explain and analyze modernity. Building on the earlier ideas of Voltaire and David Hume, two distinct schools of thought intertwine as a double helix to form the skeleton of its DNA. One strand is the functional camp, after Emile Durkheim.[2] This strand posits that as society progresses, religious traditions as institutions have less and less control over societal institutions. Education is one example, and a powerful one in the history of Canada. Religious institutions once functioned as the prescribed dispensers of education for the young, and religious teachings were considered as indispensible to the educative process as learning one's letters and numbers. Gradually, the State took over the function of the churches, establishing State-funded institutions that were increasingly divorced from specific doctrinal viewpoints and then, in some cases, from any religious affiliation or teachings whatsoever.[3] Religion was something one practiced outside of school—it was extracurricular. Thus, the function of religion becomes minimal; it is personalized and privatized, i.e. kept out of the arena of public discourse.

The second strand is the Weberian strand (after Max Weber), theorizing that in a disenchanted universe—i.e. in part, a universe where answers that rely on the supernatural are no longer needed to supply knowledge or meaning—the scientific and the rational will render a general societal belief in the supernatural "impossible".[4] If the above are the

genetic codes of secularization theory, then the contention that the intertwining of religion and State are antithetical to a modern, liberal democracy is the philosophical big bang of their conception.[5]

Secularization theory is controversial on a variety of levels and these controversies stem from myriad reasons. Some scholars argue that secularization theory is not globally applicable and therefore not useful as a tool for analysis and comparison. This argument points to American or European exceptionalism (the idea that because Americans appear to be more religious than ever and thus undermine secularization theory or that Europeans seem to be less religious than ever while much of the rest of the world is experiencing a religious upsurge, thus undermining the theory) to underscore the argument.[6] Others argue that the theory is not tenable because it is false.[7]

As in many things, much of the conflict in secularization theory rests in definitions. A major tension currently centres on whether secularization is to be defined as the decline of religion or as the transformation of religion. David Yamane, a self-proclaimed "neo-secularization" scholar at Wake Forrest in the United States, referencing Olivier Tschannen's work on the history of secularization perspective argues, that defining secularization theory as simply the decline of religion is unnecessarily reductionist.[8] R. Stephen Warner, Jeffery Hadden and Rodney Stark—among others—contend that secularization theory does define secularization as the decline of religion and that scholarship should move towards a new paradigm of "postsecularization". Steve Bruce argues the same definition as Hadden and Stark but contends that religion is, in fact, on the decline in the developing world. Bruce's contention, that religion has been and continues to be declining, is particularly important for the purposes of this study for it articulates the position that not only is religion declining, but

modern liberal democracies precipitate that decline and, in part, rely upon it to continue to flourish.

<u>Secularization as Fact: Religion is Declining in Modern Societies</u>

Steve Bruce states that:

> The secularization paradigm combines two things: an assertion about changes in the presence and nature of religion, and a collection of related explanations of those changes…It is not a universally applicable scientific law, but a description and explanation of the past of European societies and their settler offspring…It is not a simple evolutionary model and does not imply a single uniform future—but it does suppose that there are "socio-logics" to societal changes.[9]

Bruce's core argument is that there has been a long-term decline in the power, popularity and prestige of religious beliefs and rituals.[10] A root cause of that decline, he writes, is that the plausibility of a belief system is proportionate to social consensus—the more consensus there is, the more plausible the belief.[11] Thus, the individualism, diversity and egalitarianism found in the context of liberal democracy lead to the marginalization of religion in modern societies.[12] The need of modern societies to encompass diversity, to remain religiously neutral is based on the premise that diversity of faith cannot be tolerated in a society where the government allows one belief system to have legitimacy above all others. The result of such a situation, he writes, is high levels of social conflict.[13] Therefore, the modern state cannot but step back and allow religion to become privatized to the extent that, at a societal level at least, it declines until it is received with "benign indifference."[14] Bruce will be explored in greater depth when I turn to the discussion of Charles Taylor.

Like the postsecularists and the neo-secularists that are examined below, Bruce has a desire to move beyond the contention of whether or not religion is in decline and look at what secularization means as a sociological phenomenon. The point of contention for him, though, continues to be that many other scholars argue that what Bruce interprets as decline is in truth transformation.[15]

Postsecularization

In the early 1990's R. Stephen Warner called for a re-framing of secularization conversation by suggesting not that the *definition* be reframed, but that a "new paradigm" of "postsecularization" be explored. Postsecularization theorists define secularization as the decline of religion and then refute the theory with arguments that religion is not actually in decline. Warner's argument embraced Stark and Bainbridge's conception of rational choice theory. Rational choice theory (as applied to religion) asserts that religion serves as a function to fulfill the human need to know that life has meaning beyond mechanistic existence. Rational choice theory manifests as a supply and demand construct, with humanity demanding the meaning that religion supplies. It also posits a religious economy whereby religious institutions of various stripes benefit from the same principles that guide free-market capitalism: deregulation, competition, specialization.[16] This perspective takes American exceptionalism as the rule.[17] In addition, this perspective looks at institutions and at individuals but does not particularly take heed of differentiation of religion from other societal institutions. Yamane, Tschannen and Chaves each in their own way argue that classical secularization theorists were most interested in the macrosocial significance of religion.[18] Kevin Schultz agrees, noting that failure to consider aspects of secularization such as "institutional secularization (as in the marginalization of religious institutions from a reality-defining role), cultural secularization (the transformation of mythic and symbolic markers), or social secularization (faith as a source of social solidarity and division)" complicates the debate by presenting secularization as less multi-faceted than it actually is.[19]

Neosecularization

Others argued that the above paradigm of secularization theory still missed the point, which was that secularization itself was defined improperly by the postsecularization

89

proponents and hence the real issue—how religion transformed in modern society on a societal, as well as on an institutional or individual level—was being completely obfuscated.[20] To define secularization as the decline of religion was reductionist. Mark Chavez—at the forefront of the neosecularization camp—notes also that, "…currently fashionable claims suggesting that secularization theory has been decisively falsified throw the baby out with the bathwater;" implying, of course, that secularization as a theory should not be discounted on the premise of a faulty definition.[21] Neosecularization defines secularization as a transformation of religion in response to modernity, not necessarily as a free-fall decline. Another important issue gets raised by the scholars in this section: not only are there differences in definitions of secularity, but in function of religion. In this part of the discussion, it is just as important to define what secularization theory is/was meant to *do* as it is to define what secularization *is*.

Robert Bellah began criticizing a reductive definition of secularization theory forty years ago, calling it an "Enlightenment myth of secularization" which essentially posits the development of science as a direct cause of the decline of religion.[22] Yamane, Tschannen, David Martin (in his later work) and Bryan Wilson, to name but a few, join with Bellah in stressing that secularization theory posits a transformation of religion in the modern world: "…over time the place of religion in the social order, the structure of religious organizations, and the orientation of individuals to religion all *change*."[23] Wilson asserts that religious institutions, actions and consciousness diminish in their social significance, not in their existence altogether.[24]

Neosecularization, as put forth by Yamane as a counter to post-secularization, roots itself in an early understanding of the word "secular" which referred to the removal of territory or property from ecclesiastical authorities. Yamane, using Chavez, extrapolates his definition of

secularization to mean the disengagement of institutional authority over the spheres of public life.[25] Secularization, then, becomes more about the differentiation (i.e. "the process by which functions which are originally carried out together crystallize out and fall into separate spheres, with their own norms, rules and institutions.")[26] of institutions and what does or does not have authority in public life, than it does about whether or not religion is on the rise or on the decline. Yamane argues further that there is a double movement of secularization: "the broad movement in the history of the West toward a decline in the scope of religious authority vis-à-vis secular authorities and the persistence or reemergence of religious organizations under the secularized conditions established in the first movement."[27] Thus, in this paradigm, secularization theory explores the transformation of religious institutions in response to the secularizing effects (i.e. loss of authority over institutions and persons in the public sphere) of modernity.

José Casanova and Mark Chavez can be placed firmly in this secularization paradigm proposed by Yamane—Chavez himself suggests a shift from arguing over demographics data to examining a decline in religious authority and Casanova has written that, "…the theory of secularization is nothing more than a subtheory of general theories of differentiation."[28] Casanova argues that using delineated categories (which will be discussed below) to facilitate cross-cultural discussions would enable discussions to move beyond the issue of veracity into that of substantive comparative analysis.[29] For Casanova, this is necessary as the secularization debate is often "fruitless" and the analysis he suggests could "…account for different patterns of secularization…across societies and civilizations."[30] David Martin, as well, sides with Casanova in this aspect—both of them posing the suggestion that a more constructive discussion could be had by reconsidering what is meant

by secularization and "…whether we aren't better off thinking in terms of "multiple modernities," where no single rule holds true for every society."[31]

These are some of the current conversations. Secularization, so far, has been shown to be defined as many things, including: the movement into a public sphere that is set firmly in profane time; the decline of religious belief, practice and relevance in modern society; the decline of religion as authoritative institution in modern society; and the transformation of religion as a consequence of its interaction with modernity. A thicker understanding of the current discussions can be had by making a brief foray into the past and looking at the history of secularization theory.

The Historical Development of Secularization Theory

Although the concept has its roots in the Enlightenment, the word "secularization" comes from the Latin "secular" which originally meant something akin to "era". By the fifth century, the meaning of the term had broadened and become somewhat more ambiguous— meaning at the same time a sense of time without end; a differentiation between types of clergy (those cloistered as opposed to those secular or "in the world") and the differentiation between a priestly life (close to God) and a "secular" life (in the mundane, profane world outside of the monastery and professional clergy). Without further dalliance in etymology, suffice it to say that the term, like most words adopted into the English language, went through a series of definitions—differentiation between civil and ecclesiastical laws and lands, for example—before presenting itself to the modern age in its current forms.[32]

A good deal of the literature places the current meanings of the term at the feet of G.J. Holyoake, a nineteenth century British freethinker and founder of the Secular Society— a body formed in order to promote a social order that did not look to religion for authority. Holyoake himself, though, did not argue against religion. He wrote,

(secularism) does not say there is no light or guidance elsewhere, but maintains that there is light and guidance in secular truth, whose conditions and sanctions exist independently, and act forever. Secular knowledge is manifestly that kind of knowledge which is founded in this life, which relates to the conduct of this life, conduces to the welfare of this life, and is capable of being tested by the experience of this life.[33]

Holyoake encapsulates the spirit of many in the Enlightenment who did not see the rise of science and rational thought as fundamentally opposing religion, but rather as superseding certain aspects of it. As the *The Hedgehog Review* points out, it was only people like Marx who "dared to predict that the world of the future would be a world without religion."[34] Most were, the argument goes on, like Thomas Jefferson, more likely to think that human enlightenment would result in, among other things, a rational form of religious knowledge and experience.[35] Secularism as a concept has never been clear-cut and has become more nuanced as it slowly developed from Enlightenment thought to, among other things, twentieth-century secularization theory.

The definition of secularization as it is encapsulated in classical secularization theory was proffered by others, including Ernst Troelsch, but is most often attributed to Weber, although the term appears quite infrequently in his writings.[36] "Secularization" was the term Weber gave to the process and the result of the process of rationalization and *Entzauberung,* commonly translated as "disenchantment" but more accurately referenced as de-myster-ization or de-magi-fication.[37] Weber's analysis was that as human beings become more able at providing this-worldly answers for their questions and problems (a shift in epistemology), religion will cease to have special authority in society and in people's private lives (a shift in the locus of authority). Hence a society in which political decisions are made and have authority according to human reason and needs, not out of fealty to precepts proscribed by a deity or a religious institution purporting to speak for that deity—anthropocentric as

opposed to theocentric. Durkheim and others with a functional theory of religion also espouse this vision of modernization—that it is a step in humanity's collective progression.

Charles Taylor refers to both Weber's and Durkheim's view of this process as "acultural" or "culture-neutral"—a state in which it can be shown that "…under certain conditions, human beings will just come to see that scientific thinking is valid, that instrumental rationality pays off, that religious beliefs involve unwarranted leaps, that facts and values are separate."[38] In this paradigm, culture does not affect the development of human ideology and social theory as acutely as does a general propensity of all human beings to move towards the paradigm of modernity.[39]

Secularization theory in essence restates Weber's assumptions of modernity. Modernity is a process of rationalization and this process will decrease the need for and the significance of religion both at the macro (societal and institutional) and micro (individual) levels.[40] From this assumption arose the conceptions of differentiation (described above) and privatization

Privatization—the idea that that which used to be seen as a primarily communal activity (worship, for example)—means that religion is now seen as primarily a private matter with communal aspects; i.e. as an individual, I continue to believe in God— occasionally I may choose to express that belief with others in the context of public worship. Privatized religion has been regulated to "the private sphere"—the sphere where religion can remain significant in personal and private matters. The individual embraces or chooses not to embrace what used to be a communal and hence societal norm. Differentiation and privatization were encapsulated in secularization theory as key components of the process of modernization. There is more to unravel here, but before engaging in further discussion

regarding differentiation and privatization, some exploration of the ways in which aspects of the theory began to be debated within the academy is necessary.

<u>Early Debates and Detractors</u>

In the mid-twentieth century, even as secularization theory began to gain momentum as a way to explain the ways in which religion and society were interacting in the modern age, the theory had its detractors. David Martin[41] and Larry Shiner[42], in particular, were strong voices for this point of view. Shiner was concerned about a lack of cohesiveness and clarity. The question of analysis versus value judgement begins to arise here. There was a concern that the theory had become dogma and, as such, was not reflecting and analyzing reality but was too focused on its own perpetuation to be useful. In addition, the lack of universality and the fluidity of definitions, it was argued, made secularization theory an unwieldy tool for analysis.

In addition to the above, there is also the very real split between European and American social scientists in regards to secularization theory. The earliest proponents of the theory were Europeans or British, Bryan Wilson, Peter Berger (an émigré to the US), Thomas Luckmann and Karel Dobbelaere. As Europeans brought up in a milieu of church establishment, secularization theory seemed logical. The process of modernity described by Weber was certainly happening in Europe. Disestablishment, differentiation and privatization all had more resonance with societies that have experienced the entrenchment of religious institutions for centuries.

In the United States, the scene was somewhat different. Americans took the separation of Church and State as a foregone conclusion and the idea of establishment was completely foreign. Therefore, they saw no decline in the influence of established religion or signs of additional differentiation. In America, traditional religions and non-religious

spheres of society came already disassembled—no differentiation required. As there also did not seem to be any decline in the patterns of practice and belief in the US—such components actually increasing and not decreasing—a cadre of American scholars began to view secularization theory as false. Of course, the truth lies somewhere in the middle. American practice and belief *has* diminished in a sense and to a degree, at least in terms of the mainline churches and what is traditionally understood as religion.[43] But whether or not that can be attributed to secularization as it is formulated in the traditional theories is another matter altogether.[44]

In the face of these and other perceived flaws in secularization theory as an analytical tool, several solutions have been suggested. The most vigorous of detractors insist that the concept should be dropped altogether (Jeffery K. Hadden, Rodney Stark and Roger Fink [with their supply-side model of religion as marketplace], William Bainbridge, and David Martin to some extent).

A core argument for laying the theory to rest was laid out cogently by Hadden in his 1986 presidential address to the Southern Sociological Society[45] in four distinct points:[46]

> (1) Secularization theory is internally weak in its logical structure — "a hodgepodge of loosely employed ideas" — first so revealed, indeed, by Shiner in 1967; (2) such secularization theory as does exist is unsupported by data after more than twenty years of research, a point also made by Glasner (1977) in his critique of secularization theory as a "myth" a decade earlier;(3) New Religious Movements (NRMs) have appeared and persisted in the most supposedly secularized societies — indeed, Stark and Bainbridge (1985) have shown that the lower the level of practice or saturation on the part of traditional religion in modern societies, the higher the likelihood of NRM activity; and finally, (4) religion has emerged as a vital force in the world political order (cf., Hadden and Shupe 1989).[47]

This call to remove secularization theory from the scholar's lexicon inspired a bevy of responses and led, in part, to the three different approaches that are outlined above.

Furthermore, to take Hadden point by point: Hadden's first point, regarding secularization theory as a "hodgepodge" has resulted in a vigorous re-working of

secularization theory by several scholars, David Martin and José Casanova, to name but two, in order to find a systematic or at least comprehensive way of studying the phenomenon. Hadden's second point is vigorously debated by Steve Bruce, for one, who argues (as has been shown) that the data does show a steady decline in religious relevance, practice and belief most notably in the UK, but in other parts of the developed world, as well.[48] Hadden's third point is somewhat contentious—Steve Bruce has vigorously refuted Stark and Bainbridge's NRMs theory.[49] In a more nuanced approach, Reginald Bibby and Harold Weaver acknowledged its importance while arguing that Stark and Bainbridge's assumptions do not necessarily support a case against secularization as NRMs appear not to be filling a vacuum made by the ebbing of traditional religious worldviews but pulling their relatively meagre membership from a pool of the non-religious.[50] Bryan Wilson takes a completely different tack and contends that NRMs are themselves proof of secularization.[51] Hadden' fourth point has been addressed by David Martin and Martin Marty, to name but two scholars interested in the rise of religious fundamentalism in the latter half of the twentieth century.[52] Thus, although Hadden was inspired to call for a removal of the theory from the field of discourse, his critiques have served (as have the critiques of others) to refine and retool secularization theory. Casanova has already been mentioned and his theories will be expanded below. Before that, however, the work of Charles Taylor will be examined in order to better explore the claims of both the orthodox secularization theorists (Steve Bruce) and the neosecularizationists. Understanding the division is important first, because this is an integral component to the field of secularization theory at the present time; and because understanding the distinctions and the reasons for the distinctions between the theorists helps when establishing a theoretical framework for this study in order to better grasp the

reality of the position of the Canadian political landscape in terms of secularization. Taylor and Bruce make good foils for one another for their perspectives regarding the place of religion in modern society are quite different.

<u>Charles Taylor on Secularization Theory</u>

Taylor likens the secularization discussion to a three-storey dwelling in which the ground floor is a place of convergence between the detractors and the proponents—it "represents the factual claim that religious belief and practice have declined and that the 'scope and influence of religious institutions' is now less than in the past.[53] Claims about how to explain these changes live in the basement and speculation and debate about the place of religion today is housed in the upper storey.[54] The divergence in both sides, according to Taylor, becomes most apparent when the two camps (those who embrace secularization theory as a valid way to understand religion and those who see secularization theory as obfuscating, at best and wrong at worst) attempt to explain (from what Taylor calls "the historically explanatory basement") the inhabitant of the ground floor (the claim that religious belief and practice have declined and that religious institutions wield less influence than in the past) or when the same groups move to the top floor and engage in vigorous discussions about what dwells there (i.e. speculation and debate about the place of religion in society today). What becomes apparent in those discussions are deep definitional divides. The most basic, outlined by Taylor but also reinforced by Steve Bruce,[55] is that the mainline theorists must believe that features of modernity (urbanization, development of class societies, industrialization, the rise of science/technology) "…of themselves undermine belief, or make it harder."[56]

Those who would revise or do away with secularization theory, writes Taylor, see that "…the new structures indeed, undermine old forms, but leave open the possibility of

new forms which can flourish."[57] In this sense, Taylor reinforces the insights of the neo-secularizationists.

The divide becomes even more apparent when Taylor points out that Steve Bruce and Roy Wallis explain exceptions to the theory by stating, in essence, that in a modern paradigm religion has no independent motivation or reason but functions only as a support to something else.[58] This draws upon Weber, Troelsch and Durkheim by revealing a functional vision of the relationship between religion and society rather than what Taylor calls the "transformative perspective" of religion which "takes (human beings) beyond or outside of whatever is normally understood as human flourishing, even in a context of reasonable mutuality (that is, where we work for each other's flourishing)."[59] In other words, a distinction between the two positions of secularization theory that are being considered (the one asserting that secularization means the decline of religion in modern society, and that this decline is clearly supported by sociological evidence, and the other, the neosecularizationist point of view) is that the first sees religion as essentially mechanistic, a tool that developed in human societies to meet particular, functional needs—i.e. as a way to maintain order or as a way of explaining how and why the universe works as it does. The other asserts that religion is not so much a utility as it is a portal through which human beings posit a model of human flourishing that goes beyond what *is* to imagine what *may* be. This "transformative perspective" is missing, according to Taylor, in secularization accounts that rely on a functional definition of religion. He argues that to miss that component of what religion has historically meant to Western society is to miss an important facet of modern society.

Taylor extrapolates two assumptions that he asserts underlie secularization theorists such as Steve Bruce:

> The first (assumption) says that the independent motivation to religious belief and action…tends to disappear in conditions of modernity. The second says that in conditions of modernity (if not always), religious belief and action can only be epiphenomenal, that is functional to some distinct goals or purposes. [60]

In what Taylor calls the "orthodox" camp[61], the view is that modernity has an adverse affect on religion—that modern society reduces or represses religion.[62] Bruce's work bears this statement out. Bruce refers to secularization theory as a paradigm which "…combines two things: an assertion about changes in the presence and nature of religion, and a collection of related explanations of those changes."[63] The changes the orthodox side sees are those of secularization as a consequence of modernity brought about by egalitarianism, individualism and diversity—hallmarks of differentiation. His argument is that all three create a paradigm in which there is no longer a preponderance of consensual belief but a diversity of opinion.[64] This diversity of opinion can only thrive, according to Bruce, in a religiously neutral State.[65] This neutrality leads to a society in which "…all faiths are in some sense equally valid, (the result of which is that) parents lack an incentive to indoctrinate their children, and the environment proves stony ground for such seeds of faith as are planted."[66] Therefore, he argues, although we continue to see religion as an apparent component of society, it is steadily diminishing:

> Perhaps a suitable metaphor is that of the progress of any point on the circumference of a wheel on a vehicle running down a gentle slope. As the wheel turns the point rises and falls but after each turn, it is lower than it was before.[67]

He points to census data and sociological analysis that indicate the decline of persons practicing or affiliating with traditional religious institutions.[68] What is important, he argues, is the decline of the importance to the public sphere of the religious institution as social structure and as medium of a collective moral conscience. Recognizing this decline is one step we take as a collective to understanding human cultures in another light and on a different level. But in the orthodox paradigm, this knowledge can only come to the

fore when we accept the data for what Bruce and his cohorts believe it is—the secularization of western culture.

As noted above, Bruce relies upon the familiar church, sect, and cult typologies of Weber and Troelsch to underscore his contention that religion as social scientists understand and study it is a functional, social phenomenon in decline in the West. There is no doubt, according to Bruce, that this aspect of the religious is rapidly disappearing from the public sphere. He and Roy Wallis dismiss the standard countermeasure of American exceptionalism[69] as an example of continuing sectarianism that will eventually lead, not to the demise of religion but to its acute privatization and irrelevancy. However, other scholars from the post and neo-secularization schools conclude that what is meant by religious and the ways in which the religious intersects with the public sphere are merely in flux, not necessarily in strict decline.[70]

What is shown here, then, by utilizing the assumptions extrapolated by Taylor and described above, are the contemporary deep divides between the proponents of orthodox secularization theory and those who would revise or abandon it. Again, the differences are not only in terms of the definition of what is religion. They also have to do with the meaning of religion in a societal context. As Taylor has shown, with certain caveats, it is possible for that divide to be crossed by at least some on either side.

As well, and this is to my mind the most fundamental of the divisions, is the issue of the second storey of Taylor's hypothetical house—the place of religion in modern societies. To discover this, the field will need to consider a more global approach than is used by Bruce, who concentrates on Western liberal democracies while it is becoming increasingly apparent to some that modernity occurs differently in different cultural contexts. José Casanova has done extensive work in this area partially with the hope that

the distinctions between orthodox secularization theorists and neo-secularization theorists can be overcome.

<u>Privatization, Differentiation, Modernity and Secularization</u>

Casanova attempts to "insert conceptual clarity and empirical accuracy"[71] into the debate by separating the theoretical threads into what he calls three "connotations": The first, and most recent, usage is "the decline of religious beliefs and practices in modern societies, often postulated as a universal, human developmental process."[72] The second is "the privatization of religion, often understood both as a general modern historical trend and as a normative condition, indeed as a precondition for modern liberal democratic politics.[73] The third is the differentiation of the secular spheres (state, economy, science), usually understood as "emancipation" from religious institutions and norms.[74]

Casanova makes a very insightful point when he remarks that two of the sub-theses of secularization theory, decline and privatization, have been examined minutely and have undergone "numerous critiques and revisions"; but that the sub-theses of "functional differentiation" has not.[75] Hence a rather ethnocentric understanding of what constitutes modernity has been allowed to underpin secularization theory, even as modernity itself by virtue of globalization has defied "a single teleological process of modern functional differentiation". [76]

Secularization theory has, for the most part, been predicated on a Western European understanding of what constitutes modernity and a substantial portion of what constitutes modernity is thought to have been the differentiation of society and religion. A characteristic of this conception of modernity is the construction of neat categories with impermeable borders. These categories are constructed with the idea that they make more possible the process of analysis by which a variety of subjects can be best understood. The

social categories created by the process of modernity once were subsumed in the great web woven by church and state. During the process of modernity the economical, political, personal and the religious become dis-united and differentiated. Non-religious spheres become increasingly emancipated by virtue of their reliance on reason and human freedom rather than on religious authority. Religion becomes more and more relegated to the margins of society as people become empowered by their newfound freedom in rationality and self-governance. This collision of cultures—Enlightened, disenchanted, democratic modernity versus Unenlightened, mystical, enchanted, institutional authoritarianism—increased alienation and strengthened the boundaries between categories or spheres.

This understanding of differentiation, however, changes when confronted with the reality in the United States which, as I have already states, emerged from the foreheads of its theoretical framers much like Athena emerging from the brow of Zeus—fully formed and fully separate. Church and State were never entwined and indeed, worked together to ensure that religion was not interfered with by the State. It is often forgotten in our times as many religious groups in the US clamour for the State to impose particular religious points of view in portions of public space, that their forebears crafted a government that was expressly devoid of the power to impose such particularities. Therefore, as Casanova and Martin have argued—there are multiplicities of differentiation—collision as in Europe and collusion as in the US being only two.[77]

Another problem of differentiation, besides being Western-centric, is that human beings—even modern ones—are not easily and neatly relegated to one sphere and then to another and so on; the boundaries of the spheres that people inhabit are not self-contained and exclusive. The categories constructed by modernity are just that—constructions. Human beings are not categorized or generalized easily—to make a generalization. To draw

103

an analogy: every parent knows that the impermeability of categories is false. One does not depart from the private sphere of family (the home) just drop off the children at their respective public spheres(daycare/school) and forget about the domestic private sphere as one goes about one's day in the public sphere (job/volunteer). In the back of the mind and underlying conversations is always the subtext of obligations unrelated to one's job in the public sphere: dependents must be collected, meals must be produced and distributed, homework supervised, dogs emptied and filled, offspring and relationships nurtured, appointments made and kept, the feelings of guilt and/or inadequacy suppressed until it is appropriate to wallow. This is multitasking. But it is also a blatant example of the folly of compartmentalization on a micro level. And, since human institutions and societies are comprised of individuals, I would argue that it is folly on a macro level as well. I am not arguing against categories. But I am arguing against a mindset that sees those categories as impermeable because human beings don't work that way.

At the macro, or societal level, we see that on practical terms the boundaries of the spheres of modernity are much more permeable than theoretically predicated. In terms of religion, Taylor writes, "…the fact that activity in a given sphere follows its own inherent rationality and doesn't permit of the older kind of faith-based norming doesn't mean that it cannot still be very much shaped by faith."[78] The spheres may be differentiated institutionally, even legally, but human beings do not leave their ethical and moral frameworks at the door of the public sphere as if they were one's outdoor shoes left outside so as not to muddy the pristine interior.

Differentiation is a theory—albeit one that should be seen as more diverse than it has been in the past—but it is not dogma and it can become untenable when the dynamism of the human condition is not factored into the calculation. The proof of this contention is,

I believe, in the way that privatization—closely linked in some minds and paradigms to differentiation in secularization theory—has borne itself out. Casanova reports and Taylor supports that "we are witnessing the 'deprivatization' of religion…Religious traditions throughout the world are refusing to accept the marginal and privatized role which theories of modernity as well as theories of secularization had reserved for them."[79] For example, churches in the United States found themselves in a niche position during the civil rights movement as sort of being relegated to special interest group status. A little more than a decade later, the religious right had organized itself as a central player in the American political scene as evidenced by the election of first Jimmy Carter and then Ronald Reagan.

What classic secularization theory does not take into account—despite the fact that it is keenly concerned with individualization—is the fact that institutions are comprised of human beings. To be sure, these human beings now have the freedom to choose whether or not to affiliate. But when they choose to do so, they can bring the influence of that sphere to bear on the other spheres in which they live and move and have their being. To be clear, I am not arguing that they bring that influence in a way that is necessarily authoritative (although it can be), but that one's worldview cannot help but be present with one in any sphere one inhabits and that this worldview informs one's movement in that sphere—even if one acknowledges one's biases, the worldview is still present as background noise, if nothing else. In this way, the institutions as well as the individuals become in a sense "deprivatized". The individuals that comprise these institutions are the representatives of these institutions, of all the institutions with which they voluntarily associate and they bring the norms and mores of those institutions with them as components of their very being, whether it be their ethical or moral code and/or their economic or political philosophies. What is crucial in this observation, though, is the fact that any authority they may wield is not due to the religious

institution *per se*. Thus, although a religious group or institution may have the intention of swaying the polis to their particular dogma, the group or institution has very little, if any authority save that which has been given to the individual or individuals espousing the institution's assertions.

Danièle Hervieu-Léger points out that modern religious worldviews are quite often personal conglomerations of religious beliefs and practices, even when the believer is affiliated with a traditional religious institution.[80] Therefore, it is perhaps more accurate to say that the institution has a modicum of influence through the actions of the individual operating in both spheres. Differentiation and privatization must be used carefully—taking the human propensity to be (partially) a product of their worldview/environment very seriously.[81]

Moving back to Casanova's discussion of differentiation and privatization: what is interesting and, I believe helpful, is the way in which the clear delineation of his connotations of secularization provide tools for analysis in another context. For example, David Martin's work on the comparative analysis of secularization in Canada with other societies underscores the ways in which differentiation, used judiciously, can be a useful tool for analysis of societies whose ancestry stems from Western Europe and which, unlike the United States, became gradually distanced, if not completely emancipated from, the mother countries. Also, by looking at the concept of privatization, one can determine how and where religious institutions and/or individuals have repudiated the idea and what sort of effect (if any) this is having upon the political landscape of any particular society.

However helpful or non-helpful secularization theory may be and whether or not it is true or false according to one's definition, the fact remains that religion was and is a component of culture and to understand societies, religion must be a factor that is entered

into the equation. Many scholars are urging their colleagues to look beyond secularization theory and explore avenues that might be more fruitful in the increasingly global milieu. As has been shown, Casanova advocates for a shift in focus: "sociologists of religion should be less obsessed with the decline of religion and more attuned to the new forms that religion is assuming in all world religions at three different levels of analysis: the individual level, the group level, and the societal level."[82] The work of Hervieu-Léger, Heelas and Woodhead and Grace Davies all seem to agree with a variation on this theme in their own work.

As a specific conclusion to this section, it can be stated that this study also contends that a neosecularization point of view—one that sees differentiation and privatization as key components for analysis and defines secularization in the two-tiered way that Yamane suggests, is most fruitful for understanding, at the very least, the ways in which religion and politics interrelate in Canada. Before moving on, there is one more aspect of secularity in modern society discussed by Taylor that is relevant to the discussion: conditions of belief.

<u>Conditions of Belief</u>

Taylor, in the tradition of Casanova in a sense, examines yet another sense of secularity and how it can be determined as a factor in society. In *A Secular Age,* Taylor explores "the conditions of belief" which in turn invites a conception of secular society as one that "…would be secular or not, in virtue of the conditions of experience of and search for the spiritual."[83] Although the concept is complex and would take more space than I have here to unpack, I take Taylor to mean, in part, that the secularity of a society can be examined in light of the number, ease and acceptability of worldviews a society is comfortable with an individual having to choose from without stigma or public reprisal. In this paradigm, it must be clear that religious worldviews must be among those available, although certainly not privileged, just choices among many.[84] In this, Taylor could be seen

as standing shoulder to shoulder with Bruce, but this is not the case. Bruce hypothesizes that the diversity of choices will make people indifferent to religion. In this, the reasons for the decline in membership of North American mainline churches might bear him out. Taylor is more convinced that human beings are searching for a transformative component in their plethora of choices and is speculating that this is more than an individual need, but a social one.[85] Going back to the fundamental question of the place of religion in human society, then—both scholars see diversity of choice, but each sees a different ramification. As will be shown, the diversity in the field of secularization field are debates that are happening more internally than they are externally. In other words, the fact that there is a debate about what is meant by secularization and whether or not religion is on the decline in the West—and in Canada in particular—is on the periphery of awareness for what is referred to as the elite in Canada. This is important to understand in moving forward with the argument that religion is present in the political landscape of Canada.

Secularization and Canadian Society

This study posits the existence of an elite in Canada which is distinct from the larger polis and from grass-roots populism. The development of this elite is complex and a full discussion requires more time and space than are available here. What this section will offer is a simple definition and a cursory discussion of some religious and cultural elements that contributed to the establishment of an elite within Canadian society.

The Elite

The literature on Canadian religion, Christianity in particular, is rife with references to "the elite". However, the definition of this term is not spelled out, but simply put forth as if the definition should be intuitively obvious. Political theorists Michael Ornstein and H. Michael Stevenson note that: "…there simply is no commonly shared definition of the

population of elites…" in other words, the category is subjective.[86] A careful reading of Charles Taylor (more general, actually, than specifically Canadian), George Rawlyk, Nancy Christie, David Martin, Peter O'Toole, Marguerite Van Die and Michael Gauvreau, to name but a few of the scholars who use the term, leads to the construction of at least a working definition: The Canadian elite, as used in this study indicates a particular class of individuals who operate in or have direct influence on the Canadian political landscape. Their chief characteristic is that they have access to power—whether it is political, financial, through the academy or through the more established media outlets. Another key component to the cohort is their commitment to the definition of secularism as first the absolute necessity for the privatization of religion in modern society. Members of the elite appear, more often than not, to fall in line with an orthodox construction of secularization in the tradition of Steve Bruce. This point will be expanded below. In addition, this cohort tends to be educated in a classical Western Liberal Arts tradition—even if they are not formally educated beyond secondary school (and most are), they tend to be autodidacts who have educated themselves in that tradition—this component is important for it is where the academy have had greatest influence for it is in the classrooms of universities that secularization theory is studied and has undergirded the pedagogy. If members of the elite are connected to religious institutions, it tends to be as a family tradition and not as an article of faith and they hold fast to the premise that religion in Canada belongs squarely in the private sphere. Any affiliation is likely to be Anglican, United Church or Roman Catholic.[87]

<u>The Development of an Elite</u>

"Secularization has not necessarily destroyed Canadian Christianity," writes George Rawlyk, "rather, it has helped to de-Christianize the elite but not necessarily the rank and file."[88] The existence and composition of an elite in Canada can be traced back to the 17th

and 18th centuries. In his 1995 article, "Religion in Canada: An Historical Overview," Rawlyk wrote that the seventeenth century French authorities in regards to New France "hoped and expected order and stability would be ensured by carefully and precisely defining the roles each person was to play within the colonial society. Three key institutions—the colonial government, the seigneurial system, and the Roman Catholic Church—were to be the means whereby stability and social discipline would be imposed on the colony."[89] The attempt was unsuccessful, as the colonists showed a distressing (to the authorities) tendency towards 'a spirit of independence'.[90] In the mid 18th century, Rawlyk notes a "considerable chasm between the Roman Catholicism of the priestly elite and that practiced by the rank and file."[91] Rawlyk records the worldview on the elite side as being one of a "strong sense of providential mission, an obsession with deferential religious and often political order, priestly control and moral and cultural hegemony."[92] The rank and file evinced, for the most part, a "deep ambivalence toward elite Catholicism, an almost peasantlike suspicion of those in authority, and an eagerness to control one's own responses to the unfolding cosmic drama."[93] This chasm is important for, as will be seen, it is one that continues to the present time, not only in French-speaking Roman Catholic Canada but also amongst English Protestants.[94]

In British Canada, before the War of 1812, Rawlyk argues, with Nancy Christie, the dominant religious tone of the Maritimes and Upper Canada was one of "a unique form of Radical Evangelicalism, which placed inordinate emphasis on the centrality of the traumatic New Birth experience" as taught in varying ways through the more evangelical of the Christian denominations: Baptists, Methodists and Presbyterians.[95] This Radical Evangelicalism became significantly less prevalent following the War of 1812 and the influx of "hundreds of thousands" of British immigrants.[96] This influx strengthened a pro-British

bias and Anti-American fears some Canadians had about the "evils of American republicanism and extreme religious enthusiasm."[97] Thus, a pro-British leadership and a "growing middle class preoccupied with British order and British respectability, and a growing suspicion of democratic Evangelical and American-styled enthusiasm," pushed Radical Evangelicalism to the periphery.[98] In its place was an evangelicalism that put more stress on religion of the head and less on the religion of the heart.[99] This last is important because it shows a trend of accommodation within the Evangelical movement that moves it more into the centre of society and allows it to influence political power, albeit more from the grassroots perspective than from a perspective of initial power.[100] This accommodation is key to understanding the ways in which Canadian Evangelicals work to have a voice within the elite spheres of Canadian power, as it is the shadow establishment Churches—Roman Catholic, Anglican (most particularly) and, to some extent in the twentieth century, the United Church of Canada—that spawn the elite who are the focus of this section.[101]

The elite in Canada fall in the tradition of the strong British and French authoritative systems that equate social order and respectability with the state of being civilized. Like their Enlightenment brethren before them—Modern Canadian elites incorporated the perspective of orthodox secularism as another component of what it means to be modern, Western and democratic.[102]

Having been educated in an academy that stresses differentiation and privatization as key components to modernity, religious worldviews remain a mystery and a prejudice of portions of the intellectual elite in Canada.[103] Patrick Deneen summarizes the thoughts of Christopher Lascher on the subject of the persistence of religious belief among most ordinary citizens:

> This persistence offends the cultural, intellectual, and economic elite, and
> even fosters anxiety among them, because it flies in the face of the

Enlightenment creed that religious faith would be overcome with the advent of scientific progress, economic development, and political liberalization. Seen by elites as superstitious and unwarranted, religious belief is derided as intellectual pabulum and false emotional security, while public policies that arise from religious traditionalism …are viewed as irrational, inegalitarian, illiberal, arbitrary, and oppressive.[104]

Lascher is speaking about Americans, but his point is well—taken in a Canadian context as well. John Fraser wrote in the *National Post* that

Religion, as a source of excellent stories of all sorts, is one of two great no-go areas in the contemporary media…as a general rule over the past few decades; stories on religion will break into the media only if they are (a)sensational, (b)bizarre, (c) goofy, (d) gee-whiz, or (e) contemptuous."[105]

Both authors support the contention that there is a belief amongst the elite in Canada that religion is not only irrelevant but that it undermines democracy and/or modernity itself. In short, the orthodox view of secularization in entrenched in the minds of the elite in Canada. The rest of this chapter will explore why this might be so and why it might be detrimental to Canadian democracy and society.

There are several premises of secularization theory that seem to loom large in the mindsets of a great deal of the intellectual elite in Canada. I laid out the more salient aspects of the current debate above. At this juncture I will unpack these premises that underlie the challenges I am making in this study before making a cursory exploration of the theory as it pertains to the Canadian context as well as its relevant history.

Challenges

As I noted earlier, I am posing two challenges. The first challenge is to the notion that the Canadian political landscape is secular. The second is that religious worldviews are detrimental to the legislative process. I will deal with the first challenge in this section and leave the discussion of the second challenge for Chapter Five. The analysis of the challenge to the assertion that the Canadian political landscape is secular intertwines with

secularization theory.   As stated above, the notion of a secular political landscape is embraced in a large part by certain factions of the academy and by the Canadian mainstream media.[106]   The acceptance of a traditional sense of secularization by this population is supported by two clear premises and by what Taylor referencing a Foucaldian term refers to as "unthoughts".[107]

The first premise is that religion no longer plays the same role in Canadian society as it once did. As was discussed above, there is no longer a shadow establishment of Church looming silently over government. As well, the churches no longer play the role of primary social safety net, the State having assumed the role which the Social Gospel had originally claimed for institutions searching for relevance in the public sphere and a new reason for institutional continuity.[108]

However true this premise may be in literal fact, it is far from cut and dry when it is considered more closely. The shadow establishment of the institutional church may no longer have the influence it once did—but the influence of religion in the guise of individuals who espouse religious worldviews has not necessarily diminished.[109]   As Casanova and others have pointed out, religious worldviews are asserting themselves in myriad places and ways—refusing to stay in the privatized and marginal positions secularization theories placed them.[110]   There seems to be increasing awareness that the irrelevancy Bruce predicted will come to pass if the religious institutions do not incorporate the transformative component of which Taylor speaks otherwise, what differentiates the church from Amnesty International or the Synagogue from World Vision or the Mosque from the soup kitchen? Religious institutions are attempting to re-figure their position in modern Canada in both the public and the private spheres.[111]

It is clear that religious worldviews are not gone nor are without influence. What seems to be shifting slightly in Canada, at least, is the ways in which those worldviews are expressed and practiced. Peter Beyer made this point when arguing against both a postsecularization and an orthodox secularization in the Canadian context when he points out that neither theory accounts for what happened in Canada where the "possible maintenance of religious influence under conditions of structural secularization.[112] Reginald Bibby has shown, for example, that Canadians are far more likely to affiliate and/or identify with the religious traditions of their families than they are to switch affiliation.[113] What Bibby's research shows is that people holding religious worldviews are more likely to pick and choose what they will believe from the presented doctrine rather than embracing it whole cloth (if, indeed, that ever really did happen) and have a sense that the institution with which they may choose to affiliate with should be flexible and willing to evolve with and for society. Bibby's research shows that religious institutions in the private sphere do not seem to be as doomed as early reports would suggest. Religious institutions may not be a societal given any more in Canada, but religious worldviews perpetuated within a traditional institution are not so much of a minority as to be discounted as players in the public sphere.[114]

Hence, I would argue, that this first premise (that religious institutions no longer wield the power they once held in the public sphere) is true to the extent that the established church—both legal and de facto (Canada hasn't had an officially established church since 1857, but that did not remove the fact of shadow establishments affecting government both in English Canada and in Quebec)—has shifted in its structure and meaning within Canadian society.[115]

On the other hand, this premise can be argued against on the grounds that individuals affiliated with religious institutions do bring some of the teachings and ethical models of those institutions into the public sphere with them as they go about their daily business. It would be more accurate to state that the institutions have less sway as monolithic constructions but that they do have sway inasmuch as they are personified in the individuals who themselves wield power in the political world. Institutions are, after all, comprised of people who act out of corporate as well as individual needs and beliefs.

The second premise used to support the secularization thesis is that religious practice and belief is in continuing decline—the orthodox paradigm. This was discussed above. It is reasonable to assert, in this context at least, that the second premise undergirding secularization is tenuous in the face of recent evidence, but that it is defensible. That is to say, that it is true in a traditional sense of what it means to be religious, but not necessarily tenable when one looks at current surveys on Canadian religious stances. As I discussed above, traditional practice is certainly changing but whether or not it is in decline in a meaningful sense in Canada is debatable. In fact, Bibby shows otherwise.

The third category by which secularization theory is supported by a cadre of the elite is that of the "unthought". Unthought goes deeper than ideology. Taylor and Bruce both assert that the term "ideology" has a charge of blatant bias and partisanship that is unwarranted. Unthought is more specific to the point here—it is not a conscious motivation, but an underlying framework that creates the parameters of what is important and what can be known. In the context of secularization theory, Casanova lists unthought as a categorization of "secularisms":

> …the kind of secular world-views (or "Weltanschauungen") which may be either consciously held and explicitly elaborated into historico-philosophical and normative-ideological state projects, projects of modernity and cultural programs or as an epistemic knowledge regime that may be unreflexively held

and phenomenologically assumed as the taken for granted normal structure of modern reality.[116]

What unthought connotes in this context is, to quote Taylor; "…the subtle way that one's own framework, beliefs and values can constrict one's theoretical imagination."[117] Connolly, in unpacking the idea of unthought, quotes Foucault's assertion that knowledge has finite forms and goes on to observe that "…every articulation of thought presupposes the unthought from which it draws nourishment and, conversely, that which nourishes thought must always escape full articulation."[118] In this context of the elite, secularization theory is the thought and the underlying unthought is the paradigm of modernity that requires secularization in its orthodox conception to be a fact and religion to be detrimental to a modern democracy.[119]

The unthoughts that underlie the secularization debate among academics and the mainstream media in Canada are slightly different from the premises listed above—which are more quantifiable—and have to do with the perceived veracity (or lack thereof) of a religious worldview in the context of modernity. In this conception of modernity, the scientific worldview holds that religion has been proven false and/or irrelevant in the face of scientific discovery and individual autonomy. In addition to this general belief (articulated through the first two premises I put forward), the unthought in Canada is nuanced and solidified by the official policy of multiculturalism which is itself seen as emerging from a pluralism made possible, in part, by the emancipation of the public sphere from religion.

I am not arguing against mulitculturalism. The intentionality with which Canada has approached multiculturalism is one of its greatest strengths. That being said, however, multiculturalism is often seen as going hand in glove with pluralism and pluralism, in secularization theory, emerges from a differentiated, privatized, secular society. So not only does the unthought extant in the elite comprise an unshakeable belief in the primacy of

scientific rationality, the falsity or irrelevancy (for not all of the elite are atheist) of religious worldviews and the inalienability of individual autonomy—but it holds all of these truths to be self-evident and necessary components of a pluralist and hence, a multicultural society. Religion, in this unthought, is not only false, but dangerous.[120] A society comprised of religious worldviews—all of them (in traditional thought) mutually exclusive and triumphalist (again, in traditional western thought)—a society comprised of these cannot sustain a modern democracy as their religious worldviews will be constantly trying to assert themselves.[121]

There is a kind of stratification of social imaginary that allows for many academics and intellectuals to embrace secularization as a given and the ensuing theory as necessary for understanding the current position of religion in modern society. The unthought seems to be the most powerful level, as it bedrocks the two premises in such a way as to assert their undeniable veracity.[122]

This seems strange in some ways though— in the face of evidence that, while the mainstream media and parts of the academy may view the political landscape of Canada as secular, the general population may not. Even after the postwar waves of immigration that created a much more culturally diverse country, as recently as 1985, religious affiliation was still the major indicator of political party choice.[123] In addition, as Lyon points out, religious affiliation played a major role in the fate of the 1995 referendum in Quebec with 60% of Catholics who attended mass weekly (13% of the francophone population) voted "no".[124] And Lyon remarks that "in Canada, believers who belong to religious organizations are still more politically influential than those who do not."[125]

As to why this unthought is important in the larger scheme of things: what the elite think and how that is disseminated through the mainstream media has an influence on public

perception.[126] For example, it is quite telling that many people are still surprised to find that religious affiliation is such a strong indicator of political preference.[127] This is a small indicator, I believe that those outside the elite while not encumbered with the same unthought are nevertheless swayed on a surface level into thinking that secularization is a fact. It is not until surveys asking individuals what their opinions are have been conducted and analyzed that the picture of a more religious (albeit a less traditionally religious) society begins to emerge.

Having outlined the premises underlying secularization theory among a particularly potent population in Canada, I turn now to a more focused discussion of secularization theory. The main argument is that the stratified foundations upon which the intellectual elite of Canada have built their assumption of secularization in Canada are made of sand too shifty upon which to build a solid societal structure.

This section began by outlining three premises upon which it could be posited that secularization theory was based and which underlay the insistence of the Canadian elite on secularization (as is conceived of in the orthodox model) as a pillar of Canadian society: 1. Religion no longer plays the same role in Canadian society; 2. Religious practice and belief in Canada is in decline; and 3. the unthought that an Enlightened, scientific worldview holds that religion has been proven false and/or irrelevant and that it has no place in the public sphere of a modern democracy. These premises, it was asserted, provided a stratified foundation for secularization theory. In addition, another layer can be added to that foundation: the assumption that secularization is a universal, normative condition of modernity that, along with emancipation from religious institutions and norms, is a precondition to liberal democracy.[128]

Much work has been done in trying to re-think secularism in a Canadian context. As was noted earlier, though, at least in terms of informing popular opinion—the mainstream media and many members of the intellectual elite who are not part of the social sciences academy have embraced this notion of Canada as a modern multicultural State whose very modernity rests, in part, on its secular nature. The argument is that a multicultural State cannot exist without the clear separation of our religious spheres from the spheres of law and democratic governance. It is possible that cohort has come very close to doing what Hadden accused the academy of doing in 1987—"sacrelizing" secularization— making a theory into a dogma that should be accepted on faith, in spite of rational evidence to the contrary.

This sacrelization of Canadian secularism is, in my opinion, keeping a very important conversation from happening. There are myriad consequences to this but I will mention but two. First, this discourages public discourse about the role personal ethical systems that are formed by religious worldviews play in the context of an individual's role in the public sphere. Second, by maintaining an extreme and untenable position in regards to secularization theory the elite in Canada is providing a way for people with extreme religious convictions to slip into positions of power without their religious worldviews being taken into serious account—whether they be elected or appointed positions.

The above consequences are important to explore. It is important to remember that the rise of the religious right in America in the late 1970's was made possible, in part, because the liberal left considered that the days of religion as a viable voice of general influence in the public sphere had been annihilated after the Scopes trial in the early 20th century.[129] A viable voice of general influence is denoted in order to differentiate from the particular voice that rose from the religious establishment during the civil rights movement

in the 1960's. While religious institutions did not see themselves as special interest groups in this case, they were perceived by the political establishment as being just that. And, while the Canadian political process and landscape is somewhat different than that of the United States it is not untoward to be watchful so as not to fall into the same trap of polarizing ideological battles that have been so detrimental to American public discourse. To acknowledge that Canadian secularism is a myth is to begin to foster a dialogue and an openness across power lines that will in the end make for a more stable and civil society.

An example of a case where a public conversation could be important concerns the Prime Minister's Office (PMO) Canada's current Prime Minister, Stephen Harper, appointed the former president of Focus on the Family Canada, Darrel Reid, as first the policy director of the PMO and then, in March of 2009, as chief of staff. The news, while reported, was not picked up on as being significant. There are no doubt myriad reasons why this it so. It is interesting to posit that one such reason is the motivating unthought that supports a dogma of secularization in the Canadian public sphere. Mr. Reid brings an overt, clearly stated religious worldview and agenda to the realm of public discourse. He has been quoted as saying, among other things, that Christians are under an obligation to change Canadian law to conform to biblical values.[130] Mr. Reid's brand of evangelicalism has very strong, clear goals regarding the place of religion in society. There is nothing wrong, of course, with holding strong views and this study is not advocating for a witch hunt. What needs to be stressed is how important it is for the elite in Canada to understand that the premises of secularism and modernity and democracy are silencing an engagement with the religious—a subject that for many people is a key motivator in their public lives. People who agree to work in the public sphere should expect that they will be questioned by the polis as to how they will balance their personal convictions with the plurality that they

represent. Especially if the convictions that they hold do not allow for a plurality of valid worldviews. Bruce and Taylor agree that such a plurality is a necessity in a democracy. But what the adherence to an orthodox vision of secularization engenders is not the value-neutral plurality that Bruce predicts, but the kind of public landscape that has developed in Canada where religion is not taken as an equally valid voice and only marked when it can be used for purposes of hyperbole, fear mongering or ridicule.

To that end, this study is not suggesting that individuals who represent religious institutions who hold narrow worldviews should not be elected or appointed. The model to follow, however, is put succinctly by David Novak:

> …there is nothing irrational about a member of a traditional religious community affirming a public policy because this is what his or her tradition teaches; as long as he or she can also give the reason his or her tradition advocates that public policy. Inevitably, that reason has to be because this policy is for the good of any human society and not just for the members of his or her traditional community.[131]

The point is that since we cannot compartmentalize ourselves completely, there is an obligation to engage in discourse in the public sphere in such a way as to allow that not only to religious worldviews exist but that they have weight and import in and for the public sphere. An orthodox version of the secularization paradigm seems to be preventing that, as the unthought supporting it does not allow for the malleability that has become if not in actuality at least a harbinger of post-modernity.

One reason to consider the place of the secularization paradigm and the various points of view therein is in order to understand the trajectory they have taken and the theories built upon them. Once understood, there is the potential for dismantling the layers of the foundation with rationality and statistics and more cogent analytical tools and definitions that make sense to the moderates from all stakeholders, including those in power who genuinely have an interest in the common good and democratic governance as opposed

to those who would grasp power tightly and keep it close in order that a particular and perhaps personal agenda be implemented. In short, to acknowledge that Canadian secularism is a myth is to begin to foster a dialogue and an openness across the lines of power that will in the end make for a more stable and civil society.

The next section will explore secularization theory in the Canadian context, touching upon history, definitions and some comparative notes. I will conclude with a further discussion on the ramifications of its continuing to inform the Canadian elite.

It is difficult to demarcate where and when the traditional institutional churches ceased to be integral voices in the public sphere with collective influence. In other words, what constitutes secularism in Canada and when did it start? Part of the debate around secularism in Canada (as indicated above) has arisen from the shift in the institutional focus from personal salvation to the social gospel. The dates of this shift and whether or not this shift was indicative of the beginning of Canadian secularism was discussed earlier. In this paradigm, the traditional definition of secularization—outlined above by Casanova and expanded below certainly reveals itself as underpinning both sides of the debate. Secularism in one instance is assumed to be the shift of institutional focus on "a highly social gospel." On the other, it is assumed to occur only after the raison d'être of the Social Gospel had been taken over by the State.

This study finds congruence with Christie and Gauvreau, agreeing that the institutional influence does not end until well after World War II in English Canada and not until the 1960's in Quebec when the nature of influence changed with Vatican II and the Quiet Revolution.

It is also important to note that the influence of traditional religious institutions loomed large with tragic consequences in the First Nations communities in the form of

residential schools, most particularly. The formal agreement between the government of Canada and the Anglican, Roman Catholic and United Churches regarding the schools did not end until 1969. It is safe to say that while secularization in the guise of attempting to annihilate aboriginal religious traditions was certainly foisted upon these children, to claim that their experience of government intervention was devoid of religious influence or context would be ludicrous.[132]

It can be shown that the influence of religious institutions on the public sphere (certain aspects of it, at least) continued longer in some spheres than in others—at least in terms of official public policy. Of course, this is to be expected. History is not easily nor neatly arranged and the edges of eras are often unevenly cut. This is a central reason as to why this study concludes that secularization theory in the orthodox construction is too heavy-handed a tool to enable one to make an adequately complete analysis of the actual place of religion within the centres of power in Canada. However, it is possible that it can be used in the neosecularization paradigm as a general framework to get the big picture of a nuanced process.

Casanova and others have pointed out that secularization as it traditionally stands makes the most sense as "an analytical conceptualization of a historical process" when applied to Western European Christianity from the Middle Ages to the present."[133] If this is so, then certainly there should be some aspect of secularization theory that works in a Canadian context. David Martin, in his comparative analysis of Canadian secularization places Canada mostly closer to European (and Australian and New Zealand) sensibilities than to the United States. This is important to know because it helps to analyze the past, as long as one remembers that immigration will, at some point, make that tool of analysis less helpful.

Canada is becoming increasingly more diverse and the population is expanding with immigrants for whom secularization theory does not offer a reasonable rubric for understanding. Even the intellectual elite from these cultures will bring with them a different sort of unthought—although it is certainly possible that this unthought will also support a notion of secularization. So, while I will concentrate on secularism as much as it can be applied cogently to a derivative of Western European Christian culture, I also offer the above caveat as part of my reasons for reiterating that secularization theory is, at its best obsolete, and at its worst obfuscating.

In the 1990's, schools of thought arose that challenged the notion that "religion has become a matter of purely private concern."[134] "Private concern" in this case points both to a perception of the individualization of religious belief and praxis and to the demise of the shadow establishment. A key point of this argument states that religion (specifically, Christianity) moved "decisively out of the centres of power represented by government and economics, and into civil society".[135] "Civil society" in this paradigm being defined somewhat in congruence with "public space"—that is, the circles of society in which citizens engage in discourse regarding the commonweal. It is distinct from the centres of power in that the discourse is informative but not binding. Whereas in the past, religious worldviews (and this really should read Christian worldviews) formed a shadow establishment that held real authoritative sway—both in a moral sense and in the sense that practical power could be brought to bay for or against the political powers that be. This shift, argues Van Die and others, has placed religious institutions and voices to the voluntary sector of public life where they remain an enriching entity in our democracy.

This assertion is true in the sense that the churches no longer hold official or sweeping power or sway as "shadow establishments". However, I argue that neither have

they been relegated quite so neatly into the voluntary sector as they still have sway via the presence of individuals whose worldviews are intertwined with those same institutions. In fact, and this is a subject that should be explored in another study, the churches essentially have to learn how to sway the political sector in the same way that the synagogue had been doing for years. When you have never been a part of the shadow establishment, but still hold moral authority within your community and wish to make the stance of that community well known and decisive for certain issues, you learn to act through key individuals and leverage your power rather than loom ominously in the background, as collective force of sway. Again, the loss of the shadow establishment led not so much to the demise of a religious voice within Parliament, as to the theoretical levelling of a playing field—reconstructing power bases, not necessarily dismantling them.

The old categories still hold as helpful when analyzing past trends. In this sense the orthodox understanding works. Van Die relies on the traditional understanding of secularization in her observations about religion being removed as a shadow establishment in Canada—the emancipation of society from religious institutions and the expectations the institutions put upon members of society as a whole. In this connotation, religion is seen as an institution, as a shadow establishment, as a maker and keeper of societal norms and mores. Most importantly, this connotation requires an understanding of Church as the central conveyer of correct soteriology, theology and anthropology. This particular vision of religious institution is deeply rooted in the history of countries with monolithic establishment churches where the institution was seen (sometimes only by its own self) not only as the provider of a badly needed social safety net (schools, hospitals, alms for the poor) but as the conscience of society as a whole. This is the definition that Western Europeans

tend towards and one that does fit well with the Canadian position. This is congruent with observations made by David Martin.[136]

Casanova reports that European sociologists look as well to the more recent connotation of secularization—the theory that secularization in the guise of a decline in religious beliefs and practises is a "universal, human developmental process"[137]; this last, rather condescending component, are viewed by the European academy "as structurally related components of general processes of modernization."[138] In this point, Canada does follow Europe to some extent as practice and adherence to established religious institutions has dropped significantly in the latter part of the 20th century. However, as Bibby's more recent polls have indicated, Canadians are far more engaged with myriad religious worldviews than this particular connotation of secularization theory would indicate. In this case, Canadians stand more in the middle, between Europe and the United States.

In light of this, Taylor's notion of conditions of belief is quite interesting. Taylor allows for the reality that secularity is not a universal, and yet it is a technique that could be helpful in understanding the different types and levels of religiosity that are normative in a given culture. In the Canadian case it is particularly helpful because Canada is a multicultural society which welcomes immigrants from a variety of cultures that consider themselves quite modern but not particularly secular in the classic sense.

Building upon the previous section, this study proceeds with the assertion that the most useful tack for rethinking secularism in Canada is to look at the contextual shifts and restructuring, to take Lyon seriously when he writes that "…a good starting point for rethinking secularization is to look at ways in which the religious is restructured and relocated, instead of seeking indices of general decline, or moments of doctrinal transition." Martin concurs with this point of view, writing that "…secularization has everything to do

with the altering relations between church and state in modern times." Further to this point is Hervieu-Léger who sees secularization as "the process of permanently reorganizing the work of religion in a society structurally powerless to fulfill the expectations that it has had to create in order to exist as a modern society."[139] In this, Hervieu-Léger can be used to highlight the social gospel trajectory in Canadian Church-State relationships. Lyon observes that both Hervieu-Léger and Martin "…deal not only with the fate of religious institutions, or of religious functionaries but also with how religiosity is manifest in high modern times."[140] By moving beyond the orthodox paradigm the questions regarding the fundamental religiosity of humanity or lack thereof that Bruce and Wallis raise can more effectively be answered.

Leaving for another time the discussion of whether or not we live in high modern or post-modern times, Taylor and Hervieu-Léger have interesting points that are not dissimilar. Hervieu-Léger speaks of "desemboitement de la croyance, de l'aparenance et de la reference identitaire"[141] while Taylor, commenting on what he refers to as the "retreat of Christendom" predicts that "…it will be less and less common for people to be drawn into or kept within a faith by some strong political or group identity, or by the sense that they are sustaining a socially essential ethic. This should give pause, though. Because Canadian studies have shown that there *is* a correlation between party affiliation and religious institution affiliation. In fact, it is the strongest corollary. However, party affiliation has declined markedly and there are generational differences that make an impact here as well. I would suspect that if it were broken down along generational lines, there would be fewer people under 50 affiliating with either party OR traditional religious institution and that those who did espouse a religious worldview, if pressed, would admit to be influenced in their party affiliation less by their religious institution than by the congruence of the party

platform with their religious and ethical ideologies. Family tradition and loyalties should not be discounted either. The religious institution, I contend, is not the predictor, more the community within the institution that a person chooses to affiliate with. This is consistent with the observation that people bring the portions of the institutions they resonate with along with them to the public sphere but also cognizant of the fact that the institution as an entity no longer infiltrates the public sphere as a monolithic authority.

The most important thing to note in terms of this study is that in trying to get a grasp of the ways in which the relationship between a religious worldview and non-religious worldview—and here I am also incorporating the categories of modern individualism and religious individualism used by Hervieu-Léger in her work— shift and realign we are trying to grasp what it is to acknowledge the complexities of ourselves in addition to acknowledging the complexities of the Other. The shifting of what is the "public structure of belief and a sense of collective religious obligation"[142] has resulted in the necessity of a multicultural society such as Canada to submit to acknowledging a level playing field, of sorts, of political access of which it was hitherto unaccustomed. This is not to say that there is practical equality in terms of access to the circles of real power, but merely to point out that Christian religious institutions are no longer an overt avenue for such access. This is part of the readjustment brought on by what is usually referred to as secularization. Lyon writes, "Spiritual experience as a means and expression of the power which an individual can exercise over self and the world, without any involvement in a particular church: that precisely is an essential aspect of the reordering of religious individualism which its absorption into modernity infers."[143]

As well, what Grace Davies has coined the "believers without belonging" play an important role in the political life of Canada. Grenville reminds us that "…contemporary

religiosity in Canada (as elsewhere) is a 'complicated reality'…(a)mong other things, this means that church and denomination are at least 'less salient' than they once were to understanding the religious sphere…religious involvement in body politics challenges simplistic analyses."[144] In other words, just because mainstream religious institutions are in flux—religion cannot be shelved neatly with the label "extinct and obsolete" pasted upon its dust jacket.

But what of the premises that underlie secularization theory? As was shown, the premises are certainly not without some merit in the Canadian context, but neither are they all encompassing. What is really important is the unthought that (loosely put) assumes because Canada is a liberal Western democracy that it must also *de facto* be a secular state— that is devoid of the influence of religious institutions *or religious worldviews.* This last is vital, for it is integral to the unthought. In fact, I would argue that the distinction is not made in the unthought; religious worldview and religious institution are interchangeable and inseparable. Therefore because shadow establishments no longer exist, the influence of religion, even as it is manifested in people holding power, must be null. Of course, this is not true in reality. Institutions are comprised of people and those people are shaped even as they shape the institution and they bring those institutional values with which they resonate with them into the discourse of the public sphere. Taylor writes that:

> We don't just decide once and for all when we enter sociology class to leave our "values" at the door. They don't just enter as conscious premises which we can discount. They continue to shape our thought at a much deeper level, and it is only a continuing open exchange with those of different standpoints which will help us to correct some of the distortions they engender. [145]

For the purposes of argument, the above is essential. Novak is clear when he calls for people with religious worldviews to use their traditions as support for their argument only insofar as those worldviews can be shown to have another, rational (or, I would use the term "empirical") reason for being put forth. Premeditated murder, for instance, is not only

forbidden by Torah, but can be shown empirically to be bad for society—if only because one loses so much sleep keeping one eye open lest a neighbour sneak up upon one with a blunt instrument. Novak argues in so many words that one must be aware of your worldviews and of the values that are attendant, but do not expect the rest of society to be swayed by your worldview without undergirding it with arguments from the common, agreed upon mores and norms upon which the polis has agreed.

This speaks strongly to those holding the unthought that is integral to the foundation of secularization theory. Be aware that the unthought is there and engage the very thing you believe to be irrelevant if non-existent. Secularization theory has had the effect of dissuading the elite of the fact of religion in Canadian politics and this has the potential not only to alienate a good portion of the polis to the extent that democracy could erode irrevocably but also to allow those holding worldviews that are far from centrist to operate without the checks and balances good governance requires.

In the end, at least in a Canadian context, secularization theory fails to engage the nuances that need to be highlighted. It can posit a general trend and provide traction against which to push for other solutions and explanations and that is helpful to an extent. But it cannot allow us to construct models that incorporate religious worldviews as integral components in a post-modern democracy and that is what is really needed at this point in our history. Taylor makes a very important observation in *A Secular Age* that believers and unbelievers truly seem to constitute separate cultures. This is important because it highlights the extent to which a religious worldview can be entrenched in an individual. Canada's overt policies regarding multiculturalism could be a unique avenue for both believers and unbelievers to traverse on their way to trying to understand the place of religious worldviews within high or post modern culture.

<u>Conclusion</u>

While secularization—whether theory or paradigm—is not necessarily helpful in and of itself as a tool for analysis or discussion, it has served as a catalyst for important debates about religion and modernity. The orthodox point of view has been shown to be too narrow, as it does not allow for flexibility of definition and hence for the human element that must eventually be present when theory is applied to practice. This being said, the orthodox interpretation does provide insight, mainly when it converges with the point of view of the more revisionist scholars in the field.

What is vital for the purposes of this project is the understanding of the unthought that underlies the premises of secularization theory held and embraced by Canada's elite. This unthought drives the perspective of the elite and in turn the perspective of how religion manifests in the public sphere. Whether the unthought is a positive, a negative or merely neutral phenomenon is up for debate, but understanding that it is present only enhances a comprehensive vision of the place of religion in Canada's public sphere.

The next chapter traces a different component of this study—environmental history. This analysis also traces, in part, the pre-modern history of religion both in Europe and in the Indigenous communities of the portion of North America which became Canada. What will become apparent are the complex ways in which humanity's conception of itself in regards to its environment intertwine with the development of modern conceptions of Church, State and political landscape.

Notes

---

[1] Kevin M. Schultz, "Secularization: A Bibliographic Essay," *The Hedgehog Review* 8.1-2 (Spring-Summer 2006): 170-178.

[2] For Durkheim's theory on the place of religion in society, see: Durkheim, Emile. *The Elementary Forms of Religious Life: A Study in Religious Sociology* (New York: Macmillan, 1915).

[3] Of course, some religious school boards are still publicly funded in Canada. The history of public education in Canada is deeply intertwined with religion. For a pithy discussion of the subject, see Robert Choquette,

Canada's Religions: An Historical Introduction (Ottawa: University of Ottawa Press, 2004) 286-296; See also R.D. Gidney and W.P.J. Millar's essay: "The Christian Recessional in Ontario's Public Schools" in *Religion and Public Life in Canada: Historical and Comparative Perspectives,* Marguerite Van Die, ed. (Toronto: University of Toronto Press, 2001) 275-293; finally, David B. Marshall, "Canadian Historians, Secularization and the Problem of the 19th Century," *Historical Studies,* 60 (Canadian Catholic Historical Association, 1993-1994): 69-71.

[4] Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (New York: Penguin, 2002). It is important to note that Weber does not describe the inevitable demise of religion for humanity, but rather its decline in societal influence.

[5] One of the most highly regarded and vocal proponents of secularization theory currently is Steve Bruce. See *God is Dead: Secularization in the West* (Oxford: Blackwell, 2002) ; see also his article "Secularization and the Impotence of Individualized Religion." *The Hedgehog Review.* 8.1-2 (Spring-Summer 2006): 35-46for a refutation of those who would deny the veracity of secularization theory.

[6] For a good, general discussion of both stances—see José Casanova, "Rethinking Secularization: A Global Comparative Perspective." *The Hedgehog Review* 8.1-2 (Spring-Summer 2006):7-23; Grace Davie in "Is Europe an Exceptional Case?," *The Hedgehog Review* 8.1-2 (Spring-Summer 2006): 23-35 gives an interesting perspective on the European case. For a perspective of the case of the United States from proponent of secularization theory, see Steve Bruce, "Religion in the United States," in *God is Dead., 204-*228.

[7] See, for example, Jeffery Hadden, "Toward Desacralizing Secularization Theory," *Social Forces* 65 (1987):587-611. See also Rodney Stark and William Bainbridge, *The Future of Religion,* (Berkely: University of California Press, 1985); Roger Finke and Rodney Stark, *The Churching of America, 1776-1990: Winners and Losers in Our Religious Economy,* (New Brunswick, NJ: Rutgers University Press, 1992). Stark, et al are, in particular, proponents of what is known as a rational choice theory of religion that posits a religious economy whereby religious institutions of various stripes benefit from the same principles that guide free-market capitalism: deregulation, competition, specialization.

[8] Olivier Tschannen, "The Secularization Paradigm: A Systemization," *Journal for the Scientific Study of Religion* 30 (1991):395-415.

[9] Steve Bruce, "Secularization and the Impotence of Individualized Religion," *The Hedgehog Review* 8.1-2 (Spring-Summer 2006):35-46.

[10] Bruce, *God is Dead.*, 44.

[11] Bruce, "Secularization.," 36.

[12] Bruce, *God is Dead*, 30.

[13] Bruce, "Secularization.," 36.

[14] Ibid., 37.

[15] For one example among many see Paul Heelas, "Challenging Secularization Theory: The Growth of "New Age" Spiritualities of Life," *The Hedgehog Review* 8.1-2 (Spring-Summer 2006): 46-59.

[16] Rodney Stark and William Bainbridge, *A Theory of Religion* (New York: Peter Lang, 1987).

[17] R. Stephen Warner. "Work in Progress Toward a New Paradigm for the Sociological Study of Religion in the United States," *American Journal of Sociology* 98:5, (March, 1993), 1082.

[18] Mark Chaves, *Secularization in the Twentieth Century United States,* (PhD Dissertation, Harvard University, 1991); Tschannen; David Yamane, "Secularization on Trial," *Journal for the Scientific Study of Religion* 36:1 (March, 1997) 113.

[19]Schultz, 173-174.

[20] Chaves.

[21] Mark Chaves, "Secularization as Declining Religious Authority," *Social Forces* 72 (1994): 750.

[22] Robert Bellah, "Between Religion and Social Science," in *Beyond Belief*, (New York: Harper & Row, 1970), 237.

[23] Yamane., 110.

[24] Bryan Wilson, *Religion in Sociological Perspective*, (Oxford: Oxford University Press, 1982), 149. It should be stated that Bruce does not argue with the idea that religion transforms, he does not posit the death of religion as a human activity for all time—he merely interprets the data as showing a steady decline of religious practice, belief and authority in modern societies to the extent that religion is not dead but irrelevant.

[25] David Yamane, *The Catholic Church in State Politics: Negotiating the Prophetic Demands and Political Realities,* (Oxford: Rowman & Littlefield, 2005), 154.

[26] Charles Taylor, *A Secular Age,* 425. Of course, it can be argued that the Church was differentiated in the above sense even before the Reformation period. From its beginnings as a minor sect to an outlawed belief system to a legitimately state-sanctioned religion to survivor after the fall of Rome, the Church was

independent of, dependent upon and then legitimizer of the State in the West. The Church in many ways wielded greater power than did the State and as such did not need the State nearly as much as the State needed the Church for legitimization. The Church was legitimized by virtue of its position as Bride of Christ and holder of truths and precepts that either assured one's eternal salvation or damnation. The State, by contrast, adopted much of its norms, rules and institutions from the Church and, until the modern period, relied upon the Church to support spiritually the power that it wielded temporally. In other words, until the Enlightenment, the State needed the Church vastly more than the Church needed the State. The power of the State could be used in ways that could make life on earth hellish but that was nothing compared to the eternal torment that awaited those out of favour with the Church. The Enlightenment gradually allowed public discussions (for these ideas had undoubtedly been held privately by some) of the various types of ideas that led to a human-centred rather than a theo-centred State; which in turn made the conception of differentiation seem not only plausible but correct. Thus the process of differentiation began to accelerate as both church and State began to morph into modernity's mould.

[27] David Yamane, Charles E. Mellies, and Teresa Blake, "Playing for Whom? Sport, Religion, and the Double Movement of Secularization in America," *Sociology of Sport and Social Theory,* Earl Smith, ed. (Champaign, IL: Human Kinetics, 2010), 82.

[28] Chaves, *Social Forces;* Jose Casanova, *Public Religions in the Modern World,* (Chicago: University of Chicago Press, 1994), 18. It should be noted that Chavez has been criticized, by Schultz and others as having so narrow a definition of secularization (the decline of religious authority but not individual belief) as to appear to be defining the problem away rather than dealing with the actual complexities presented by the data on both sides of the issue.

[29] Jose Casanova, "Rethinking Secularization: A Global Comparative Perspective," *The Hedgehog Review* 8.1-2 (Spring-Summer 2006):7-23.

[30] Ibid.

[31] Schultz., 76.

[32] Taylor touches upon this in *A Secular Age*, 54-55.

[33] G.J. Holyoake, *The Origin and Nature of Secularism*, (London: Watts and Co, 1896) 51.

[34] The Hedgehog Review, "After Secularization," *The Hedgehog Review* 8.1-2 (Spring-Summer 2006).

[35] Ibid.

[36] Kevin J. Christiano and William H. Swatos, Jr., "Secularization Theory: The Course of a Concept", in *The Secularization Debate,* William H. Swatos, Jr. and Daniel V.A. Olson, eds. (Oxford: Rowman & Littlefield),1.

[37] Ibid., 2.

[38] Charles Taylor, *Modernity and the Rise of the Public Sphere*, (The Tanner Lectures, Stanford University, 25 February 1992). http:///www.tannerlectures.utah.edu/lectures/documents/Taylor93.pdf. Accessed 23 August 2010, 206.

[39] Taylor also remarks that "the overwhelming weight of interpretation in our culture, positive and negative tends to the acultural." 208. He also credits Weber with giving a "cultural-dependent" reading of modernity by invoking the Protestant ethic, "as defined by a particular set of religio-moral concerns, which in turn helped to bring about modern capitalism." Ibid.

[40] Russell J. Dalton & Hans-Dieter Klingmann, eds., *Oxford Handbook of Political Behavior,* (New York: Oxford University Press, 2007), 485.

[41] David Martin, "Towards Eliminating the Concept of Secularization," *Penguin Survey of the Social Sciences,* J. Gould, ed. (Baltimore: Penguin, 1965), 169-182. As mentioned above, Martin has since revised his earlier concerns and is more interested in exploring the transformative definition of secularization than doing away with the theory. See David Martin, *On Secularization: Towards a Revised General Theory*, (Burlington, VT: Ashgate Publishing, 2005).

[42] Larry Shiner, "The Concept of Secularization in Empirical Research." *Journal for the Scientific Study of Religion* 6 (1967): 207-220.

[43] For declining membership numbers, http://www.ncccusa.org/news/090130yearbook1.html; For a discussion of the decline in practice and belief, http://pewresearch.org/pubs/614/religion-social-issues

[44] For more discussion in this vein and some analysis of data, see Finke and Stark, *The Churching of America,*).

[45] Quoted in William H. Swatos Jr and Kevin J. Christiano, 2.

[46] William H. Swatos, Jr. and Kevin J. Christiano point out that Hadden's arguments were, in part, presaged by a series of articles by Roland Robertson beginning in 1971.

[47] Ibid., 1.

[48] Bruce, "Secularization."

[49] Bruce, *God is Dead;* "Secularization".

[50] Reginald W. Bibby and Harold R. Weaver. "Cult Consumption in Canada: A Further Critique of Stark and Bainbridge. *Sociological Analysis* 46:4 (1985):445-460.

[51] Bryan Wilson, "Secularization: the Inherited Model" in *The Sacred in a Secular Age: Toward Revision in the Scientific Study of Religion*, Phillip E. Hammond,ed. (Berkeley, CA: University of California Press, 1985).

[52] David Martin, *Pentacostalism: The World Their Parish*, (Oxford: Blackwell, 2002); Martin Marty and R. Scott Appleby, *The Glory and the Power: The Fundamentalist Challenge to the Modern World,* (Boston: Beacon Press, 1992).

[53] Taylor., 431.

[54] Ibid., 431-432.

[55] Bruce, *God is Dead: Secularization in the West*, "The Secularization Paradigm."

[56] Ibid., 432.

[57] Ibid.

[58] Ibid.

[59] Ibid., 430.

[60] Ibid.

[61] Ibid., 429.

[62] Ibid.

[63] Ibid.

[64] Ibid.

[65] Ibid.

[66] Ibid.

[67] Bruce (2002).,176.

[68] It is important to note that he does identify secularization theory as a Western European phenomenon that is applicable also to their "settler offspring".

[69] Steve Bruce and Roy Wallis, "Secularization: The Orthodox Model" in *Religion and Modernization*, Steve Bruce, ed. (Oxford, Oxford University Press, 1992), 23.

[70] See, for instance, Danièle Hervieu-Léger, "In Search of Certainties: The Paradoxes of Religiosity in Societies of High Modernity." *The Hedgehog Review* 8.1-2 (Spring-Summer 2006).

[71] "After Secularization" *The Hedgehog Review* 8.1-2 (Spring-Summer 2006).

[72] Jose Casanova. "Rethinking Secularization: A Global Comparative Perspective." *The Hedgehog Review* 8.1-2 (Spring-Summer 2006):7(16).

[73] Ibid.

[74] Ibid.

[75] Casanova, 2.

[76] Ibid.

[77] Casanova, "Rethinking"; Martin, *On Secularization.*

[78] Taylor, 425.

[79] Ibid., 426.

[80] Danièle Hervieu-Léger. "In Search of Certainties."

[81] Taylor, 426.

[82] Casanova., 7.

[83] Taylor, 3.

[84] Ibid.

[85] Ibid.

[86] Michael Ornstein and H. Michael Stevenson, *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State*, (Montreal: McGill-Queen's University Press, 1999), 106.

[87] For a definition of Canada's political elite see, Kenneth Newton and Jan W. Van Deth, *Foundations of Comparative Politics* (Cambridge: Cambridge University Press, 2005), 143. A classic text on the existence and ramifications of a Canadian elite is John Porter's *The Vertical Mosaic: An Analysis of Social Class and Power in Canada* (Toronto: University of Toronto Press, 1965).

[88] Ibid., 131.

[89] George Rawlyk, "Being and Becoming Canada" *Annals of the American Academy of Political and Social Science,* 538 (March 1995):132.

[90] Ibid.

[91] Ibid.

[92] Ibid.

[93] Ibid.

[94] Ibid., 131.

[95] Ibid., 133. See also, Nancy Christie, " 'In These Times of Democratic Rage and Delusion': Popular Religion and the Challenge to the Established Order 1760-1815," in *The Canadian Protestant Experience 1760-1990,* G.A. Rawlyk, ed. (Montreal: McGill-Queen's University Press, 1994).

[96] Rawlyk, 134.

[97] Ibid.

[98] Ibid.

[99] Ibid., 135. See also, Goldwin French, "The Evangelical Creed in Canada," in *The Shield of Achilles,* W.L. Morton, ed. (Toronto: McClelland & Stewart, 1968), 16-35.

[100] For a good explanation of the place and history of evangelical Protestantism, see Robert Burkinshaw's response to Mark Noll's book *What Happened to Christian Canada?.* Robert Burkinshaw, "Mark Noll, *What Happened to Christian Canada?*: A Response form an Evangelical Perspective," *Church & Faith Trends* 2:1 (October 2008): http://files.efc-canada.net/min/rc/cft/V02I01/Burkinshaw_WHTCC.pdf. Accessed 28 August, 2010. See also, Michael Gauvreau, *The Evangelcial Century: Colleg and Creed in English Canada from the Great Revival to the Great Depression,* (Montreal: McGill-Queen's University Press, 1991).

[101] Marshall, "Canadian Historians."

[102] Support for the existence of a secularized Canadian elite is rife: Dr. Paul Bramadat's address to the plenary session of the Ethnicity and Democratic Governance Conference in Montreal, QC on 27 October 2007: "Our Current Interregnum and the Decline of Secular Modernity."; http://canada.metropolis.net/pdfs/Bramadat_e.pdf. Accessed 26 August 2010; Jeffrey D. Brison, *Rockefeller, Carnegie, and Canada: American Philanthropy and the Arts & Letters in Canada,* (Montreal:McGill-Queen's University Press, 2005), 44-45.

[103] See Christopher Lasch, *The Revolt of the Elites and the Betrayal of Democracy* (New York: WW. Norton & Co., 1996). See also Bramadat's aforementioned lecture; John Biles and Humera Ibrahim, "Religion and Public Policy: Immigration, Citizenship and Multiculturalism—Guess Who's Coming to Dinner?" in *Religion and Ethnicity in Canada,* Paul Bramadat and David Seljak, eds. (Toronto: University of Toronto Press, Inc, 2005), 169.

[104] Patrick Deneen. "Christopher Lasch and the Limits of Hope." *First Things.* December 2004.

[105] John Fraser, National Post, June 2000.

[106] Taylor.,429; Lyon.,10; and Casanova.,6.

[107] Taylor., 427. See also, Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (London: Routledge Classics, 2004), 351-357.

[108] Peter Beyer, "Religious Vitality in Canada: The Complementarity of Religious Market and Secularization Perspectives," *Journal for the Scientific Study of Religion* 36:2 (June 1997): 274, 280, 284.

[109] For a discussion of the shadow establishment see David Martin. "Canada in Comparative Perspective." and John H. Simpson, "The Politics of the Body in Canada and the United States," both in *Rethinking Church, State and Modernity.* David Lyon and Marguerite Van Die, eds. (Toronto: University of Toronto Press, 2000). For an interesting discussion on the influence of the Protestant establishment on into the 1960's, see Catherine Anne Gidney, *A Long Eclipse: The Liberal Protestant Establishment and the Canadian University, 1920-1970,* (Montreal: McGill-Queen's University Press, 2004), 143-148.

[110] Taylor.,426. See also Biles and Ibrahim.

[111] David Seljak, "Catholicism's 'Quiet Revolutions': *Maintenant* and the New Public Catholicsim in Quebec After 1960,"; R.D. Gidney and W.P.J. Millar, "The Christian Recessional in Ontario's Public Schools,"; Don Page, "From a Private to a Public Religion: The History of the Public Service Christian Fellowship," all in Van Die, ed. *Religion and Public Life in Canada..*

[112] Peter Beyer, "Religious Vitality in Canada: The Complementarity of Religious Market and Secularization Perspectives," *Journal for the Scientific Study of Religion* 36:2 (June 1997), 272.

[113] Reginald W. Bibby *Restless Gods: The Renaissance of Religion in Canada.* (Toronto: Stoddart Publishing Company, Ltd. 2002). 38.

[114] Biles and Ibrahim.; Beyers.

[115] Beyer.

[116] José Casanova, "Rethinking Secularism: Secular, Secularizations, Secularisms," The Immanent Frame: Secularism, religion and the public sphere, entry posted Thursday, 25 October 2007, http://blogs.ssrc.org/tif/2007/10/25/secular-secularizations-secularisms/. Accessed 31 August 2010.

[117] Ibid., 428.

[118] *William Connolly: Democracy, Pluralism and Political Theory.* William E. Connolly, Samuel Allen Chambers, Terrell Carver (Milton Park, Oxon: Routledge. 2008), 295.

[119] Something interesting that Connolly also draws out, echoing Taylor, is the notion that what appears to be missing sometimes is the willingness to be creative in the period of "fecundity" that can be found in the "passage from the unthought to the thought." These passages lie between articulated, representational thoughts and the unthought which is, as has been stated, itself unarticulated and "non-or-minimally ideational." (Connolly, *Neuropolitics: Thinking, Culture, Speed: Theory Out of Bounds* (Minneapolis: University of Minnesota Press, 2002), 112-113.)This begs the question: if we can take advantage of that point before thought—to acknowledge the secularization theory myth that encompasses the unthought and grab it before it becomes articulated in secularization theory-backed ideology and re-fashion it so that it says something new instead of being hidebound to something old…would that bring about a paradigm shift in elite thinking?

[120] Taylor, 435.

[121] Bruce, (2006).

[122] See also Taylor, 427.

[123] Ibid., 9.

[124] Ibid.

[125] Ibid. 18.

[126] "The tracking of elite opinion (by Hoggan & Assoc, a public relations firm) was done because it often foreshadows views that eventually spread to the general public." See "Canadian dismayed by Ottawa's record on climate change" by Marin Mittelstaedt in *The Globe and Mail*, Saturday, November 21, 2009. A11

[127] Lyon.

[128] Casanova speaks to this in "Rethinking Secularization".

[129] A good exploration of the rise of the religious right in 20th century American is William Martin, *With God on Our Side: The Rise of the Religious Right in America* (New York: Broadway Books, 1996).

[130] Marci McDonald, *The Armageddon Factor: The Rise of Christian Nationalism in Canada* (Toronto: Random House Canada, 2010), 87.

[131] David Novak. "Secularity Without Secularism: The Best Political Position for Contemporary Jews" *Hedgehog Review* 8.1-2 (Spring-Summer 2006): 107-116.

[132] The topic deserves far more space than can be adequately afforded here. For an introduction see J.R. Miller, "The State, the Church, and Indian Residential Schools in Canada," in Marguerite Van Die, ed. *Religion and Public Life in Canada: Historical and Comparative Perspectives.* (Toronto: University of Toronto Press, 2001), 109-129 see also, John Sheridan Milloy, *A National Crime: The Canadian Government and the Residential School System: 1879-1986.* (Winnipeg: The University of Manitoba Press, 1999).

[133] Ibid., 111.

[134] Marguerite Van Die, ed. *Religion and Public Life in Canada: Historical and Comparative Perspectives.* (Toronto: University of Toronto Press, 2001). Overleaf.

[135] Ibid, 1.

[136] David Martin. "Canada in Comparative Perspective." *Rethinking Church, State and Modernity.* David Lyon and Marguerite Van Die, eds. (Toronto: University of Toronto Press, 2000), 23.

[137] Casanova, "Rethinking Secularism,"7, see note 16.

[138] Ibid.

[139] Lyon, David. *Rethinking Church, State, and Modernity: Canada Between Europe and America.* (Toronto: University of Toronto Press, 2000), 12.

[140] Ibid.

[141] Taylor, *A Secular Age,* 514.

[142] Ibid.

[143] Lyon, *Rethinking Church, State and Modernity.,* 64.

[144] Ibid.

[145] Taylor, *A Secular Age,* 428.

Chapter Three: Resources and Making Home: A Brief History of Cultural and Religious Attitudes Towards the Natural World From First Contact to Confederation.

Introduction:

Religion and the environment have been always been intertwined. Religion offers avenues for exploration of the unanswerable questions of life and the natural world, in part, gives rise to those questions. In their forward to the Harvard Religion and Ecology series, Mary Evelyn Tucker and John Grim write that:

> ...religions help to shape our attitudes toward nature in both conscious and unconscious ways. Religions provide basic interpretive stories of who we are, what nature is, where we have come from, and where we are going. This comprises a worldview of a society. Religions also suggest how we should treat other humans and how we should relate to nature. These values make up the ethical orientation of a society.[1]

In the 20th century, especially, religion—specifically Western religions—were castigated by the nascent environmental movement for precipitating the societal values (or lack thereof) that enabled environmental degradation. Indeed, the relationship between humanity and the natural world has, at least in the West, been complex and complicated by myriad factors—some of which have been discussed and some of which will be presented in this and subsequent chapters. The Forum on Religion and Ecology founded by Tucker and Grim strives to show where religion values intersect and inform environmental values and how that intersection can be used to further the cause of precluding global environmental disaster. This study relies loosely on the mandate of the Forum for its impetus. Since, as Tucker and Grim assert, religion and nature are integral to the human experience, one cannot explore the influence religion has on modern society without taking into account the impact that influence had and does have on the environment. This chapter proposes to utilize Tucker and Grim's methodological aims of identification of distinctive ecological

attitudes, analysis of commonalities, and explorations of desirable modes of human presence with the earth in its exploration of environmental history. This will lead, eventually, to a discussion of how religion, environment, and political landscape are intertwined in Canada.

In addition to adding to the story of how religion and the political landscape is intertwined in Canada, this chapter provides a context for the development of environmental policy in Aboriginal communities and in the communities formed by the Europeans on this continent after first contact and after Confederation. I will discuss the specifically Canadian story of human beings and their physical environment and the ideals and worldviews that were moulded and shaped, in part, by the landscape in which they found themselves. First and foremost, this is a chronology of environmental policy from the three aforementioned perspectives. In order to render this chronology meaningful, I have constructed a framework that is informed, in part, by environmental history and bioregionalism. This framework allows for a narrative that provides context for policies and demonstrates the inextricable intertwining of tangible human context (in this case, the physical geography, flora and fauna of place) and ideology when applied to public policy. This is vital for my ultimate argument that religion has, does and will play a part in such human endeavours.

This premise rejects a mediational epistemology[2] whereby embededness is irrelevant for acquisition of thick knowledge.[3] Instead, I am demonstrating a dialogical approach that does not allow for alterity of the environment but rather sees it, as Yi-Fu Tuan notes, as an integral component of the development of human culture. For, according to Tuan, culture and space create place.[4]

Culture consists of cumulative deposits of knowledge, experience, beliefs, values, attitudes, meanings, hierarchies, religion, notions of time, roles, spatial relations, concepts of the universe, and material objects and possessions acquired by a group of people in the

course of generations through individual and group striving. These aspects of particular human societies combine with particular profane space (Eliade)[5] to bring about place, which I will define using Kathryn Allen Rabuzzi's definition of home as belonging or dwelling in *one's proper habitat* (italics mine). Therefore, particular human societies develop in concert with particular geographical environments to create a whole in which humanity and physical environment are intertwined.

This last is vital for comprehending the ways and kinds of environmental policies that societies craft and embrace. Physical environment must shape, although they do not determine, the people who dwell within it and context is, as I argued above, certainly formative. It is a symbiotic relationship; human beings are on the one hand at the mercy of environmental components we cannot change—weather, for instance (global warming and climate change aside). On the other hand, our physical environment is at the same time somewhat malleable, we can and do change it by expressing and carrying out our needs, wants and wishes within and upon it. Our physical environment changes with us and because of us just as certainly as we are marked and changed by it. This understanding is crucial because it is not just our ways of basic survival that are affected by the environment, but also our worldviews. Our philosophies and our religious ideologies are profoundly affected by our environment, just as surely as the ideologies we hold affect our environment.

When I refer to "environment" in this chapter, I mean something very specific. "Environment" is an amorphous term, meaning different things in different disciplines. In this context, "environment" is used in the ecological sense. It can be defined here as a complex of physical, chemical, and biotic factors (as climate, soil, and living things) that act *in concert with* an organism or an ecological community…"[6] (italics mine) Part of a dialogical approach necessitates, in part, rejecting the supposed dichotomy between culture and nature

139

in favour of an acknowledgement of embededness and mutuality. In part, embededness in this context represents the actuality of the statement above: that an organism or an ecological community acts in concert with their respective environment. Additionally, it also represents the integral intertwining of organism, community and environment. One does not live, move, or have their being without the other.

Embededness can be effectively examined in this milieu by utilizing the concept of bioregionalism. Bioregionalism is the idea that "a place (is) defined by its life forms, its topography and its biota, rather than human dictates; a region governed by nature not by legislature."[7] Dan Flores has presented a more specific understanding of bioregionalism as a tool to understand human history. Flores argues that seeing bioregionalism as "not merely (a) focus on ecology and geography, but (an) emphasis on the close linkage between ecological locale and human culture…(the) implications (are) that in a variety of ways humans not only alter environments but also adapt to them". [8] His argument, as Neil S. Forkey points out, gives the opportunity to underscore natural place and the human community. [9] For the purposes of this study, bioregionalism also gives license to see history outside the context of political boundaries. This is especially important for the purposes of understanding aboriginal histories as First Nations people lived their lives in accordance with bioregions rather than with artificial, legislated territorial borders. That is to say that there were recognized territories but that the boundaries were organic rather than artificially imposed by a governing body. That is to say that Aboriginal governance did not have a tradition of distributing territory along the lines of human-made boundaries, but rather relied upon the bioregion itself to determine logical boundaries.

A good deal of the above has already been incorporated into the historiographies by scholars of Canada's First Nations.[10] What I hope to contribute here is some insight into

how their environmental policies were reflective of their notions of place—before and after First Contact. The other two-thirds of the chapter will explore the British, French and post-Confederation Canadian contexts in much the same manner. While the actual history of environmental legislation will be addressed in greater detail in the next chapter, this chapter will lay the contextual framework to facilitate greater comprehension and analysis. In this chapter, the discussion will be focussed on the sociological, theological and economical ideologies that formed the precursors to legislation from which modern environmental policies and legislations emerged.

Pre History:

North American Aboriginal peoples posit that human beings have lived on Turtle Island, what we now call North America, for as long as there have been people.[11] The Western scientific community is not as clear as to when human beings arrived, but they posit that it was an actual *arrival* and that human life did not begin in North America. The popular assumption had been that they arrived from Asia, moving across Beringia—the land that emerged in the area now covered by the Bering Sea as a result of the lowering of sea levels during an Ice Age 14-12,000 years ago.[12] The hypothesis is that hunter gatherers pursued their prey across Beringia onto what would eventually become a separate continent. Although the evidence shows that the vegetation was not capable of sustaining "large or diverse ungulate population(s)", the radio-carbon dating of mammalian skeletons found in the region show that large mammals did roam that region well before 12,000BCE.[13] Wynn states that the archaeological evidence for their presence comes from central Alaska and indicates that humans entered the area in a warm-climate interlude…between 12,000 and 11,000 years ago.[14] The hypothesis has been that these people—later known as Paleo-Indians to scholars of the Americas—gradually migrated southward. These people were

then the rootstock from which an increasingly large, diverse and culturally complex population of indigenous people…descended.[15] This hypothesis is based heavily on the existence of a particular kind of projectile point technology (the Clovis Complex) that is common to Paleo-Indian cultures in North America and to the indigenous peoples of Siberia. The above story is disputed, both in the scientific community and in the indigenous communities. The latter of whose stories of origin indicate the presence of their people in this continent from time immemorial and who find mythologies that state otherwise highly offensive. The disputation of the former has to do with some recently discovered evidence that has led to a diversity of interpretation.

The crux of this has been that many scientists now date human occupation of North American to 30,000-43,000 years ago.[16] As Wynn points out, this dating is much closer to "time immemorial", which is more in keeping with the oral histories and traditions of North American Aboriginals. This is not to adopt the oral histories and traditions at the expense of a scientific interpretation of the data. Rather, it is to reinforce what many scientists who work with aboriginal elders have discovered—that the traditional ecological knowledge (TEK) held within the collective mythology of aboriginal peoples often (but not always) has a theoretical foundation that gibes with that of western science.[17] I will expand upon this below.

Regardless of which theories or combination of theories are correct regarding the peopling of the North American continent, one fact seems clear—that human populations migrated northward as the ice sheets receded and a plethora of cultures developed. Wynn writes, "diffusion and local innovation replaced migration as the major impetus to cultural change, and technologies were both elaborated and increasingly precisely adapted to local environments."[18]

142

The rate of environmental change decelerated between 4000BCE and 1000BCE. Temperatures declined and sea levels stabilized to approximately what we are familiar with today. As a result, in part, of this relative stability, the archaeological record is quite rich and reveals a wide diversity of cultures. Most cultures appear to have been either relatively sedentary or predictably peripatetic—occupying the same seasonal hunting/fishing/gathering grounds year after year or travelling established routes in concord with the seasons.

Some cultures, however, were sedentary. There is evidence of a large urban settlement where the Mississippi and Missouri Rivers join, close to the Ohio River. From one thousand to six hundred years ago, an estimated 25,000 people inhabited this city known as Cahokia.[19] As Paper notes, nothing but temple platforms survive in our time—but at the time it was a "mercantile metropolis", the hub of a large trading network that was operational during the heyday of a macro culture that archaeologists call Hopewell.[20] We have evidence, as well, of a busy sea trade on both coasts.

The archaeological evidence shows that by 1000CE, most of present-day Canada had been occupied for thousands of years by a variety of peoples. We know little of these people and our ability to collect information about them is limited. What we do know is that most of them were hunter-gatherers and that the animals hunted included fish. Agriculture was not widespread, notwithstanding the cultivation of corn, squash, sunflowers, beans and tobacco introduced into southern Ontario after about 500CE. We also see that these populations are embedded in their ecology, living and moving with the rhythm of the seasons:

> Most people lived in small mobile groups and all depended upon the close and
> detailed knowledge of their environments acquired over the centuries by
> ancestors who had occupied their territories for generations before them.
> Typically, each band developed a seasonal round of activity within an

approximately defined territory. Within this area, particular species of animals would be hunted at certain times and places, perhaps determined by their migration routes, plans would be gathered at appropriate times of the year, and fish and other resources would likewise be exploited according to the seasons. Trade linked groups of people and different geological and ecological regions.[21]

More than this, the indigenous cultures of present-day Canada had lived and thrived in particular bioregions for hundreds of generations. As Wynn cautions, it is not wise to assume that these cultures were static and unchanging.[22] As embedded components of a complex ecosystem, these people were "…products of skilful adaptation, over millennia, to changing environmental circumstances and the opportunities presented by cultural contact and the diffusion of ideas and technologies."[23]

These cultures were composed of individuals who knew their physical environment and its ecology with the same intimacy that Sherlock Holmes was reputed to know the city of London. Such an intimacy was vital for sustaining oneself and one's community. In order to exploit the technologies made available for the greatest good of the community (or what Wynn refers to as the satisfaction of their needs), one needed to understand the materials one was working with, as well as the environment in which they were to be used—i.e. the use of fire to clear land for agricultural purposes. This is a practice that is controversial now, but long ago seems to have been carried out in ways that were sustainable. Even more apt than the comparison to a great detective might be that of a modern day artisan, attuned acutely to the tools and materials of her trade.

At this juncture it would be wise to stop and briefly discuss traditional ecological knowledge (TEK) and its more generalized cousin, Indigenous Knowledge (IK). The interlocking components of environmental policy and religious understanding are integral to TEK which is a way of knowing that informs the assertions I am making here in regards to what is known about aboriginal environmental policies in Canada. In her book *Working with*

Indigenous Knowledge: A Guide for Researchers, Louise Grenier defines Indigenous Knowledge as "…the unique, traditional local knowledge existing within and developed around the specific conditions of women and men indigenous to a particular geographic area."[24] These systems are dynamic, innovating from within but also adapting external knowledge to suit a local situation. In addition, IK covers all aspects of life and is cumulative. Grenier notes as well that they are the result of "…generations of experiences, careful observations and trial–and-error experiments.[25] TEK is a component of IK referring more specifically to the knowledge of the natural environment. Traditional ecological knowledge is not flummoxed by the dynamic and non-linear processes of cycles and fluctuations.[26] TEK relies upon "intuitive wisdom" that is "characteristic of traditional, non-literate cultures…in which life was organized around a highly refined awareness of environment."[27] In aboriginal cultures, TEK is the way in which continuity and changes in resource management are tracked. As Berkes writes, "…the practice of indigenous knowledge is, above all, the story of how social/cultural systems adapt to specific ecosystems."[28] In short, TEK is the cumulative knowledge a traditional culture has about the cycles, habits and fluctuations of its natural environment. TEK is not static, but neither is it fickle. It relies on the observations and teachings of generations before but is open to the observations and experiences in the present. It has developed systems by which any new knowledge can be tested and integrated into the body of the TEK of that particular culture.

Berkes lays out a framework for analysis of TEK known as a knowledge-practice-belief complex. [29] In this complex (as Berkes composes it), there are four concentric circles: Local knowledge of land, animals; Land and Resource management systems—this uses local environmental knowledge and includes a variety of practices, tools and techniques; Social Institutions: rules-in-use, codes of social relationships that facilitate social restraints and rule

enforcement; the fourth level is the worldview "…which shapes environmental perception and gives meaning to observations of the environment…(this) level includes religion, ethics…and rounds out the knowledge-practice-belief complex that describes traditional knowledge."[30]

The aboriginal cultures that the Europeans encountered in what became Canada were complex societies deeply embedded in their ecology with sophisticated political structures and intricate religious systems. [31] The acknowledgement of this complexity is important in the context of establishing that there were cogent, comprehensive environmental policies that were developed within a different social imaginary than those of Europeans, but were nonetheless, extant and sophisticated. For example, in the worldview of the Cree, the animal (or fish or bird) controls the hunt. The creature being hunted has agency and, as such, must be treated with respect. One uses what one catches and does not "play" (i.e. catch and release) with the game.[32] This worldview has currency within a social imaginary vastly different from a western European one. However, the environmental policies that arose with it were (and are) sound: rotation of the fishing areas—fishing one lake for a season and then letting it lie fallow for several seasons after. Also important was the strict attention paid to "biophysical events in the landscape such as the spring ice break-up in the river and change of color of the vegetations in September." [33] these signs gave evidence that it was time for hunting. Even more specifically, for a particular Cree community, the Chisasibi Cree of St. James Bay was the choice of where and when to set their nets and the size of the nets to be set. The nets that were set farthest from the village were aimed at larger, slower growing fish while the ones closest to the village were designed to catch a smaller, more quickly maturing fish which was able to withstand a higher fishing pressure. Fikret Berkes, in his own studies with the Chisasibi Cree of St. James Bay,

concluded that the above strategies constituted a productive, sustainable managed system using recognizable management strategies.[34] The example is, of course, contemporary, but the practices and strategies were extant way before the time of First Contact.

It is important to note that mere accumulation and possession of knowledge does not guarantee wise resource management. There are instances where indigenous peoples have not managed their resources well.[35] However, there is evidence that societies possessing such knowledge *and* a strong capacity to learn are likely to have sustainable practices. [36] Berkes references Slobodkin and Gadgil in arguing that humans as a predatory species can be characterized as being adapted to maintaining a population "close to the ecological carrying capacity"; and, as such, are also characterized by forming societies that use a variety of social regulations to ensure prudent resource usage.[37] By and large, the environmental models of the aboriginal peoples of Canada—when taken into context— seem to have been sustainable.

The models used by the varied aboriginal peoples of Canada differed from band to band, depending upon location, needs and custom. However, there was/is a certain uniformity in the ways in which the bounty of the natural world was viewed. The aboriginal understanding of the physical world is fluid and non-hierarchical. The transcendent is tangible and interactive. Therefore the concepts of stewardship (which implies kind of mandate to steward resources bestowed upon one as a kind of property) and of dominion (which speaks for itself), are imprecise at best. The social imaginary in an aboriginal context is one of complete integration with the tangible, the spiritual and the intellectual. Each component of creation has a presence in the tangible world of the here and now and in the intangible world that lies beyond mortal space and time. Each component has its place in creation and each component has value in and of itself and as a critical piece of the whole of

creation.[38] Therefore, one piece of creation cannot be said to own another piece of creation in the way Europeans would have understood land and property ownership and the rights of usage thereof.[39]

As a case in point, the Mi'kmaq people have a term, *Netukulimk*. Somewhat akin to the understanding of resource management, it is much more layered and nuanced. It is defined in *Mi`kmaq Fisheries (1993)* as "the Mi`kmaq way of harvesting resources without jeopardizing the integrity, diversity or productivity of our environment…it embodies the sharing of the natural bounty of the Creator for self-support and the well-being of the individual and the community at large." [40] This doctrine of *Netukulimk* is seen as an inheritance, passed down from generation to generation. One of the manifestations of that doctrine is the belief that the land itself is sacred and to be held in trust by the current generation for subsequent generations. The principle allows for the survival of the current generation while they are enjoined to be mindful of the needs of the seventh generation for the basic necessities of life. In short, the present generation is seen to be holding the fate of the next seven generation in its hands.

Aboriginal cultures are, first and foremost, oral cultures.[41] Traditional knowledge is handed down from elder to youngster via songs and stories that instruct and inscribe the history and traditions of each peoples in the memories of each generation. As such, inflection and tone are as much a part of the stories as the words themselves. This renders it difficult to adequately represent the memories of aboriginal peoples on the page.[42] That being said, it is also integral to an adequate understanding of aboriginal social imaginaries to at least have a flavour of the myriad mythologies that undergird the cultural understandings of the relationships between humanity and the natural world. To understand the social imaginary more completely, it is instructive to look at the creation myths or myths of origins

of some of the aboriginal peoples of Canada. The myths of origins of the indigenous peoples of North America are varied. Canada's First Nations have eight unique creation myths that can be loosely divided into two categories: diving person and world parent.

In the Iroquois version of the diving person the story is told of the Sky People; there was no earth beneath. The chief's daughter became ill and a wise elder was consulted. He told them to dig up a tree and lay the girl beside the hole. As the people were digging the hole, the tree fell through it and took the chief's daughter with it. The falling girl saw only water below her. Two swans observed her fall and decided that she was too beautiful to drown so they swam to her and caught her. They placed her on the back of the Great Turtle and all the animals of the earth gathered to see her. The Great Turtle counsels that the Sky Woman is a symbol of good fortune. He bids the animals to find where the tree landed in the ocean and to bring it to him. The swans lead the animals to the place where they caught the girl. The otter, muskrat and beaver dive down in succession and die upon surfacing, exhausted and empty-pawed. The last to try is an elder woman toad who also perishes with the effort but not without first managing to spit a mouthful of earth onto the back of the Great Turtle. The earth is magical and grows and grows until it becomes the Earth Island. The animals, also at the behest of the Great Turtle, gather lightening from the sky to create the sun and the moon while the burrowing animals dig holes for the sun and moon to descend into and rise up from. The woman gives birth to twins, one good and one evil, and corn, beans and squash grow from her breast.[43]

In the Igluik version of World Parent a catastrophe causes the world's supporting pillars to collapse and destroy the earth. Two men emerge full-grown from the chaos. They marry and one becomes pregnant. The other man sings a song which causes the pregnant man to become a woman who then gives birth to a girl child. The two giants care for the

child who is also large and who has a huge appetite for meat. One night they awake to find her biting them. Horrified, they take her far out to sea and push her into the water. When she clings to the boat, they cut off her fingers. The fingers become whales, seals, and shoals of fish. The giant parents are afraid of their child and row away into the night. The giant girl becomes the demon girl Sedna, Great Mother of all sea creatures. She causes storms and governs the migrations of her sea creature children.[44]

There are, of course more variations on these themes, as each culture is unique. The Siouian story includes a man arising out of the earth, warmed and hardened by the sunshine. The Haida mythology incorporates the trickster tradition embodied in Raven who releases humanity into the world and gives them fire. The Tsimshian have a resurrection component, the Mi'kmaq a variation on the story of a great Flood. Despite the variances, there are some commonalities that can be extrapolated. All posit human beings as part of a worldview that is inclusive, that is, a worldview in which balance is the causation of harmony and visa versa.[45] Another key component of these worldviews is that of the common good. Heroic and laudable actions are almost always linked to ends that benefit the community as a whole. Thus, the animals that lose their lives diving for the tree at the bottom of the ocean in order that land may be started and the first nation's woman saved are heroic in part because the turtle tells them that the woman is good luck and therefore her preservation will help the extant community. Lessons learned from the trickster stories are those which benefit the community as a whole. This is one way that the creation myths show how deeply the needs of the common good are rooted within aboriginal culture. This is not to say that individual gifts and needs are not acknowledged, but there is a strong sense that the individual profits excessively at the peril of the community. Like many religious systems, the worldview perpetuated is at its heart deeply practical. Keeping balance means that food will

be plentiful, people will not starve and society will not unravel. The societies that the indigenous peoples of Canada developed (subsistence economies, hunter-gatherers) depended on their being able to work together and to get along in order to survive. Attributes such as selfishness or thievery undermined the cohesiveness of the community and put the whole people in peril. Let me be clear, I am not advocating for an entirely functional view of religion. This discounts, rather condescendingly I believe, the reality of the metaphysical dimension that religious communities attribute to their beliefs. The fact remains though, that the messages inherent in the mythologies do reflect ethical codes that foster cohesive community and support a morality that puts the common good ahead of individual. This speaks directly to the ways in which the natural world was regarded and used by Canadian aboriginals: although the aboriginal nations that were extant in Canada at the time of first contact were making use of the natural resources for the very practical purpose of survival, their underlying philosophy towards the resources that they were utilizing was one of mutuality and balance rather than one of entitlement and dominion.[46]

To understand the above principle is not to embrace the concept of the Noble Savage. It is important to acknowledge that avarice and deviancy were and are extant in aboriginal society—the trickster stories, especially, make reference to that reality. However, the above principles enable one to begin to grasp how aboriginal societies in Canada worked in concert with one another and with their physical environment. The social imaginary was one of mutual use and benefit rather than of individual ownership. Therefore the policies that developed in regards to what we refer to as resource management were, in Western terms more along the lines of stewardship than domination and exploitation. To be sure, there were agreements between different peoples who inhabited adjoining territories as to who would use what hunting grounds when, and what the parameters of those hunting

grounds were. However, as can be seen in the case of the Mi'qmak and the concept of

Netukulimk –ownership was foreign to these understandings so one band may use a

particular territory as its summer hunting grounds while another would use the same

territory in the winter. This amorphous (to the western mind) understanding of what

constitutes ownership and subsequent user rights are part of the root of the conflict between

aboriginal and western Europeans that underlies the complex issue of treaty negotiations and

land claims. [47] As I will discuss further down, the social imaginary of the Europeans at the

time of First Contact had shifted from those of a society with lands held in common to that

of a society where individual ownership was integral to the economic system. In addition,

the cosmology that supported both social imaginaries added yet another layer of complexity.

In part because of the willingness to draw from their own history of place, aboriginals were

able to respond swiftly and efficiently to natural ebbs and flows of the population of game

and to let farming grounds lay fallow for a certain number of seasons—a prime example of

ecological adaptation of human groups to their environment. [48]

As Paper points out, "...what we can learn from European sources on the nature of

Native religious traditions around the time of contact is partial at best…(w)e can learn much

more from the Native peoples themselves who have extensive oral traditions about their

past."[49] What TEK tells us is that the aboriginal cultures of Canada in general had

environmental policies whose ends were directed towards conservation and a subsistence

economy.[50] These policies were informed by a cosmology that saw all of creation as

interwoven and non-hierarchical. This is a cosmology centred in a world that is still

enchanted, with the boundaries between temporal and spiritual permeable and real.[51] In this

paradigm it is impossible to speak of environmental policy or ecological practices as being

separate from religious scruples—talk of this would be a false dichotomy.[52] Therefore, the

practical is always checked by the spiritual. In the case of the Cree, where the animal controls the hunt and the human being is a passive partner in the hunt,[53] the lack of game in a particular area was not necessarily an indication that other hunting spots should be sought for a prescribed period of time so that the population had time to recover, but a sign that a hunter had been disrespectful to the animal he was hunting and that animal was refusing to cooperate in the face of disrespect. Berkes relates the story of a young man who inadvertently showed disrespect to the Otter he was trapping. He had taken too long to check his traps and the fur had begun to spoil. The young man was despondent as he expected the Otter to retaliate by not allowing itself to be caught for perhaps three years.[54] More observation would be needed over a longer period of time to determine if the resources were making themselves scarce in general (a sign of mass displeasure—indicating that the land should perhaps lay fallow for a period of time). Or, it could be possible that the "land is unfamiliar" with the hunter—he is new to the territory and the land and animals do not know him, have not yet measured his mettle. As the land gets to know him, he will gain in success—that being gauged not by quantity but by his ability to "get what he/she needs."[55]

The environmental policies and practices of the various aboriginal peoples of Canada at the time of First Contact were developed within a social imaginary and worldview that necessitated maintaining harmony and balance in both a practical and a metaphysical sense. IK and TEK show that the systems that developed, did so over time and that, like any process, encountered errors in judgement and practices that were not, in the end, practical or good for the land. That being said, it is also clear that by the time of First Contact, the policies and practices that were extant had been so for generations—honed and perfected over the years; making note of subtle changes in environment, dynamic, but, generally

153

speaking, not reckless. These were cultures that had developed their environmental policies over a long period of time. Patience and acumen had enabled them to maintain rich, viable societies in North America. The coming of the Europeans introduced a vastly different social imaginary to North America and with that social imaginary came environmental policies that were, at times, in direct opposition to those practiced by the aboriginals. The next section exams the development of that social imaginary and worldview and explores the environmental practices that accompanied it.

After First Contact: European Environmental Policy

Robert B. Anderson and Robert M. Bone divide the change in the nature of natural resource use into three periods: Prior to first contact, European colonization and state building, and that of the present day. The first period, according to Anderson and Bone, was of usage that "…was as a part of a complex and reciprocal relationship inseparable from culture, values and spirituality."[56]

It is the deeply rooted notion of reciprocity which indicates an awareness of being embedded in a particular landscape—a notion of reciprocity that is not shared in the same way with the Europeans. Even the settlers who came to see the Canadian landscape as something fine and possessed of a kind of spirit did not demonstrate the same collectivity of reciprocity, the kinds of non-hierarchical relationships with nature as did the aboriginal peoples.[57] Nor, understandably, did they interpret their history with the land in the same fashion.

It is interesting to note, however, that the settlers who did develop a sense of the Canadian landscape as imbued with a spirit of its own or as a transcendent natural force were reflecting a theology that was not at all popular but that had been quietly and continually expressed and nurtured from its 12th century beginnings. That this is so is of

154

relevance, lest this population be labelled simply the "Romantics" and be left to languish in that taxonomical box. Franciscan theology and the natural world will be expanded upon below.

In Anderson and Bone's conception—the second period—the phrase "resources management" arose and with it "…the notion that something can be good for people and bad for the environment, which makes that benefit an entirely relative one."[58] It should be noted that the concept of resources management is not unlike the aboriginal understanding of "continued use"—both adhere to the principles of renewability and animal cycles. Therefore, although Anderson and Bone are sceptical of what the term reflects philosophically, the use of the term by some ecologists is, in general, neutral.

The current period, according to Anderson and Bone, incorporates two forces—the emergence of an environmental movement and interest in sustainable development and the fact that Aboriginal persons are regaining control over their lands. These two forces coalesce with a "growing acknowledgement of the traditional Aboriginal world view, and attempts to incorporate "traditional environmental knowledge" (TEK)…"[59] The emerging environmental movement incorporates a point of view that rejects seeing the natural world in terms of resource management and instead incorporates a term coined by Aldo Leopold—"imagine a mountain". This term refers to a shift in perspective allowing for human beings to see themselves as one component of, rather than the ruler/shaper/decider of, the natural world; just another biological organism within the biosphere, as it were.

I have explored the first of Anderson and Bone's periods and now come to the second—European colonization and state-building. A comprehensive historical treatment is beyond the scope of this work. However, it is important to establish the religious framework in which the European colonizers of Canada were operating, as this also provides

155

illumination for the greater cultural, political and economic impetuses for colonization of this portion of North America.

<u>Sixteenth Century Europe (by way of the Medieval World)</u>

In his book *A Secular Age*, Charles Taylor outlines three features that, in sixteenth century Europe, made it impossible not to believe in God: the order, design and "great events in (the) natural order" of the natural world; the deeply embedded belief that society and the various associations therein were "grounded in something higher than mere human action in secular time"; and, opposed to Weber's expression of "disenchantment", the world in which they lived moved and had their being was enchanted. [60] As Taylor points out, to say that this world was enchanted is to claim that, for them "…beyond all the inevitable ambivalences, the Christian God was the ultimate guarantee that good would triumph or at least hold the plentiful forces of darkness at bay."[61] The spiritual world was a tangible place and evil was real. The cosmos was filled with "super-agents like Satan himself…down to minor demons…the enchanted world, in contrast to our universe of buffered selves and "minds", shows a perplexing absence of certain boundaries which seem to us essential."[62] This section explores, in part, the idea that in terms of the natural world, the buffered self was in some limited sense already extant in the pre-modern period.

This last is important because it shows that past and current environmental policy stem from a social imaginary that is deeply entrenched in an understanding of the environment as "Other". The notion of the buffered self as used by Taylor is a concept that lends itself well to the explanation of the pre-modern western European's relationship with the natural world. Taylor's explanation of the enchanted self is one who is porous, who is vulnerable to forces beyond the tangible—psychic forces, spiritual forces which have agency and power to infiltrate one's very being, The porous self is without the boundaries that

modern people have—among them the strict sense of individual autonomy and integrity that renders the self incapable of being co-opted by transcendent forces. In discussing the difference between enchanted and buffered, Taylor writes:

> We make a sharp distinction between inner and outer, what is in the "mind" and what is out there in the world. Whatever has to do with thought, purpose, human meanings, has to be in the mind, rather than in the world. Some chemical can cause hormonal change, and thus alter the psyche. There can be an aphrodisiac, but not a love potion, that is, a chemical that determines the human/moral meaning of the experience it enables. A phial of liquid can cure a specific disease, but there can't be something like the phials brought back from pilgrimage at Canterbury, which contained a miniscule drop of the blood of Thomas à Beckett, and which could cure anything, and even make us better people; that is, the liquid was not the locus of certain specific chemical properties, but of a generalized beneficence.[63]

An enchanted worldview is by definition a worldview in which human beings are embedded in their complete surroundings and those surroundings have the potential for a causal relationship—for good or evil—directly with an individual. The buffered self has boundaries. She is, in a sense, one degree (at least) of removal away from whatever it is that is affecting her. This is taking liberties with Taylor's idea of the buffered self, but the comparison is helpful in terms of the distinction of removal versus embededness.

The person living in an enchanted universe is embedded holistically and experientially in the physical, mental and spiritual. As Taylor points out, the 16th century person was embedded in an enchanted universe in which the existence of God and the intangible world of spirits, demons and demiurges simply *was*. The mindset can be likened unto one of those around-the-campfire ghost stories: two travellers are venturing forth on a deserted road in the middle of a moonless night. They come to a crossroads and do not know which way to turn. A third traveller appears on the road and exhorts them to take the road that he is himself taking. They travel along together until they reach a pub whereupon the first two travellers turn to the third and offer to buy him a drink in repayment for his

helpfulness and find that he has vanished. Later, when they relate their tale to the landlord they are told about the Ghost of Whatever-it-may-be Road who was hanged at those crossroads and either helps hapless travellers or leads them down the wrong road to their doom. To the person of an enchanted age, the ghost is as real and as tangible as the first two travellers supposed their new companion to be. The spirits, God, demons directly interact and affect those who are alive and mortal.

A person who is not part of an enchanted universe is able to remove herself from the environment by compartmentalizing and rationalizing. Therefore, the ghost was not real, but merely a manifestation of the fears the two travellers had about travelling along a strange road late at night with no map and no GPS to guide them. Like Alice in Wonderland they puzzle and rationalize until the governess wakes them up and they realize that of course it had all been a dream—a dream composed of the rational components of the tangible world upon which her mind had been dwelling when she drifted off to sleep. The same analogy can be drawn to the film version of the Wizard of Oz. Improbable things, feelings and experiences have rational, scientific explanations and these rational, scientific explanations allow the modern person to remove or distance herself from the feeling in a way that a pre-modern person couldn't. "Things don't really have this meaning; it just feels this way, which is the result of a causal action utterly unrelated to the meanings of things. This step of disengagement depends on our modern mind/body distinction, and the relegation of the physical to being 'just' a contingent cause of the psychic"[64] Without taking exception to Taylor's observations regarding the buffered modern and the unbuffered pre-modern person, I would argue that the pre-modern person was already buffered or distanced from the natural world.

This must be argued carefully, for it is so that for all intents and purposes the pre-modern person was living in an enchanted world. But the shift from enchanted to dis-enchanted took place slowly and in stages. One did not wake up in an enchanted imaginary one day only to step through the looking glass into the rationalism of modernity the next. Indeed, the type of buffered self that I am positing was not dis-enchanted per se. But the person was buffered in the sense that he or she saw themselves as removed from and not embedded in the natural world. To use a rather worn Christian cliché, they were in the world but not of it. They were buffered in the sense that the natural world was other—whether as tool to be used by the spiritual world for or against them, or as resource to be used as one saw fit. In a sense, they were one step removed from their natural environment.

This use of the concept of the buffered self is congruent with Taylor's exploration of the relationship humanity has to the natural environment in this period. He argues that the philosophical concepts of nature held by the pre-moderns were foundational in lay attempts to reform which, in turn, were fundamental to the development of humanism.[65] Taylor refers to it as an interest in nature "for its own sake" as opposed to nature as only in reference to God.[66] To understand this proffered construction of a pre-modern Western understanding of humanity's relationship with the natural world, a short exploration of the work and thought of Lynn White, Jr. may be in order. White wrote an essay in 1967 for the journal *Science* which is regarded as a seminal work, not the least for the vigorous conversation that it generated. White believes that to "adequately understand the environmental crisis, we must first exhume and critically evaluate the ideas of nature, human nature, and the proper relationship between people and nature embedded in our inherited world view."[67] This is a fundamental component of White's philosophy; that "what people do about their ecology depends on what they think about themselves in relation to things

around them."[68]   For White, since the West was deeply influenced by Latin Christianity, the history of its interpretation of the natural world was the place to look for key ways to shift societal perceptions of the relationship human beings have with their natural environment. His essay in *Science* laid out his understanding of this history and a proposal for how a shift in perceptions might be made to come about.[69]

In "The Historical Roots of Our Ecologic Crisis", White[70] makes an observation regarding a shift in perception of the relationship between humanity and the natural world by drawing, among other things, upon a shift in Western illustrated calendars around 830CE. He observes that the older calendars were "passive personifications" but that the newer calendars "…show men coercing the world around them…man and nature are two things, and man is master."[71]   White makes this observation in the context of building an argument that Christianity underlay the shift in consciousness that moved people in the West from seeing themselves as embedded in the natural world to seeing themselves as removed from it.   His argument, in part, is that when Christianity "triumphed" over paganism and its concomitant animism, human beings found themselves able to exploit the natural world "…in a mood of indifference to the feelings of natural objects."[72]   White contends that this mindset is rooted in a particular interpretation of the Genesis story[73] embraced by the Latin West.   White asserts that in the early church "…nature was conceived primarily as a symbolic system through which God speaks to men…(a) view of nature that was essentially artistic rather than scientific."[74]   According to White, by the 13th century, the Latin West had shifted in its focus of natural theology from one of divine communication via "physical symbols" to one of human discernment of the divine mind via the deconstruction of creation.[75]   The foundational cosmology in the former paradigm is that of humanity firmly embedded in creation.   That being so, the original understanding of the natural world by the

early church posited that God was communicating with human beings (creatures) via their intrinsic medium (creation).[76] The "symbolic system" is indicative of an implied embededdness. Human beings use symbols to represent and communicate complex realities and those symbols must make sense, be relevant to the intended recipient. If God was seen as using nature as a symbolic system to communicate with humanity, then there had to be an inborn connectedness, an empathy with the natural world in order for God to expect human beings to decipher the codes of meaning within. There is an assumption, before the 12th and 13th centuries, in this paradigm that nature and humanity are concomitant—they belong to the same métier and milieu. According to White, this shifts by the early 13th century, and nature becomes not symbol but mechanism. Taylor also notes something similar to this with reference to Aquinas and the "autonomization of nature" where each part of creation had its own nature, peculiar to itself. God is still present in the whole, but the whole is a background of harmonious order comprised of autonomous parts.[77]

White believes that the cause of the shift lies in the ways in which the Latin West interprets the Biblical creation stories. This misinterpretation, according to White, has its roots in the writings of the early Church Fathers, particularly Tertullian and Irenaeus. These last, writes White, planted the seeds to the notion that "…man shares, in great measure, God's transcendence of nature."[78] White sees the false dichotomy between human beings and the natural world coming to the fore in the 13th century—a development concurrent with the rise of a nascent scientific community.[79] Contending that Christianity has historically been perceived as radically anthropomorphic, White traces the consequences of this anthropomorphism to an unprecedented bent for technology and a shift in imaginary that manifested itself in a mechanistic conception of creation as composed of pieces that can be taken apart and shown to be reflective of the mind of the Master.[80] Like no longer

communicates with like, but apprentice learns to be Master by reconstructing (after deconstructing into components) and eventually gains the knowledge/mind of the Master him or herself. Humanity is no longer embedded in or consubstantial with creation, but rather above and outside of nature. God is the Master of the craft and humanity God's apprentice, made in the Master's image and therefore given license to deconstruct the Master's work in order to determine the workings of Master's mind. Creation is seen as a tool used by God and humanity endowed with the mandate and the ability to learn to dominate and deconstruct creation in order to master the materials themselves. This is not to say that humanity would become God—at least in the context of the High Middle Ages this would be seen as heretical—merely that humanity is expected by God to gain greater understanding of God and God's creation by using scientific principles. According to White, the anthropomorphism of Christianity, magnified by a misinterpretation of the Genesis stories of creation, gave impetus to this eventual evolution of perception. Thus White attempts to show the scientific audience that he is addressing the ways in which he believes Christianity was misinterpreted in the West and used to further the work of science and technology to the eventual detriment of the natural environment. While his exegesis is somewhat questionable[81] at points, and undoubtedly the causation of ecological devastation is much more complex that this one essay asserts, the shift in the Western understanding from embededness in nature to detachment or buffering from nature is well-drawn.

To be clear, I am not endorsing an interpretation of White that asserts his entire argument to be that Christianity was the major culprit in global environmental degradation, but using his argument to support my contention that pre-modern humanity in the West was buffered in a Taylorian sense to the extent that they saw themselves removed rather than embedded in the natural world.

After drawing a particular picture of Latin Christian interpretation, White introduces a component of Western Christianity in his essay that he argues is more in keeping with the earliest of Christian understandings of the relationship between humanity and the natural world and which he believes should be embraced by the West so that the ecological crisis could be averted. He argues for the rejection of "…the Christian axiom that nature has no reason for existence save to serve man."[82] St. Francis of Assisi, claims White, "…proposed what he thought was an alternative Christian view of nature and man's relation to it: he tried to substitute the idea of the equality of all creatures, including man, for the idea of man's limitless rule of creation."[83] But even in Francis, there is still the sense of humanity as distinct from, and not embedded in, nature.

Francis' theology was both broader and more nuanced than White portrays. Taylor refers to the Franciscan aspect of a "new vision of nature" in the 13th century as "…the life of God in the animate and inanimate things which surround us…"[84] Taylor argues, in part, that Francis' focus on this vision was at the forefront of a new spirituality that focused on the humanity of Christ among people, as opposed to the Christ of judgement that had heretofore been put forth by the Church.[85] Granted, Taylor and White are using Francis to prove two different theses. But each point out that Francis was part of a movement that involved the new vision of nature. White sees this vision as wholly radical in its egalitarianism. Taylor points to a movement that was trying to take Christianity back to the masses. In this context, Francis' ecstatic poetry is more old-fashioned than radical. Francis' point is to see the life of God in every living thing. He fights against hubris and extols humility but not to the extent that the faithful are extolled to see themselves as co-equals embedded in the natural world. Francis' awareness of the value of all of creation has important ramifications for the current environmental movement, but his theology, as

Taylor points out, was also instrumental in the emerging process of recognizing the ordinary person in their individuality. This particularity, according to Taylor, eventually contributes to the individualism of modernity.

White and Taylor each present a different facet of Franciscan theology for consideration. Another point at which they both differ is that of the social imaginary of the world that Francis inhabited. White portrays a world wrested from enchantment at the hands of conquering Christianity. Taylor's history is more nuanced. Even though there are signs of dis-enchantment, Taylor asserts that the process was much slower than White indicates. This next section explores the two theological points of view put forth by White as well as the social imaginary described by Taylor.

The view of nature that 16th century Europeans inherited from their medieval forbearers was complex and several strands of thought come to the fore when the complexities are examined. One strand, exemplified and amplified by St. Francis of Assisi in the 12th century was that of the ancient Christian ascetics. Incorporating statements such as Antony's from the 4th century—"God's words can be read in nature,"[86] but also introducing the ideas of familial relations with other creature in the whole of creation and the extension of chivalric conceptions to interactions with creatures—St. Francis' writings and teachings supported a vision of creation that has been interpreted by some contemporary ecologists (White included) and theologians as one that posits humanity embedded in creation in a non-hierarchical relational way, very much like Aboriginal thought. [87] However, as Roger Sorrell very rightly points out, much of this interpretation is anachronistic; Francis was a man of the 13th century and his foundations were not egalitarian but hierarchical. Creation was God's handiwork and was hierarchical. [88] Each facet of creation had its fixed place and purpose.[89] Human beings may need to show respect to God's creation and have a

responsibility for stewardship but this respect and responsibility stem from the knowledge that it is God's *work* that commands humanity's respect and duty. Creation is the work of God, that is the universal commonality. God is pleased best when God's works are treated with respect and reverence—not because they have intrinsic value in and of themselves, but because they are the works of the Creator. The Creator is great and good, thereby the Creation is great and good.[90]

The above is the thread of commonality that united all the strands of thought towards nature in the 16th century—that nature (or creation) is something that humanity is part of but not something with which humanity interacts on an egalitarian footing. Nature is Other, a part of the created order crafted and presented by God *for* humanity. In Francis' paradigm this position means that humanity has responsibility towards the rest of creation and joins with the rest of creation in praising God, but is not embedded in the natural world in an egalitarian sense. Thus Francis shows "affection and reverence" to creation in his Canticle to the Sun but the language he espouses with the Sun and the Water "…do not imply any pantheistic of pan-psychic view of creatures, since Francis' conceptions of them were rooted soundly in Christian doctrine. They are rather a way of showing in a poetic and emotional way Francis' affection for and affinity with creatures."[91] It is not confraternity that Francis sees, but beauty in the *other* aspects of God's creation. Humanity is part of the created order but as the "highest" creature in that hierarchy. From this perspective, it can be seen that Francis has a deep understanding of the Othering between humanity and the rest of creation.

That Francis understood this can be seen in the way he speaks of creation: sister Moon, brother Fire, etc. Francis is not romanticizing or anthropomorphizing, Sorrell argues, but is personifying—trying to build bridges of empathy.[92] Such efforts would not be

necessary with a population that saw itself as embedded in nature; Francis' nomenclature would not be seen to be radical in the least. But his "enfraternization of all creation" belies a popular conception of nature as Other. His attempts to persuade offer a telling glimpse into the mind of his contemporaries and their view of nature.

Again, it can be shown that in the Latin West, people and nature were perceived as being distinct from one another. Sorrell's arguments undergird Taylor's observations regarding the type of spiritual direction in which Francis was heading—that of bringing Christ to the masses, especially to those on the margins of society. As mentioned before, Taylor argues that this focus on the person of Christ also brings focus on the uniqueness of the individual. The implications of that for this study is that with a humanity buffered from nature, the increased pull to know God through the person of Christ and not through the vehicle of creation becomes stronger. The natural world becomes more and more Other— incidental, almost, to humanity's understanding of itself. Francis' exhortations are not that humanity knows God *through* creation, but that humanity recognizes the wonder of God *in* creation.

This refutes, in a large sense, the portrait of Francis' cosmology that is put forth by White. Francis did not attempt to "depose man from his monarchy over creation and set up a democracy of all God's creatures."[93] However, when White remarks on Francis' "spiritual autonomy of all parts of nature"[94] he is closer to the mark, for that reflects the particularity brought about by the trend reflected in Francis' overall theology. Seeing White's arguments in this light is important, for the discussions that White generated encouraged a reading of Francis as a heretical environmentalist that may be of use for contemporary environmentalists, but is somewhat unhelpful when trying to decipher the attitudes of pre-moderns towards the natural world. This worldview was one of a humanity with a religious

worldview buffered—removed and not embedded—from the natural world. In that part, White's point is valid—religion is integral to understanding the history in the Latin West of humanity's relationship to nature. As Taylor writes, "the new interest in nature was not a step outside of a religious outlook, even partially; it was a mutation within this outlook."[95] In the next section I will explore varieties of religious outlooks in the 16th century that had their antecedents in the 12th and 13th, and whose people set forth into the New World armed with worldviews and social imaginary that would differ profoundly from new cultures that they would encounter.

Sixteenth Century Western Europe

The theology that undergirds the social imaginary and hence the view of humanity's relationship with the natural world in the 16th century is inextricable from the culture of the time and place. And it is inextricable in the sense that a religious worldview was not merely a component of society—it simply was, among other factors, what made society whole; what made reality real. Taylor describes the buffered self as "…essentially the same self which is aware of the possibility of disengagement."[96] If this is the case, then the non-buffered self— the pre-modern person—could be described in most instances as not being aware of the possibilities of disengagement. White argues that, in terms of the relationship between humanity and the natural world, these possibilities appear to be present in the 13th century. Taylor is clear that the buffered self is not fully so until the modern period. He observes three components of this 16th century world: 1. The natural world the people lived in…testified divine purpose and action; 2. A kingdom could only be conceived as grounded in something higher than mere human action in secular time. 3. The world was enchanted—a world filled with spirits, demons and moral forces…[97] So the premodern person of the 16th century was only buffered in a very limited sense.[98] This partially buffered

167

person exists in a world that is not particularly conducive to the "possibilities of disengagement." Thus the premodern person cannot distance him or herself from the influence of demons or evil spirits—in an enchanted world, their existence is tangible and inarguable. Therefore, even though the partially buffered person no longer sees humanity as embedded in the natural world, the natural world is still full of all the components that make it enchanted and, as such, has a powerful place in the social imaginary.

So it is fair to observe that leading up from the long 13th century and at the beginning of the 16th, the theology of the natural world (to distinguish from natural theology) engendered a view of nature as something to be feared or regarded with awe but not something of which humanity was necessarily a part. They were dependent *upon* nature, but nature itself had no agency apart from how the supernatural chose to use it. The supernatural was Other to nature as well—as it was temporal and not eternal. The natural world is object, never subject. Aside from Francis' cosmology, nature was a force to be overcome and subsumed. In certain interpretations of the scripture, God had sanctioned that domination. The Fall had shown nature to be untrustworthy as it could be used by evil to tempt human beings. Although Francis does speak against this particular view, there is no doubt that it was deeply entrenched in the cosmology of the time and place. On the positive side, God also could use it to bless human beings with fertile soil and good weather. The natural world was often an auger of God's current disposition towards God's people. The natural world was one vehicle through which God communicated the Divine will. According to scripture, the natural world outside the safety of the Garden of Eden was also a place of exile after the Fall. In terms of humanity's place in all of this, as a special part of the natural world endowed with souls, human beings had a unique relationship with God. All of this makes for a fairly complex theoretical attitude towards the physical environment.

The belief was that human beings were at the top of the created order and, as such, had dominion over nature; even, it should be recalled, in the paradigm presented by St. Francis. For, as discussed, although Francis' teachings did not vary in some respects from those of his contemporaries, his view of nature is best understood as a view of creation that was organized according to a divine plan, was hierarchical in nature and in which each component had its own set place. The responsibility for stewardship can be justly extrapolated but to do so at this period is somewhat anachronistic. In either case, God had provided the basic necessities for living—fertile soil for planting, materials for creating shelter and clothing, animals and birds for hunting and fish for the catching. In this way, human beings were beholden to creation for their survival and, since God was the author of creation, they were ultimately beholden to God. In St. Francis of Assisi's paradigm, this meant that God should be seen to be present in all of creation and that should engender a kind of humility in our encounter with all of creation—almost as if being part of creation was practice for the humble wonder that one would display when one eventually found oneself in God's presence after death.

But as alluded to above, there were other paradigms as well that viewed nature not as God's gift nor humanity's benevolent sibling, but as a dark and broken prison, a "vale of tears" that was corrupt and through which God chose to manifest God's pleasure or displeasure through floods and droughts and years of good harvests and fine weather. In this sense nature becomes a tool of God, through which humanity benefits or falls ill.[99] It is an effective tool because humanity is trapped in this world (not embedded, for humanity is in a real sense seen as above and beyond). In this paradigm humanity's true home is the City of God. In this worldview, being part of the created order is a trial of one's mettle, a place for the soul to be refined and honed. A place so corrupt and corrupting that it was merely

to be endured and, in the end escaped not for Paradise but for Purgatory, as the corrupting influence of this world was too great for all but the most pure of souls.

Since the worldview that I am exploring will eventually come into contact with the North American aboriginal worldviews, it would be fruitful to do a short compare and contrast at this juncture. The western European worldview just described stands in deep contrast to the one held by the aboriginal peoples of what came to be known as Canada. In their paradigm, humanity does not stand outside of the natural world but is literally "of" the natural world. To be sure, the forces of the natural world and the resources could also be communicated with, but the actions taken were seen as a consequence of the relational. If the game were scarce or the weather intemperate it was because relationships were out of balance and needed to be put right. It was incumbent upon all parties to strive to regain that delicate balance that allowed for all life to proceed. There are contrasts and parallels here, of course. In the Christian paradigm a balance of relationships was also important but the fundamental beliefs about those relationships were inherently different. For the Christian, the relationship between humanity and the divine had been put out of balance with the Fall and no amount of human effort would bring that relationship right. Through Christ there could be reconciliation but the scales could not be so easily reset, as the corruption of the corporeal world was irredeemable until the end of time. In addition, in the European context, human beings were not contending with spirits in nature, but spiritual forces *using* nature for their own ends.

In this sense, then, the desire is not so much for a balance of all relationships but for an overpowering of the forces that are complicit in perpetuating brokenness. In the European paradigm, the broken relationship (in the form of the Fall) was foundational to the way the world now worked. Christ's coming *may* have brought spiritual redemption but,

170

unless something changed at the final reckoning, the relationship between human beings and the natural world was broken. Hence, the enchanted world of the European is hierarchical and adversarial—all the more so if God is seen as judge or tempestuous father. Human beings are embedded in the natural world but they are not *of* the natural world and therefore do not need to seek for right relationship with the components of that world but with the creator of that world. The Aboriginal worldview (in the most general sense) is that of humanity embedded in the natural world with the need for maintaining right relationships within that natural world. Although many Aboriginal mythologies do portray a creator figure (or figures), the stories all convey the sense that these figures expect their creation to be in harmony with itself and not to look to the creator as the automatic arbiter. Human beings have the capacity and the responsibility to maintain proper relationship and balance with the natural world.

All of this is not to make a value judgement regarding which paradigm is the most "correct" or beneficial for humanity as a whole. History is complex and the theories that I am bringing forth are merely attempts to try and understand portions of what eventually evolved from the clashing of these worldviews. Religious worldviews are fluid and emerge and evolve as the needs of their respective societies change. This does not mean that worldviews always change fundamentally, but that their modes of being expressed and even of being used change as they are adopted by and adapted for each generation.

The European paradigms—St. Francis or the "vale of tears"—necessitate an understanding by humanity of their dis-embededness in the natural world. In the sixteenth century, the latter view was more prevalent than was the view ascribed to St. Francis. Entwined in this perception, of creation as God's tool, was the understanding that earth was not humanity's true home—the Augustinian idea of the City of God and the City of Man.

171

In this paradigm the physical world is incidental to human happiness and it is the soul's true desire to leave the created world to join with God in God's perfect city.

In this fundamental worldview was a cosmology that could not help but inform environmental practices. Nature was a tool used by the supernatural in a variety of ways for a variety of reasons. Because of the Fall, humanity was destined to dwell as broken creatures in a created world that was not their true home, but a lost Paradise filled with danger and hardships. This worldview is evidenced by the widely held belief that salvation was only for the few and that eternal damnation was the eventual lot of most; the increased sense of God as harsh judge rather than forgiving father; the idea mentioned above that the world was in Satan's hands; and that flesh was equivalent to corruption and damnation."[100]

This highlights a very important difference between the worldviews seen in North American Aboriginal cultures and the enchanted world of 16th century Europeans. The theological understanding that human beings were in the world but not of the world—that is, embedded in the natural world but not really a *part* of it because their souls belonged with God in their true home—that understanding combined with the worldview that saw nature as God's tool, served to support a cognitive dissonance that leads to alterity. That is, by seeing the natural world as a tool and human beings as not ontologically embedded in this world, the natural world can be seen by human beings as Other, as an entity separable from humans. The difference in theology underlying the worldviews leads to social imaginaries of very different types.

I want to be very careful here to state that I am not arguing against Taylor's notion of the pre-modern person as porous and the modern person as buffered. Although nature was Other in the enchanted paradigm, it still operated on the principle that boundaries between things were porous—and it is here that there is some congruity between the

172

European and the Aboriginal. Humanity could not buffer itself from the reality of nature as actor. When crops failed it was not just that the farmer was a victim of the weather but that there were evil spirits making themselves manifest in the lack of rain or in the clouds of locusts. Or, that God was displeased and showing God's wrath. The idea of in the world but not of it does not preclude the reality of one's being affected by the world or the otherworldly. I am arguing merely that nature (in the form of the physical environment) was a tool through which spiritual forces were known to work and, as such, this laid partial groundwork for an eventual shift to disenchantment that saw nature as predominantly a tool.

This notion of nature as tool is integral to the understanding of the environment that European explorers in the sixteenth century brought with them as they searched for new trade routes and for geographical expansion. At this stage in the common European worldview (and Taylor does make a very important distinction between the intellectuals of the time and the general population—more on that below), God is in charge and uses nature, in part, to keep humanity mindful of what power God has. This relieves human beings of a certain amount of responsibility towards the natural world. To be sure, it is God's creation and tool and, as such, commands respect. However, God has also commanded humanity to "have dominion" over the earth and to use the resources therein to sustain themselves.

This creates a kind of fragmentation in the enchanted worldview of the 16th century European: First, nature is God's tool for reminding humanity of God's power; secondly, nature is populated with spiritual forces both good and evil that constantly vie for dominance over human existence; third, nature is God's gift to humanity in their brokenness—having been expelled from paradise, they are nonetheless presented with the means necessary for eking out a subsistence living from the created world outside of Eden.

And lastly something new, the Reformation brings about one more fragment—the sense that the natural world is something to be conquered or overcome. Just as an undisciplined body can bring the soul's downfall, so is the natural world repugnant and unruly. Just as the flesh needed to be brought into discipline and controlled, so too did the natural world.[101] The first fragment reflects the judgemental father God mentioned earlier. This gives the natural world a menacing tinge, a flavour of retributive justice if you will. The second reflects a humanity with some measure of power in the spiritual realm as the relics of the saints are available to them for the requesting of God's power and the magical use of warding off evil. The third fragment views nature as a reflection of God's largess and mercy. The fourth is a variation on the second with its dawning belief that humanity can have some measure of control over the physical world—though of course this control is seen as illusionary at this stage as all control ultimately belongs to God. The mechanistic point of view can be seen here as well—with God-through-nature shifting from the great communicator to the great mind which must be disassembled for the watchmaker's edification. The difference between two and four is mainly in the decreased belief in the magic of relics or other material objects and the increased belief in the power of good works and of science.

These four fragments are reflective of different theological positions that will all play out in environmental policy as disenchantment begins to take hold in the European worldview. The first two, especially, form part of the foundation for an exploitationist vision for what will be called natural resources that the Europeans brought with them to the New World.

This is not to say that aboriginals did not exploit their environment. However, their understanding of their societies first had a longer, remembered and respected breadth. They also had a worldview that not only acknowledged human embeddedness in nature but saw

this as integral and non-hierarchical. There was also a perception that there was a direct, causal relationship between the respect shown to nature and the ways in which nature reacted. Humanity had a measure of control that went with the responsibility. Exploitation could only go so far, or the subsistence economy would collapse because, according to the worldview, respect for the natural world was not being displayed. The worldview of 16th century Western Europe was somewhat different.

Worldviews do not develop in a vacuum. All the components that comprise society interact with one another and influence one another to varying degrees. The social and theological changes being wrought in the period of 1300-1600 were accompanied by economical and political changes as well. All were to have a deep impact on the global environment.

In *A Secular Age*, Taylor traces the shift in social imaginary in Western Europe from an enchanted universe where God is an indisputable fact and the ways in which moderns delineate boundaries—between self and others, temporal and spiritual—are porous to one where autonomy is beginning to take hold and disenchantment to reign supreme at the advent of the Reformation. The pre-modern person that I have posited above, partially—buffered and disembeded from the natural world, is also deeply entrenched in a social imaginary that is shifting. The shift, in broad terms, can be described as going from symbol to mechanism.[102] The art and sciences of the Renaissance build in part, upon the theological antecedents which posit human agency and autonomy along with the absolute sovereignty of God. Taylor, making his argument for the development of humanism in this period, notes that in this period, the concept of human agency as "active, constructive, shaping…"[103] gives rise to contemplative ways in which to grasp the world—science and art—as well as taking a greater place in ethics.

This last is especially important because it contributes to the social imaginary that arises in Western Europe during the Reformation which, in turn, deeply affects the ways in which humanity sees their relation to the natural world. A humanity with agency has responsibility to render human society to be what God expects it to be, and that includes managing nature in such a way as to maximize human flourishing. Reformers saw this agency being kept in check by strict discipline and order.

Taylor's observations regarding the history of a "disciplinary society" paint the picture of a complex and increasingly regulated culture where discipline and order were reflective of, among other things, proper religious conformity.[104] He notes that in the 16th century, elites who heretofore would have been satisfied with the gains their own class had made in terms of knowledge and refinement (becoming "civilized", in other words), began attempts to make over the lower orders of society: "They are precisely not left as they are, but badgered, bullied, pushed, preached at, drilled and organized to abandon their lax and disordered folkways and conform to one or another feature of civil behaviour."[105] This understanding of lower orders as a population that needs to conform to the ideal of the elite has far reaching consequences for both cultures after First Contact. But what is also important is what is seen as the divine mandate for the "Godly minority" to keep the masses in check.

The particularity of human natures that was a harbinger of autonomous individualism also dovetailed with the Protestant insistence that there was no hierarchy of vocations. Since everyone was called by God to live up to their calling in the fullest way possible, it would be irresponsible of the elite to leave the masses as they were.[106] It is not a particularly difficult stretch to argue that this passion for creating order out of chaos and felt responsibility for enabling God's creatures to rise to as high a level of perfection as possible

176

informed attitudes towards the natural world. There was already the idea that humanity had the capacity to discern the mechanics of nature and, as such, the capacity to use it as a tool in the same manner as God.[107] This view goes beyond disembeddedness of humanity from nature to entwine with the theological stance of domination. The notion of stewardship or of empathy with fellow creatures is still extant, but is peripheral in the great wave of theological, social and economic changes being wrought in the 16th century.

As the European worldview moves towards disenchantment, it is easy to make the statement that the sense of the environment as Other, and subsequently also as tool for the betterment of human pursuits by humans, led to greater and more unsustainable exploitation. However, as with any type of human history, things are much less facile and far messier in their explanation. Neither environment nor religion are deterministic in and of themselves. However, the two are integral to an understanding of the social imaginary of the 16th century.

As mentioned above, it is impossible to speak of European society in the sixteenth century in any kind of secular terms. The worldview and social imaginary were enchanted and God was inextricably entwined. This being the case, it is inconceivable that any kind of vision of the natural world was formulated or implemented devoid of theological influence in the sense of what Taylor refers to as a "naïve understanding", or "the construal we just live in, without ever being aware of it as a construal, or—for most of us—without ever even formulating it."[108] That is, the theology (or, to be more accurate, the theologies) imbedded in the social imaginary of the time would have been part of the make-up of any person. Again, I am not arguing in the least that such a theological component was deterministic, merely that the underpinning existed as a vital component of the worldview espoused by 16th century Europeans.

Leading up to the 16th century, there were profound shifts taking place socially, economically and theologically. Some of these changes led directly to the development of an economic system that would depend upon geographic expansionism for its growth and prosperity. This expansionism was supported theologically by a growing mechanistic understanding of the world—exploration brought knowledge and knowledge furthered the quest to understand the mind and ways of God—and by the mandate to proselytize.

As well, there is little doubt that shifts in the natural environment were deeply tied to some of those changes. The outbreaks of the Black Death from 1347-1400 and what is often referred to as the Little Ice Age are just two examples. In the case of the Black Death, for example, one ramification was a reduction in the available labour force and a command of higher wages for those few who were left to work the land. During this period, it had also become possible for peasants to have small surpluses which they were then able to trade or sell in the urban markets. In some cases, peasants were themselves able to purchase land. Although this relative largess was not always a predictable constant, one consequence was that the class distinctions necessary for maintaining feudalism began to erode and with this, the dependence on a subsistence economy.[109]

The rise of the city-state and the degradation of arable land due to unsustainable farming practices (i.e. an imbalance between livestock which were necessary for providing fertilizer; pastures; poor crop rotation; and land that had been parcelled into too many lots) and the process of enclosure of common lands[110] also contributed to social unrest and peasant uprisings in the countryside and in the urban areas.[111] As Perry Anderson observes, "the penetration of the countryside by commodity exchange had weakened customary relationships, and the advent of royal taxation now often overlaid traditional noble exactions in the villages; *both tended to centralize popular reactions to seigniorial extortion or repression, into major*

collective movements" (1974a: 202, emphasis added). [112]Thus, land use (or misuse), in part, led to

some colonization into Eastern Europe and to a noticeable dip in the relative prosperity of

the peasant class. Those who had been managing to have a small surplus to sell or barter for

themselves found themselves struggling at a subsistence level once again. As Moore notes,

"those areas most prone to revolt were neither fully commercialized (prior to capitalism no

area could be) nor entirely subsistence-oriented, but rather those areas that lay somewhere in

between."[113]   In other words, those peasants who had been rising above a subsistence level

were reluctant to return to their former economic positions—no matter how much pressure

was put to bear upon them by the seigneurs or the princes.

Moore's discussion is focused on the development of capitalism in the West, but his

insight into the environmental issues that played a part in that development from 1300-1600

are also important for this study. The changes in the ecology of the feudal lands, the

droughts and famine brought about by inadequate land use, the ensuing Black Death

possibly exacerbated by the weakened resistance to disease through malnutrition[114]

supported a theology of despair—only slightly ameliorated by the dim hope of purgatory and

the Church's offering of indulgences—while also providing partial grounds for a profound

shift in the balance of power between social classes.[115]

To elaborate, I will turn again to Taylor's examination of the time period of 1450-

1650 and the rage for order. He outlines three kinds of change that were integral to the shift

from enchanted to disenchanted and which were supported by the Reformation:

> …first, autonomous changes in popular piety, which may be encouraged from on high, but are
> not mainly powered from above, like the devotion to the crucified Christ, and the practices of
> solidarity before death and Purgatory. There are, second, the rise and development of new
> elites, with a different outlook, or different social base, as with the educated laity who more and
> more mark the religious picture of Latin Christendom through this period. And then there is the
> third, the deliberate attempts by elites, whether old or new, to make over the whole society, to
> change the lives of the mass of people, and make the(m) conform better to certain models which
> carried strong conviction among these elites. [116]

Taylor's observations here mark, as do Moore's, the shift in the power balance between the different factions of western European societies. As Feudalism crumbles and a new social and economic reality begins to emerge—so, too, does a new religious reality begin to develop. Taylor calls part of this a "rage for order" and a "…dissatisfaction…with the hierarchical equilibrium between religious leaders and people, hierarchy and laity…"[117] According to Taylor, this dissatisfaction can be seen, in part, through the banning of festivals that make fun of the hierarchy—such as Carnival, when societal roles are reversed and peasants play at being kings while the clergy play at being peasants. As the "rage for order" becomes more entrenched in the wake of the Reformation, such hierarchical equilibrium becomes intolerable, as do its collective expressions.

To Taylor's explanation of the drive for order, I would also add that the comparative economic disarray that was caused by the slow dismantling of feudalism and the development of the early stages of capitalism also contributed to the circumstances that made Reform so fertile. Internal societal structures were being shifted, making it necessary, in part, for external structures to be put into place so that the theological impetus for order and discipline was justified by the social and economic situation. The additional environmental realities—i.e. lack of available arable land for cereal crops, climate change—also added to the shift.

There are many threads to weave together to present as coherent a picture as possible of a Western European concept of the environment at the time of, first Cartier (1497) and then Cabot (1534). The centuries leading up to this point had produced people who lived in an enchanted universe, where the concept of Godlessness was inconceivable. The natural world was, if not filled with the spirits of nature that a much earlier culture had worshipped, ripe for use by a wide variety of supernatural forces, including God. Although

pre-modern, these people were partially buffered in the sense that they did not see themselves as being embedded in their natural environment. Mind-body dualism served as a foundation upon which a cosmology of nature as Other was set. Nature is conceived of as a tool. It can be used, as stated above, by supernatural forces for the help or to the detriment of humanity. Conversely, nature was also a tool used by humanity for its own needs. However, the sense of nature as unpredictable, as a tool for judgment in the hands of the supernatural was also palpable. Even as farmers planted crops and made shrewd predictions about the weather, there was the sense that all would be for naught if evil spirits were to feel capricious or if God were to be angered and pass judgment in the form of drought or flood or early frost. Still, the predominate understanding at the time was of nature as tool to be used to further one's ends, be they human flourishing or spiritual caprice.

It is apparent, also, that although the view of nature articulated by Francis in the high Middle Ages is not defunct, it is certainly not at the fore. With the emergence of a mechanistic view of the universe and the development of a nascent scientific method along with the influence of Platonic and Aristotelian philosophy comes a point of view that sees nature not as God's great communication device, but as the blueprint of God's brain. Taylor asserts that the beginnings of humanism are partially here, and I agree. I would also add that the beginnings of a further tendency to Other nature are also here—nature is no longer complicit in the great struggle to communicate with God; nature is object that must be deconstructed to understand God. This furthers an understanding of the natural environment as tool for humanity's use. There is a kind of empowerment here as well. If the workings of nature will help one to understand the mind of God, will not this understanding enable a mastery of nature that will take it out of the hands of malevolent spirits?

Therefore, at the foundation of the picture I am trying to portray here is a Western European embeded in an enchanted universe but partially buffered in the sense that he does not see himself as embedded in the natural world. And this is one point at which the worldviews of the Western European and the North American Aboriginal diverge—both worldviews are enchanted, but the former is disembeded while the latter is not. For the Western European as well, the natural world is a tool for use by the temporal and the supernatural but the social imaginary in which he is embedded is slowly moving towards a dis-enchanted universe. For the Aboriginal, the natural world has agency and works in concert with the other agents within creation to achieve a balanced, sustainable existence.

In Western Europe, nature had no agency and the theology of the time sustained a humanity-has-dominion perspective towards the natural landscape. Therefore, the degradation of arable soil and the depletion of forests were seen as fulfilling a divine mandate and the ensuing ramifications not viewed at all as a sign that nature itself was displeased. If anything, God would be beseeched to make the land fertile and hold off the forces of evil.

Thus, when the opportunity arose to expand European interests to the New World, the opportunity itself was seen as a sign from God and the economic and consequent social good that would presumably come from such ventures as evidence of God's good will towards the endeavors. The mastery of open ocean navigation and the resources to make such voyages a reality was confirmation of the divine mandate to acquire the knowledge necessary for further mastery of vast mechanistic universe.

Layered upon this was the belief of the Reformers that creating order out of chaos was also a divine mandate, that cultivation and civilization were also signs of the Divine presence and pleasure. This drive to tame and subdue that which was hitherto wild and

182

unpredictable had a deep influence on later settlers to the New World, who would claim that the Aboriginals could not possibly lay claim to land that they had not permanently cultivated.[118]

Lastly, there was the missionary aspect of Christianity, both Roman Catholic and Protestant conceived of themselves as fulfilling the divine mandate of Mathew 25 by going off to make believers of all peoples. Thus it was that not only did the Western Europeans strive to have dominion over the non-human flora and fauna of the New World, but to also dominate and "tame" the Aboriginals they encountered. This missionary activity, however, did not manifest itself until the late 16th/early 17th century

First Contact: Western European

As Wynn remarks, the intersection of cultures new to one another is a "complicated and intricate set of processes."[119] He references Urs Bitterli and his rubric for classifying the engagement between Europeans and non-Europeans: contact, collisions and relationships. Although Bitterli's rubric has some problems in what it does not encompass,[120] it does provide a methodology of sorts (or, as Wynn calls it, a "grid") for viewing the process of the consequences of contact.

According to Bitterli, "contact" was short lived, first meetings that incorporated ceremonial qualities. Sometimes the parties were aware of the other before contact and sometimes not. Bitterli cites these contacts as usually being peaceful. "Collision" happens when there is a shift from peace to war fomented by a power imbalance and/or the perception of the other as treacherous.[121] Wynn points to disease, also, as a form of collision, an idea that will be expanded upon below. "Relationships", according to Bitterli, involve "…a prolonged series of reciprocal contacts on the basis of political equilibrium or

stalemate" and rely on commerce and religion;[122] in the case of the Canadian Aboriginals and Europeans the instruments of those relationships were traders and missionaries.[123]

The relationship aspect, as Wynn notes, was peaceful "so long as the exchanges at their core remained of interest to both parties."[124] This was more readily workable at an economic level. The evidence shows the Aboriginals to be shrew and careful traders, largely, savvy about what their good were worth in exchange for the offerings of the Europeans. Where the relationships were most volatile was when worldviews were misinterpreted and misunderstood and when the relationship with one group created animosity with another—this last includes the process of enculturation which was, in general, experienced more keenly by the Aboriginals than by the Europeans.[125]

Therefore, commerce was a commonality. Certainly the socio-economic structures of Europeans differed from those of the Aboriginals. But Aboriginal cultures were well acquainted with the notion of trade and cognizant of the material benefits, as were the Europeans. Trade in the form of goods and services (information, making guides available for the explorers, etc.), although it may have been unbalanced at times (with either side occasionally gaining the better part of the bargain), the fundamental rules of trade seem to have been understood on a basic level by both groups of people. In terms of land use and religion, the gulf was vast and the consequences grave for both sides.

In the case of land use and ownership there were obvious divergent views. A cosmology that sees nature as a tool without agency is bound to clash with a cosmology that sees nature as having agency and therefore as being more than tool. In addition, we have seen that, historically, the clashes between Aboriginal and European have centred on land use and property ownership. This intertwines with the religious component of a relationship as well. While both sides were inhabiting enchanted universes, the understanding of the

supernatural in those universes was disparate. As I have tried to show, however, the theological underpinnings of the Europeans were every bit as entrenched and intractable as were the Aboriginal's. The Europeans eventually come to see their relationship with the Aboriginals on a religious level—assuming that the Aboriginals have no religion and that it is the European's mandate to *give* them a religion. The Aboriginals enter into the relationship with the Europeans well aware of their own worldviews and without the notion of proselytizing—to them, the presence of the sacred is intuitively obvious in the way that the world works, one does not attempt to convert another to a worldview that is just as apparent and necessary as breathing. It is quite likely that the Aboriginals who first encountered Europeans assumed that the Europeans held the same worldviews as they did. Even after the differences become more and more apparent, it was the Europeans who had to struggle to create a "need" for the religious wares they had to peddle. As Bitterli drily observes, eternal life as presented in the Christian worldview was "seldom really in demand".[126] Thus, the egalitarian, non-supercessionist worldview of the Aboriginals intersected with the hierarchical, supercessionist worldview of the European at contact, into collision, pell-mell into relationship, thence to a state of first colonization, and then into the morass that remains post-colonialism. Religion and the natural environment both play key and intrinsically integrated roles within this square dance of cultures. The first set begins (for our purposes) in the 16th century.

"First contact" is somewhat of a misnomer for the 16th century. Archaeological evidence shows that contact between the aboriginal populations of Canada and Europeans go much further back than the 16th century-actually around 1000CE with the Norse from Greenland making contact with Newfoundland, Labrador and possibly Baffin Island.[127]

The Norse settlements, in part because of the Little Ice Age (1200-1600), were

abandoned in 1400 (western and northern) and were completely bereft by 1500 (eastern). This study touches briefly on the late 15th century (John Cabot, 1497) and then moves to the 16th century and Jacques Cartier (1534). The scope of this study is not vast enough to encompass a thorough examination of the consequences of First Contact on all indigenous peoples and the physical environment of Canada.[128] What I will do here is make some general observations.

As stated above, European expansionism was driven by myriad reasons, some religious, some social, some economic. What the explorers also brought with them was a social imaginary fueled, in part, by a religious worldview that posited the natural world as a tool over which humanity was destined, even mandated, to have mastery and dominion. The New World (as they deemed it) was abundantly stocked with natural goods for which there was a good market back home.

Within ten years of John Cabot's voyage to Newfoundland, British, French, Spanish and Portuguese fishing vessels were populous along the coast.[129] Fisheries were established and their growth eventually had devastating effects for the Beothuk, the indigenous people of Newfoundland. Wynn writes of the Beothuk world that "It's very foundations had been undermined by the growing number of newcomers who failed to understand, and remained largely indifferent to, the fate of those whose delicately balanced traditional way of life was dislocated and disrupted by European occupation of this island territory."[130] I want to be careful here not to romanticize the Beothuk but to use this as an example to highlight the manifestation of a particular theological mindset. 16th century Europeans were partially buffered—nature was tool, not system in which they were embedded. Although they may have solicited information from the Beothuk and trade may have occurred,[131] any information they received would have been heard by ears tuned to a social imaginary that

perceived the natural world as tool or mechanism to be used or manipulated. What they would have heard was the "how" of existing in that environment. Even if they had been told the "whys" of the Beothuk's ways, it is not clear that those whys would have made sense—the two worldviews being so vastly different.[132] The "delicate balance" described by Wynn likely would not have been seen as such. The conception of such a balance would have meant re-thinking the fundamental relationship between human being and natural world.

The 16th century European explorers were driven, for the most part, by economic reasons. Cabot, Cartier and da Verrazzano were all given mandates by their monarchs to sail forth and find new riches and new passages to the east and its abundance of silks and spices. What they found were new lands and new fisheries rich in fish and timber and furs. In addition, of course, people.

By the time of Cartier's landing in 1534, precedence had already been established in terms of being able to claim the land although it was already occupied. This precedence stems from the 13th century church's attempt to define the rights of "heathens" and "infidels" in light of the church. Pope Innocent IV (1243-1254) affirmed and relativized the heathen's "natural rights to possess property and to exercise political power"[133] by subordinating those rights to the right of the church to evangelize and make disciples of all nations.[134] As Choquette points out, this concern with the rights of the church, resulting from its mission to evangelize remained a framework of the discussion of 'heathens' until the 16th century.[135] Under this framework, King Ferdinand and Queen Isabella were able to obtain exclusive rights to evangelize the native population of Hispanolia in 1492, circumventing the laws that would otherwise have denied their claims of sovereignty because the land was inhabited. Pope Alexander VI (1431-1503) issued the papal bull *Inter Coetera* in

1493 and delegated his power and duty to evangelize to the Spanish Crown. The bull also granted authority to adopt whatever measures might be necessary to achieve that objective.[136] The essential effect of this was to grant Spain "exclusive ownership and dominion over all of the lands in question."[137]

In 1537, another papal bull was issued, this by Pope Paul III, that addressed the vicious treatment the native peoples in Spanish colonies had endured and concern over the difficulty such treatment might make for evangelizing. *Sublimus Deus* affirms that the Aboriginal persons are people and that "the said Amerindians and all other people who may later be discovered by Christians are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should freely and legitimately enjoy their liberty and the possession of their property…"[138] Choquette reminds the reader that political realities made this bull difficult to enforce in the Spanish colonies.[139] However, it laid down a framework that differs from the first one above in that it recognizes the aboriginals as men and does not put the rights of the church above the rights of the aboriginal populations. This distinction did not keep the French and the English from seeing themselves as more civilized than the Aboriginals nor did it prevent atrocities.[140] However, since the Church and the ideas and proscriptions thereof were deeply entrenched in the ideology of the time, it is conceivable that this ideology became part of the mindset of the later French explorers and missionaries. The import for the purposes of this study is this, that it is possible to speculate that by acknowledging the humanity (although not necessarily the equality) of the Aboriginals, the Church tacitly grants the European nations the capacity to apply their own understanding of laws and property to their relationships with the Aboriginals. Before this, we know, that the Europeans seemed to have no compunction at occupying lands that they desired. A century

afterwards, there is at least the recognition that the Aboriginals conceived and laid claim to land as property (although certainly not in the same sense as the Europeans understood the term).

The lack of compunction can be evidenced, in part, by the encounter that Cartier had with the Iroquoian chief Donnacona in 1534 just three years before the *Sublimus Deus* when Cartier raised a cross on lands being used by the Iroquoi at the Gaspé. Cartier wrote that the chief "made us a long harangue, making the sign of the cross with two of the fingers

…he pointed to the land all around about, as if he wished to say that all of this region belonged to him, and that we ought not to have set up this cross without his permission."[141] Cartier's dismissal of Donnnacona's perceived claim is solidified by the fact that on Cartier's voyage of 1541 the stated purpose was to take control of the territories "by friendly means or by force of arms."[142] *Sublimus Deus* had been issued 4 years before that date, but I assert that this was not enough time for the meaning of the bull to have entrenched itself in the consciousness of Cartier or the French monarchy.

There is little doubt that the Europeans saw Canada as being full of natural resources that were theirs for the taking. In the 16th century, fishing was the major focus and trade with Aboriginals a secondary one. The British concentrated their efforts on the Grand Banks and the French in the Gulf of St. Lawrence. Cartier had been determined to establish settlements but weather and disease, and the strained, eventually hostile, relations with the Aboriginals caused him to withdraw. Settlement attempts by France were abandoned until the 17th century.

Contact, collision and relationship in the 15th and 16th centuries between Europeans and Canadian Aboriginals were marked by a growing awareness of each other's similarities and differences. Initial contact was profitable on both sides, Europeans acquiring

information and furs and Aboriginals acquiring metals and other European goods. This is not to say there was no hostility or that everything went smoothly. Collision occurred in several ways: mishandling of natural resources by the Europeans leading to sometimes devastating consequences for the Aboriginals (i.e. the Beothuk), the assumption by either side that the other was operating out of the same cosmology and social imaginary as themselves, the forming of alliances that favoured one Aboriginal group but made the Europeans the automatic enemy of a group hostile to the group with which an alliance had been made, and disease. Relationships, I would argue, wove in and out, not linearly progressing, but forming and unraveling and being re-formed.

Land Use and Population

To understand the natural world that Cabot and Cartier found in the 15th and 16th centuries is vital to how current understandings of the natural world are formed. North America was not a sparsely populated, pristine wilderness upon which the Noble North American trod softly and noiselessly on lissome toe. By the mid 18th century, it may have been seen to be so, but this was only after millennia of use (15,000 years), contact and collision had changed the landscape yet again.

William Denevan has estimated the Aboriginal population in North America in 1492 to be around 3.8 million. He estimates a drop in population to about 1 million (74 percent) by 1800.[143] This is significant for our purposes in two ways. First, it shows, in part, the devastating biological impact of European and African diseases on the North American Aboriginals. Second, it somewhat belies the argument that the natural world of the Americas was uncultivated by the Aboriginals. It is true that the cultivation and care developed by the indigenous population was not familiar to the Europeans, but it was certainly manipulation and cultivation in its own context. Denevan observes that "by 1492

190

Indian activity throughout the Americas had modified forest extent and composition, created and expanded grasslands, and rearranged microrelief via artificial earthworks. Agricultural fields were common as were roads and trails. All of these had local impacts on soil, microclimate, hydrology, and wildlife."[144] One important ramification of this information for this study is that it shows that Aboriginal cosmologies did not preclude the alteration of the natural environment.[145] Embededness within the natural environment did not mean that one was passive. What it did mean was that one considered the utility of one's actions against the consequences and tried to make choices that would not result in an imbalance of the cosmos.[146] This was the environmental ethic (or policy, for our terms) in general that was extant in the 15th/16th centuries.

The Europeans, mainly the French at this point in the Canada narrative, came with rigid and hierarchical understandings of society[147] and of the natural world. The policies that they brought with them were not those of sustaining what was there, but of finding better ways in which to utilize it. That was the dominion mindset, the mandate from God—to use the natural world for the betterment of human flourishing. Betterment, in their cosmology, meant to take their own ways of doing things and impose them on the new lands, which they felt were theirs by divine right. Hence, the exploitation of the resources they found in New France had theological as well as economic impetus. They saw land that was not being utilized as they believed it could be and set out to claim that land on the basis that they knew what to do with it. The decimation of Aboriginal numbers, mainly through disease, in the 15th and 16th centuries worked to further their cause and helped even more as they moved into the 17th century and further into the interior.

As well, as Denevan points out, "the landscape of 1750 was more "pristine" (less humanized) than that of 1492."[148] The demise in Aboriginal numbers and the subsequent

lessening of human impact on the environment strengthened the myth that the Aboriginals were neither impacting nor utilizing the land productively.

But, this is not a noble savage vs rapacious capitalist narrative. The reality was more nuanced than this. The Europeans brought with them ideas and policies regarding the natural world that were deeply entwined with their theologies. Land use, ownership and exploitation of resources was constructed and prescripted by the view that God had ordered the universe in such a way as to put humanity in charge and to mandate their use of the world for human flourishing, both economically and spiritually.

European Environmental Policy

The theological themes of dominion and of stewardship both arrived with the settlers in New France and with the British. Dominion underlies the dominant themes towards the natural environment, even as the notions of stewardship continue to play a countertheme even after the entrenchment of modernity, through the growth and development of Romanticism.

It is difficult to discern any blanket European environmental policies at this stage without making this portion of the larger study completely unwieldy. There were regional policies for agricultural lands and forest usage as well as regulations regarding hunting and fishing. In general these policies were reflective of a dominion theology borne of a conviction of entitlement by divine right and a belief in hierarchy that placed noble above peasant above nature, just as God was above humanity. The seigniorial system in France (initiated in New France in 1623 and abolished in 1854) and the declining feudal system in Britain were reflective of this hierarchy-by-divine-right. As well, there was the impetus, mentioned above, to create order out of chaos. This becomes codified in various ways, one of which is the Lockean notion that labour (the work required to subdue and coerce the

192

land) gives one ownership rights to the land. This impetus is manifested also in the policies of the government in 19th century, as in during the War of the Demoiselles, where the government attempted to restore its conception of order and "civilization" through ecological policies of re-forestation.[149] Choquette remarks that this predilection is not surprising, given the precariousness of European society (black death, war, Reformation, Counter-Reformation, demise of the feudal system); such a desire was not untoward. There was, however, a latent theological course that wended its way quietly under the roar and tumult of the dominant theological flood.

The Franciscan notion of God reflected in every aspect of nature had never been completely subsumed. As was discussed above, St. Francis described a view of creation the logical outcome of which, although firmly entrenched in a hierarchical social imaginary, was conservation or stewardship. Francis championed the idea that humanity had responsibility towards the natural world. This idea expanded over the centuries to become an understanding that God's mandate for dominion was actually a mandate of care and not of domination.

A case in point that shows the existence and occasional clashes of these two worldviews can be seen in an examination of the ramifications of enclosures of common lands in England during the 16th century in Kett's Rebellion (1549).[150] It is not necessarily the rebellion itself, but the demands set before the King that highlights the differences in worldviews. The argument is made, in this petition, for a return to and respect of the tradition of the lands held in common. In essence, Kett petitions Edward VI for, among many other things, recognition of the just use and distribution of the land and maritime resources. The petition upholds the hierarchical component of the society that is a given of

193

the time, but is also reflective of a Franciscan sensibility, pleading for the equitable treatment of God's creatures by those who by God's mandate are set above them.

The fisheries, the fur trade, the settlement of French and then the English all bear the stamp of dominion. The natural resources are viewed as not only there for the taking, but as never-ending. Dominion theology—the worldview that sees humanity as mandated by God to cull the natural world for its own flourishing—also has within it the strong sense that God will continuously provide, a sense that could be supported by referring to the New Testament, in particular.[151] Couple this with the growing sense that economic prosperity and plenty was indicative of God's favour, and the surety that European resource management strategies and land use customs were superior to those of the Aboriginals, and the result was human-induced environmental change on a scale much larger than the continent had hitherto witnessed. These changes were not only geographical, but affected indigenous animals and sea life as well. Wynn records, and others have noted in various studies, the sharply decreasing numbers of indigenous species from East Coast to West. The heavy demands of European and Russian fishers, hunters and trappers on the fisheries, whales, sea otter, fur seal, seal lion, beaver, bison, etc. were extraordinary and devastating. There were attempts at moratoriums and quotas, but many of these measures proved to be "too little, too late." It is also interesting to note that the attempts at quotas happen in the 19th century, at the end-point, rather than at the beginning of dis-enchantment of the Western worldviews.

Intertwining of Theologies with Ideologies of the Time

It is important to note also that from 15th century contact on, the idea of the environment as Other, as tool rather than integral component with agency, does not permeate the Aboriginal cosmology in a complete way, but it does begin to permeate

194

practice. The traditional Aboriginal ways were changing and shifting due to external factors directly related to the European fur trade and settlements. However, the traditional understanding of the way the cosmos works does not disappear from the Aboriginal cultures, even as those societies are slowly being splintered by the importuning of missionaries, of needs and demands of the fur trades and reduced decimation by disease. Trade for European goods at the point of contact becomes collision when traditional Aboriginal societies are asked to change their economies more swiftly than their cosmologies and social imaginaries can adapt. This has import for this study in that it intimates that extant cosmologies and subsequent environmental policies can be easily subsumed by a new dominant group, as was the case in Canada. The presence of the Europeans as in the fur trade, and as settlers and as communicators of disease established a new dominant religious and environmental worldview that subsumed the one held and implemented by Canada's Aboriginal population. That being said, the Aboriginal groups in Canada were not passive in this process, the Aboriginal understanding of the way the land and its inhabitants should be treated continue as a third stream in the story that is Canadian environmental policy. It is clearly distinct from the dominion theology. The differences with the Franciscan/Romantic sensibilities seems less apparent, until the fundamental cosmologies are compared. Then differences become clear. For example, an Aboriginal worldview supports an ethic and system of sustainable use-—a dynamism that in many ways precludes a pure conservationist outlook. The Franciscan and Romantic worldviews on the other hand can (and often do) support a conservationist stance that could be seen as static rather than dynamic. As I will show in another chapter, the Aboriginal cosmology is heard and codified in numerous treaties and negotiations.[152]

195

The dominion theology brought by the Europeans allowed them to use, harvest, cull, manipulate and subjugate the natural world as they saw fit. This theology was, of course, overlaid by the scientific and philosophical thinking of the time—personified by Bacon and then later by John Locke and his concepts of labour as justification of ownership.[153]

Neil Evernden encapsulates the Baconian mindset neatly when he discusses Bacon's way of looking at knowledge (and at nature). "Bacon's science helps command nature in action, and its method is therefore to catch nature at work, as Jonas says-—to ask questions that illuminate the "how" rather than the "why".[154] Laid over the dominion theology of the time, this supported a worldview that concentrated on how the natural world could be utilized and tamed to facilitate human flourishing. That does not mean, of course, that there was a lack of awareness that the resources of the natural world could be over-used, but the flora and the fauna of Canada must have seemed so abundant and so vast was the continent that the mere thought of depletion would have been ludicrous.

Romanticism

If dominion theology was intertwined in the Baconian and Lockean ideologies of the 17th and 18th centuries and transported to Canada, the ideals of stewardship and empathy towards the natural world were sustained and nurtured in many ways by the Romantics of the late 18th and 19th centuries. Kevin Hutchings writes that "in its responses to Enlightenment science, technological development, and ecological despoliation, Romanticism[155] was the first Western discourse to address environmentalist concerns in a comprehensive and sustained manner."[156] Where it becomes important in the scope of this study is where and when it upholds a medieval Franciscan theology expressed by writers and

observers of Enlightenment cultures. As Harrison points out referencing William Cronon and Paul Fry, "Romantic representations of nature reflect not so much actual places and encounters as virtual landscapes and experiences that mirror their writers' projected desires and culturally mediated values"[157] One need look no further than Susanna Moodie's *Roughing it in the Bush* or even to Catharine Parr Traill (less a romantic, but still reflecting a Franciscan ideology of stewardship and empathy) to understand what Cronon and Fry mean. The key to this understanding and to the import of the Romantics for our purposes is their insistence on experience as being true and relevant which flies in the face of the Baconian and dominion worldview of questioning nature in order to control it.[158] The Franciscan worldview harkens back to Aquinas who, as Evernden reminds us, "…assumed that practical knowledge should derive from experience, and that theory should inform the practitioner of the wisdom of choosing one form of action over another."[159] Moodie and Parr Traill both observe in order to understand and empathy continues to grow with that observation. A Franciscan theology of stewardship and empathy lies at the foundation of this Romantic sensibility, with its affirmation of a hierarchical relationship with nature that nonetheless is called into a kind of empathetic relationship with a world that is foreign to humanity and yet is still home, although temporarily.

From the 17th century until Confederation, the dominant environmental policies of first New France, then British North America, then Upper and Lower Canada, then finally Canada were those undergirded by a dominion theology, supported by a worldview that saw creating order out of chaos as not only virtue but necessity, by an increasingly modern sense of scientific competence and European superiority. The policies were to expand holdings, exploit resources for profit and to convert, tame and "civilize" the Aboriginal populations.

Although there were three theologically environmental worldviews extant in this period, only one was successfully asserted.

These three worldviews: Aboriginal, Franciscan, Dominion cannot be said to actually intertwine as Canada moves towards Confederation, but they do persist and assert themselves. Dominion and Aboriginal worldviews find themselves the most overtly at odds until the late 19th century when strains of Franciscan theology rise up in the voices of the early environmentalists. These voices were explored more completely in Chapter One and will be examined in a different light in Chapter Four in aa review of Canadian environmental policy from Confederation to the 21st Century.

Notes

[1] Mary Evelyn Tucker and John A. Grim, "Series Forward," John A. Grim, ed. *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community* (Cambridge, MA: Havard University Press, 2001)

[2] Charles Taylor, "Overcoming Epistemology" in *Philosophical Arguments* (Cambridge, MA: Harvard University Press, 1995), 1-19. See also Charles Taylor, *The Explanation of Behavior,*(London: Routledge, 1964).

[3] Ibid., 12. This is also a common theme in Environmental Ethics, the argument that we as a species have developed an Illusion of Disembededness and are therefore guilty of treating the Environment as "Other" thereby removing ourselves from a context of nature *which is wild and undisciplined and therefore liable to make us feel uncivilized…*

[4] Yi-Fu Tuan, *Space and Place: The Perspective of* Experience (Minneapolis: University of Minnesota Press, 1977). 4-6.

[5] I would also argue that sacred space could be a part of this equation, but that it is not a necessary integer. It seems to me that sacred space is created because of place being realized.

[6] http://www.merriam-webster.com/dictionary/environment

[7] K. Sale, *Dwellers in the Land: The Bioregional Vision.* (San Francisco, CA: Sierra Club, 1985).,43.

[8] Dan Flores, "Place: An Argument for Bioregional History," *Environmental History Review* 19 (Winter, 1994):5

[9] Neil S. Forkey, *Shaping the Upper Canadian Frontier: Environment, Society, and Culture in the Trent Valley* (Calgary: University of Calgary Press, 2003)

[10] See especially the multimedia tutorial, *Canada's First Nations* *http://www.ucalgary.ca/applied_history/tutor/firstnations/home.html* composed by scholars at the University of Calgary and Red Deer College.

[11] Jordan Paper, *Native North American Religious Traditions: Dancing For Life.* (Westport, Conneticut: Praeger, 2007), 66; see also Suzanne Berneshawi, "Resource Management and the Mi'kmaq Nation" in *The Canadian Journal of Native Studies XVII,* 1 (1997): 117.

[12] Choquette, 7; Graeme Wynn, *Canada and Arctic North America: An Environmental History* (Santa Barbara: ABC/CLIO, 2007), 10.

[13] Ibid., 15.

[14] Ibid.

[15] Ibid., 16.

[16] Ibid., 20.

[17] See the discussion in Chapter One "Context of Traditional Ecological Knowledge" in Fikret Berkes' *Sacred Ecology.*

[18] Wynn, 25.

[19] Paper, 34

[20] Paper, 33, 34.

[21] Wynn,.25

[22] Wynn, 29

[23] Wynn, 29

[24] Ibid.

[25] Louise Grenier. *Working With Indigenous Knowledge: A Guide for Researchers.* (Ottawa, ON: International Development Research Centre, 1998), 1

[26] Ibid, 8.

[27] Ibid.

[28] Ibid, 59

[29] Ibid, 13.

[30] Ibid, 14.

[31] Paper, p 28.

[32] Fikret Berkes, *Sacred Ecology: Traditional Ecological Knowledge and Resource Management* (Philadelphia, PA: Taylor & Francis, 1999),111--112

[33] Ibid.

[34] Ibid, 115.

[35]Berkesl, 90.

[36] Ibid., 59.

[37] Ibid., 60.

[38] Ibid., 79.

[39] Ibid.,6.

[40] Suzanne Berneshawi, "Resource Management and the Mi'kmaq Nation" in *The Canadian Journal of Native Studies XVII,* 1 (1997):115-148.

[41] Although, as Paper notes, books and writing were not unknown in North America at least as far back as the Maya. The Anishanabe used birchbark scrolls as mnemonic devices for telling the myths and "maintaining the complex initiation rituals". Paper, 82.

[42]*Canada's First Nations: Antiquity: Native Creation Myths.* http://www.ucalgary.ca/applied_history/tutor/firstnations/myths.html accessed on 28 October 2009 at 3:30pm AST.

[43] Ibid. as excerpted from *The Indian Peoples of Eastern America: A Documentary History of the Sexes.* Edited James Axtell, Oxford University Press, 1981.

[44] Ibid., excerpted from Burland, Cottie *North American Indian Mythology.* Hamlyn Publishing, 1965.

[45] Paper, 9.

[46] Ibid, 81

[47] Berkes.

[48] Ibid, 48-49; 87-89

[49] Paper, 29

[50] Not all aboriginal practices have an ethic of conservation, Berkes points out that the aboriginal population of New Guinea have extensive knowledge of their local flora and fauna but their practices leave a large ecological footprint. (see Berkes, p 12). The evidence for the aboriginals in North America points to a conservation ethic.

[51] Berkes, 91

[52] Ibid, 92

[53] Ibid. 81.

[54] Ibid.

[55] Ibid.

[56] Robert B. Anderson and Robert M. Bone, ed., *Natural Resources and Aboriginal People in Canada.* (Concord, ON: Captus Press Inc., 2003). Preface.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] *A Secular Age.* Charles Taylor (Cambridge, MA:The Belknap Press of Harvard University Press, 2007). P.25.

[61] Ibid., 26.

[62] Ibid., 33.

[63] The Immanent Frame, Charles Taylor. http://blogs.ssrc.org/tif/2008/09/02/buffered-and-porous-selves/ Retrieved on 19 December 2009.

[64] Taylor, *A Secular Age.* p. 37

[65] Ibid. 88.

[66] Ibid. 90.

[67] J. Baird Callicot. "Genesis Revisited: Murian Musings on the Lynn White, Jr. Debates". *Environmental History Review* 14:1/2 (Spring/Summer 1989): 65.

[68] Lynn White. "The Historical Roots of Our Ecologic Crisis" in *Worldviews, Religion, and the Environment: A Global Anthology.* Richard C. Foltz, ed. (Toronto, ON: Wadsworth, 2003), 32.

[69] Callicot notes that one of the discussions that arose out of White's article was that of ideology determining actions. Callicot himself muses, "…given the inertia of habit, can changed beliefs, ideals, and values actually bring about changed patterns of behaviour?"(Callicot, 66). Yi-Fu Tuan was also sceptical of this premise as a universal. See "Treatment of the Evironment in Ideal and Actuality," *American Scientist* 58 (1970): 244-49. White himself uses both the terms "think" and "ideas" in his essay. In a later work, "Continuing the Conversation," Ian Barbour, ed., *Western Man and Environmental Ethics* (Reading, MA: Addison Wesley Publishing Company, 1973), 58. "…in the end one returns to value structures"-as providing the best insight into a culture's behaviour patterns.

[70] White's essay has been critiqued as hostile towards Christianity and as simplistic but in fact it is neither. To address the latter, his critics often fail to consider the audience to whom he was directing his remarks. It was, after all, published in *Science* and directed towards that readership. It is quite possible to read the essay also as a pedagogical exercise, seeking to educate a scientific audience that was dismissive of the role of religion in ecology. If his approach is somewhat basic, it can be assumed that on some level this was necessary as he was not seeking to speak primarily to theologians nor scholars of religion. To address the former complaint, White is clear that it is a misinterpretation of the Biblical sources that he is critiquing and not Christianity as such. I am indebted to Dr. Nancie Erhard at St. Mary's University for the conversation out of which these observations arose.

[71] White. , 33

[72] Ibid.

[73] J. Baird Callicot points out that White, like others, actually conflates the P and J versions of the Genesis stories and depends more upon the later P(5th century BCE) story that itself parallels contemporaneous Greek cosmologies. Callicot goes on to observe that the humanism White extrapolates from a Western Christian interpretation of Genesis itself rests upon Greek philosophical humanism.

[74] White, 35.

[75] Ibid

[76] Which, of course, is not to detract from the fact that God was also believed to be speaking allegorically via the Scriptures. Both the natural world and the world within the Scriptures were portrayed as being written in the symbolic language of God for the purpose of illuminating humanity.

[77] Taylor, 92.

[78] White, 35.

[79] Ibid

[80] Ibid, 34.

[81] For a fascinating and illuminating discussion of this, see Callicot.

[82] White, 36.

[83] Ibid.

[84] Taylor, 94.

[85] Ibid., 93.

[86] Roger Darrell Sorrell, *St. Francis of Assisi and Nature* (New York, NY: Oxford University Press, 1988), 15.

[87] Ibid

[88] For background to this, see Clarence J. Glacken, *Traces on the Rhodian Shore: Nature and Culture in Western Thought from Ancient Times to the End of the Eighteenth Century* (Berkeley: University of California Press, 1976).

Glacken works with his own concept of "the principle of plenitude" in connection with the Aristotelian concept of continuity to point out (with Lovejoy) the fruition of this grafting within neoplatonism-a hierarchy of nature "manifesting itself on a scale of being from lowest to the highest forms..." Glacken, 6, note 7.

[89] Ibid., 8.

[90] In this, Francis works against the Neoplatonic horror of the corrupt corporeal to insist that the created, as God's handiwork, cannot but be good.

[91] Ibid., 128.

[92] Ibid.

[93] White, 36.

[94] Ibid.

[95] Taylor, 95.

[96] Taylor, 42.

[97] Taylor, 26.

[98] If, of couse, one can legitimately be said to be only partially buffered. It does strike one at first as a bit like being partially pregnant. But Taylor himself points out that buffering is a process, not an overnight ontological shift. And, although this is compartmentalizing in a modern sense, if it is a process then the buffering must start somewhere. I am arguing that it began in the west with humanity's disembeddedness with the natural world.

[99] Taylor, 42.

[100] Robert Choquette, *Canada's Religions* (Ottawa, ON: University of Ottawa Press, 2004), 31.

[101] Taylor, *A Secular Age.* Chapter Two "The Rise of the Disciplinary Society," Taylor does not explicitly reference the natural world, but the ideology that he describes would have also affected the view of the natural world in addition to the sociological and theological changes he depicts.

[102] Ibid., 99.

[103] Ibid.

[104] Ibid.

[105] Ibid.

[106] Ibid., 104

[107] Taylor, 99; n.15

[108] Ibid, 30.

[109] J.W. Moore, "Ecological Crises in the Making of the Modern World 1300-1600 *Paper presented at the annual meeting of the American Sociological Association, Marriott Hotel, Loews Philadelphia Hotel, Philadelphia, PA.* Accessed 2009-05-25 from http://www.allacademic.com/meta/p22456_index.html., 11-13.

[110] Enclosure was allowed beginning in 1235 under the Statute of Merton. According to Wordie, 45-50% of common land was enclosed by 1500 and 70% by 1700. J.R. Wordie, "The Chronology of English Enclosure 1500-1914," 36:4 *Economic History Review*, (November, 1983): 483-505.

[111] Moore, J, 14.

[112] Ibid, 12

[113] Ibid., 12

[114] Ibid., 6.

[115] Moore., 12.

[116] Taylor, 85

[117] Ibid.

[118] Carolyn Merchant, *Earthcare,* (New York: Routledge, 1995).

[119] Wynn, 34

[120] For a concise discussion of the limitations, see Wynn, 36.

[121] Wynn, 35

[122] Ibid., 36

[123] Ibid.

[124] Ibid.

[125]That being said, one cannot ignore the existence of the Metis nation and the process of mutual enculturation that occurred.

[126] Wynn, 36

[127] Ibid, 40

[128] For such an account, see Wynn, 33-85.

[129] Wynn, 49

[130] Ibid., 54.

[131] Ibid., 51

[132] It is perhaps constructive here to remember the difficulty each side (Aboriginal and European) had in conceiving each other's conception of property with the European having an understanding of private property and the Aboriginal a sense that ownership was impossible as the natural world had agency in and of itself.

[133] Choquette, 42.

[134] Ibid.

[135] Ibid.

[136] Ibid.

[137] Ibid.

[138] Ibid.

[139] Ibid.

[140] In fact it could be argued that this framework remained in place until the implementation of the Gradual Assimilation Act in 1857 which began to officially promote the rights of the British colonial government over the rights of the Aboriginal and which was sanctioned by the actions of the churches.

[141] Wynn, 59. reference.

[142] Ibid.

[143] William Denevan, "The Pristine Myth: The Landscape of the Americas in 1492" in *Canadian Environmental History: Essential Readings* David Freeland Duke, ed (Toronto: Canadian Scholar's Press, 2006).

[144] Ibid.

[145] There is no documentation by Europeans of this type of land use and cultivation by Aboriginals in Canada, I am extrapolating from Denevan's work. However, it seems highly unlikely that such cultivation would be so with the groups in the US and not be true of at least some groups in Canada.

[146] I am not unaware of the arguments against the "ecological Indian". To be sure, there were buffalo jumps and over-hunting. The point here is that those instances appear to have been the exception more times than they were the rule. Aboriginals had had a long time to get to know the natural world in which they lived, moved and had their being and time to develop a savvy for how much destruction would be tolerated by both the natural and the supernatural.

[147] Choquette, 294.

[148] Denevan, 94.

[149] For a comprehensive study of this particular conflict, see Tamara L. Whited, *Forests and Peasant Politics in Modern France* (New Haven:Yale University Press, 2000)

[150] Of course, Kett's rebellion was about more than enclosures, but the enclosures are what remain germane to this work.

[151] Matthew 6:25-34; 7:7-12; Philippians 4:6. A careful exegete will note that these verses are traditionally attributed to the folly of worrying after temporal, rather than spiritual things-an analysis which also fits with the mindset I am describing.

[152] See Chapter Four on the history of environmental policy.

[153] The Lockean ideas of property ownership are examined in the Chapter on later environmental policy, as they directly relate to treaty negotiations and the distinction between labour and care as signifiers.

[154] Derrick Jensen, *Listening to the Land: Conversations About Nature, Culture, and Eros* (White River Junction, VT: Chelsea Green Publishing Co., 2002), 116; for a lively discussion of Bacon and the idea of the dominion over nature see Carol Merchant's article, "Dominion Over Nature" in *Worldviews, Religion and the Environment: A Global Anthology.* Richard C. Foltz, ed. Merchant makes good arguments and her place in the firmament of the history of environmentalism is inarguable, I have chosen not to dwell on her theories-as tempting as that is-for the sake of brevity.

[155] The use of Romanticism as a tool for understanding environmental history is sometimes controversial and appears to be drawn mainly down the lines of science and the humanities-each side accusing the other of not fully grasping the nuances of the arguments. For more discussion on this, see Hutchings.

[156] "Romanticism in Canada: Environment, Culture, and Representation: Overview" Dr. Kevin Hutchings, University of Northern British Columbia. http://web.unbc.ca/~hutchink/crc.html, retrieved 06 February 2010.

[157] *Romantic Circles: Romanticism, Ecology and Pedagogy.* Special Issue of the Romantic Pedagogy Commons. Gary Harrison "Romanticism, Nature, Ecology: Introduction" http://www.rc.umd.edu/pedagogies/commons/ecology/harrison/harrison.html, retrieved 06 February 2010.

[158] Derrick, 116.

[159] Ibid.

Chapter Four: Canadian Environmental Law: Background, Theory, Trends

<u>Introduction</u>

Environmental law is seen as a modern phenomenon. The earliest cases cited can be found in 19th century tort law.[1] I contend, however, that the antecedents of environmental legislation lie in property law, as these earliest of laws focus directly on human relationships with one another and the land.[2] In addition, it is not possible to fully discuss environmental policy and legislation in Canada without first exploring the treaties made between Europeans and Canada's Aboriginal Nations. The spirit in which many of the treaties were negotiated and the worldviews of the negotiators are vital to understanding the trajectory of a social imaginary that has direct bearing upon modern environmental law.

Eventually in this segment of the study, environmental and church histories coalesce in an exploration of Canadian environmental policy and law in the late 19th through the early 21st centuries. The section starts with an answer to the very basic question, "what is environmental law?" Having established that, I will discuss the origins and philosophical background of contemporary environmental law. This will necessitate a brief foray into the antecedents of Western legal systems in general, with a side trip through the labyrinth of Natural Law before coming back to a more focussed exploration of environmental law in particular. The discussion will then turn to previous chapters, drawing points of relation and clarification in order to begin to pull together the threads of a very broad argument. The chapter will conclude with a more detailed history of environmental law in Canada that will segue into Chapter 5 and the detailed discussion/analysis of the Species at Risk Act and two of the figures involved in the ultimate construction of that legislation.

Environmental Law: Definitions

Aristotle wrote that law is the application of reason for the common good. If this is so, then it can be said that environmental law, specifically, is the application of myriad compromise positions—all considered "reasonable"—by one group or another and designed to balance a plethora of definitions of the common good. Plainly stated "(e)nvironmental law is the body of legislated statutes and judge-made common law that can be used to protect and improve environmental conditions."[3]   More comprehensively, Canadian environmental law is a complex system of federal and provincial common law, legislation, statutes, regulations, treaties, orders-incouncil, and international agreements that have been put into place in a variety of jurisdictions to provide a system whereby human agency in the context of its impact on the natural world is monitored and/or regulated. The amalgamation is crafted to provide parameters of use, allocation, and regulations to prevent abuse (however that may be defined) or to provide avenues for redress in cases of breach or abuse. Environmental law is extremely broad, aspects of it being incorporated in criminal, civil and international legislations.

Canadian Environmental Laws:

The Fisheries Act (1868) is the oldest example of Canada's specific environmental legislation. As mentioned above, international agreements, treaties and conventions are also aspects of the environmental law landscape.[4]   In the modern period, there are several components that comprise the whole of federal Canadian environmental law. These include:

- Environmental regulatory laws (i.e. laws that regulate harmful substances that affect water and the atmosphere). These laws utilize licensing, prohibitions

and regulatory offences to obtain their objectives and are usually overseen by tribunals;[5]

- The Environmental Assessment Act. The federal act is triggered when a project is proposed for federal lands or requires federal permits.[6] Major physical undertakings that involve a public authority or public funding require environmental assessments to determine whether or not the undertaking will have deleterious effects on the environment in which the undertaking is proposed to take place. If it is determined that the effects may be deleterious, usually the project will not progress until hearings have been conducted.[7] An important consequence of this Act is that it provides interested parties with advance notice of proposed projects.[8]

- Protection legislation is also another core component of Canadian environmental law—The Canadian Environmental Protection Act and The Species at Risk Act, for example. Essentially, protection legislation covers species, natural land areas, forestry, energy and economic sectors and oceans and inland waters.

In addition, there are laws that confer environmental rights on citizens, i.e. the right to information, participation in regulatory decisions, and the ability to demand that standards be applied.

Regulatory Oversight

Environmental law is also concerned with the mechanism of regulatory oversight. In Canada, there is disagreement regarding how regulation and redress are handled, with one side wishing to have immediate recourse to the judiciary when there is a dispute and another advocating for disputes to be adjudicated by boards or tribunals. The distinction may seem smallespecially since there can be recourse by way of judicial review—but it is significant, as it reflects deeper philosophical differences in regards to the purpose of government and the places of the voices of corporations, the general public, and the courts in the public sphere.

Administrative Boards and tribunals are components of administrative law, which is one of the three basic areas of public law (in addition to constitutional and criminal) in Canada dealing with the relationship between a government and its citizens.[9] Administrative law is the body of law dealing with the relations between private individuals and the government, and with the structure and operation of the government itself[10] and is "…based on the principle that government action…must (strictly speaking) be legal, and that citizens who are affected by unlawful acts of government officials must have effective remedies if the Canadian system of public administration is to be accepted and maintained."[11] When a government drafts a piece of legislation, part of the process is to determine whether the legislation will be regulated by an administrative board. If there is no indication, then aggrieved parties can seek recompense from the courts. If a piece of legislation is going to be governed by administrative law, the legislation will state this and will outline the provisions for creation of a board or give jurisdiction to an existing board. The jurisdiction and make-up of the board will also be spelled out. Some legislation is more specific than others. Although, as stated above, judicial review may be available as recourse, courts are

loath to interfere with the decisions of administrative bodies unless there is a clear and palpable error of law and/or fact. Reviews can be initiated if the administrative board has violated constitutional, statutory of common law principles.[12] In most cases, the judiciary will only exercise control where the board has exceeded its jurisdiction, issued a patently unreasonable decision, or followed improper or unfair procedures.[13] Administrative action is initiated by an aggrieved party who has legal standing. Who may consider themselves aggrieved is typically spelled out in the legislation but if there is a question of legal standing, the courts may be asked to render judgement on that one point before addressing any case on its factual merits. Proponents of embedding administrative recourse (that of an administrative board instead of direct access to the courts) in environmental legislation argue that it is more cost-effective than going to court, both for the government and for the aggrieved party. They also argue that the composition of an administrative board can consist of experts in a field who are more qualified than the court to consider and deliver a fair and informed decision. Timeliness is another factor often raised—administrative boards are usually required to render a decision within a very short period of time.

Those who argue for environmental legislation that is more in line with American environmental legislation where courts interpret legislation and guide implementation argue that the administrative process is actually not expedient in the least, as it allows the government time and leeway to prolong the process if they find the decision of the board unpalatable. It is also pointed out that there is more flexibility with rules of evidence and with the scope of persons that a board can choose to hear. Proponents of administrative recourse argue that the rules of evidence are stringent in a courtroom and that judges are bound by strict and complex rules of evidence, interpretation and precedence that often preclude what some persons may deem to be simple common sense solutions.

Administrative boards can allow for creative solutions that might not be available to a court.[14]

Proponents of environmental legislation that allow for immediate access to the courts, rather than involving an administrative board, look to the Americanstyle litigation paradigm. Opponents claim that litigation is needlessly adversarial, exacerbates animosities, is costly, may not effectively address all points due to the rules of court, can disallow standing for peripherally aggrieved persons, and precludes win-win solutions. Proponents counter that the courts are the last resort of public voices which are often subsumed by corporate interests and governmental indifference in an often frustrating attempt to engage in dialogue with all interested parties. It could also be argued that recourse to the courts is a necessity because government often neglects (in some cases refuses) to enforce environmental legislation and that recourse to the courts is the only way for people outside of government to ensure that science, not politics, will receive proper consideration in what comprises sound, sustainable environmental policies and practices. Another argument for immediate access to the judiciary as opposed to boards is that the government crafting the legislation finds ways to subvert or control the regulatory or tribunal process to its own ends. The perception in this case is that the government's own ends are often not in accord with the best interests of the environment, but are more geared towards the interests of corporate power and economic expediency. As well, although there is the possibility for practical solutions that a judge may not have recourse to, an administrative board also does not have the power to impose severe penalties. Opponents argue that the inability to impose such penalties can hamper a board's efficacy, making environmental legislation a paper tiger. In addition, although the courts are open to anyone with standing who wishes to file suit, administrative boards can refuse to entertain the submission of a person or group if that

person or group are not demarcated in the guiding legislation. The flip side of that is, however, that administrative boards may choose to hear parties that are not so demarcated. It is also true, however, that although anyone can file a suit, courts have the discretion—actually the mandate—to only hear cases brought forward by persons or groups that are determined to have legal standing in regards to the issue or issues before them.

Philosophical Underpinnings: First Observations

The on-going crafting of these systems of environmental laws (for each jurisdiction has such a system, from municipal to international) reflect on one hand the development of a growing consciousness of human causality in regards to environmental degradation and, on the other the need to control and/or protect economic interests. These competing (but not always conflicting) interests together gave the impetus for what we know as environmental law.

The diversity of opinion in regards to the legal oversight put into place by individual pieces of environmental legislation indicates a diversity of motivation behind the crafting of legislation. The *Species at Risk Act*, for example, was in response to the international convention on biodiversity that Canada signed in the early 1990's which required the Canadian government, as signers of the convention, to protect and monitor its own biodiversity. In contrast, The Fisheries Treaty of 1818 was negotiated in order to regulate the access of American fishers to Canadian (or at that point, British North American) fisheries.[15] The diversity of opinion and motivation are also reflective of the history of the development of environmental law where the fundamental issues of modernity in regards to the overlapping of different spheres (i.e. public, private, social) are constantly being revisited. The *Canadian Environmental Protection Act* (*CEPA*), for instance, arose in response to a variety of issues regarding the control of toxins that accumulate in the environment and the inability

(some would say refusal) of industry to recognize any residual danger from the application of human-made chemicals on the natural environment (such as DDT and other harmful chemicals) and to regulate itself.[16] The controversies surrounding the adoption of the *Act* remain: federal vs. provincial jurisdiction, the rights of the public v the rights of private enterprise. In addition to these are intertwined discussions regarding the actual objectivity of science and agreement (or lack thereof) on just what constitutes education and real knowledge. For example:

In 18th and 19th century France, the elite ruling class and educated foresters became convinced that the Alpine regions needed to be re-forested and that poor use of the land by peasants had led to the degradation of the Alpine environment and landscape. Thus implementation of a policy of reforestation was attempted. The peasants, annoyed at not being consulted and alarmed at the prospect of losing their livelihoods were less than amenable to the policies and responded in a variety of creative and effective ways. However, the knowledge of the peasants in regards to their own environment was dismissed as unscientific and uneducated. In fact, the archaeological records have shown that the areas had not been deforested in any meaningful way, and that the peasants for the most part had adapted to the locale just as much as they had adapted the locale to accommodate their needs.[17] The recognition of the value of the perspectives of different stakeholders has gradually come to be acknowledged, albeit grudgingly at times, and the principle, at least, is reflected in the process that accompanied the CEPA in modern Canada.

Scope and Jurisdiction

This same diversity of opinion and motivation behind environmental law ensure that it is exceedingly broad in scope and that its boundaries are not clearly demarcated. As mentioned above, not only can criminal law be a component,[18] but property law and tort law

are also (and more consistently) used to advance environmental objectives.[19] As well, the field also draws upon a "vast range of traditions, legal concepts and subjects…some (with) counterparts in other regulatory areas."[20]

The above being so, the issue of jurisdiction looms large in environmental law. In Canada, the power to legislate for the environment is split between the federal and provincial governments with Aboriginal issues and rights also coming into play. The *Constitution Act of 1867* gives no express allocation of environmental management powers and this state of affairs remained in place after the Canadian *Constitution Act of 1982*. It is apparent in the 1867 *Act*, though, that issues involving natural resources were seen as integral to the social and economic well-being of society. Section 91 of the *Constitution Act* gives the federal government the power of taxation and the power to make laws governing trade and commerce, navigation, seacoast and fisheries, Aboriginal interests, and criminal law. In addition the federal government has the mandate to make laws for "peace, order and good government" of Canada.[21] The federal government also has treaty-making power although it cannot implement international agreements without constitutional authority or provincial agreement.[22] Aboriginal governments have authority by virtue of constitutionally protected rights and powers established in section 35 of the *Constitution Act* of 1982, which includes treaties.[23]

The Provinces under Sections 92 and 109 can: make laws for the management and sale of public lands, municipal institutions, property and civil rights, and matters of local or private nature. The 1982 natural resources amendment delineates changes in powers to manage and to capture revenues from non-renewable and forestry resources and the generation of electrical energy.[24] In addition, proprietary interests are granted in Section 109 wherein public lands and minerals are vested with the Provincial government unless they are

federally owned or under federal authority.[25]   Essentially, the federal government has jurisdiction over a breadth of resources—fisheries, interprovincial and international, while the provinces control local natural resources, have primary jurisdiction over forestry, agriculture, mining and hydroelectric development.   Provinces are also responsible for regulating the forestry industry in regards to the pollution of local streams and rivers, notwithstanding the federal mandate for regulating fish habitat.

The delicate balance of powers that exists in Canada is continually being played out in environmental policy and legislation. The natural world is easily divided on paper, but not so sanguinely managed in reality. Therefore, a solution posed for the preservation of one species may not be effective for the preservation of another. Since law is, by necessity, usually crafted with general principles in mind rather than particulars, the inability to provide blanket solutions for environmental issues can be seen as a challenge to the legislative process. More than most other fields of law, it must account not only for the human element which contains in itself a broad diversity of belief systems; but for the dynamism that is inherent in ecosystems—which are not entities that are easily defined, confined or generalized. The jurisdictional challenges can be seen in myriad cases. One example is from the *Species at Risk Act* where the federal government only has legislated responsibility for species that are on federal lands. Critics of the legislation demanded to know just how the governments were going to convey to the species in question where it was safe to reside and where it was not, as the flora and fauna of a landscape more often than not tend to be oblivious of artificial political boundaries.

Of course, political entities by their very nature demand that boundaries must be set and parameters recognized. Historically, when there are environmental issues to be addressed, provincial and federal governments in Canada have attempted to work together

to design legislation that is complementary rather than adversarial.[26]   When there are significant disputes, judicial decisions interpret the jurisdiction.   In 1997, the Supreme Court of Canada issued a landmark decision in the case of *R. v. Hydro Quebec*, upholding the argument that the Canadian *Environmental Protection Act* constituted criminal law and was, as such, valid legislation. To make the matter more complex, the courts have also decided that pollution deleterious to fish and marine pollution fall under federal jurisdiction.   Two other points must also be understood.   First, attempts to give the federal government umbrella jurisdiction over environmental issues have been rejected by the Supreme Court of Canada, which views environmental protection as an aggregate matter.[27]   For this reason, arguments for complete federal jurisdiction cannot be made on the basis that it is of "national concern" or under the residual "peace, order and good government" power and; second, that if there is conflict over whether federal or provincial law should prevail in a particular instance the "doctrine of Paramountcy" decrees that federal law trumps provincial law.[28]   This creates a hierarchy with the Constitution at the apex and government policy being developed in the form of environmental statutes.   These statutes provide a legislative framework for the official policy.   They specify objectives and purposes and the general scheme by which those objectives will be accomplished and specify or create the officials and/or agencies responsible for administration and enforcement.   They also enable the making of regulations and rules by cabinet ministers, municipal governments and some environmental boards.[29]

Jurisdiction is only one component of what makes environmental law the rich and complex field that it is.   Since it does, as mentioned above, intertwine with a variety of other legal fields, it is useful to have a cursory understanding of the development of general legal theory and practice in the west—specifically the development of natural law theory and the issues of legitimation.

It is impossible, and tangential to the main study, to give a complete account of the development of Western legal systems in this chapter. However, it is important to understand the development of the concept of our modern legal system in light of the emergence of the modern world. Not, as I have shown, because the pre-modern world saw human beings in Western Europe embracing an idyllic wholistic existence with human beings and nature acknowledged to be interdependent and mutually embedded, but because many of the philosophical tensions that arise with the Reformation and then with modernity are still reflected in the discussions and debates over legislation in our time—one of the most salient being should or does law reflect a morality that is inherent to the human condition as such? To paraphrase the singer/activist Billy Bragg—does society envision courts of justice or courts of law?[30]

The earliest codified laws were largely property laws. These developed chiefly from the ancient community customs and religious laws of particular societies which were themselves codes for human behaviour within a given society. They established rules that enabled people to live together peaceably in groups. In ancient times these laws were seen as being mandates by the local deity or deities. They made good sense, for the most part. Obviously it is easier to live in community with someone if both of you have agreed that your deity frowns upon the practice of stealing livestock. The earliest understandings of how laws were justified (seen by society as legitimate), and how legal reasoning and judicial decisions should be made, were formed in the context of communities imbued with a religious worldview.

For example, the practice of English common law developed along much the same lines as did (does) religious law. For example, the Talmud is legal commentary on the Torah.

It contains a plethora of legal questions put to rabbis or by rabbis and decided in council. The decisions of the rabbis, both majority and minority, are recorded in the Talmud and serve as precedence for subsequent legal decisions. Common law developed in much the same way. Common law consists of judicial decisions and commentary on important cases to which a lawyer can point to establish the strength of his or her case. From common law come statutes, which are essentially the rules that society agrees to obey. Statutes maintain the status quo and are designed to facilitate the workings of an ordered society.

One major difference between common law and religious law is that the one is seen to be positivist (human-constructed) law whose antecedents are justified partially on the basis of natural law rather than stemming completely from laws proscribed directly to the community by a deity.[31] In either paradigm, the heart of what is being discussed is the justification by which laws are binding on individuals and societies. Religious law says, at its most base and essential, "Because God (or Gods) says so!" Natural law theory as it has developed in the modern age says "Because humanity reasons that it must be so!" In fact, Michael Stolleis points out that this legitimation was in the process of shifting in the period of the High Middle Ages to the Early Modern Era:

> from determined truth (veritas) to …secularized will (voluntas), and, with that, from eternal law to a continuously adapted positive law. In the mindset of the early modern age, this law approximated natural law because it appeared to be a timeless ratio scripta. What is more, being 'imperial law', it bore a sacred aura.[32]

The distinctions made here between natural law and religious law are crucial for the eventual development of an anthropocentric rather than a theocentric moral order, because natural law theory can be seen to posit a particular anthropology that is conducive to the belief that the capacity for self-rule is inherent. Faith in this political capacity eventually intertwines with other humanisms of the Renaissance to emerge as the modern Western State. This emergence is important to understand in the context of this study, as it speaks

directly to the idea that environmental legislation, and the ways in which it is conceived and executed, is reflective of a current social imaginary that itself derives from concepts of how we should be governed and the philosophical underpinnings of that imaginary. A pivotal (but not determining) development that leads to the modern concepts with which this study is concerned is that of Deism.

Deism and Shifts of Theological Legitimization

The removal of theological legitimization of natural law has to do, in part, with the conception in the West that the temporal and the tangible were real (the "natural" world), and that the transcendent was not concerned with the temporal. Stolleis describes three key changes in Europe that brought about that conception: "fundamental transformations of the geocentric world view and the theoretical revolution in the natural sciences, the religious crisis in Europe that triggered a relativization of the theological monopoly on truth, the political rise of absolutism and the emergence of the nation state at the cost of feudal rule and the power of the estates and cities."[33] In other words, the discovery of the "New World" by Western Europeans and the rise of inductive reasoning (i.e. the Baconian "scientific method) as opposed to syllogistic logic; the Reformation and the Wars of Religions which contributed, in part, to a distaste for the confessional aspects of theology both in the academy (in a general way) and, specific to my purposes, within the legal faculties of the academy. The third factor—the rise of the nation state and the demise of feudalism—as I have shown in a previous chapter, took place slowly over a long period of time and was as influenced by the two factors mentioned above as it was influential in and of itself.

The mechanistic world was not, as Taylor points out, the only foundation for a "reconstructed" social imaginary that came out of the Renaissance.[34] The idea of human cooperation with divine perfection is seated deeply in Aquinas' thought and establishes itself

quite comfortably in the philosophical outlooks of Michelangelo and Leonardo. The echoes of it can be heard much later on in the writings of John Wesley as he "strives toward perfection". But the mechanistic view did supersede the non-mechanistic worldviews that arose. And the discovery of immutable natural laws allowed, eventually, for natural law to be seen as an organic outcropping of social norms that were natural because of humanity's creatureliness. Logical, consequential conclusions could be made and drawn about inanimate as well as animate objects because both were regulated by natural laws. The rise of Deism is particularly important here. Deism is the idea that reason can determine that there was a divine architect of the universe who conceived of and put into place the laws that govern all of creation. The God of Deism is a remote being, a designer but not a meddler, for once the universe was put into motion, the Creator withdrew and does not interfere either through miracles or revelations. "God made the integers," wrote Leopold Kronecker, "and all else is the work of man."[35] God becomes the maker but not the nurturer, the Mastercrafter content to establish rules and natural order and then to step back to watch the scene that has been put into play. Natural laws no longer derive their authority solely from the fact that they are the laws which God wishes us to follow, but because they are the laws which bring inherent order and point us towards happiness or flourishing, with or without God's presence to manipulate them. Taylor writes,

> What is striking about Deist views is that the human good in terms of which God's benevolence is defined is so self-contained. It is not that the reference to God is wholly absent, but it seems to be subordinate to a conception of happiness which is defined purely in creaturely terms. Happiness is the attaining of the things we by nature desire, or pleasure and the absence of pain. The rewards of the next life seem to be considered just as more intense and longer-lasting versions of the pleasures and pains of this…" [36]

Taylor cautions against drawing a straight line from the Enlightenment to Deism to humanism.[37] This caution is well-placed, as it reminds one that the course of human

thought and history is never neatly linear. The entire elite of the Western world did not embrace Deism en masse or all at once. However, Deism did become a favoured intellectual position of many elite members of Western society and that theological conception interacted with the scientific worldview championed by Bacon, among others, to eventually enable a political and legal system that conceived of itself as separate from divine or eternal law even as they were also conceiving of a physical world that must, in the face of reason, be devoid of any random, inexplicable or magical influence or intercession in the form of a suspension of the laws of nature.[38] Deism was one way in which the elite, who had already internalized a new moral order characterized by discipline and rationality, incorporated belief in God with this new order.[39]

This rise of Deism is important to consider when one looks at the development of the nation state under the rule of law as we know it. The understanding of humanity's position in the cosmos changed with the Renaissance. Higher anthropologies (conceptions of human beings as not depraved or irredeemable but as rational, capable creatures, endowed by God with that rationality and capacity for reason) developed and with that a changed willingness to accept (over time, of course) human-generated laws as authoritative in and of themselves. Reason was still a necessary component, but reason was seen as God given and then, eventually and only be some, a virtue possessed of human beings which separated them from other animals. The value of human discernment and judgement based on reason and influenced by Baconian scientific method slowly allowed for the notion that laws might be counted as authoritative without needing the force of God to legitimize them.[40] I am suggesting that just as common law drew authority from a perceived sagacity of age and use so does natural law eventually become to be perceived as authoritative by virtue of human sanction. As in Deism, God is not unimportant in this perception, but

neither is God contemporaneously central as God may have been in earlier eras. Rather, the human capacity for comprehension and invention is seen as limitless. The introduction of inductive reasoning allowed for scientists to study the particular and make generalities in the form of natural laws (i.e. how the world works). This way of reasoning allowed, in part, for thinkers to posit that all that can be known about the natural world could be observed, reasoned and categorized. There were physical laws that operated outside of God's jurisdiction (the voluntarist point of view embedded in Deism).[41] If this was the case, it was reasonable to assume that there were natural laws governing human society that could be objectively discovered and which would be authoritative in and of themselves, just as were the laws of the natural world.[42] In a sense, I am arguing that a shift to the literal scientific interpretation of nature (as opposed to the allegorical), through what James J. Bono calls the study of the natural particulars, led as well to an interpretation of natural law being literally derived from the temporal reality of human nature and society.[43] This last connects with the assertion that a higher anthropology has been developed and with it a measure of trust in human ability that was not (directly, at least) illuminated by divine inspiration but by observation and inductive reasoning. If the paradigm begins to exist that one can trust one's own perception of the composition and mechanisms of the natural world, then surely one would begin to trust in one's perception of what was good for temporal human society and happiness. To be clear, there is no hubris being exhibited here, merely a shift in the perception of the limits of human finitude.[44]

And so with the rise of Deism and the shift in social imaginary that moved God and a common community focused on "practice, prayer and hope"[45] to the periphery of what constituted human good there is also a shift in perception of what constitutes natural law. God is no longer essential. To be sure, God can be reasoned out of the particulars, but the

particulars themselves, the natural laws that Aquinas subsumes to the eternal laws, live and move and have their being outside of divine interference and authority. Of course, this shift takes quite some time.

<u>Categorization and Private Property</u>

One more aspect of early modernity that is relevant to the development of inductive reasoning is that of categorization. Inductive reasoning, as mentioned above, involves creating generalizations or universals from particulars. To do this in a comprehensive way requires a great deal of categorization and taxonomy. To draw universal conclusions about non-deciduous trees, for instance, one studies a plethora of non-deciduous trees and creates a category for them: conifers. Conifers are studied more closely and then more narrowly defined, and so on. This need to categorize in order to comprehend is useful, of course, and in many ways, efficient. However, I would argue (and it is certainly not an original observation) that it leads to a particular mentality that increasingly sees the need to create not only categories, but distinct boundaries around subjects in order that they might be studied more closely.[46] It is possible that the zeal with which this form of scientific method was embraced reinforced the centuries-old perception of humanity's disembeddedment with the natural world and had the effect of (in part) perpetuating the point of view that humanity was removed/above/set apart from the natural world. This point of view, being reinforced by theology on one side and by the increasingly Deist elite on the other, served, in part, to allow the myth of human disembeddedness to continue even when an objectively scientific point of view might have pointed the way to the contrary. In the present, this continued perception allows environmental legislation—and, tangentially, treaty negotiations—early on to be crafted in such a way that the natural world was and is viewed as a series of neat compartments rather than an overlapping dynamic whole. The effect has been to trust such

221

categorization as foundational to an objective method of comparison and discernment which can have the consequence of giving weight to that which is perceived to wreak less economic havoc, than being moved to examine the effects as an organic whole.[47] But, of course, the pathway to this predicament is far from straightforward. A significant branch of this pathway for environmental law is the role that natural law plays in the developing of the Lockean notion of private property, a way of compartmentalization that led to profound communication difficulties between Western Europeans and North American Aboriginals.

Natural law, even without a theistic component, eventually became to be seen by many as the moral facet of the law itself—a necessary component of the legal systems gradually adopted by and adapted to the nascent nation state. Therefore, what constituted natural law was (and is) as important as what authorizes it. In the third century, Ulpian cited marriage and procreation as integral components of natural law.[48] Isidore of Seville adds "one liberty of all human beings" and "the acquisition of property taken from the heavens, earth, and sea" in his *Etymologies*, written in the 7th century.[49] The twelfth century Canon jurist Gratian connects the Jewish and Christian injunction that "…each person is commanded to do to others what he wants done to himself." in the *Decretum*. In recognizing this, Pennington comments that, "(b)y defining natural law as the duty to treat other human beings with care and dignity, Gratian stimulated jurists to reflect upon a central value of natural law: the rendering of justice and the administering of equity in the legal system."[50] A century later, Aquinas asserts the teleological tenet that the goal of natural law is to direct human beings toward the good and that good could be discerned with the proper application of reason. As stated above, natural law theory became common usage in the West after Aquinas and Pennington elucidates the creativity of 12th and 13th century jurists in expanding what was fundamental to natural law: property rights were deduced and protected by natural

law because when God forbade stealing, private property was sanctioned. Since natural law protected private property, even emperors could not deprive a person of their property without just and necessary reasons. Contractual rights were also deemed natural law and hence, even royalty was bound by them. The fourteenth century found judicial procedure being included. The support, education and inheritance of children were also included and in the 15th century Gregorio Lopez de Tovar argued that a child's right to inheritance was indelible and could not be taken away. Finally, in the 16th century, Francisco de Votira argued that the right of the majority of people to render their consent in political matters was also a norm of natural law.[51] Ingredients comprising natural law were added over the centuries, in particulars, if not in essence.

A careful reading shows that the fundamentals of natural law (at least up until the point of this discussion) are about maintaining right relationships—what Grotius refers to as the "sociable" aspect of his definition of natural law.[52] Of course, it could be argued that right relationship is what all law is about, but there is a subtly here worth pointing out. Natural law can be seen as different in the sense that it is seen to be derived to enhance the positive attributes of human society—that is, it posits the best and the most virtuous standards of human behaviour. It is teleological; it works towards the human good. Common law, as positivist, is derived from the practical in human relationships. It reflects what has happened—usually deviance from a societal standard and the steps taken to ameliorate that deviance. It does not aim towards aiding human flourishing per se but for assisting in establishing and maintaining a social order in which human flourishing can happen. Natural law says what should be happening. People should be married and they should procreate. Here is how those relationships should work. This is not to say that natural law does not prescribe consequences, it does. But the consequences are aimed at

maintaining an establishment of right relationship that is in itself good. The moral teleos of goodness and harmonious relationships, in this paradigm, is what is seen to be driving and sustaining the law. Natural law is reflective of a universal, moral order against which positivist (including common) law can be evaluated.[53] This moral order is derived from an understanding of humans as rational, sociable beings.

It does not matter if, as Grotius writes, the natural law stands as authoritative on reason alone or, as Locke asserts, that it is from divine mandate. What is important, writes Taylor, is the rationality aspect: "God made man rational, and he made him sociable, and with an instinct to his own conservation. It is plain from this what norms he held binding on his creatures. Plainly they must respect each other's life, liberty and estate."[54] What should also be noted is that the right relationships by and large have to do with human relationships—eschewing any mention of equity or embeddedness with or in the rest of the natural world. This disembeddedness is also reflective of a shift in the moral order which embraces not only the older understanding of human disembeddedness with the natural world, but also disembeddedness with the old, pre-modern prescriptive, hierarchical social and economic systems (at least, at first, among the elite).[55]

This spirit of natural law (even with, or perhaps because of, the divestment of the concept along purely theistic lines) is part of what Taylor calls the Modern Moral Order,

> …disembedded individuals who come to associate together. The design underlying the association is that each, in pursuing his or her own purposes in life, act to benefit others mutually. It calls for a society structured for mutual benefit, in which each respects the rights of others, and offers them mutual help of certain kinds.[56]

The conception of human goodness and right relationships reasoned in the natural law paradigm has shifted from theocentric imposition to anthropocentric derivation—but the understanding that human beings are moving on a path undergirded by universal truths

regarding the human condition remains strong. These universals are, as discussed above, seen to be codified in natural law.

The natural law or natural right component that is most salient for the current purposes is that of private property. Property laws are among the earliest of codified laws and, as I have shown above, are integrated by jurists into the realm of natural law. John Locke's theories on private property are particularly pertinent when exploring environmental law because of his theories equating the acquisition of private property by virtue of one's labour, and for his argument that the purpose of government is for the "regulating and preserving of property" (II, ∫3).

Given the premise of this study, I would be remiss in observing that Locke's religious upbringing no doubt played an integral part in his later worldview and philosophies. His theory of labour is redolent with that particular theology that equates industry and proper application of energy to a material success which brings honour to God who has endowed the individual with the resources necessary for success.[57] In addition, for Locke, property was more than material, it "…could include one's bodily activities or one's liberty as well as one's physical possessions. The way in which a person exploits these resources reveals his qualities as a rational agent. Private property—the exclusive individual right of exploitation—is necessary to individuality."[58] Peter Laslett argues that the word "property" as used by Locke in most of the *Second Treatise* is to be read as not material possessions "…nor in units of the conveniences or necessities of life but much more generally as 'Lives, Liberties and Estates."[59] "Property" is symbolic, then, of that which an individual can be said to own—whether it be material or a natural right or the Protestant religion.[60]

The concept of private property for Locke, then, began with the person. This ownership of one's personhood was inalienable and central to natural law. Like Grotius and

Pufendorf before him, Locke argued that humanity had been given the created world in common. However, Locke deviates from the other two jurists by insisting that property could only be private. Grotius and Pufendorf argue that "universal consent was required for…collective ownership to be divided into private portions."[61] Locke asserts that one's person and one's capacity for labour are inherent private properties and by their application a "secondary type" of physical property is attained.[62]

> Thus the Grass my Horse has bit; the Turfs my Servant has cut; and the Ore I have digg'd in any place, where I have a right to them in common with others; become my Property, without the assignation or consent of any body. The labour that was mine, removing them out of that common state they were in, hath fixed my Property in them.[63]

Geraint Parry points out that Locke takes the criterion of "occupancy" that was held in both Roman and natural law and creates a test for what occupancy consists in. Locke contends that property becomes such when an individual "hath mixed his Labour" with whatever he removes from the "common natural condition".[64] This is an encounter of embeddedness of an entirely different kind. Parry points out that the physical object that has become property "takes on an element of the person."[65] In this sense, the natural, physical world becomes embedded in the person—not vice versa. This is vital for understanding the ways in which treaties were negotiated and later environmental legislation enacted because this understanding of humanity's relationship with property and the natural world becomes a key component in Western legal thought. Unlike Grotious and Pufendorf, Locke argues that no consent to disperse commonly held property is needed because there is no "property" as such until an individual applies his or her labour and that portion of the natural world cleaves to them by virtue of that application.[66] To be sure, this is but one small component of the vast shift in social imaginary that came about in the wake of the writings of Locke and others in the 17th and 18th century. I am only aiming to scratch at the

surface of complexity here by teasing out one aspect of a possible connection between the eventual pervasiveness of Lockean thought and the ways in which ownership and stewardship come to be perceived in the west.

As pointed out above, Locke's definition of property is, by necessity, quite broad. Thomas Jefferson paraphrased it in the Declaration of Independence as those inalienable rights endowed by the Creator: "life, liberty and the pursuit of happiness." Locke himself defines it as "lives, liberties and estates". As David C. Snyder (among others) points out, Locke needs this definition of property to explain why political authority is legitimate, why human beings consent to be governed, and what the limits of that governance should be.[67] For the purposes of this study, it is enough to know that Locke has articulated a theory of property and governance that is self-consciously composed of individuals coming together in "…such a way that their reciprocal action redounds to their mutual benefit."[68] Individuals acting for their own self-interest will according to Locke, by their very natures, act for the benefit of others, because such actions are obviously what will lead to the betterment of society.

The natural law tradition out of which Locke partially draws his theories of governance and economics (and out of which Grotius draws his theories of international law) was a way of structuring a new societal order that not only, as Taylor asserts, spans across confessional divides[69] but also provides a stabilizing bridge across the chasm between premodernity and modernity. Natural law is a concept that has traction in the ancient world, the Middle Ages, and the modern world. It provides stability, even as it is malleable enough to be embraced by different eras with their different needs. "The aim of Natural Law theory was to provide a rational terrain d'entente, replacing not only the ex parte theories of extremist religious partisans, but later on, in its Lockean variant, also setting aside other,

dangerously flawed reactions to the religious strife, such as theories of sovereignty unbound by any law."[70] The underpinnings were malleable, even as the philosophical tenet of objective morality was not. Knowing that how and why natural law theory developed and continued into the modern period is important, as mentioned above, because it remains, again, as one of several strands of arguments regarding what exactly legitimizes and motivates Western legal systems.

<u>The Purpose of Private Property</u>

Grotius, and later Locke, posit a rational moral order from the blueprint they see in natural law. Grotius' sociable beings are incorporated into Locke's vision of individual life and liberty sustained in community by one another's respect for that life and liberty.[71] The Lockean ideal then has human beings using their drive for self preservation as motivation for working to exploit the natural world and, as a consequence, acquiring private property and spurring economic growth.[72] This rational (and for Locke, God-given) way of living emerges as a norm; "…a stable order of industrious men in the settled courses of their callings, dedicating themselves to growth and prosperity, rather than war and plunder, and accepting a morality of mutual respect and an ethic of self-improvement."[73] It is the "dedication to growth and prosperity" and the "morality of mutual respect" that are most pertinent at this juncture of the study.

The dedication to growth and prosperity was seen as a process, an unfolding of a teleological moral order. The morality of mutual respect informed and solidified this order, it was the component of noblesse oblige that had been developed under the premodern hierarchy and which Locke re-fashions into an implicit social contract—no longer between master and servant, but between individuals in society. I am being quite careful here in not glorifying Locke's philosophy as radically egalitarian—doing away with class and elitism by

turning over the tables in the public square. But the assertion of the idea that the true divine order was one in which all men were seen as having equal access to the acquisition of wealth and the right to hold onto private property gave all men (and I am being deliberate in my choice of gender here) vested interest in laws that maintained this new status quo.[74] In this sense, the morality of mutual respect incorporates the assumption that each man has the duty to assure that the laws government makes do not interfere with his or his neighbour's fundamental, God-ordained right to the accumulation of private property.

Locke's social order and the social contract that is implied by it also reflects a new social imaginary that incorporates a world view that did not see time as cyclical but sees human history as progressive and dynamic—"(s)ympathy," writes Taylor, "and a community of interests should have been enough to establish a non—conflictual order of things…the fully formed reformed society was close to hand…requiring only one more package of reforms: political…economic…social"[75] This is pertinent because a progressive view of history and of human endeavours reflects a philosophy regarding a social contract whose basic tenets incorporate the notion that members of society who are entrusted with the political directing of the state have the best interests of the individuals of that society in their hands and that this best interest is something that is already mutually agreed upon. If the underlying understanding is that the moral order is teleological and progressive—always moving towards perfection (in this case, human flourishing, I am not referring to soteriology), then the implied understanding of the governed is that the laws that are being made are ones that will facilitate what it good. Of course, the problem in that case ends up being who defines the good, and is there mutual agreement upon the steps one takes to arrive at this good? Aside from the very real class differences that are brought to bear on a progressive view of human history, this question can also be addressed (and will be) in light

of treaty negotiations between nations who have completely different ideologies and social imaginaries. The sensibilities of the seventeenth and eighteenth centuries and the ensuing philosophies of historical progression, human capacity for transformation and economic theories loom large in this story and play an integral part in the way environmental law is envisioned and shaped.

In the eighteenth century, there is an understanding of natural law theory that is accompanied by Lockean economic theories regarding property ownership. Muldoon comments in his brief discussion of the evolution of Western legal tradition and environmental legislation that the economic idea that it is acceptable for people to be self—interested profit seekers intertwined with the equally compelling idea, discussed above, that nature can be broken down into parts, understood, and manipulated for human benefit to produce an ethos asserting that societies and individuals should pursue economic and scientific progress built on increasingly efficient innovative exploitation of nature's resources. This understanding of property ownership in the Lockean terms of acquisition by virtue of labour and the understanding of the purpose of science and the purpose of government in relation to human flourishing are other components that comprise the foundation for comprehension of the development of Western legal systems in general and in environmental law in particular.[76] All intertwine with the growing and shifting social imaginary that redefines human flourishing in terms of the individual in society rather than the society composed of individuals with set positions in a rigid hierarchy. This is significant for the purposes of this study because it can be argued that the shift to individualism combines with other factors already discussed (i.e. private property rights, scientific discovery, Deism, anthropomorphism, inductive reasoning) to allow for the emergence of a society that values (to the point of ascribing divine sanction to) the acquisition of wealth,

individual achievement and the ability to flourish with a certain amount of autonomy from God, government or, to some extent, from one another. Intertwined with this shift is also the reflection of the Protestant Reformation where the emphasis becomes less about the salvific nature of the Christian community embodied by the Church (whereby salvation of the individual is mediated by a hierarchy acting on behalf of the corporate faithful) than about an individual's responsibility for their own salvation. A spiritual safety net versus a pull yourself up by your own bootstraps approach to soteriology, as it were.

This theological and sociological shift (if, indeed it is possible to actually make such a division) has profound ramifications for the crafting and implementation of law. Laws, of course, always have to respond to and account for the dynamism of human society.[77] Taylor points out that early modernity is a period in which human society (at least in Western Europe) was striving for ordered, comprehensible societies that would, the elites were convinced, best aid human flourishing. The modern moral order works quite nicely with a Lockean understanding of private property—government exists to protect that private property which, as shown above, is broadly defined not just as material, but as symbolic of the ideals of liberty and so on. Legislation regarding use of the natural world and this conception of individualism and private property shifts also in order to reflect these modern ideas.

An Ideological Shift and a Precursor to Environmental Legislation

As mentioned above, Western Europeans saw themselves as disembedded from the natural world. Nature was God's tool and humanity roamed creation, dependent upon it and with the mandate to use it, if not subdue and dominate it. Even the Franciscan

paradigm reflected a rigid hierarchy that was extant in both Church and in lay government. Early modernity continues the model of disembeddedness in part by strengthening an anthropocentric worldview. Science allows human beings at first to comprehend God in nature by disseminating God's mind from observation. This observation (and I am intentionally glossing over complexities here) leads to the discovery of what are believed to be firm and immutable laws of nature which allow for the observer to draw the conclusions that to know these laws is to know God, not just from observation but from inductive reasoning and experimentation. The belief in the immutability of nature's laws and the ability of human beings to discover those laws facilitate the rise and embracing of humanism and also, in part, necessitate the rise of Deism (if nature's laws are immutable and God is the creator of those laws and the author of their immutability, it is unreasonable to posit that God would interfere with the workings of those laws by performing miracles and the like.). Lockean notions of private property add a different layer to the disembeddedness and conception of human relations with the natural world, even as they remain staunchly theistic in their intent and composition.[78]

The Lockean ideal of ownership supported this disembeddedness by placing an ontic as well as temporal value on the relationship between labour, nature's resources and the individual. A different kind of embeddedness arises from this—the individual is embedded in nature to the extent that his or her relationship with the value of their property holds meaning and identity to and for them. By positing the almost mystical fusion between the labourer and his or her acquisition, Locke introduces a meaning to ownership that borders on the transcendent. Economics has always been integrally intertwined in human endeavours, but this particular vision of ownership by the individual as one that is not only

divinely sanctioned but is also a fulfillment of human purpose is reflective of a particular shift in the social imaginary.

A shift in the social imaginary that, in part, values the individual over the corporate can be demonstrated in myriad ways, but the one most relevant to this study is via legislation having to do with the natural world—the plausible precursors to modern—day environmental legislation—specifically, laws regarding property ownership and land use.

The Statute of Merton (1235) is the first of the *Statues of the Realm* in England and one of the bases for English common law. The overall purpose of Merton was, as was the Magna Carta's twenty years before, designed to limit the rights of the King. The particular portion pertinent to this purpose is the component regarding enclosures. Merton allowed lords of the manor to enclose common land, providing that sufficient pasture remained for the tenants. The Statute sets out the manner and in which cases lords may approve part of the wastes, woods, and pasture belonging to their manors, against the tenants. Wastes, in this case, refer to land which is not being used. To enclose land means to "…extinguish common rights over it, thus putting an end to all common grazing. To effect this, it was usual for the enclose to hedge or fence the land...(a)ll enclosers…deprived the community of common rights."[79]

The history of enclose (or "inclosure") in England is complex and too vast to engage with in any sort of depth in this study. What makes it interesting and relevant for the purposes at hand is the many ways in which enclosure is viewed at different points in England's history. As John Locke refers to enclosure as one way in which it may be proved that land is owned and as his contentions reflect attitudes that were brought to bear in the development of treaties between the Western Europeans and the North American Aboriginals, it is worth the while to explore the topic briefly.

The Statute of Merton states: "

> Also because many great men of England…have complained that they cannot make their profit of the residue of their manors as of wastes, woods, and pastures, whereas the same feoffees have sufficient pasture, as much as belongeth to their tenements….if it be certified by assize that the plaintiffs (the commoners) have sufficient pasture, with ingress and regress let the other (the lords) make their profit of the residue, and go quit that assize.[80]

This is significant for it codifies at least a sample of High Middle Age thinking in regards to private property and the responsibility of the owner towards the tenant. The right to ownership of the land is not disputed and the right to profit is seen as a given, but not at the expense of the commoner. The landowner has the mandate to assure that enough common land remains for the use of the commoner. The point of Merton seems to be more a codification and recognition of the rights of the landowners as acknowledged by the Crown than it is a precept that the landowners needed in order to persuade the commoners to acquiesce to enclosure. As Thirsk remarks, "Much enclosure had already taken place without trial or tribulation in the early Middle Ages. Enclosure from the waste had been as commonplace a part of the farming round as ploughing."[81] Indeed, it seems to have been so commonplace, this negotiation between landowner and commoner, that once agreed to by the King, the Statute gradually falls into disuse. It was revived again during the brief reign of Edward VI by the Duke of Northumberland (the doomed Lady Jane Grey's father) to legitimate the enclosures by landowners during the Tudor era. Such enclosures were frequently vehemently opposed (in some parts of England much more vociferously than others—the disparity being the consequence, in part, of population density and the quantity of available land for common usage).[119]

Even at the time of Merton, profit from the land was being sought. But the statute reflected a social imaginary that incorporated an ethos of communality in general and in

particular to farming practices—profit was allowable, even desirable, but land held in common was deemed to be a necessary component of the community economy. By the sixteenth and seventeenth centuries this seems to have shifted—for a variety of reasons, some of which I have already discussed (population variations, environmental degredation)—to a time in which two disparate views of farming were extant: the individualist and the communal.[82] The individualist allowed the farmer himself greater latitude in farming practices and often led the encloser to convert the land from arable to pasture—thus ensuring that he would need to hire fewer labourers. This did little to endear the encloser to his neighbours. The communal, and more ancient, allowed for enclosure but assumed that a semblance of balance would be kept: if one piece of land was enclosed, then another would be offered in compensation for common usage; the enclosed land remained arable and thus was a source of employment for others; the community itself worked to make the land arable and then agreed together to partition some land off for private use and some for common—but the decision was communal.[83]

These two farming ideologies are, of course, reflective of the larger tensions of a society where individualism is taking hold as a social, political and religious force. In the eighteenth and nineteenth centuries (from 1750—1850) the Enclosure Movement, whereby enclosure happened rapidly by individual Acts of Parliament, seems to support a contention that the individualist point of view was prevalent and presumed to be the more legitimate construction of the social good—at least by those who had the power to make the laws.[84] Indeed, by the end of the nineteenth century, Mr. Wingrove Cooke is reported in the *Report from the Select Committee on Master and Servant* to have said, "If the lord leaves sufficient common to satisfy the rights of the commoners, he can inclose(sic) the remainder; but as there is scarcely a common now where that can be done, practically speaking the right of

approvement is a dead letter."[85] In that same quote Mr. Cooke opines that the Statute is all but "obsolete".

All of this is relevant to the discussion at hand not only because, in a very small way, it reflects the rise of individualism, and a shift in the social imaginary, but because it traces a shift in how private property and, in part, how humanity's relationship to the natural world as revealed by legislation, can be marked. Disembeddedness is already marked in *Merton*. The feudal system of land tenure (i.e. the system whereby land is held by a vassal on perpetual tenure from a superior)[86] is taken as given. This reflects a social imaginary (perpetuated by Henry III, disputed to an extent by the barons) that placed the King as God's envoy, ruling by divine right and, as a consequence, holding the divine right to do with the land what the King saw fit. Just as nature was God's tool, so was it, by proxy, the King's. The King has given the land to the barons' use and the barons, in turn, see the land as a tool for sustenance and profit. The relationship with the land itself—an understanding that sees nature as having agency—is subsumed by the relationship with what the land can provide.

In addition, at its inception, *Merton* reflects a communal social imaginary. Being a baron was expensive. Among one's expenses were taxes owed to the King for the use of His land. In order to pay those taxes and cover one's other expenses, the land had to be used in a way that was most profitable. Enclosing the land was one way in which the property could be made profitable, either by converting the land to pasture or by consolidating farmland. This was all well and good for the barons, but the peasantry also needed reassurance that their traditional access to common lands would not be compromised. *Merton* establishes that the tenants—the common holders—have a right to expect that such common land will be made available—the assurance is codified.[87] There is

an understanding that the individual is responsible for the well-being of the community and cannot profit individually at the complete expense of the whole.[88]

Through the centuries, the communal need is devalued in favour of an ideal that seeks to have no lands in common but that every person traditionally using common lands will have their own, private piece of property for them to cultivate or otherwise use as they wished. That this was so is again evidenced by the remark from the parliamentary gentleman above in 1865 that all land had been enclosed. And indeed, this is what happened in the 18th and 19th centuries through Acts of Parliament—that small strip farms and traditional common lands were amalgamated and/or enclosed. In compensation, farmers were offered private strips of land (often inferior) in the stead of the commons. In this sense a different kind of disembeddedness can be seen as some tenants had farmed particular parcels of land and accessed in common particular areas for generations. The relationship one might have built up with the geography was not measured as important in light of the necessity to use the land for maximum profit. Indigenous knowledge and direct labour in the service of a specific piece of land were considered ephemeral at worst and as easily transferrable at best.

It must be pointed out, though, that the enclosures were not the same in all parts of England and that some were negotiated amicably. [89] However, the social imaginary that is reflected by the practice of enclosures in the 18th and 19th centuries is vastly different from that in the 13th, and supports a contention that religious perspectives are intertwined in the social imaginaries that produce legislation in any given era. At a cursory glance, the Pre-Reformation Catholicism of the 13th century is present in the assumption of a hierarchy that presumably mirrors that of heaven, and of the view of the natural world as tool over which the ruler has absolute dominion and over which lesser creatures have more limited access.[90]

The legislated enclosures of later centuries reflect the passion for moral order that Taylor writes about as being integral to the Reformation. To enclose the land is a way of taming it and the people who use it. It is still tool, even tool to be given by a hierarchy to the lowlier—but here the tool is for the individual's own good—not to ensure the common good per se by making resources available for common use, but to ensure the good of each individual and as a consequence, of the collective of which those individuals are a part.

Another interesting point to ponder lies in the thought of Grotius and Locke and their respective positions regarding common lands and the acquisition of private property. Grotius, it should be remembered, argued that land was originally held in common and that some sort of general consent was required before the land could be held by a private individual. Locke, on the other hand, held that no such consent was necessary as nothing became property until it was mingled with one's labour. Both philosophies are reflective of the state of enclosure that was most prevalent during their lifetimes. Wordlie argued that it could be shown that in the 17th century, 2% of land in England was enclosed, while in the 18th the figure rose to 24%. Now, Wordlie's exact figures have been disputed, but the principle still holds, that the state of enclosures during the majority of Locke's lifetime would have been high, whereas they would have been relatively low in Grotius'. In addition, Grotius was historically much closer to the time of the Tudors in England where public outrage in some quarters of England was loud and vociferous against the perceived tyranny of the landed gentry over the hapless tenant and labourer. In short, Grotius' time and place was more in tune with the practice and ethos of land held in common, whilst Locke witnessed and lived in the era where enclosure seemed to be the most logical and productive way of asserting ownership—after all, to enclose the land was to make it more productive

and required a modicum of tangible labour that merely working the land might not have seemed to do.

Again, I want to be clear that this discussion is a microcosm of social, religious and legal phenomenon. Obviously there are complexities which are too massive to unravel at this point. As mentioned above, the motivation (in this case, the social imaginary and the religious worldviews) behind legislation is as important a component in understanding its complexity as are the facts of the political and economic climates of the time. This is certainly true when trying to understand the role that treaties have played in Canada's development of environmental policy and legislation.

Private Property and Treaties

At first glance, it may seem odd to include a section on treaties in a chapter on environmental law. However, treaties between European nations and North American Aboriginal nations reflect shifts in the European social imaginary that are relevant to current environmental legislation: treaties deal with property rights, land and resource use and as such also reflect particular views regarding humanity's relationship with the natural world—all of which are also relevant to current legislation and policy positions. Futhermore, the eventual privileging of European worldviews over the worldviews of the indigenous peoples of Canada have ramifications that are vital to comprehending the variety of voices that sit at the table of modern legislative and policy negotiations.[91] Lastly, the religious worldviews of all parties are evident in the treaties and in the treaty-making processes. The Aboriginal understanding of embeddedness in the natural world and the European conception of disembeddedness and nature-as-tool, in part, undergird the treaties themselves.[92]

As intimated above, the history of enclosures in England reflect a shift in understanding in regards to private property that is integral to understanding treaty

negotiations between the English Crown (or the Crown's proxies) and Canada's Aboriginal Peoples. Treaties are important for understanding environmental law because they deal, in part, with use and ownership of the natural world. As well, they reflect a shifting social imaginary in the West, part of which is theological and part of which is economic. Both these factors are brought to bear in modern environmental legislation when we examine which voices are at the negotiation table and which interests are considered during those negotiations.

Lockean views of private property acquisition have already been discussed and they are vital to understanding a portion of the mindset that Western Europeans (primarily the English and the French) brought to the treaty-making process. However, the legal justification for land acquisition and precepts of international law and treaty-making are also important for this discussion. Intertwined with all of that is the background of contact with North American Aboriginals that has been discussed at an early juncture in this work. It has been shown that some of the earliest motivations for European exploration that eventually culminated in their landing in the Americas were economic (as a part of the rise of mercantilism) and religious. As these voyages of discovery took place, bodies of laws were developed in order to prevent or at least to forestall chaos from erupting on a grand scale. There are laws regarding what constitutes discovery and ownership—first sighting (Spain, Portugal) or development (France, England). There were laws regarding in whose name claims may be made (always a political or economic (i.e. Hudson's Bay Co. or the Northwest Co.) body—never in the name of an individual). And there were laws governing how indigenous populations were to be treated (in the early days of Spanish exploration, the Pope determined these prescripts). Although there are a few 16th and 17th century jurists who made their mark on international law, Hugo Grotius makes a particularly easy starting point

from which to gain perspective on the motivations and philosophies behind some burgeoning international law that had effects on the ways in which treaties were negotiated with North American Aboriginal peoples.[93] Grotius is perhaps best known for his work on international and maritime law. A 17th century scholar, lawyer and diplomat, Grotius was a Protestant who spent a good deal of his life working to further the cause of tolerance and religious accommodation in an era of bitter and deadly sectarian strife. The aspects of Grotius' thought that are pertinent for this study appear first in *De Jure Praedae Commentarius (Commentary on Prize and Booty)*[94] in a brief discussion of non—European rulers and the legitimacy of States using proxies and in *The Freedom of the Seas* in which he briefly discusses treaties.

In *Pradae*, Grotius is making an argument justifying the seizure by the Dutch of a Portuguese ship. The main gist of Grotius' argument is that the Portuguese could not have sovereignty over the high seas or exclusive trade rights with the East Indies and that the Dutch had no other recourse than to respond by using force.[95] The relevance for the argument in *Pradae* for the purposes of this study rest in one of the ways in which Grotius makes an argument for justification. Grotius argues that the Dutch are justified in the seizure because they have allied themselves with the King of Johore, a non-European. Grotius writes that "alliances and treaties with infidels may in many cases be justly contracted for the purpose of defending one's own rights."[96] Edward Keene observes that "What probably first catches the attention here is Grotius' positive attitude towards the rights of this non-European ruler. Not only did Grotius assert the validity of treaties with heathens, he went further to praise the rationality and sagacity of the 'Indians of the Orient', and warned about the way in which 'shameless lust for property was wont to take cover under the excuse of introducing civilization into barbaric regions'.[97] In fact, Grotius was

part of what Taylor refers to as the "neo-Stoics"[98] and, as such, had an investment in "the ideal of civility (which) develops an active, transformatory agenda (which is) partly the result of the symbiosis and mutual inflection with the agenda of religious reform…"[99] Of course, Grotius is not discussing North American Aboriginals, but his point, that making treaties with "heathens" was justified in the case of one's own self interest, and his willingness to recognize non-European sovereignty, shows some congruence with the earlier thinker, Francisco de Vitoria, who also asserted that non-Christians could have sovereignty and ownership of land.[100] Secondly, he was making an oblique theological argument against co-opting land on the basis of trying to convert the original inhabitants, something against which Vitoria had argued vociferously in defiance of the Pope and the Spanish and Portuguese governments a century earlier.[101] In this, he is also echoing Alberico Gentili.[102] Of course, this is not at all to say that Grotius disagreed with the precept that land could be appropriated under certain conditions, merely that appropriating land in order to convert the inhabitants was not a legal exercise of this right. This discussion is pertinent to environmental law and the specific topic of this study, again, because it indicates how religious motivations became intertwined and foundationally integral to the development of the Western legal systems, even as the motivations and overt sectarian views were being fought over and attempts made to subsume them in natural law, which Grotius and others were trying to re-frame as universally moral but safely irreligious, or transcending religion.

Grotius' desire to place the discussion in the realm of natural law rather than letting it be couched in religious terms is congruent with his desire to move beyond sectarian violence and into the realm of moral justification by reason which leads, of course, to natural law. In this, Grotius was not alone. As Merete Falck Borch points out, rightly so, that "some of the most prominent writers on international law in the sixteenth and seventeenth

centuries gradually left the theologically based justifications for conquest of indigenous peoples behind and increasingly turned to a concept of natural law as governing relations between nations."[103] The concept of natural law in Grotius' time certainly had theological antecedents and connotations, but the connotations were universal rather than sectarian. In this, it can be seen, that legal arguments move from the sectarian realm (i.e. the Spanish asserting their sovereignty over the "heathen" indigenous American Indians with the Pope's blessing) to that of the moral and reasonable realm (i.e. natural law) that is theoretically more neutral and therefore more likely to enable consensual agreements. Grotius, in other words, uses a traditionally religious tool—natural law—to undergird his theories but couches the theological (God-designed and given natural law) as morality and reasonableness upon which Catholic and Protestant can agree. This is not to say, of course, that Catholic and Protestant *did* agree with any consistency, despite Grotius' efforts. However, even if Grotius did not consciously intend to foster the move from theological argument to a theological proxy, i.e. natural law as a potential Gileadean balm, it is fair to say that this is what his efforts *did*. The import of that is to see a theological worldview deeply embedded in a strain of Western law that remains viable in modern Western legal thought. That worldview is not overt, most of the time, but it is inextricably intertwined in natural law theory.

Another point that is important to the treaty process is the argument that Grotius makes in regards to sovereign governments having the right to delegate a proxy to negotiate (or, in the case mentioned above in Grotius' work, to fight) in its name—in essence what Keene calls "divisible sovereignty".[104] True, this had been common practice in the course of human history, but Grotius, as a jurist, reiterated this right in his legal argument, giving gravitas to already accepted practice.[105]

These concepts—divisible sovereignty, the theological worldview wrapped in the perceived rationalism of natural law, the argument for the legitimacy of treaties made with non-Christians and the Lockean view of private property and land acquisition—provide components that add to the whole picture of the mindset brought to bear by the Europeans in treaty negotiations with the aboriginal people of North America, specifically the portion that became Canada. And, of course, the ideas presented by Grotius and Locke morphed as they were adapted and applied and integrated into shifting social systems.

It has been mentioned before that both Grotius and Locke were interested in moving beyond the sectarian violence that had wreaked such havoc on their respective countries. Natural law proved the perfect levelling ground for it provided a moral framework that did not disavow God but neither did it depend upon a Protestant or Catholic point of view for its inherent reasonableness. Inherent in natural law was the notion of private property that would come to loom so large in treaty negotiations and in later environmental law. Both Locke and Grotius agree that private property can be acquired and that it can be inherited. Both also agree that private property cannot be called such until or unless there is a recognizable (and by this I mean a government that a Western European would have found recognizable) government in place, for the purpose of forming a government is for the protection of private property. Locke and Grotius differ, as discussed above, in that Locke believes the initial acquisition of property (that is, from land that was previously unowned or "waste") can happen via labour. Indeed, it must happen with labour, or the land is not owned. Grotius argues that land is originally held in common by all and that one must have permission before one can acquire it as one's own property. Both Locke and Grotius appear to have envisioned the Aboriginals of North America as living in a condition of natural simplicity (Grotius) without the structure of any recognizable

244

government. Of course, we now know that to be untrue, but when Grotius and Locke were writing, their understanding was of vast tracts of lands in North America that were inhabited by, but not possessed of, the indigenous peoples. The implications are now well known, because of the concept of property ownership viewed by both Locke and Grotius as logically following from natural law—the precepts of which were universal. But this is where a shift comes from Grotius' thought and this shift is important.

Grotius does not appear to have an issue with the sovereignty of non-Christians.[106] As shown above, he has no compunction against signing treaties with "heathen" rulers. He does not make a distinction, in his construction of international law, between Christian and non-Christian states.[107] This is not surprising when one considers that natural law was seen by Grotius as universal and the precepts of international law that he described were painstakingly rooted in natural law. However, as Keene notes, Grotius' original scheme of the law of nations as applicable in the same form to both Europeans and non-Europeans underwent a shift in the 17th century.[108] This shift parallels Taylor's discussion of a shift in the moral order and social imaginary, a shift towards civilization as both a measure of one's more enlightened nature and as a goal through which all humanity would find fulfillment. Keene asserts that this idea of civilization "comprehensively radicalized the application of (Grotius') ideas about how sovereignty should be divided and how individuals' private rights should be acquired and protected in the extra-European world."[109] In part, the Lockean notion of property acquisition via labour became the standard, as did the practice of imperial paramountcy by the Europeans. Keene points out that this results in an imperialism and colonialism undergirded by a bifurcated understanding of the goal of international law. This bifurcation held that, on the one hand, European nations were civilized already and international laws existed to "…promote the toleration of cultural and political differences

between civilized peoples so as to allow them to live together in peace." On the other hand, "other forms of international political organization and different legal rules were deemed appropriate, in keeping with the belief that here the central purpose of international order was to promote the civilization of decadent, backward, savage or barbaric peoples."[110] This fits in with the contention that an important shift in the social imaginary was a movement to a particular type of moral order that saw the elite as having a paternalistic role to play in the cultivation of the souls of others.[111] This was a European nation to non-European nation mandate.

Grotius writes that treaties negotiated between an "inferior" and a "superior" party will lead to the strong overpowering the weak—leading to a "diminution" of sovereign power—even though negotiations appear to have been between equals.[112] The treaties of the 17th and 18th century show just that, as settlement becomes more important than trade and the relationship of mutual benefit declines between the Europeans and the Aboriginals. As J.R. Miller writes, "The evolution of treaty-making—from commercial pacts to modern agreements—reflects the underlying Native-newcomer relationship. When that association was mutually beneficial…the treaties were respectful of both parties and benefited all participants...When the relationship deteriorated…the treaties that resulted were much less advantageous to Aboriginal peoples."[113] Although this study is not focused on Aboriginal land titles and treaty rights, the above is relevant for this study because it marks the ways in which European view of humanity's relationship with the natural world came to be paramount in North America.

It has been established that (in general) two wildly disparate worldviews came together when the Europeans began to explore North America: the Aboriginal worldview of embeddedness which drove the ways in which the natural world was used and regarded, and

the European worldview of disembeddedness. The Aboriginal worldview, especially was a worldview that was at once dynamic and established, dynamic in that it was not stagnant— just as the natural world is not stagnant and established, in that the worldview *worked* for the time and place. Enter the Europeans at a profoundly complicated time in Western history. Sectarian strife and the beginnings of new social, economic, scientific and religious phase were swirling about and they brought this maelstrom of chaos striving to be tamed with them into what they perceived to be a New World.

Of course, it is facile to say that the Aboriginal nations which they first encountered weren't also dealing with political intrigue and economic challenges of their own. Human society is by definition political and the historical record is clear that the Aboriginals in North America had rich and complex societies. That the Europeans recognized this, in part, is clear in the first treaties.

Miller lists three types of treaties in his historical survey of Canada's treaty traditions with the Aboriginal nations.[114] The first, and earliest (17th century), were forged not with the Crown, but with private companies (fur traders, mostly) which were given quasi-governmental status by virtue of their charters given by sponsoring sovereigns.[115] Miller stresses this in order to assert that treaties made with Hudson's Bay Company, for instance, should be read as treaties made with the sovereign himself, under international law as described by Grotius. These treaties were commercial compacts focused on commerce. Given that both the Europeans and the Aboriginals they encountered were experienced traders with shrewd business people on both sides, and that both the Europeans and the Aboriginals had something to gain by these compacts, both sides seem to have benefitted. In other words, although the Europeans may have seen themselves as superior examples of

God's handiwork in every conceivable way, yet it was prudent and profitable to at least give the appearance of accepted equality between Aboriginal and European.

That this was so could be seen as well in the ways in which each group sized up and learned to appease and incorporate the customs of one another. Wynn speculates that "(t)hrough the earliest years of contact, natives and newcomers probably exchanged more than they knew, and syncretism—the fusion or reconciliation of diverse beliefs and practices—was widespread."[116] That the Aboriginals saw the Europeans not only as valuable trading partners but also as military allies is well established.

The second treaties developed alongside the first, in the last part of the 17th century, gaining more and more traction in the 18th century. These were the peace and friendship treaties that outlined alliances and developed out of the commercial relationships between Europeans and Aboriginals. These alliances were important for all sides, militarily as well as commercially.[117]

There was a religious component that must be recognized, as well, for the conversion of the Aboriginal peoples of North America to Christianity was, to some Europeans, an important mission. In some places conversion occurred. Wynn (among others) notes that traditional remedies for illnesses were often ineffective against the new diseases brought by the Europeans and "age-old practices to propitiate traditional deities" sometimes did not have the effect to pull the ecosystem back into balance (for instance, to repopulate the beaver habitats quickly) and this resulted, in part, in the elders and in the traditional worldviews losing some of their traditional authority.[118]

However, religion was also used as a means to an end, for both sides recognized its' import to the other. Although the Europeans may not have seen Aboriginal religious traditions as legitimate worldviews, that they recognized them as a distinct metaphysics can

be seen in the writings of the representatives for the Hudson's Bay Company who refer to Aboriginal religious beliefs.[119] The Europeans, especially the delegates from private companies, became skilled at incorporating important Aboriginal customs into their business practices[120] but the Aboriginals were adept at this as well,

> (c)ustomary practices were blended with beliefs promulgated by newcomers, and it was not always easy for Europeans to establish how firmly their attitudes and expectations permeated indigenous views…In religion, certainly, elements of Christian belief were incorporated into native practices to make them more acceptable to missionaries, and some professions of Christian belief may have obscured polite and subtle but nonetheless deliberate rejection of its basic principles.[121]

During the commercial and peace and friendship treaties, which were certainly reflective of a more egalitarian mutual perception than were the third type of treaties, it was practical to at least maintain a veneer of respect and regard for one another. Miller reminds his readers that North American Aboriginals had vast trade networks already in place in the 17th century and that the Europeans adapted to the mores that were extant. Kin relationships were key in Aboriginal trade relations and extended kinship ceremonies were performed to incorporate the Europeans into the networks.[122] That the worldviews regarding humanity's relationship with the natural world were disparate was not a problem in these instances. Where it becomes problematic is when, as stated above, settlement becomes more of a desire than does trade. By the time settlement and expansion begins happening in earnest, the Aboriginal populations have been drastically reduced by disease and the Aboriginals find themselves at a distinct tactical disadvantage. What might have begun as treaties between equals now are the unequal treaties expostulated by Grotius. Thus, Aboriginal sovereignty— along with Aboriginal worldviews and environmental policies—is fractured.

The third line of treaties started in 1760 and remained a force until the early 1920's. They "emerged directly, almost inevitably, from the vicissitudes and pressures of Britain's

alliance system in the latter half of the 18th century. Territorial treaties were agreements governing non-Natives access to and use of First Nation's lands." [123]

The ideas of Locke and Grotius regarding private property and what constituted a government undergirded the mindset of the Europeans in regards to land ownership and natural resource use in the Americas. Both saw the Aboriginals as still in a state of nature, meaning that the land on which they lived, moved and had their being was land still held in common (Grotius) or simply available for original acquisition (Locke). Locke builds on Grotius—who bases land claims on whether or not the natural right to appropriation had been exercised[124]—and writes that the Aboriginals have no enclosures, a sure sign to him that all land in North America is "waste" and up for grabs.[125] This highlights a crucial point for environmental law even today—what constitutes "right" relationship between humanity and the natural world. The Europeans literally could not see that the natural world was being used in a way that they saw as productive or meaningful. This was not only an economic waste but an offense against God who had given the earth as a tool for productive use and the "taming" and cultivation of which was outward sign of inward holiness. That land must be left in common that is "as good" as that which is appropriated was highly subjective, as the later treaties showed.

In addition to this, Grotius' international law clearly supported colonization of foreign lands, even if those lands were sovereign. The caveat that enabled such appropriation was based on Grotius' interpretation of natural law and the idea that self-preservation was a tenet whereby property could be acquired. If one's own nation lacked sufficient land to support its own population, it was permissible for the people of that nation to find other lands to populate. However, that nation maintained its sovereignty over the

appropriated lands, assuming, of course, that the non-Christian sovereign continued to adhere to natural law. If he or she did not, then the land was deemed to be common.[126]

The Aboriginals, on the other hand, had a different worldview. They knew and understood that they were making use of their habitats in the most productive way possible. They had established methods for sustaining themselves and maintaining balance with the rest of the natural world. That they were healthy metaphysically speaking was reflected in the abundance of game, a good harvest, and surplus with which to trade. In a general way, the lack of these things would indicate a lack of holiness, of balance.

In addition, where the Aboriginals saw agency, Europeans saw commodities. To be sure, the natural world, for the Aboriginals, was populated with creatures on whom they preyed, but as has been discussed, their prey had agency—that is, the animal *chose* to allow its own capture and that capture was made possible by the respect the trapper showed for the creature's dignity and agency. This is not necessarily a nobler worldview, it simply highlights the distinction between Aboriginal and European. To the European, disembedded from the natural world and thus removed from the necessity of appeasing any animist spirits to maintain a balance that would ensure his continued survival in a particular environment, the beaver was a commodity to be exploited.

The commercial treaties indicate a willingness by all parties to use the natural world in ways that were increasingly unsustainable. The environmental practices that had been slowly developed over thousands of years were not compatible with an economic system that was predicated on ever-increasing demand. In addition, the goods for which the Aboriginals traded made them increasingly dependent upon the trading posts and the non-Aboriginals for what were becoming to be seen as essentials. Wynn makes this observation regarding the Algonquian, Huron and the French:

…as both indigenous groups suffered significant population decline as a result of introduced epidemic diseases in the 1630's, trading at (the level of 12,00—16,000 beaver pelts per year) must have required each of them to invest a considerably greater proportion of available labour in support of the fur trade than they had in the 1620's. For the Algonquians this probably meant more time spent killing beaver and less on hunting and fishing. To compensate for this shift, they likely depended more heavily on corn and beans from the Huron. This would have required more time and effort from Huron men from clearing more land and from women both in the fields and grinding meal. Thus, the temptation to substitute imported goods for traditional tools and other items that were time—consuming to manufacture was likely enhanced. But satisfying this temptation meant trading yet more furs. All of which spelled escalating dependence on the fur trade.[127]

The three categories of treaty, outlined and expanded upon by Miller, show the shift in sovereignty cautioned about by Grotius even as they reflect a growing awareness of the divergence of thought in regards to the natural world evinced by both peoples, non-Aboriginal and Aboriginal.

The aforementioned dependence and consequent shift in the way of life for many Aboriginal peoples had profound social, economic and religious ramifications. As the Aboriginals become less populous and more dependent, their sovereignty is weakened. True, the companies still need the Aboriginal trappers, but the company leverage is increased by the Aboriginal dependence. Thus, it can be seen that the practices and trade outlined in the commercial treaties had unfortunate consequences for the sovereignty of the Aboriginal nations with whom they were made. The decline in sovereignty is directly related to the view of the natural world that became paramount in Canada over that of the Aboriginal. Because the European worldview regarding the natural world did come to subsume that of the Aboriginal peoples, it also gained traction as the correct view—seeing as it was the point of view that can be said to have "won". This is significant, for it implies that the European view is not only correct but more powerful and that the Aboriginal view is somehow weaker, as its people were unable to champion their worldview successfully. This, in turn, is seen as

a triumph of Christianity over Aboriginal religious worldviews. This becomes more and more significant as modernity and the belief in the objectivity of a scientific worldview become entrenched in the Western social imaginary.[128]

It is also helpful to understand that the European/Aboriginal relationship was somewhat unbalanced in the beginning (17th century) in favour of the Aboriginals who needed the Europeans much less than the Europeans needed them. The Europeans adjusted to Aboriginal ways and mechanisms even as Aboriginals refused to speak European languages and insisted on their own customs being followed. In this way, Miller asserts, indigenous peoples dominated early commercial compacts.[129] However, their relationship to the natural world was changing as a result of the commercial treaties, and I would argue that this is where Aboriginal sovereignty—and hence a loss of Aboriginal worldview primacy in Canada—becomes vulnerable.

The peace and friendship treaties relied on the acumen of European "forest diplomats" to further the cause of both French and English in the lead up to the final battles over which European power would control North America. In Atlantic Canada, the French had an additional ally in the Catholic Church, as Membertou and his extended family were baptised in the early 17th century (1610)—most probably because Membertou recognized the ritual as one integral to the kin—making process so vital for trade relations.[130] This last underscores the reality that Aboriginal peoples were highly conscious of their own self-interest when negotiating trade and peace.[131] The commercial and peace and friendship treaties serve as reminders that there was more to the relationship between the Aboriginals and Europeans than disagreements over property rights. In the periods where there was mutual self interest and cultural ties (i.e. through carefully crafted kin relationships), there was also mutual conformity to one another's customs and religious rituals. The syncretism

that arose from that time did create a cadre of Crown representatives who respected Aboriginals on their own merits.

In 1763 Britain issued The Royal Proclamation that, among other things, created a legal protocol for establishing ownership and acquiring Native lands. As Miller shows, the Proclamation "embodied and extended policy developments that had been under way for some years."[132] Aboriginal controlled territory 'reserved for them as their hunting grounds' is recognized as such in the Proclamation, even though the entire domain is supposedly owned outright by the King. This is in clear accordance with Grotian international law which allows for members of other nations (in this case, the Aboriginals) to hold land within the sovereignty of another country (in this case, British North America). The Proclamation is clear in its recognition of Aboriginal claims to ownership of Crown land created under the magic waving of powers of a document issued half a world away.[133]

The Crown representatives mentioned above had been advocating for these policies for quite some time. Such policies were key if the British were to maintain the trust of the Aboriginals who were experiencing strife with speculators and 'land hungry interests' that threatened smooth governance (the Proclamation asserted that only the Crown had the right to negotiate land claims with the Aboriginals). Three things then happened that are pertinent to the study: The War of 1812, a new wave of Indian Department personnel, and a shift in British policy to a "civilization program".

The aftermath of the War brought an influx of land-hungry immigrants and settlers into what was supposed to be Aboriginal Lands. The representatives of the Crown who now staffed the Indian Department were not military men who had known and forged kinship ties with the Aboriginals, but young civil servants—non-military men from a settler society "who had never learned to appreciate First Nations' commercial, diplomatic, and

military skills, and who, consequently had less consideration for them then their bureaucratic forebears."[134] These men were enjoined by the Crown to apply the new assimilationist policies.

The above is relevant to the history of environmental legislation because it represents a shift, not only in the equality of ideology on the subject of two disparate worldviews regarding the relationship between humanity and the natural world (i.e. Aboriginal and European), but also a shift from diversity in terms of how the natural world should be used. Hunting and trapping, once paramount in the economy of both newcomer and Aboriginal no longer had the import that agriculture did. Land that was not enclosed was not being used to its utmost. Land that was wild and from which one had to seek one's livelihood amongst the tangle and chaos of forest and river was not being utilized according to natural law, which bids each man to acquire privately what he can in order that a civil, ordered society might be formed. Lockean notions of private property were intertwined with the Reform ideology of moral order which in turn was reflected in a view of the natural world as both a challenge to tame, cultivate and a tool with which to foster order. In this worldview, the land must be used to civilize, cultivate the Aboriginal person. Obviously hunting and gathering were of a lower order and so Aboriginals were encouraged (and perhaps this is too mild a word) to become as the Europeans and enclose, settle and farm their land.

Thus, treaties, especially the land allotment treaties of the late 18th and 19th centuries are reflective of a subjugation of one worldview to another and reveal a policy towards land use that is apparent in policy discussions regarding the environment in the 20th and 21st centuries: the superiority of objective science versus the subjectivity of indigenous knowledge, the balance between private property rights and the rights of the collective, the right to economic prosperity versus the right be assured of sustainable practices that will

benefit future generations, human embeddedness in the natural world versus human dominion over a universe created by a deity for humanity's private use versus a stewardship model that sees not so much embeddedness but responsibility. The re-emerging question of modernity—how to balance the individual with the collective, the private with the public and the corporeal with the transcendent— are reflected again and again in environmental policy and legislation.

The Conventional Wisdom: Environmental Law Begins Here

In Judaism, after the second century of the common era, Rabbinic Judaism developed. In the course of this development arose the tradition of putting a fence around Torah. The concept was that since the Temple was no longer available for worship and it was still necessary for reclamation of a state of ritual purity, something had to be done to assure that the precepts of Torah were kept inviolate by the Jewish people. One author likens the concept to that of a beautiful garden that one does not wish to see trampled. The garden is there for our pleasure and enjoyment, but the fence that surrounds it keeps it fresh and pristine for everyone and assures its safe flourishing. And so the Oral law of Moses— traditionally passed on by word of mouth— was written down in the Mishnah, commentated on in the Gemarah and put together in the Talmud by two different communities (one in Palestine, one in Babylon) in part so that the Jewish people would be able to keep the precepts of Torah by adhering to traditions (fences) that served as reminders of the central mitzvoth. For instance, *Kashrot,* (or the dietary laws of Judaism) state that one must not boil a kid in its mother's milk. This is understood to be humane, as it is disrespectful to cook the offspring in the very substance that was designed by God to nourish it. To protect this teaching, the rabbinic "fence" of this is that it is forbidden to mix meat with milk. A further fence is developed when it is decided that the milk and meat should not mix in the digestive

tract and so a certain number of hours are prescribed between the ingestion of meat and the ingestion of dairy. Yet another fence is constructed with the further admonition to keep separate sets of dishes so that meat and milk will never mix. Thus, concentric circles of behavioural control are constructed to maintain the integrity of the moral order within the community.

The Western legal system as it developed during the processes of modernity is quite similar. As Taylor and others point out, one of the themes of the modern moral order and the modern social imaginary is that of creating order out of chaos. In the late Middle Ages/Early Modern period, laws such as the *Magna Carta* were about limiting the powers of the crown. With the Reformation and the consequent reforming of society, public policies were implemented to improve the behaviour (and presumably the eternal lot) of the public—they were implemented by the elite for people's own good. Codified laws under an agreed-upon societal structure ensured that society would be in control and ordered, just as the law of physics ordained the order of the cosmos (at the behest of God). Just as property must be privatized by enclosure, ensuring that no one will trample on the natural rights of another to possess and to flourish. Environmental law is at the heart of this discussion because, at its most basic it is "(t)he process whereby the common resources of society—the air we breathe, the water we drink, the minerals in the ground, the trees on the land, and the lakes—are allocated to those public and private interests that use those resources to provide goods and services for the public at large."[135]

Muldoon asserts that formal environmental law can most likely be traced back to customary rules about human-environment relations formed by our first ancestors.[136] I have touched upon that briefly above. The more modern antecedents to environmental law as we know it are tort law and, of course, property law. Tort (Latin for "wrong") is an area of

private (as opposed to criminal) law having to do with compensating those who have been injured by the wrongdoing or negligence of another party. Torts do not deal with contract law. The sub-categories of tort law that are pertinent for environmental law are nuisance and negligence. These sub-categories govern the use of land and can address physical injury to neighbouring land or interference with the use and enjoyment of neighbouring land.[137] One of the very first cases that addressed the substantial and unreasonable interference with personal property was established in the common law case of *Rylands v Fletcher* in the 19th century.

     Rylands v. Fletcher was the progenitor of the doctrine of strict liability for abnormally dangerous conditions and activities.[138] Essentially, this case dealt with the liability one party incurred when it engaged in activity on their property that had an adverse effect on the property of a neighbour. The principle established in *Rylands v Fletcher* (after two appeals and a narrowing of the rule set forth in the first appeal) is that a person is responsible to his or her neighbour when, no matter how inadvertently, they have harmed or injured their neighbour and/or their neighbour's property. This ruling strongly contributed to establishing negligence principles that are most promising for environmental law. Another sub-category of tort law developed through 19th century common law rulings was nuisance, which legal addresses issues such as noise, unsightly premises, strong odours, etc. It addition to being a sub-category of tort law, nuisance can also be found in criminal law. Public nuisance is also an offence in the *Canadian Criminal Code* and can be used as a component to environmental law. These are laws by which private citizens can bring pollution problems before the courts.[139] Negligence and nuisance can overlap and provide fertile ground for environmental law.

In 18th and 19th century Britain, public health advocates were engaged with environmental issues, as the move towards urbanization was accompanied by air and water pollution exacerbated by factories and overcrowded and close quarters leading to the quick spread of disease. Sanitation and clean drinking water became issues that public health authorities found themselves advocating for.

In the late 18th century a discussion was also fomenting regarding natural and positivist law that would escalate well into the 19th century. Not only is positivist law human-made, but the theory rests on the ideology of positivism (personified most popularly in David Hume) which essentially says that that nothing can be known beyond what is empirically observable or logically demonstrable. Mark Tebbit writes (discussing William of Ockham's proverbial razor) that positivism states "(i)n all our investigations of the natural world, there must be a presumption against theories which postulate a complex of unseen entities when a more simple explanation is available."[140] The upshot of this for law is the argument that common law and precedence were too arbitrary a foundation upon which to build a plausible legal system. The point of this for the purposes of this study is that legal positivists were refuting natural law proponents. They argued that reason and morality were not the same thing, and that to posit that law was based on a morality rendered it too subjective to operate as the tool of logic that it must in a just society. This is an inherent religious argument. Recall that Grotius and Locke were both emerging from the horrors of sectarian violence. They both couched their theories from religious standpoints but in ways that subsumed sectarianism into what they assumed was the theologically neutral language of natural law. To be sure, natural law did go back to Aquinas, a Catholic. However, the idea that there were moral absolutes and universals also resonated with Reformers of all stripes. It was assumed that morality, prescribed by God through the natural world and through

humanity's ability to reason, was fundamental to all facets of society, particularly to those that regulated personal and corporate behaviour. Legal positivism, in the name of scientific objectivity, removes this theological component (although some positivists were more Deist than Atheist) and transforms the legal system, especially in Britain, by encouraging lawyers and judges to eschew arguments based on what was increasingly seen as a capricious moral stance in favour of arguments based on logic and bald fact.[141] This discussion of legal theory is important to bear in mind in discussions of environmental legislation for it reflects deep philosophical divides in early modernity extant in our policy and legislation today.

The earliest laws discussed—tort and property— reflect a sense that the government (at least the judicial branch of it) is perceived by the populace as having the responsibility for enacting and enforcing regulations that protect and encourage what is valued most in society. In those cases, security and the enjoyment of our private property. There is morality entrenched, a sense of the natural law that informs the concept of a social contract supposing the concept of mutual beneficence. In the public health laws, also, there is a pragmatism intertwined with what could be seen as a sense of responsibility towards one's fellow human beings in regulating conditions under which disease and pestilence can spread.

Beyond tort and property law, until the 1970's, Federal environmental law in Canada was sparse and depended mostly on the *Federal Fisheries Act.* And even the *Fisheries Act*, in its original form in the 1860's was limited "to blanket prohibitions against discharge of 'deleterious substances' in 'waters frequented by fish'."[142] Cited by some as the strongest piece of environmental law in Canada,[143] the *Act* has undergone several permutations since its first inception in 1868.

A Legislative Gap

As has been mentioned, until the 1960's and 70's, the tools of an environmental lawyer were limited to the apparatus just discussed. This means that from the late 19th century until the mid 20th century, there were no major federal pieces of legislation passed that were directed at the interrelationship between human beings and the natural world. This is not to say that there were no pieces of legislation passed that had to do with the management of natural resources, but to point out that management of the natural resources is not akin to the protection of one's habitat—which is how environmental law is broadly viewed today.

The word that is of the most importance in the above paragraph is "protection" and the most important concept is that of government responsibility. Tort law arises out of the realization that private citizens need recourse to the courts in order to seek justice that is not technically in the jurisdiction of the State (i.e. if it is the State's responsibility to maintain order, it has been determined that the State's powers to enforce law resides in the *Criminal Code*, leaving other matters to be decided between private individuals via the State supported system of the judiciary). Thus, the State maintains security—by regulating criminal behaviour and order—by providing the mechanism whereby citizens may seek and find arbitration and resolution. But security in these instances are related to persons and to personal enjoyment or fulfillment via their property.

The Fisheries Act, in part, protected Canadian sovereignty and gave the federal government the authority to mediate between two economic powerhouses in Canada, forestry and fishery. Thus, the forestry industry could be held in check, lest the effluent from saw mills cause irreparable harm to fisheries down river or in the ocean. Again, these are regulations put in place for the State to maintain security—it served no one's interests to have these two important resources at constant odds with one another. So the individual

was protected from his or her neighbours under civil law and via the criminal code and Canada's sovereignty and industry were protected via the *Fisheries Act*. It wouldn't be until the 1970's that the federal government would be pushed to consider protection of the natural world as a component of governmental responsibility towards its citizenry.[144]

The Social Gospel and Government Responsibility

The question of the purpose of government for human society is broad and convoluted. In addition, despite the American and French Revolutions, the argument over the proper role of government has not been definitively decided in the West. The various permutations of public, private and other spheres are part of the puzzles of modernity and just where governmental authority fits in is part of the never ending labyrinth of human society. So when one looks at reasons for a dearth of federal environmental legislation in the early decades of the 20th century, it is prudent to remember that environmental legislation is as much about how we govern ourselves as it is about how we treat the environment.[145] Environmental law is a response to grass roots efforts to prompt governmental action on the basis of protecting the natural world—at times at what seemed to be at the expense of economic and private property interests. In addition (and most pertinent to this study), part of the question of how we govern ourselves lies in the ways in which Christianity in Canada evolved in its relationship with the State.

The simple answer to the lack of federal environmental legislation is that such consideration of the needs of the environment, of the natural world, was off the political and the grass—roots radar. To be sure, there was a vibrant conservationist movement in Canada and a strong romantic notion of Canada as free, unspoiled wilderness (especially from European and US tourists), but the sense that the natural world of human habitation was something to be protected under the auspices of the government (as opposed to having

natural resource *interests* protected) was yet to come.[146] In one sense, it can be said that the

thought of such legislation was a luxury. This seems ludicrous in light of today`s urgency

regarding climate change, but not so much when one considers the turmoil of the first four

decades of the twentieth century. To be sure, the natural world was complicit in some of the

suffering one saw (drought, decline of fish stocks, erosion of topsoil, etc.) but it was the

aftermath of those disasters—what to do with the human fall-out that raised concerns. Not

to mention the devastating effects of two major wars on the morale and the economy of the

country. So although we can look back in history to see that there were environmental red

flags everywhere, as early as the mid-18th century (if not before), the lack of environmental

legislation in the early to mid-20th century does not seem untoward. There is, of course, a

more complex explanation, of which religion plays a small part.

The history of the Church in Canada was discussed above and it is the history of the

Social Gospel that I turn to now to explore the statements of the preceding paragraph. The

social and economic turmoil of the mid-19th and then the early 20th centuries shook Western

democracies and led to much soul-searching and much wrangling over political ideology.

The churches were caught up in this to an extent, with the social gospel movement

occasionally conflated with socialism itself.[147] The social gospel movement took much of its

cue from the earlier Great Awakenings in the 18th and 19th centuries where evangelism and

what is now referred to as social justice emerged as two sides of a theological coin.

The social gospellers were about bettering society, the Protestantism underlying it

also gave them a strong sense of confidence that they, as intellectual and spiritual elite, knew

what it was that the downtrodden needed—although it must be emphasized that the

inherent paternalism was not (at least not always) intentional. Social gospellers embraced a

different anthropology than their predecessors. Children and women began to be seen as

people. Poverty began to be seen as a social ill—human-made and thus having the potential to be human-controlled—rather than as an individual moral failing. When an anthropology changes, the need for a different theology (or Christology) arises. The Christ that arose out of the Social Gospellers was one that resonated with the Great Awakenings. This Christ was one with a heart for the poor, and one who wanted Christians to become better people by being the hands of God in the world. Instead of church as status quo, the social gospel posited a church for social change. If society changed, then people would have their basic needs met and then they could work at being better people. This, too, is somewhat simplified form the complexities of the movement, but the gist is there. The social gospel movement carried out and on the abolitionist and prohibitionist crusades that were begun in the Great Awakenings.

The above is important because it shows one way in which religion was still relevant in the political scene in Canada. It was because of its position as a shadow establishment that it could effectively lobby itself out of a societal purpose by insisting that the purpose of government included providing a social safety net for its citizens. The churches engaged in these debates vociferously.

Thus it can be seen that religion, in the form of Christianity, was present in the political and public sphere (if, indeed, such spheres can be said to be separate) in a covert and in an overt way. Covertly (albeit not by intrigue or stealth, merely by historical fact) in the form of natural law theory which still informed the legislative and judicial processes and by its overt presence as a shadow establishment. It should be remembered, for future reference, that the shadow establishment in the guise of the church was itself composed of the elite, even as it purported to represent the voiceless and disenfranchised. The

establishment elite would not have been swayed by a shadow that was not equal in social prestige, at least not at that point in history.

The desperate human needs are lifted up and championed by many holding a religious worldview. The political discussions centre on human need and the balancing of this with human greed and the needs of a pre, concurrent, and post-war economy. Underlying these discussions are still the complex questions of the purpose of government and the place of religion in the public sphere. The social gospel movement was successful in helping to lobby for a greater social safety net and, as a consequence, saw the role that churches played in Canadian society shift. Their position as a shadow establishment remained, but the *raison d'être* of the institutional church had shifted. If the government gains a social conscience—what is the duty of a church that has seen itself as an advocate for the downtrodden in modern society? The churches had planted their feet firmly in the temporal world for the good of humanity's souls, but with the wars over and the Depression over and post-war affluence beginning to emerge, what was the purpose of a religious public voice?

This has bearing on environmental legislation because one of the things (among many) that the churches who had been involved in the social gospel movement did was to eventually become involved in the environmental movement. Before that, though, the churches, by virtue of their continued societal position as the shadow establishment were also partially responsible for the continuation of the voice of natural law theory (though the theory is by no means uncontested). This voice insists that law has a mandate to put forth a moral vision as well as functioning as a tool for order and justice.

Canadian Environmental Law

Muldoon asserts that "environmental law rests as much on ideas about democracy as on understandings about how to deal with the environment."[148] To understand the rise of

environmental law one has to understand that it is, at its essence, a grassroots phenomenon and hence reflects an idea of participatory, rather than purely representational, democracy. Muldoon highlights two especially important ideas of environmental law: the public welfare role of government and the importance of citizen participation in policy deliberations.[149]

Environmental law posits that governments in democracies have the responsibility to defend and advance public well-being and that regulation of the environment is integral to that well-being.

In the 1960's and 1970's grass roots movements formed in response to the issues of air and water pollution and, when it became apparent that the existing legal tools—*The Fisheries Act*, nuisance and negligence laws—were inadequate to provide for comprehensive and systemic environmental protection, these groups began to lobby for legislation that would be effective.[150]

The importance of citizen participation is integral to environmental law—"virtually all progressive steps in environmental law have required public initiative, public ingenuity, and persistent public pressure."[151] The environmental movement of the 60's has its roots in the anti—nuclear movements that developed in the aftermath of the Second World War and the Cold War. Where once there had been an assumption and an excitement that technology would be humanity's greatest achievement, the looming horror of nuclear warfare incited a movement to convince governments to divest themselves of the bomb. There were many offshoots of the anti-nuclear movement and the environmental, or ecological, movement was one of them and one of the most enduring.

Environmental laws were crafted in response to a rising recognition (heightened by awareness of the over-whelming destructiveness of the atomic bomb) that the natural world was also human habitat and, as such, needed to be cared for in a way that would not be

deleterious to human flourishing. Muldoon refers to the *Fisheries Act* and the tools of property law, criminal law and torts as "Phase One" in the history of Canada's environmental legislation.[152] "Phase two" are waste control and cleanup laws.

These laws were mainly localized, provincial laws and statutes. They defined the environment as air, water and land upon which human life depends.[153] The objective was to control harmful substances being deposited on land or into the water. The underlying assumption of this phase was that "the natural environment could be used to dispose of, dilute, and cleanse the waste produced by human activity, as long as sufficiently careful management prevented too much contamination at any one time and place. Legislation was a matter of fairly allocating nature's assimilative capacity."[154] It is in this phase that specific regulations regarding particular contaminates begin to appear, along with cleanup laws and regulation of human and industrial waste. The late 60's and early 70's also saw the enactment of comprehensive environmental legislation in Ontario, Quebec, BC and Alberta.

In the late 1970's and 80's it became apparent that the waste control laws did not address the problem of accumulation of toxic chemicals in the environment and the toxics control laws that characterize "Phase Three" were enacted. The hallmarks of this phase were recognition that environmental protection is a long term process and that toxic substances respect neither ecosystem nor political boundaries. The approach was preventative and anticipatory and included protocols and processes for identification and effective control of contaminants. These pieces of legislation were consistent with international laws and are thus outward looking in development, implementation and administration.[155] Federal and provincial levels of government were held to have the authority to regulate toxic substances and in 1975 the Federal *Environmental Contaminants Act* (the Canadian *Environmental Protection Act* (CEPA) was its successor) was passed. In 1997, the

267

Supreme Court of Canada in its decision regarding *R v Hydro Quebec* declared that CEPA was constitutional and that the federal government had the power to regulate toxic substances under the auspices of criminal law. The *Pest Control Products Act*, the *Transportation of Dangerous Goods Act* and the Canada *Consumer Product Safety Act* are all part of this phase of environmental law in Canada.[156]

Phase Four is the phase with which the next chapter will be concerned: Comprehensive approaches involving environmental assessment and planning and management regimes. The *Species at Risk Act* and the *Environmental Assessment Act* are but two pieces of legislation that emerge in this phase of Canadian environmental law. This phase recognizes the importance of international concerns as well as reflecting at least a surface acknowledgement that humanity might be more embedded in the natural world than modernity has heretofore admitted.

Conclusion

Since 1970, the field of environmental law has established itself and supported itself with more and more comprehensive legislation at both the provincial and the federal levels. Most of this legislation has been initiated at the grassroots level (although it should be pointed out that the various Non Governmental Organizations and citizen's groups are now as organized and sophisticated as the government agencies with which they negotiate) and so reflects a belief in the social imaginary that government cannot always be trusted to act in the best interests of the polis unless provoked to do so.

Environmental law walks a fine line between preservation and change. It has to be a tool of government, the polis and industry if it is to be effective. As Muldoon notes environmental law is "expected to protect resources and maintain biophysical and ecological systems that provide crucial services and facilitate advancements that will minimize waste

and enhance efficiency in resource use. It is dynamic/conservative; ambitious/careful; a broad societal contributor/an effective tool in its own realm."[157] In short, environmental legislation reflects the complexity of the Canadian political landscape in general. What is also apparent is that there is a dichotomy of modernity that is encapsulated in the negotiation of environmental legislation in Canada—that of religious and non-religious worldviews. The religious worldviews are apparent in the insistence by some environmental groups (mostly grassroots, mostly purporting to represent segments of society that are not perceived by the elite as having agency) that environmental legislation is inherently moral and embodies a worldview that sees humanity at the very least as stewards of the natural world and at the most as embedded in it. Religious worldviews are also apparent in the stream of natural law theory that is one tributary of the philosophy of law underlying Canada's legal system.

The non-religious worldview is apparent in the pragmatic and the positivist. The Lockean principles of private property and relative autonomy from government regulation and interference are apparent most clearly in the laws that have been enacted. There is a sense from this position that the right to economic prosperity trumps all else and that self-regulation contributes best to the general welfare. This last, of course, is most un-Lockean for both Grotius and Locke take it for granted that society will advance along the principles of mutual benefit. Of course, there are massive grey areas here and the sides I am describing are more of a spectrum than along two poles. The next chapter will provide a microcosm of the above, allowing for some further dissection of two complex and, at times, disparate points of view in relation to the development of the *Species at Risk Act*.

---

[1] Tort Law is a category of law that addresses a civil wrong for which a remedy may be obtained or a breach of duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction, Tort law is the branch of law dealing with such wrongs and includes sub-categories such as

negligence, nuisance and, in some circumstances, public health. Bryan Gamer, ed., *Black's Law Dictionary*, 7th ed. (St. Paul, MN: West Group Publishing, 1999).

2 Property law is a category of law that addresses the right to possess, use, and enjoy a determinant thing, such as a tract of land or chattel, and the right of ownership that arises from government establishment of private property and undue interference. Bryan Gamer, ed., *Black's Law Dictionary*, 7th ed., (St. Paul, MN: West Group Publishing, 1999).

3 Muldoon, Paul R, Alastair Lucas, Robert Gibson, Peter Pickfield. *An Introduction to Canadian Environmental Law and Policy in Canada*(Toronto, ON: Emond Montgomery Publications, 2009), 9.

4 Muldoon, 10.

5 Ibid.

6 At the time of this writing, the Harper government is proposing changes to the ways in which the CEAA is applied and over which applications they have jurisdiction.

7 *Canadian Environmental Assessment Act* (http://laws.justice.gc.ca/en/C-15.2/) Accessed 21 April 2010. See also Environmental Law in Ontario and Canada (Blake, Cassels& Graydon LLP)
 (http://www.blakes.com/pdf/EnvLawOntCan.pdf),9. Accessed 21 April 2010.

8 "It is through environmental assessment that aboriginal peoples, including ourselves and the communities we live in, learn of proposed projects that may impact our aboriginal interests," Ron Plain, spokesperson for the Aamjiwnaag First Nation and twenty (Ron Plain n.d.) (The Canadian Encyclopedia n.d.)other First Nations in a letter to Prime Minister Stephen Harper dates 22 April 2010.
(http://www.ctvbc.ctv.ca/servlet/an/local/CTVNews/20100422/harper_letter_100422/20100422?hub=BritishColumbiaHome) Accessed 22 April 2010.

9 The Canadian Encyclopedia
 (http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0000043)Accessed 20 April 2010.

10 Black's Law Dictionary, *supra*, s.v. "public law".

11 Ibid.

12 Ibid.

13 Ibid.

14 In essence, this is because the courts are bound strictly to the rules of evidence and to the rules of law. This is so that a court decision can be seen to be founded upon tangibles rather than on the arbitrary whim of the judge. (For more on this see David Dyzenhaus and Michael Taggart "Reasoned Decisions and Legal Theory" *Common Law Theory: Cambridge Studies in Philosophy and Law*. Douglas E. Edlin, ed. (Cambridge: Cambridge University Press, 2007), 162.

15 Sessional Papers Volume 11. Second Session of the Sixth Parliament of the Dominion of Canada, 1888. No. 1 Precis Writing. Friday, 11th Nov. 1887, from 10:30am to 12:30pm. *Answer of the Canadian Minister of Justice to the contentions of the American Ambassador in regard of the proper interpretation of the Fishery Treaty of 1818, December.* 51 Victoria Sessional Papers (No. 12B) A. 1888, 38-40.

16 The history of the Act is, of course, more complex than this. For a concise exploration of the development of the *Act* see Kathryn Harrison, *Passing the Buck: Federalism and Canadian Environmental Policy* (British Columbia: UBC Press, 1996), 128-133. See also "Canadian Environmental Protection Act" in *Conservation and Environmentalism: An Encyclopedia*. Robert Paehlke, ed. (Routledge: London, 1995). See also, David Vanderzwaag and Linda F. Duncan, "Canada and Environmental Protection: Confident Political Faces, Uncertain Legal Hands." In *Canadian Environmental Policy: Ecosystems, Politics, and Process*. Robert Boardman, ed. (Oxford: Oxford University Press, 1992).

17 Whited, Tamara L. *Forsts and Peasant Politics in Modern France*. (Yale University Press: New Haven, CT, 2000)

18 See **R. v. Hydro-Québec**, [1997] 3 S.C.R. 213. In short, the Supreme Court of Canada held that the Canadian Environmental Protection Act constituted criminal law.

19 Muldoon, 9.

20 Muldoon, 11.

21 It has been argued that environmental issues are so important at this point in human history that the federal government should be allowed to make sweeping and binding laws despite Provincial government objections by utilizing the 'peace, order and good governance' power. However, as Muldoon points out, the Supreme Court of Canada considers environmental protection as an aggregate matter and this precludes use of that power in this instance., 21.

22 Ibid., 20.

[23] David R. Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy,* (Vancouver: UBC Press, 2003), 11.

[24] J. Peter Meekison, Roy J. Romanow, and William D. Moull, *Origins and Meaning of Section 92A: The 1982 Constitutional Amendment on Resources* (Montreal: Institute for Research on Public Policy, 1985).

[25] Ibid.

[26] However, as Boyd points out, there is no onus on the provinces to craft environmental legislation at all. Since the provinces constitutionally have a great deal of power when compared to the arrangement in the United States. There, states can be required by federal law to conform to national standards. In Canada the federal government cannot always require such compliance, as it only has constitutional power over specific portions of the environment. The requires a great deal of negotiation and capitulation when attempting to resolve environmental concerns. See Boyd, Chapter 8, "Systemic Weaknesses". See also Harrison, *Passing the Buck.*

[27] Muldoon.

[28] Muldoon, 21.

[29] Ibid., 24.

[30] Billy Bragg, "Rotting in Remand." from *Victim of Geography* (A-Play Collection: UK, 1997).

[31] To be sure, natural law is still seem by some people and systems as having been "endowed by one's creator" as is stated in the American Declaration of Independence. However, the concept of natural law and/or rights does not rise or fall due to the presence or absence of a divine creator. God, in this paradigm, is theoretically incidental.

[32] Michael Stolleis, "The Legitimation of Law through God, Tradition, Will, Nature and Constitution." In *Natural Law and Laws of Nature in Early Modern Europe: Jurispridence, Theology, Moral and Natural Philosophy.* Lorraine Daston and Michael Stolleis, eds. (Surrey: Ashgate Publishing Ltd, 2008),49.

[33] Ibid.

[34] *A Secular Age.* 114.

[35] Dorothy L. Sayers. *Gaudy Night.* (New York: HarperTorch, 2005).

[36] Charles Taylor, *Sources of the Self: The Making of the Modern Identity.* (Cambridge: University of Cambridge Press, 1989), 267.

[37] Taylor deals with this extensively in *A Secular Age* but a pithy commentary is found on pages 294-295.

[38] This is not, of course, to argue that Bacon himself was proposing a Deist or even Godless position. For insight into Bacon's theological conception for scientific method and theory see James J. Bono, "The Two Books and Adamic Knowledge: Reading the Book of Nature and Early Modern Strategies for Repairing the Effects of the Fall and of Babel." In *Nature and Scripture in the Abrahamic Religions: Up to 1700, Vol 1.* Jitse M. van der Meer and Scott Mandelbrote, eds. (The Netherlands: Koninklijke Brill:, 2008), 317-325.

[39] Taylor, *A Secular Age*, 292.

[40] See Friedrch Steinle "From Principles to Regularities: Tracing 'Laws of Nature' in Early Modern France and England" in Daston and Stolleis, 216, in particular. Steinle points out that Bacon himself discusses natural law using the legal realm as his point of comparison. In this he uses common law, which draws authority from tradition and custom rather than from God- thus establishing, in part, a way of conceiving natural law as a term devoid of theological connotations.

[41] Bearing in mind, of course, that the thought of God not having established those laws Godself was not at all prevalent. I am arguing only for the door opening to that possibility being thinkable on a broad societal scale.

[42] The entire subject of the philosophy of laws in nature and of natural law is vast and an important component in early modern history. For further elucidation see Daston and Stolleis; also Bono; as well, "The New Science and the Via Negativa: A Mystical Source of Baconian Empiricism" In *Francis Bacon and the Refiguring of Early Modern Thought:Essays to Commemorate the Advancement of Learning (1605-2005).* Julie Robin Solomon and Catherine Gimelli Martin, eds. (Vermont: Ashgate Publishing Co, 2005).

[43] Bono., 299.

[44] Taylor also points out that a shift also occurs in "…our background understanding of the human epistemic predicament…(where)…God Is not essential to the very framework of their lives, but an entity (albeit and important one) which we have to *reason towards* out of this framework." *A Secular Age.* p. 293-294.

[45] Ibid., 294.

[46] This conception of modernity is, of course, very thin. I mention it in order to argue later on that a post-modern conception of fluid boundaries and inter-relatedness is hampered in the legislative arena by the persistence of the modern need for categorization and taxonomy.

[47] One need look no further for an example of this than the history of the mismanagement of the north Atlantic cod fishery. The dire state of the fishery was discovered as early as the late 19th century and essentially ignored, largely on the basis of short-term economic need.

[48] Justinian. *Digest* 1.1.3.

[49] Etymologies (5.4); directed to the reference by

http://faculty.cua.edu/pennignton/CanonLaw/NatrualLaw.htm. Accessed 19 May 2010.

[50] Ibid.

[51] Ibid.

[52] Hugo Grotius, *The Rights of War and Peace,* A.C. Campbell, trans., (Washington & London: M. Walter Dunne, 1901), Book I, Introduction, paragraph 10, 21.

[53] Ben A Rich, *Strange Bedfellows: How Medical Jurisprudence Has Influenced Medical Ethics.* (New York: Kluwer Academic/Plenum Publishers, 2001), 37.

[54] Taylor, *A Secular Age.,* 126.

[55] Taylor, *A Secular Age.,*423.

[56] Ibid. 447.

[57] For more on this there is, of course, *The Protestant Ethic and the Sprit of Capitalism* by Max Weber. The literature regarding Weber and his theories regarding Puritanism and capitalism are, of course, vast. Although somewhat dated, "Beyond Lenski: A Critical Review of Recent "Protestant Ethic" Research" in the *Journal for the Scientific Study of Religion* 12 (1973), 141-155 gives an adequate overview of some of the basic controversies—including the ever-present discussion regarding the distinction between Calvinist and Puritanical thought. In addition, Richard Münch makes some interesting observations regarding Weber and Protestantism in *The Ethics of Modernity: Formation and Transformation in Britain, France, Germany and the United States.* (New York: Rowman & Littlefield Publishers, Inc., 2001) Chapter 2 "From Ancient Judaism to Ascetic Protestantism"

[58] Geraint Parry, *John Locke.* Vol. VIII of "Political Thinkers." Gerraint Parry, ed. (UK :George Allen & Unwin, Ltd, 1978), 50.

[59] John Locke, *Two Treatises of Government.* Peter Laslett, ed. (Cambridge: The Press Syndicate of the University of Cambridge, 1988), 102.

[60] Ibid.

[61] Ibid., 51.

[62] Ibid.

[63] Ibid., 289.

[64] Ibid.

[65] Ibid.

[66] Ibid.

[67] Snyder, David C. "Locke on Natural Law and Property Rights" *Canadian Journal of Philosophy,* 16:4 (December 1986),723-50.

[68] Taylor, *A Secular Age*, 690.

[69] Ibid., 127.

[70] Ibid. Taylor also goes on to enumerate other theories of social order that arose at the time and which are also important in understanding the rise of modernity. However, that is too broad for the purposes of this study, as compelling as it is to wander in the garden of historically bright images.

[71] Ibid., 129.

[72] Ibid., also, Locke, John. *Second Tretise of Civil Government*, Chapter 5.

[73] Ibid.

[74] Snyder, Part III "Natural Law and Property".

[75] Ibid., 130.

[76] Again, these are issues that, in part, comprise the foundations of Western liberal democracy-however, my focus is somewhat narrower than that.

[77] Münch, 2.

[78] This last is an important point, for Locke is often interpreted outside of his religious context. For more, see John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government'.* (Cambridge University Press, 1990). esp. pp. xi-xii. See also Steven M. Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution.* (Raleigh, NC: Duke University Press, 1990), Chapter One, "The Historiographic Revolution: The Rise of "Cato" and the Decline of Locke in American Revolutionary Thought."

[79] *Chapters from The Agrarian History of England and Wales: Volume 3-Agricultural Change: Policy and Practice*, 1500-1750. Joan Thirsk, ed. (Cambridge: Cambridge University Press, 1990), 54-55.

[80] Statute of Merton 20 Henry 3. c. 4.

[81] Thirsk., 55.

[119] Thirsk., 56-57. Of course, not all of the enclosures were greeted peacefully. For a lively discussion of the dissention in the 13th century, see Dyer, Christopher. "Conflict in the Landscape: The Enclosure Movement in England, 1220-1349" *Landscape History*, 29 (2007), 21-30.
It is also important to note that during the time of the Tudors, a strong anti-enclosure movement existed largely due, in part, to the unease the government felt in the rise of unemployment caused by enclosure and conversion from arable to pasture.

[82] Ibid, 60-61.

[83] Ibid., 61

[84] For speculation regarding myriad motivations behind the Enclosure Movement, see Roger J.P Kain., John Chapman and Richard R. Oliver, *The Enclosure Maps of England and Wales 1595-1918*. (Cambridge University Press: Cambridge, 2004) 1-3.

[85] *Reports from Committees: Eight Volumes*. By The Great Britain House of Commons. Session 7 February –6 July, 1865. "Open Spaces (Metropolis). p. xxi, paragraph 24.

[86] "The Abolition of Feudal Tenure Act of 2000," quoted in "Farewell to Feudalism." By David Sellar in *Burke's Peerage and Gentry*. www.burkespeerage.com/articles/scotland/page14e.aspx Accessed 18 June 2010.

[87] It is impossible not to draw parallels here to the Biblical injunction against harvesting the corners of one's fields so that the poor might be able to gather sustenance from the landowner's bounty. (Leviticus 23:22)

[88]Obviously there were baron who were at least being perceived as not leaving enough land in common or the stricture would not have been needed. My point is that a societal ideal or expected norm is being spelled out in the Statute.

[89] Thirsk, 56-61.

[90] Taylor speaks to this obliquely when he discusses pre-modern social imaginaries. See *A Secular Age*.,164.

[91] To be clear, I am not assigning a value judgement to this privileging-it is merely historical fact.

[92] For more on this connection see "Rediscovering America: the *Two Treatises* and Aboriginal Rights" in James Tully, *An Approach to Political Philosophy:Locke in Contexts*. (Cambridge University Press: Cambridge. 1993).

[93]Grotius' views were not always shared by his contemporaries. For more discussion on that point see Ibid.

[94] The entire text of which was not published until the 19th century-the portions referred to here are from *Mare Liberum (Freedom of the Seas)* which was published anonymously by Grotius in 1609. See: http://www.san.beck.org/GPJ13-InternationalLaw.html#3 Accessed 21 June 2010.

[95] Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*. (Cambridge University Press: Cambridge, 2002).

[96] Grotius, *De Jure Praedae Commentarius*. Gwladys Williams, trans. (Buffalo: William S. Hein, 1995). 315.

[97] Keene, *Beyond the Anarchical Society*. 50, n. 30.

[98] For Taylor's discussion regarding Neo-stoicism which begins with Lispsius, see *A Secular Age,* 115-120.

[99] Taylor, *Modern Social Imaginaries.*, 41.

[100] Vitoria, *De Indis et de Jure Belli,* 139.

[101] Ibid. See also Borch, *Concilliation*., 192.

[102] Borch, *Concilliation*., 195.

[103] Merete Falck Borch,. *Conciliation, Compulsion, Conversion: British Attitudes Towards Indigenous People, 1763-1814*. (Rodopi B.V.:Amsterdam, 2004).,192.

[104]Keene, 3.

[105]Grotius also crafts an important precept by asserting that the individual in a state is akin to the sovereign state his or herself and has the same rights to defend his or her property accordingly. This translated into a defence of private companies also having that sovereignty, a point which was not lost on the Hudson's Bay Company in their dealings with Aboriginal nations. A good treatment of Grotius' ideology along these lines can be found in "Hugo Grotius" Chapter 3 in Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant*. (Oxford: Oxford University Press:, 1999) 78-108.

[106] Grotius, Hugo. "The Rights of Treaties" Part VIII. *The Rights of War and Peace: Including the Law of Nature and of Nations.*

[107] Keene, 6.

[108] Ibid.

[109]Ibid.

[110] Ibid., 7.

[111] Miller, J.R. *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada.* (University of Toronto Press: Toronto, 2009)., 105.

[112] Grotius, Hugo. "The Rights of Treaties" Part VI. *The Rights of War and Peace: Including the Law of Nature and of Nations.*

[113] Miller., xi.

[114] It is important to note, however, that the divisions that Miller makes between commercial treaties and peace and friendship treaties are distinctions that Aboriginals themselves do not make. They are "two sides of the same coin." Miller., 284-85.

[115] Miller, 4. Here, Grotius' claims of divisible sovereignty come to the fore, as the Hudson's Bay Company acts, for all intents and purposes, as the Crown's representative governing body.

[116] Wynn, 95.

[117] Ibid.

[118] Wynn, 95. See also Grant, John Webster. *The Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534.* (Toronto: University of Toronto Press. 1984). For a view that strengthens the notion that Aboriginal peoples of Canada were less swayed by the Christian message than has been previously thought see Blackburn, Carole. *Harvest of Souls: The Jesuit Missions and Colonialism in North America, 1632-1650.* (McGill-Queen's University Press: Montreal. 2004).

[119] Miller., 12.

[120] See Miller, 12-21.

[121] Wynn., 94

[122] Miller., 12-21, 284-85.

[123] Ibid.

[124] Keene, 56

[125] Both John Douglas Bishop ("The Lockean Basis of Iroquoian Land Ownership" *Journal of Aboriginal Economic Development* 1(1). p. 35-43. And James Tully ("Rediscovering America: The Two Treatises and Aboriginal Rights", in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge University Press: Cambridge, 1993) give compelling accounts and reasons as to why Locke is misused by historians and political theorists alike when it comes to private property and the application of Locke's theories. I agree with much of what each scholar has to say, in particular with the general thrust of their arguments. However, what I am most interested in here is not how things are being interpreted *now* so much as how Lockean notions of private property were adopted and applied by 17th, 18th and 19th century European governments and their agents to justify the appropriation of Aboriginal lands by non-native settlers.

[126] Keene., 56-57.

[127] Wynn, 82.

[128] See Chapter Two on Environmental History for a discussion of the slow incorporation of "Traditional Ecological Knowledge" into a broader notion of what is scientific.

[129] Miller., 185-87.

[130] Ibid., 188.

[131] Ibid. It should be noted that, though Aboriginals had agency in negotiations, it does not lessen the effect or the gravity of colonialism on Canada's Aboriginal peoples.

[132] Miller., 289.

[133] Ibid., 290

[134] Ibid., 105.

[135] Muldoon., 10.

[136] Muldoon,. 12.

[137] Canadian Encyclopedia "Environmental Law"
http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0002628.
Accessed 5July2010.

[138] http://law.jrank.org/pages/9976/Rylands-v-Fletcher.html Accessed on 29 June 2010

[139] See http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0002628 Accessed 5July2010.

[140] Mark Tebbit, *Philosophy of Law. (*London: Routledge, 2000) 17.

[141] Of course, it is more nuanced than that and the arguments over natural law and positivist legal theories rage on to this day.

[142] Muldoon.,. 46.

[143] Boyd., 200, see n. 39.

[144] I am trying to make a distinction here between the conservation movement and the ecological movement. The former was concerned with the preservation of the natural world (flora and fauna) and with the impact of humanity on the natural world; while the latter was concerned with the relationships of the entire ecosystem-humans included.

[145] Muldoon.

[146] It should be noted that the 1930 *Parks Act* does demonstrate awareness that there was a sense in which the government did have responsibility for the natural world. However, the development of the parks reinforces the contention of human disembeddedness with nature. The parks are not human habitat; they are portions of the natural world set aside not only for human enjoyment but to fulfill the mandate of stewardship. For good discussions regarding the history of Canada`s national parks and to gain a glimpse of the beginnings of the science of ecology that would eventually have a strong influence on the development of the environmental movement, see ``Changing Ecologies: Preservation in Four National Parks, 1935-1965.`` by Alan MacEachern in *Canadian Environmental History*, David Freeland Duke, ed. (Canadian Scholars Press, Inc: Toronto, 2006). For a pithy history of the environmental movement in Canada see Monte Hummel's article "Environmental and Conservation Movements" in the *Canadian Encyclopedia*.
http://thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0002627 Accessed 6 July 2010. See also Foster, Janet. *Working for Wildlife: The Beginning of Preservation in Canada.* (University of Toronto Press: Toronto., 1998).

[147] In some instances this was not untoward, J. S. Woodsworth for example, embraced socialism as his creed. See Mills, A. *Fool For Christ: The Political Thought of J. S. Woodsworth.* (Toronto University Press: Toronto., 1991).

[148] Muldoon,

[149] Muldoon.,. 13.

[150] Muldoon., 46.

[151] Muldoon.

[152] Muldoon., 46.

[153] The careful reader will note that, while there is a shift here in acknowledging human dependence upon the environment, there is not a reference to embeddedness and the assumption still is that nature is tool to be used more wisely than perhaps it had been in the past.

[154] Ibid., 47.

[155] Ibid., 49.

[156] Ibid.

[157] Ibid.

Chapter Five: The Species At Risk Act, Background and Case History

<u>Introduction</u>

This chapter provides a case study, a microcosm in which the important question of the relevance, import and existence of religious worldviews in the Canadian political landscape can be examined. In her book *Passing the Buck: Federalism and Canadian Environmental Policy*, Kathryn Harrison makes an argument from the field of public policy analysis that "societal influences on governmental strategies of action *and of inaction* within the federal system" are vital, and that "…institutional analysis cannot proceed independently of social analysis." [1] Dr. Harrison is making an argument in the context of a discussion on federalism as viewed through the lens of environmental policy. However, her observation is congruent with my thesis—most particularly with the goals of this chapter. It is my contention in this section that social analysis cannot be fully informed without consideration of the religious worldviews inherent in underlying legal, institutional and personal philosophies in the Canadian political landscape. In short, a useful social analysis cannot make the assumption that religious worldviews are not present in myriad ways in discussions regarding public policy and legislation. That being said, it should be noted from the outset that the first part of this chapter will be more (in fact, mostly) concerned with laying a foundation that concerns policy and legislation more than it does religion. It is necessary to set this foundation so that the reader has an adequate grasp of the context in which religious worldviews and their impact on the relevant legislation and policy will be examined.

The aims of this chapter are to show how religious worldviews are present (in a general way) in the environmental policies of a government, in this case, the federal Liberal governments between the years of 1993 and 2004—when the *Species at Risk Act* (SARA)was first conceived until its eventual Royal Assent into law. This portion of the study will also

show how religious worldviews were reflected in the process of negotiation, the eventual composition of legislation (SARA, specifically) and in the aftermath—discussions, critiques and implementation challenges. I will begin with a brief discussion regarding policy in general and the Liberal Party's stated environmental policy in the election of 1992 along with some observations regarding the implementation of that policy in the form of internal audits and external critics. The study will then explore the context in which SARA was first proposed—the United Nations Convention of Biological Diversity—and the ensuing story of how SARA came to be, this portion includes an in-depth exploration of the religious worldviews of two of the most prominent people associated with the process of SARA becoming law, The Honourable David Anderson, former Minister of the Environment under Jean Chrétien and Elizabeth May, past president of the Sierra Club Canada and current leader of the Green Party of Canada. This portion will include an analysis of *SARA* in the context of discussion Mr. Anderson and Ms. May. The chapter concludes with an analysis of the ways in which SARA has or has not been implemented and the role (if any) that religious worldviews played in that part of the story. It is hoped that by telling and analyzing the story of SARA and two of the characters at the heart of its plot it will be shown that religious worldviews are extant and, when acknowledged as overt components of the political whole, beneficial rather than detrimental to the Canadian political landscape.

Methodology

There are many ways to approach the type of analysis undertaken in this study. The study could have been done without any interviews, relying entirely on the texts of committee hearings and reports issued from outside sources, such as the Sierra Club of Canada's annual Reports on Rio (which will be discussed below). However, I was interested in underscoring the human element of the policy and legislative process in order to drive

home the point of religion not being detrimental to the legislative process in general and to this one, specifically. For this, I decided, it was necessary to conduct interviews with persons involved in the process. Since the interest in this component of the study was the human element—in the stories and backgrounds that people brought to this legislation—a qualitative rather than a quantitative approach was employed.

The next decision to be made was whether to concentrate on breadth or on depth in terms of soliciting input from persons involved in the legislative process under scrutiny. Theoretical sampling was to be used. As Janice M. Morse explains, "A theoretical sample is the deliberate seeking of participants who have particular knowledge or characteristics that will contribute data to categories with inadequate data, referred to as *thin* areas of analysis."[2] The category that was thin was that of the personal approach a person with a religious worldview might bring to the policy and/or legislative table and how deeply that religious worldview might or might not become embedded in both process and policy or legislation. Theoretical sampling can provide both breadth and depth, especially as the interviews progress and categories begin to emerge, but in the interest of brevity, it was felt that only one or the other could be employed.

Both breadth and depth have merit. Breadth affords a comprehensive picture with myriad perspectives and certainly provides a larger sample size from which to draw conclusions. There were a plethora of parties involved in the crafting of the *SARA* and the process concerning its crafting and proclamation was far enough in the past to have enabled me to gain access to more than a few of the players. One of the drawbacks of breadth, however, is that it can preclude the ability of the researcher to draw and report on in-depth

conclusions regarding individuals—especially given the limited space for this component of this particular project.

The disadvantages of depth were that it would necessitate smaller sample sizes and therefore would not have the numbers to allow me to extrapolate my findings in a broad, general way. However, depth could serve as a model for further study and more broad analysis by suggesting categories for comparison and contrast. As well, depth could be facilitated by unstructured interviews with a limited number of players who were willing to speak with me not only in regards to policy and legislation and political strategy, but on a more personal level in regards to their individual religious worldviews and histories. Obtaining the permission and trust required of subjects for unstructured interviews could be prohibitively difficult, given that some of the people integral to the development of the *SARA* were still participating in public life.

In the end, three considerations were pondered before choosing depth over breadth: the breadth and scope of the study itself, the likely quality of interviews obtained from the perspective of either approach (breadth or depth) and, the amount of useable data that might be obtained.[3] The *SARA* was a fairly narrow topic to be studying, although the intertwining of environmental law and religion was not. However, since this component of the study was narrow, it was felt that a representative from two sides of the drama that was the composing, negotiating, and passing of the *SARA* would suffice to build the categories mentioned above. In a study that revolved entirely around the *SARA*, more samples would have been chosen.

The likely quality of the interviews was a difficult one to assess, but I was confident that I could obtain at least two quality interviews from players who were integral to the

process and who were, if not on opposite sides, at least came from two different perspectives regarding the *SARA*. My confidence stemmed from the fact that from 1998 until 2001, I was living in Ottawa and working at St. Bartholomew's Anglican Church as their Christian Education Coordinator and Youth Director. Mr. Anderson's children were part of the Sunday School and the Youth Group and Ms. May was (and is) a dedicated Sunday School teacher. Both were active, involved members of the parish. I was new to Canada at the time and initially unaware of the prominent positions Mr. Anderson and Ms. May held in their public lives. To me they were simply engaged parents and willing volunteers. However, as I became more entrenched in the parish, I began to gain knowledge of the "outside" lives of the parishioners and of the parents of the youth with whom I worked. From time to time, I had conversations regarding religion and the environment with both Mr. Anderson and Ms. May. I was also dimly aware of the conflict and tension that arose out of the negotiations regarding the *SARA*—as politics and environmental issues have always been two of my passions—although I was diligent in my efforts to remain neutral, as was my professional duty. Through my work at St. Bartholomew's, I developed a good relationship and an easy rapport with both individuals.

My professional relationship with Ms. May and Mr. Anderson was one reason that the *SARA* was chosen as the piece of legislation to analyze in this study. My relative familiarity with the story of the *SARA* and with two of the players and their religious worldviews seemed a good fit. In terms of choosing samples for interviews in the context of the story of the *SARA*, Mr. Anderson and Ms. May were ideal—they both had established religious worldviews, came from the same denomination but held disparate theological views, and were passionate about the environment while having very different anthropologies. In addition, they were both experienced participants in the Canadian and

International political landscape. That experience would afford, I felt, a wealth of information and insight in regards to how one integrated one's personal worldviews with one's job as a public steward. This experience, both in the realm of personal religious worldviews and praxis and with political landscapes, addressed the third criteria—the amount of useable data for the study. As was mentioned above, it is exceedingly difficult to get public figures to speak candidly in regards to personal views and values especially as they pertain to religion. I was confident that my relationship with Ms. May and with Mr. Anderson was based on enough trust that I would be able to ask personal questions regarding their religious worldviews and their early religious histories and receive responses that were more nuanced and in-depth than those I would have received from subjects with whom I had no relationship. This is not to say that qualitative analysis necessitates such a relationship, but to point out that persons in public life are quite often inured to probing questions and reluctant to speak about religion in any sort of meaningful way on a personal level.

One difficulty with qualitative analysis is that it is hard to know when one has acquired an adequate amount of data for one's purpose. The working rule is that of saturation—when no new data appear and, as Morse writes, "the researcher has 'heard it all'"[4] I conducted two interviews with Ms. May and two with Mr. Anderson. Interviews with Ms. May were in person and on the phone and interviews with Mr. Anderson were both via phone. The first interview with Ms. May lasted approximately 2 hours and each of the other interviews were approximately an hour each. Both subjects were asked to tell about their religious worldviews, describe their religious history and to talk about the development of the *SARA*. Saturation occurred, in terms of the *SARA,* in these interviews after two sessions with each of the subjects.

<u>Privatization</u>

At this juncture it might be prudent to mention the fine line that this study draws regarding the privatization of religion. Although it is defined clearly and discussed elsewhere in this study, an important clarification bears repeating here: it is part of the contention of this study that religious worldviews in the modern world of the 21st century cannot be categorized as privatized. Religious worldviews are integral to the myriad other worldviews that live in any given individual (always supposing this particular individual has chosen to embrace a religious worldview) but those religious worldviews are present in the public sphere or in the political landscape whenever that individual chooses to participate in said venues. Ms. May and Mr. Anderson may be quite careful to articulate their desire not to impose their personal religious beliefs on others but their religious worldviews underlie the work they do in and on behalf of the polis at large. In this sense, their religious worldviews are *not* privatized, but extant and operating in the public sphere and political landscape. Just how they are integrated will be discussed below after a brief definition of other terms used in this chapter.

<u>Policy</u>

Simply put, policy is a plan or course of action that is adopted by an individual or group. In terms of electoral politics, policies are developed by various political parties in part, to show the electorate what they can expect should that party be elected to power. Parties also use policies to determine and guide courses of action once the elections are over and the business of governing has begun. In a Parliamentary system, such as Canada's, the opposition theoretically uses their policy platform as a guideline for determining when to support or oppose the policies of the party in power.

<u>Conservatives, The Green Plan, and Rio: A Paradigm Shift Triumvirate?</u>

As mentioned in Chapter Four, Canada's environmental policies have traditionally been intertwined with economic concerns. Even the conservation movement that nurtured the science of ecology had a mandate that was more in line with preserving parts of the natural world for the purposes of tourism, fishing and hunting. This changed somewhat in the 1960's and 70's when a variety of grassroots environmental advocacy movements began to lobby for clean air and water in the face of increasing environmental pollution and a perceived unwillingness by industry or government to be proactive.

These grassroots movements were informed, for the most part, by the ecology movement—which viewed the world as a complex of systems, rather than as autonomous components of a finite whole. In religious terms, those movements that incorporated people and ideals of faith, the worldview embraced was a model of stewardship as opposed to a dominion/domination model. St. Francis of Assisi is often pointed to as the originator of the stewardship movement (although, as shown, this is not a completely accurate conception of Francis). Environmental concerns had occupied a portion of the theological community for quite some time but with Lynn White's essay on "The Historical Roots of Our Ecologic Crisis" in 1967, a fervent and rigorous academic discussion began that started to give firm historical and theological foundations to the environmental activism already extant in the Christian community. These movements are important for myriad reasons but one most pertinent for policy is that the arguments the groups made for clean air and water and for regulation of industry to counter pollution were arguments based in morality and public health—not on the premise of maintaining the integrity of natural resources for purposes of sustainable exploitation. As can be seen, this was a substantial shift in focus that highlighted a growing hostility between government and industry and environmentalists. Policy had traditionally been driven by a tacit agreement between natural resource industries

and government that unimpeded access to resources were necessary for the well-being of Canada as a viable, sovereign nation. The grassroots movements that rose up to lobby for stronger laws against pollution did not disrupt this agreement, but in many ways served to solidify it, creating, in essence, two distinct and adversarial camps, with government and industry united against environmentalists—each group seeing the other as intractable and as embracing social imaginaries that were detrimental to human flourishing. This shifted somewhat in the 1990's.

Another shift that is important to note is that of jurisdiction. In 1985, the Conservative government was compelled by a number of factors to increase the federal role in environmental issues, despite a stated preference for federal-provincial cooperation.[5] Harrison notes that Tom McMillan, the environment minister at the time, "…clearly envisioned a federal role that included federal unilateralism, thus going beyond the strictly supplementary role assumed in the past."[6] The Conservatives asserted a strong federal role, even after the election in 1988 with the new environmental minister, Lucien Bouchard stating that:

> If there is a special role for the federal government, it is the development of national environmental protection standards and practices. The very nature of environmental problems demands this. Too often, the solutions adopted to control polluting emissions or hazardous waste, for instance, differ from province to province…Ottawa must play a key role in the harmonization of standards and methods.[7]

Harrison's thesis is that increased federal involvement in environmental issues is strengthened only when the polls reflect an electorate that is profoundly concerned with environmental issues—Bouchard's statement certainly is reflective of such a government inhabiting such a reality. The courts had asserted the federal government's place in environmental regulation and at this point in time, Harrisons shows, the public was eager to

see federal involvement. As the recession of the early 90's began to take shape, however, the urgency of larger environmental concerns (acid rain, global warming, etc.) is taken on less and less by the rhetoric of the federal government and talk turns to what is being done internationally and what can be done in partnership with provinces and the private sector. It should be noted that the private sector increasingly comes to refer to industry and is not consistently inclusive of grass roots environmentalist movements who also see their influence wax and wane with the polls.

As mentioned above, a shift in Canada's environmental policy occurred in the 1990's when an attempt was made to first discuss environmental and economic issues comprehensively and also to move in a direction that was less reactive (i.e. environmental cleanup) and more proactive (i.e. a sustainable development model with regulation only a portion of the whole picture. This was aided, in part, by the newly minted (1989) *Canadian Environmental Protection Act* (CEPA) Enforcement and Compliance Policy which, among other things, promised that compliance with CEPA would be mandatory thus ushering in a change in policy, a 'radical shift in philosophy' from the 'gradual, negotiated compliance' that previous federal legislation had encouraged.[8]   In 1990, the Conservative government under the leadership of Brian Mulroney introduced the Green Plan, a five-year initiative designed to deal comprehensively with environmental and economical issues. The formulation of The Green Plan was complex and controversial with several governmental departments and cabinet ministers concerned about a "power grab" by Environment Canada.[9]   Roundly criticized by environmentalists and praised by the Alberta business community and the provinces, The Green Plan continuously stressed the need for federal-provincial partnerships (to the annoyance of the environmentalist groups who felt that their hard-won powers to force the federal government to flex its constitutional muscles in terms of the environment

was being eroded). The first plan to make a policy commitment to sustainable development, the Green Plan was a combination of environmental cleanup/protection and framework for sustainable development. "Sustainable development" in this context means a way of maintaining economic growth and natural resource exploitation while taking care not to decimate the very resources one is attempting to exploit. The Conservative effort attempted to steer away from unsustainability and a poor economy, calling the Green Plan an effort at 'planning for life.'[10] In a sort of three-pronged approach, the plan allocated funds for cleaning up past mistakes, growing industrial technologies and practices to promote pollution cleanup and sustainable development, and to develop programs to address "normative principles that shape decision-making systems in government and society." These societal and economic decision making systems (i.e. the systems whereby concern for and steps to ameliorate potential environmental degradation was sublimated in the face of perceived economic necessity) were identified in the earliest drafts of the plan (1989) as the root cause of environmental degradation.[11] Toner notes and Hoberg and Harrison agree that once the Green Plan was reviewed and amended by the Cabinet Committee on the Environment, it looked "less like a novel sustainable development strategy and more like just another environmental protection program."[12] What the Committee had done was to put the cleanup programs to the fore and the suggestions for a paradigm shift in societal and economic agendas aft, thereby addressing stated concerns of the electorate and subsuming a potentially difficult political position. Toner notes, however, that even thus reinvented, the Plan still marked a shift of sorts by moving away from an inordinate reliance on the heretofore favoured regulatory approach. Harrison remarks that The Green Plan was essentially a spending program that was composed heavily of "programs that make friends"

(i.e. national parks, local benefits and research centres) and innocuous spending commitments that "don't make enemies" (environmental monitoring and education).[13]

The Green Plan introduced to Canadians in 1990 was the plan taken to the Earth Summit in Rio and the plan had been to use Rio as a launching pad for Green Plan II, but that ambition was never fulfilled.[14] What did happen at Rio was a reflection, in part, of the further acknowledgement by government that myriad voices, not just those of government and industry, were entitled to, if not precisely a seat at the proverbial negotiating table, at least a full view of what was on the menu and some input into how it ought to be ordered.[15] All components of the Canadian contingent at Rio were invited to daily briefings by Jean Charest, then the Minister of the Environment. Although Environment Canada's enthusiasm for this 'increasing recognition of the need for transparency, accountability and inclusion in the way we make decisions relating to the environment,"[16] was strong, other departments did not share this zeal and the promise of inclusivity and transparency was not continued once the delegates reached their natal shores. However, the precedence had been set and it will be shown how environmental groups would harness this model of cooperation and negotiation and potential for productive cross-section dialogue in the long and often fractious path towards Royal Assent for SARA.[17]

Both Toner and Harrison have postulated that the Conservatives had political will to implement the Green plan but not the staying power because the agreements made at Rio and environmental issues in general faded from the 'top of mind' public opinion surveys as the economic recession deepened.[18][19] In short, the plan needed the impetus of the electorate because the government itself lacked a "strong ideological or emotional foundation" for implementation from within the party.[20]

Harrison refers to this period as "the second wave of environmentalism" in Canada, wherein the electorate once again evince a major interest in the environment, prompting a response at the federal level.[21] This is significant, for it illuminates the background against which SARA was negotiated. The environmental policies of the Conservative government in the late 1980's were driven by heightened public interest in the environment (most particularly in terms of air and water pollution) and were hampered by issues of jurisdiction that were reflective of other politically fraught developments in the same period (i.e. *The Meech Lake Accord*). Federal-provincial relations are key to environmental legislation in Canada and Harrison marks two important ways in which they changed after the first wave of federal legislation in the early 1970's. The first was that the provinces had "colonized their jurisdiction" and were resentful of federal interference. Jealous of their autonomy and concerned that federal environmental regulations put into place by politicians in Ottawa who did not have to pay the political price for loss of jobs and lack of economic investment would have deleterious results for their provinces, provincial politicians were antagonistic towards a stronger federal presence in environmental affairs.[22] Secondly, environmental groups had fought and won court cases that forced the federal government to acknowledge and enforce its position as major player in environmental affairs meaning that, among other things, "…federal and provincial governments no longer were able to resolve their disputes behind closed doors."[23] Thus, going into the 1990's, four players stood at the ready to embark on discussions of environmental protection and regulation, and economic development: the federal government, the provinces, industry, and environmentalists. Throughout the 1990's each participant would bring their particular bias to the negotiating table.

<u>The Liberals "Create Opportunity" in Black and White and Red All Over</u>

The Conservative government were defeated in October 1993 and the Liberals moved into government with the policy book, *Creating Opportunity: The Liberal Plan for Canada* (aka "The Red Book") clearly outlining the policy agenda for the foreseeable future. In opposition, the Liberals had criticized The Green Plan for not going far enough to effect a "fundamental shift in values and public policy".[24] The environmental policy that the Red Book advocated was, in essence, one that adopted converging economic and environmental agendas.[25] It took off from Rio and from The Green Plan and was intended, in part to institutionalizing sustainable development in government, society and industry. The stated policy attempts to veer away from regulation in favour of "preventive care" and also advocates for the above stated "fundamental shift" by creating a social imaginary in which the economic and environmental agendas were focussed on prosperity without environmental degradation or loss. In fact, the policy consistently insists upon sustainable development as a 'win-win' proposition. Another interesting aspect of the policy is the consistent promise to reform the structures and functioning of the federal government in order to facilitate the ensuing agenda

The Liberal environmental policy outlined in the Red Book of 1993 had four components:

1. "Keeping Canada's Promises" puts into place two arm's length governmental bodies (the Commissioner on the Environment and Sustainable Development under the aegis of the Auditor General's office, and the Canadian Environmental Assessment Agency) and promises an audit of policies and funding so that there is incentive for research and development that is pro industry and pro environmental sustainability.

2. "The Greening of Industry" addresses pollution prevention and energy conservation, the environmental industry—which it does little to define other than to make the statement that Canada is a "world leader in understanding the impact of industry on the environment"— and, renewable resources.[26]

3. "Building on Public Awareness" is the component most directed to the individual voter. It outlines a project that emerged from the National Round Table on the Environment and the Economy and was a proposal to create a national marketing campaign—which was likened to Participaction—"…to communicate the individual and collective actions needed for sustainable development." As well, it promises intervener funding and greater individual access to the courts, proposing to give individual citizens and environmental group's access to regulatory procedures. This section also addresses the phasing out of toxins and a commitment of sorts to cooperate with the Provinces and municipalities on carbon dioxide emissions while still maintaining a competitive economic base.[27] The policies outlined in this section also promise to complete the National Parks System by 2000 and to "protect in its natural state a representative sample of each of the country's natural regions, amounting to at least 12 percent of Canada."[28]

4. "International Leadership" is the final section on sustainable development and it deals mostly with the promise that, "…environmental security through sustainable development will be a cornerstone of Canadian foreign policy."[29]

The Red Book reflected both a pragmatic and a mythological approach to the environment. Using phrases such as "wise public investment"[30] and "integration with economic and environmental goals",[31] the policies described were intended to convey a message of fiscal responsibility and a keen sense of the importance of natural resource

industries to Canada's economic well-being. This is especially strong in the section on natural resources (as opposed to the section dedicated to the environment and sustainable development) where policies for "simpler environmental and regulatory policies, and attractive taxation regimes" are emphasized along with the assertion that government has the responsibility to be "more supportive" and "collaborative" with industry and "must help in the environmental sphere by dealing with the problem of overlapping jurisdiction over environmental standards, regulations, and assessments".[32] The settlement of Aboriginal land claims and a streamlined system of assessment, regulation and land access are earmarked as important environmental components of the Liberal natural resources policies. It is interesting to note that the language used in the section on Natural Resources is clear, concise and business-like. Discussion of the conservation of fish stock, for example mentions "effective conservation measures" for the purposes of sustaining the fisheries industry.[33] This contrasts with the language present in the section on environment and sustainable development.

An exegesis of Chapter Four of The Red Book of 1993 is akin to untangling the myriad voices and sources of the Pentateuch. There is the brisk, rational, business-like persuasion of the source that promises to "establish a framework in which environmental and economic policy signals point the same way;"[34] and which observes that, "(e)nvironmental liability concerns have begun to affect the functioning of Canadian capital markets. A solution must be sought that does not burden parties who exercise due diligence with undue liability…"[35] This is the same voice found in the section on Natural Resources, the source I shall refer to as "P" for pragmatic, practical and prudent.

There is a second voice that is particularly apparent in Chapter Four and it is a voice that goes beyond election hyperbole—although it certainly does indulge in that from time to time. This voice uses the words "vision" and "moral" and reflects a stewardship approach to sustainable development and the environment that, it is believed, is meant to resonate with that portion of the electorate for whom the environment is not merely resource, but something over which humanity has an obligation that goes beyond economic need. Thus, the "E" source (ecological, environmentalist) in the Red Book makes statements like "(t)he vision a Liberal government will follow incorporates the qualities of thrift, collaboration, and a special physical and spiritual tie to the land that are important to the Canadian identity."[36]

The two voices represented in Chapter Four of the Red Book are interesting for the purposes of this study in part because they indicate a tacit acknowledgement or at least a perception of the environmentalist component of the electorate to whom the policy purports to speak. The stated policy walks a delicate line between a dichotomy of interests—industry/government and environmentalists and, while it purports to be advancing an intertwining of needs and goals, it also by its very language facilitates the dichotomy. The pattern of the document is such that a grand vision statement is put forth by E (with some snippets, in red, by P) to be followed, as the document narrows to details by statements that are often almost wheedling in tone aimed at industry and those more inclined to a "P" sort of vision: "Managing economic development and human growth without destroying the life-support systems of our planet demands of Canadians a fundamental shift in values and public policy. We must aspire to be less wasteful of our natural and human resources, to place greater worth on the welfare of future generations, and to take pride in maintaining a healthy, productive earth[37]   followed in the next paragraph by more assertive use of "P": "…a vision of a society that protects the long-term

health and diversity of all species on the planet, promotes energy efficiency and clean technologies as the basis of a competitive industry, and wisely manages and conserves its renewable resources."[38]

Now, of course it is imperative when crafting a policy document for the entire electorate that the document be as all encompassing of a plethora of interests as possible without seeming to be obsequious in the extreme. However, the tone of the rest of the Red Book is that of "P". "E" is only adamantly extant in the section on sustainable development. This is so, in part, because the public's interest in and approval of environmentalist groups was particularly high when the book was crafted.[39] Thus, it was necessary to capture both the interest and trust of industry and environmentalists with the same document. The Red Book acknowledges the agreements made at Rio while also attempting to convince industry that their interests would also be served by this societal shift. But what is interesting here is that the "E" source uses language that is often associated with religious worldviews: "vision", "spiritual", "moral", "wisdom". The more concrete language is saved for the "P" source: "sustainable management", "converging agendas", "promotion of efficiency" "competitiveness".

The type of language that is associated with "E" in the Red Book is significant, for it betrays an assumption that environmentalists are more apt than not to hold a worldview that is, if not specifically religious, at least open to that way of framing reality. There is nothing inherently wrong in that assumption, it is true that religious voices were up front and present at the Earth Summit in Rio and that voices advocating for environmental stewardship had become steadily stronger and more numerous throughout the 70's and the 80's. This subtle equation of environmentalists with religious worldviews becomes significant when it is

realized that, as the economic recession of the early 90's became more pronounced and public awareness of and urgency for environmental issues eroded, environmentalists as individuals and as groups had to fight not only for a place at the table but for the acknowledgement by government that their presence and their input was legitimate. The dichotomy that is personified in the Red Book becomes more pronounced in practice. In addition, it could be argued that one reason that the environmentalists were perceived as being outside the political norm in terms of helping to formulate legislation and critiquing policy was that they were perceived by the ruling elite as having a predilection for religious worldview, something that, as has been seen, is considered to be outside the pale for Canadian politics. Of course, it is ludicrous to suggest that all environmentalists and environmentalist groups have religious worldviews or, even if they do, that those worldviews are at the fore when policy is being determined. But it is clear in the language of the policy handbook that such worldviews were seen by the elite as integral to the thought processes of these groups. And it has also been demonstrated that the elite in Canada's political landscape are wary of religion in the public sphere. This being said, it is not untoward to postulate that the voices of environmentalists were viewed with suspicion bordering on hostility not only because of a perceived agenda that was seen to be at odds with short-term economic prosperity (the Liberal government itself having argued that long-term prosperity lay in sound environmental policy) but also because environmentalists were perceived as opening the dialogue in the public sphere up to voices (i.e. religious worldviews) that the elite believed were detrimental to the smooth operation of government and society.

The overall tone of the policy is one of enthusiasm for the potentially lucrative economic rewards that may emerge from a shift in focus from an economy based on natural resources exports to one based on "the research, development, and implementation of clean

and energy-efficient technologies, renewable energy use....a host of new investment opportunities."[40]   It must be acknowledged, however, that the projected awareness of responsible environmental stewardship does not ring hollow. The policy as written conveys a positive sense that sustainable development is not only prudent and potentially lucrative, but responsible as well, "Sustainable development—integrating economic with environmental goals—fits in the Liberal tradition of social investment as sound economic policy.   Preventive environmental care is the foundation of the liberal approach to sustainable development; it is a wise public investment like preventive social policies and preventive health care."[41]

Couching environmental stewardship in the terms of prudence and investment in addition to harkening to the very popular national healthcare system placed the Liberal policies in a position calculated to gain agreement from all sides. To reiterate the policy position, the Liberals released a vision document called "A Guide to Green Government" in June 1995.[42] This document was signed by the Prime Minister and by cabinet and state that, "achieving sustainable development requires an approach to public policy that is comprehensive, integrated, open and accountable. It should also embody a commitment to continuous improvement."[43] This document is important because it provided a framework to guide the preparation of the now-legally mandated sustainable development strategies (SDS) that each governmental department was to design and implement. The Office of the Commissioner on the Environment and Sustainable Development was created at this time to monitor the SDS's and to report on them to Parliament.

The Liberal environmental policy of the early 1990's was more cautious than the Conservative policies in the mid to late 1980's. This correlates with the salience of the

environment in the minds of the polis at the time.[44] Stated policies leaned heavily on the

desire to balance the concerns of the four stakeholders named above.   What is very

interesting is that, in addition to the Red Book being a self-proclaimed collaborative process,

it also builds heavily on the more popular aspects of Rio, using language from the

agreements to reach out to the public, cementing the perception that Canada was a world

leader in issues of the environment.   They revised and proclaimed the *Environmental

Assessment Act* which was popular with the electorate and built upon the court cases fought

by environmental groups forcing the federal government's hand in intervening with

provincially sanctioned projects.[45] As Harrison points out, the establishment of the *Act* and

the agency was also a means by which the federal government could re-gain control of their

discretion to intervene with the provinces on environmental issues[46]—control that had been

substantially weakened by court decisions in cases brought forth by environmental groups.

They promised to invest in "environmental industry" citing new methods of manufacturing,

research and development, capitalizing on Canadian experience in cleaning up environmental

waste and alternative energy sources as ways in which the economy and the environment

could be served this was a nod to the provinces and reassurance that federal funds would be

available to mitigate other aspects of environmental policy that could prove to be

detrimental. This component also linked in with foreign policies, as trade and environment

became more and more closely linked.[47] The promise to pour money into a public relations

campaign gave a nod to the promises made by countries at Rio and also was meant to

reassure environmentalists that the Liberal government was sincere in its stated policies.

Assertion of Canada's intention to be present at the international level and the government's

awareness that security was, in part, an environmental issue re-framed the traditional role of

environmental awareness at the federal level—which was seeing the protection and

conservation of the natural world as a component of maintaining sovereignty. In addition, the international component also has a trade aspect to it. The 1994 foreign policy review argued that "domestic policies on environment, trade, and development assistance have an effect on international security by influencing international developments. Building shared security…involves creating a long-term international trade and investment agenda that focuses the World Trade Organization's attention on issues such as agricultural export subsidies, labour standards, anti-dumping actions, and other domestic practices that harm the environment."[48]

Grand statements and attempts at diplomacy aside, the environment was not the primary focus of the federal Liberal government from 1993 to 1997 when Jean Chretien called a second election. Balancing the budget and paying down the national debt were the focus, with the 1995 referendum in Quebec also taking some care and attention. Also, as mentioned, interest in environmental issues were waning in the perception of the public as the recession and federal government cutbacks took hold, and Quebec separatism loomed large in the national conversation. By the time an election was called in 1997, however, the budget was well on its way to being balanced (indeed, in 1998 there was a surplus) and Chretien and Paul Martin, Minister of Finance, were quite popular. The 1997 Red Book was titled, *Securing Our Future Together*. The section on the Environment is titled "Environmental Stewardship" and the language and policies are vastly different from those outlined in the first Red Book in 1993. Gone is the dual source. In its place is the "P" voice, steady, reassuring and solid. Gone also is the language of spirituality and morality. In its place are the terms "heritage", "shared history", "true and worthy stewards", "conservation", "proud" and most forcefully—"Canadians". It is a document and a section calculated to address a country recently on the brink of dissolution. It also reflects a government well aware of the

fact that the environment was not at that point high on the public's list of important national issues, but unemployment, the economy, health care and national unity were.[49] In the 1997 Red Book, the policy spelled out is one of careful diplomacy. Emphasis is placed on traditional areas of federal involvement: National Parks, species and marine conservation, air and water pollution, public awareness campaigns.[50] The areas covered are expanded in the 1997 Red Book. They are:

1. "Custodians of Wilderness and Wildlife": As mentioned above, a traditional area of federal jurisdiction, this section concentrates on conserving the National Parks and makes mention of the proposed Species at Risk Act.

2. "Shifting to Sustainable Development": In the previous Red Book, sustainable development was the cornerstone of Liberal environmental policy. In this edition, many of the same goals are articulated, but the ambitions are somewhat diluted and emphasis is on changes that the federal government can make within.

3. "Science and Technology for Sustainable Development": The Liberal policy again is to provide research and development monies at home and abroad to facilitate the growth of environmental industry.

4. "Strengthening Environmental and Health Science": This component of policy is new to the Red Book and is most likely designed to speak to that portion of the polis for who healthcare was a looming concern. This component of the policy speaks to research into toxic substances and supporting the training and employment of scientists interested in environment and health.

5. "Pollution Prevention": This component builds on earlier policy by proposing amendments to the CEPA and asserting that prevention is cheaper in the long run than is cleanup. Again, the emphasis here is on what the federal government

can do to improve itself. There is a careful delineation between what is federal and what is not.

6. "International Leadership": In 1992, this section discussed security and the exporting of Canadian industrial knowledge, this section in the 1997 Red Book has a different emphasis. In the 1997 version discusses the fact that "many environmental problems cross borders and so must be dealt with on an international level."[51] This is the first mention of crossborder contamination and it is significant that it is firmly ensconced in the "international" section of the chapter. Scientific cooperation, Canada's reputation as an "honest broker" and "environmental expertise" are other factors woven into this component of environmental policy.[52]

7. "Climate Change": Climate change did not receive its own section in the 1992 Red Book although it is mentioned a couple of times in the context of controlling emissions and international agreements. In 1997, climate change is defined and acknowledged as being real and poses a threat to "…Canada's ecological and economical well-being."[53] It is one of the longer sections in the policy statement. "Thoughtful and effective action" is called for and the policy put forth incorporates research and development, scientific study and an agreement to reduce emissions. In addition, the policy clearly states that "…we have a responsibility as a technologically advanced nation to take progressive measures and play a leadership role, both domestically and internationally…it is through the example we set and the efforts we make that we gain the credibility and authority to encourage other nations to take similar action." By this phrasing, the policy refutes other arguments, both domestic and international,

that developed nations cannot be expected to cut their emissions if developing nations will not do the same. The necessity of working with provincial governments on climate change is also touched upon, touting a recent agreement between governments to work together to "achieve the highest standards of environmental quality."[54] This section also announced the formation of a "Youth Round Table" to advise the Minister of the Environment.

Although the heading "Environmental Stewardship" can be construed as religious language, the phrase had been used enough by religious and non-religious groups alike to be seen as appealing to a broad spectrum of voices. Certainly it speaks to that strain of reformulated Franciscan theology adopted by Christian environmentalists as justification for ecological activism. The term also harkens back to the early conservationists, John Muir, especially, whose evangelical Christian roots are clear in the ways he writes about humanity's responsibility towards creation. The import of the term for a government wanting to stress its achievements in the regards to the budget and management of the economy is enormous, too. "Stewardship" carries with it the connotations of sober thoughtfulness, of being prudent, careful and in control. Implicitly referencing the dictum that evolved in part from the Protestant Reformation—that a managed, ordered society was what counted as civilized—the word "stewardship" conveys just that. The very malleability of the term makes it a good choice for introducing the revamped environmental policies. The Liberal environmental policy going into Jean Chretien's second mandate is conspicuously devoid of attempts to reach out to environmentalists (or any other group save the provinces), specifically. The language used has the tone and effect of attempting to draw the entire polis into a shared vision of Canada as a vast expanse of natural beauty and bounty, the heritage of which is a collective legacy towards which we all have a responsibility. The lack of

spiritual language can be seen as significant, as that language not only is perceived as speaking to environmentalists but to Aboriginals and, given the antagonism at the time regarding arguments over "distinct societies", to refer to environmental issues with any terms that could have been construed as favouring the rights of one faction of society over another would not have been politic to say the least.

The environmental policies of the Liberal government heading out of the 1990's and into the 2000's were not particularly assertive and indeed, have the air of taking a backseat to the more publicly salient issues of economic growth, strengthening healthcare, jobs and national unity. The federal government took a fairly conservative stance, erring on the side of diplomacy always with an eye on the economy and national unity. The care the federal government took to refrain from taking what could be construed as a radical stance towards environmental protection was, as Harrison has demonstrated, not new. The federal government has traditionally shown a reluctance to tread on the toes of provincial jurisdiction in terms of natural resources. Mindful of the ways in which environmentalists had used the courts to push a more aggressive agenda for the federal government, the Liberal government of the time crafted legislation and departments both to answer the mandates handed down by the judiciary and to secure their place as had traditionally been perceived—that as mediator and lead negotiator and as regulator of issues explicitly spelled out in the Constitution—fisheries, marine habitat, regulation of Crown Lands.

The role that environmental groups waxed and waned, as well. Better organized than they had been in the 1970's, the court battles they initiated and won were echoed in the legislative triumphs, particularly in the agreement by the government to offer financial support for independent interveners in Environment Assessment matters. By the 1990's environmental interest groups were accustomed to being consulted by the government as

often as private industry and the provinces were. The power of the voices of environmental groups, however, was somewhat diluted when the salience of environmental concerns dimmed in the public consciousness. The relationship between established environmentalist groups and the federal government has traditionally been adversarial, which was why, in part, the inclusiveness at Rio was such an important occurrence. With a waning of public support in the polls, however, environmentalist groups found that their voices were given less credence than they had been at the negotiating table. Even, as will be shown in the case of SARA, when they teamed with industry partners to present recommendations, the perception of them as adversarial and overly idealistic hampered discussions with the federal government.

Critiques of Policy Implementation

The critiques levied against the federal Liberal government's implementation of their environmental policy came from myriad sources. The Commissioner of the Environment and Sustainable Development issued several reports that said, in essence that the lack of adequate funding (substantial cuts were made to environmental programs as well as to the Ministry of the Environment and to that of Environmental Assessments in the throes of budget cuts to erase the deficit and balance the federal books)[55] and an inability of the government to effect a paradigm change within the public service that resulted in every department "buying in" to the importance of a sustainable development plan. Additional difficulties arose with the inability of the government to develop adequate instruments for measuring progress in sustainable development within the government. Accusations of a lack of leadership from the Prime Minister in this area have also been levied.[56]

Critiques from outside government also criticized the dearth of funding and what was perceived as a lack of political will to advance an agenda more in line with the

agreements made in Rio. The reports cite political expediency as taking primacy over environmental commitments, chides the federal government for failing to put measures into place to reduce greenhouse gasses and argues that the 1997 Red Book does not go far enough in tax changes, pointing out that the fossil fuel sector would continue to get better breaks than that of the renewable energy sector.[57] The critiques (from 1997-2002) also highlight a perceived lack of movement in the areas of pesticide regulation, marine habitat conservation, commitment to Aboriginals, and in biodiversity—the last of which will be dealt with at some length below. In essence, the Sierra Club holds that the federal government failed to live up to international agreements, did not keep up with scheduled improvements to legislation (SARA, Pest Control Products Act, Environmental Assessments Act, etc.), did not complete the national parks in the timeframe it set for itself, and did not make the requisite changes in the culture of the federal government so as to implement an effective system of sustainable development—among other things.[58] Some of the reasons perceived for these inadequacies were substantial cuts in funding, lack of political will, and in-fighting from the civil-service level to the cabinet itself.

The Relatedness of Thing: Departments and the Cabinet

The charges of lack of leadership in terms of the environment from the Prime Minister and of political in-fighting within cabinet are not unimportant for the background purposes of this study.[59] After all, relationships between people are part of the historical fact of an issue and must be considered. There is not world enough nor time in the context of this study to delve deeply into the rich and complex relationships that comprised the federal Liberal cabinets between 1992 and 2002. However, it is important to note that the departments over which various cabinet ministers presided had inherent animosities towards other ones. In addition, it must be remembered that MPs who were cabinet ministers were

also seated in Parliament to represent the interests of their constituencies and, as such, provincial interests were never far out of mind when issues were being discussed in cabinet. It is important to remember, also, that Canada's traditional relationship with the natural world in the form of governmental oversight was that of regulation for the purposes of assuring economic development and security. Even conservation efforts were couched in economic terms—it was important to maintain the national parks for tourism, big game must be protected so as to attract hunters from around the world, fisheries conserved for exploitation, forestry regulated so as to assure maximum profit without depletion of the resources, etc. Therefore, the departments of Natural Resources, Parks, Fisheries and Oceans, the Environment, and Environmental Assessment frequently found themselves at odds with one another by virtue of their perceived mandate and by the political needs of the ministers holding the portfolios. I will speak more directly to this below.

The environmental policies put forth by first the Green Plan and then by the federal Liberals in the first and second Red Books were suggesting a paradigm shift that was threatening on a number of levels to a number of people, interests and governmental departments. This was thrown into a mix that already included provinces jealously guarding their own sovereignty over natural resources (as well as economic security, and maintaining the good will of the electorate), a recession and a large national deficit. Add to this a system in which the federal government was used to deferring to the provinces on issues of constitutionality regarding the environment but had been forced from that position by newly and highly organized environmental groups who saw a national solution to a variety of environmental problems as the only way of assuaging the problem of a rapidly deteriorating global ecology. The consequences were predictable: suspicion, combativeness, foot-dragging and out and out animosity between members of cabinet. In addition, the electorate was also

being pulled in myriad directions—economic growth and availability of jobs are important to one's health and happiness and the perceived immediacy of that urgency eventually overcame the overwhelming alarm about environmental degradation that had loomed so large in the public mind in the late 80's. Both Mulroney and Chretien showed themselves to be canny at interpreting polls and crafting policy that spoke to the things people wanted to hear.[60] This is not to say that government policy should be viewed cynically, on the contrary, the trick is to have established goals and visions and find a way to express them that does not dilute their integrity but explains them in terms that resonate with the mood of the electorate at any given time. That is basic electoral politics. However, that being said, Harrison has pointed out the lack of real interest in the environment beyond the polls evinced by Mulroney's government[61] and the charges of a lack of political leadership levied against Jean Chretien in terms of the Environment portfolio do indicate, if nothing else, a certain lack of interest in advancing an aggressive environmental platform in the face of perceived apathy from the polis.

Preamble to the Species at Risk Act: The Legislative Company SARA Would Keep

At the outset, environmental issues in Canada are difficult to negotiate, in part, because of the ways in which jurisdiction is divided by the constitution. However, neither the public nor environmental groups were particularly concerned about these delicate legal negotiations between federal and provincial governments when it came to establishing standards for clean air, water and human health. And, as has been shown, environmental legislation is grass-roots driven. Harrison has shown that federal diligence in promoting such legislation correlates to its salience with the electorate.[62] In the late 1960's salience was high and concern about pollution and the emergence of the ecology movement in general prompted federal action on what, hitherto had been considered by federal politicians to be a

provincial concern. Public pressure and pressure from the opposition saw a new department and five major pollution acts pass under Trudeau's federal Liberal government from 1968-1972: Environment Canada was established by an Order in Council in November of 1970 and affirmed in June 1971 by proclamation of the Government Organization Act. It was during this time, also, that provincial departments of the Environment were created. Statutes were: the *Canadian Water Act*, the Amendments to the *Fisheries Act*, the *Clean Air Act*, the *Northern Inland Waters Act*, and the *Arctic Waters Pollution Prevention Act*.[63] From 1975 to 1985, only two statutes were passed (the *Oceans Dumping Control Act,* the *Environmental Contaminants Act).* In 1977, more amendments to the *Fisheries Act* were made and in 1980 the *Clean Air Act* was amended to respond to the problem of acid rain. In 1988 the *Canadian Environmental Protection Act (CEPA)* was proclaimed. The *CEPA* consolidated the *Environmental Contaminants Act,* the *Ocean Dumping Control Act,* and portions of the *Canada Water Act* and the *Clean Air Act*.

Harrison, Toner, and George Hoberg both observe[64] that the crafting of the *CEPA* represented a watershed in the process of environmental legislation development. For the first time there were multi-stakeholder consultations. Where before there had been only closed door negotiations between federal, provincial and perhaps industry interests, this process included public consultation with myriad stakeholders representing industry, environmental groups, and labour (among others). This process went on to become a prototype for other legislative endeavours—including *SARA*, and would also be used as an approach by Canada with Canadian delegates at the 1992 Earth Summit in Rio.

CEPA also accepts more federal responsibility for regulation and enforcement than did the statutes of the 1970's, although it should be noted that the Opposition parties and environmental groups were unhappy with the bill, complaining that it was too deferential to

the provinces and had certain portions that would undermine its constitutional basis. Regulated industry was concerned that there would be "inconsistent federal and provincial regulations", a concern also voiced by environmental groups.[65]   In addition, the "(e)nvironmentalists' opposition to the bill was intensified by resentment of the fact that, just when it appeared that the public would be ranted meaningful input into federal environmental policy, the federal and provincial governments followed the tried and true approach of striking a deal behind closed doors."[66]

While the *CEPA* was landmark legislation, both in process and in the theoretical teeth it gave to the federal government, the *Canadian Environmental Assessment Act* was, in some ways, more important for the purposes of understanding the players in the *SARA* story.   The adversarial relationship between environmental groups and the federal government was discussed above. The adversarial relationship exists, in part, because of a perception by environmental groups that the federal government is loath to exercise its authority in environmental matters and because, in part, the federal government sees environmental groups as being somewhat monomaniacal in their pursuit of meaningful, effective environmental legislation. The differences have been exacerbated by several court cases in which the courts have ruled that the federal government has greater power and jurisdiction than it chooses to wield. One such decision came down in 1989, just as the Mulroney government was proposing to table the *Environmental Assessment Act.* In its 1989 throne speech, the Mulroney government announced its intention to replace the Environmental Assessment and Review Process (EARP) Guidelines order with legislation. Public consultations akin to those that had taken place with *CEPA* had taken place and draft legislation was ready to be put forward. That same month, the *Rafferty-Alameda* decision was handed down from the Supreme Court of Canada.[67]   In essence, the *Rafferty-Alameda*

decision affirmed the responsibility of the federal government to conduct environmental assessments. This decision, in some ways, solidified the adversarial relationship between environmental groups and the federal government and also put the federal government at direct odds with the provinces.[68] "The nature of the…decisions…limited the ability of the two levels of government to resolve their differences through compromise. In granting citizens enforceable claims to federal actions, the courts effectively empowered private litigants to drive a wedge between the federal and provincial governments."[69] The federal government had, as has been shown, consistently deferred to the provinces in terms of enforcing environmental protection regulations and had carved out a comfortable niche for itself as a resource available for consultation to the provinces on these matters. With *Rafferty-Almeda* and the 1989 *R v Quebec Hydro*, the judiciary confirmed what the environmental groups had contended all along, that the federal government had jurisdiction through a variety of constitutional mandates and would not use that jurisdiction for enforcement unless pushed by outside parties. In the vernacular, the environmentalists had held the federal government's feet to the fire and pushed them outside their comfort zone. This is important for the purposes of this study because it traces the background of the relationships that intertwine in the telling of the *SARA* saga.

One other point of significance in regards to the consequences of the court decisions is it put the federal government in the position of needing to take care in the crafting of the *Environmental Assessment Act* in order to gain some modicum of control back from the courts. In short, the federal government's traditional position regarding the enforcement of environmental legislation had been shaken and order needed to be restored. The delicate balance between province, federal government, industry and environmentalists needed to be brought back to stability.

Another way in which harmony was sought was through the 1998 "Canada-Wide Accord on Environmental Harmonization."[70] In part, the Accord transferred the drafting of environmental legislation to the Canadian Council of Ministers of Environment and also mandated stakeholder input be prominent in the drafting of all new environmental intergovernmental agreements.[71] Environmentalists were critical of the accord, believing that it was "an attempt by the federal government to cope with its own diminished capacity by transferring environmental responsibilities to the provinces."[72] The "diminished capacity" in this instance referred to the budget cuts that had reduced the size of the public service. The Parliamentary Standing Committee on Environment and Sustainable Development echoed those concerns.[73]

Analysis

There are several layers of motivation and meaning surrounding the development of environmental legislation in the late 1960's and early 1970's. One is the age-old Canadian problem of jurisdictional tension between federal and provincial governments.[74][75] Issues brought about by the National Energy Program, negotiations to repatriate the constitution and national unity/Quebec sovereignty were all in play and made the relationships between federal and provincial governments somewhat tenuous.[76] These relationships are complex and not always adversarial. In a very real sense, the provinces were (and are) concerned with the economic viability of the natural resources and their incumbent industries. This is not to say that there is no provincial concern for conservation or environmental protection, but that the provinces are directly responsible for maintaining the economic viability of provincial economies. The federal government has a mandate to maintain order ("peace, order and good government"), to regulate some resources, and to advocate for and with Aboriginal nations. This is yet another layer and speaks to a kind of separation of ideologies.

The exploration above of Lockean and Grotian ideas regarding how societies ought to work depends, in part, on government maintaining security in order that private property rights be protected. Security can be understood as meaning, among other things, the security of persons, the security of property and the security of sovereignty. In Canada, it can be said that, in a sense, the responsibility for this is divided between the provincial and federal governments. The provincial governments are responsible, at least in terms of natural resources, for maintaining the security of the economy (which is tantamount to the security of property)—at least an economy based on natural resources. The federal government is responsible for security of persons (to the extent that responsibility for the criminal code rests in federal jurisdiction) and for the security of sovereignty (which explains the jurisdiction over oceans, waterways and fisheries—as these have an international component to them.[77]). On an even deeper, philosophical level that harkens back to the Reformation, it can be seen that the federal government is charged, above all, with keeping order ("peace, order and good government"). A civilized society is one of order.[78] It can be argued that, on an even deeper level, there is a sense at which the federal government is also charged with keeping a sort of moral order. This moral order includes standing up or supporting ideologies that the provincial governments—charged with economic security— may not have the will or ability to support. The federal government can, in some ways, be viewed as representing the collective conscience of the nation. It is at this layer that environmentalist groups (and individuals) seem to engage with the federal government— being more concerned with the issues of pollution control and the halt of environmental degradation than with jurisdiction.[79]

This in itself adds another layer to the conversation, as it highlights points of view regarding humanity's relationship with the natural world. From both governmental

310

standpoints, not only is humanity disembedded from the natural world but this world and society itself can be compartmentalized and held as separate. The natural world is a tool for humanity to wield as each individual or corporate entity sees fit. From the standpoint of environmentalists, the concept of ecology—of the natural world as a system of interrelated components leads to the conclusion that to compartmentalize environmental issues is to leave them unsolved.[80] This leads to yet another layer within the environmental movement itself which is still evident today. The stewardship model and the embeddedness model.

Briefly, the stewardship model stems, in part, from the perception of St. Francis as a proponent of a type of egalitarianism that sees humanity as occupying a special, privileged position in the cosmos—ordained by God to be stewards of creation rather than dominators. In this paradigm, humanity is charged with caring for and nurturing creation. Humanity is seen as a part of creation, perhaps not with greater value than other creatures (although that is debated) but with a *special* value due (and this list is not exhaustive) to either their God-given ontology (a religious worldview) or their cognitive superiority to other creatures (less religious than rationalist). In yet another subtle twist, the model of stewardship that is referenced in the 1997 Red Book, mandates a balanced care and concern for all of the natural world including, as has been shown, the socio-economic needs of human beings. This shifts the model slightly away from egalitarianism and more towards a hierarchy of value (which could be argued to be more in line with the original St. Francis) with human beings at the top.

The embeddedness model is more akin to the worldview of Canadian Aboriginals. Here, stewardship is not precisely the right term because that implies a level of paternalism that belies true egalitarianism. In this worldview, everything has agency and is interconnected. What affects one part of the ecology has ramifications for all. Thus, it is in

our own self-interest to maintain right relationships with all of creation. There is nothing paternalistic about self interest, but it does breed a type of humility that precludes arrogance. All of the natural world is in the same boat and to put the needs of one above the others could tip the metaphorical canoe. This is distinct from stewardship, in that stewardship implies a hierarchy, whether it is value-laden or not. In the embeddedness model, there is responsibility but the responsibility is more onerous. In the stewardship model there is the implication that one can simply walk away from one's responsibilities and there may be ramifications, but those ramifications will not necessarily be visited directly upon the poor steward in this life (religious worldview) or at all—thus, the current government can argue that it is being a good steward of the fossil fuel resources in the Oil Sands while abrogating the longer term environmental effects which will not be felt directly by them but by their grandchildren. In the embeddedness model to deny or ignore responsibility has a direct, if not an immediate effect, as all life is interdependent. Since all life has agency, also, the more cognitive ability one has, the more responsibility one has to maintain a balance in the universe.

This is the domestic background to the story of the development of the *Species At Risk Act*. There is an international component, as well beginning with the *United Nations Convention of Biological Diversity* of which Canada was the first signatory.

The Species at Risk Act: Prologue: The United Nations Convention of Biological Diversity

Canada's environmental policies must be understood in both domestic and international contexts. Domestically, as has been discussed, issues of jurisdictional divisions and provincial and federal politics provide the context. Internationally, the context is one of various conventions and protocols to which Canada has agreed to adhere. The convention

that is most pertinent for the purposes of this study is the *United Nations Convention of Biological Diversity*. The *Convention*, which Canada signed in 1992, has three main objectives: the conservation of biological diversity, the sustainable use of the components of biological diversity and, the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.[81] Among other things, the *Convention* calls for each nation to "identify and monitor the important components of biological diversity that need to be conserved and used sustainably"[82] and to "establish protected areas to conserve biological diversity while promoting environmentally sound development around these areas."[83] In addition, the *Convention* requires member countries to review their legislative protection for endangered species.[84] The commitments of the *Convention* are legally binding and it was to this *Convention* (as well as to other commitments made in Rio) that the 1993 Red Book harkened when it discussed Canada's "leadership" and "commitment to sustainable development".

In one very real sense, the *Convention* gave a collective voice to a trend towards ecological thinking that had started in the late 19th century with the conservation movement and expanded in the late 20th century with the increasingly broad dissemination of the idea that all life was interdependent: " The view of the Earth (from space in 1969) symbolizes the changing scientific paradigm, form the atomistic approach to 'dead and inert' matter that characterized Newtonian and Baconian science to the recognition of the ecological web and the intricate interdependency of a very alive nature…"[85] The *Convention* recognized the necessity of maintaining balanced ecosystems for the long-term health of human beings and of the planet in general.

The *Convention* is a treaty and was crafted by legal experts with input from, among others, the global scientific community. It recognizes that human beings need to exploit natural resources but argues that such exploitation must be done in a way that is sustainable.

The *Convention* advocates for balance and the term that is used for that balance is "sustainable development", a term mentioned and defined above.

One of the most important aspects of the *Convention* is the decision-making apparatus that it advocates: the precautionary principle. The precautionary principle is Principle 15 of the Rio Declaration and it states: "In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[86] Thus, governments are cautioned against impeding the protection of a species or habitat (or other environmental issue) by using the excuse of incomplete scientific data. The phrase "cost-effective" is, of course, wildly subjective and continues to be a source of consternation.

And so, the stage is set for the negotiation of *SARA*. The *Convention* requires that Canada put species at risk legislation into place, the Rio Earth summit engendered great hope among environmental groups that their voices were being heard and that a paradigm shift would occur—towards sustainable development, brought about, in part by the federal government's stated commitment to the Rio summit and by public pressure on government to fulfill its commitments. The environmental groups, it must be pointed out, were not idealistic and starry-eyed about the prospect of immediate paradigm shifts. They were, however, hopeful that government would have no choice(especially now that it had been so vocal on the international stage and were under pressure from the courts) but to follow through on its stated goals which included a more consultative, open-door policy process.[87]

Canada's Species at Risk Act: The Players

Every legislative effort is a drama unto itself, a story unfolding in the context of the greater policies, workings and machinations of government. The players in the drama of *SARA* include the federal government and the Opposition—for the purposes of this study, the federal Liberals were in government, opposed first by the Bloc Quebecois and then, in their second mandate, by the Reform Party. It is pertinent to note that during this period in Canadian history (early 1990's to early 2000's) an ideological shift occurred with right-wing conservatism raising a strong anti-regulation, anti-state intervention voice that "constrained state action…(t)hese attitudinal shifts combined with the overall downsizing of government as a result of the deficit fight has resulted in a diminution in federal capacity to initiate and implement sustainable development."[88] Federal government concerns revolved around erasing the debt, shrinking the deficit and maintaining national unity. The Quebec Referendum in 1995 is also key in this drama, for it brought to the fore issues of provincial autonomy and strengthened federal reluctance to push for a stronger federal presence in environmental concerns. The traditional stance of the federal government towards the environment has been one of dominion—exploitation of resources for economic good and maintenance of security and sovereignty. In other words, natural world as tool to be used by human beings. With the rise of the environmental movement in the 1960's (more on that below), some aspects of the federal government's treatment of the environment shifted under the pressure of the electorate and by virtue of the use of the judiciary. The federal government was placed in the position of having to be defender and promoter of sustainable development while also maintaining its traditional role of protecting economic resources and its own sovereignty. By virtue of its international agreements after Rio, the federal government was obliged to re-invent itself, in some ways, as steward and not as dominator

of the environment. This shift in rhetoric (if not necessarily in deep ideology) is apparent in the 1997 Red Book.

The provincial governments, as was mentioned above, jealously guarded their jurisdiction and were suspicious of any attempts by the federal government to exercise control over the exploitation or monitoring of natural resources. Both Harrison and Toner note that the public service facilitated this hostility, with provincial departments, most notably those mandated with intergovernmental relations, viewing the relationship as adversarial rather than complementary. In addition, the federal government was reluctant to be seen as putting up barriers to economic development. From a traditional standpoint, the view of the provincial governments towards the natural world has been one of protecting natural resources—a dominion model of disembeddedness in which economic growth is the measure of human flourishing and ecosystems are not so much interdependent bioregions but autonomous differentiated areas of designated use.[89]

Industries that rely on natural resources are the traditional backbone of the Canadian economy.[90] A reading of the 1993 Red Book illuminates the concerns of industry: the text refers often to the need of the federal government to be "supportive", "collaborative" and, "helpful".[91] It is clear that industry was concerned that their access to natural resources would be curtailed by federal involvement and that there was an underlying hint of a threat from industry in general to invest in parts of the globe that did not have complex, time and money consuming regulatory strictures. There are also resource battles at play in the relationship between industry and the federal government in terms of Aboriginal land claims. These included differences of opinion regarding access to resources on contested Aboriginal lands as well as arguments over how best to exploit the resources. In all cases, however, it is

important to note that industry (including fishing and agriculture) view the natural land as *resources*—commodities for human exploitation and/or consumption. It made sense to use the resource sustainably if only for economic reasons.

The other actors in the drama are the environmental groups. Loose associations in the 1960's and later politically savvy and well-funded NGO's in the 1980's and 1990's, environmental groups loomed large in the development of environmental legislation and policy in the era under study. The activism that grew out of the dominant environmental concerns of the 1960's—which Kearns identifies as "pesticides, pollution, and population"[92]—had a component in which religious worldviews were decidedly present.[93]

Conservation, Ecology and Religion

The conservation movement of the early twentieth century that was a precursor to the movements in the 1960's and beyond was fed, in part, by Romanticism—itself a backlash to the Enlightenment. Romanticism differed philosophically from the Enlightenment sense of order, laws and rules by which humanity, through reason, might free itself from the bonds of nature. Romanticism viewed nature as revelatory, not as a tool of constriction but as a tool for seeing more deeply into the cosmos. It is the mystical counter-point to Enlightenment thought. Kearns writes, "In reaction to the Enlightenment disengagement from nature, and in distress over the results of technological innovation and industrialization…(r)omanticism sought reunification with nature as a way to religious inspiration, harmony, and community."[94] "Nature romanticism" also served as a sort of surrogate religious expression for conservationists such as John Muir, who rejected his fiery evangelical roots for a spirituality grounded in nature. Kearns notes that "(n)ature as a source of revelation would become the most important and nuanced response to the disenchantment brought on by much of Protestantism and science."[95] As was shown earlier,

the natural world has served as revelatory vehicle for a variety of religious worldviews; this is merely one more permutation. What makes it significant is that it keeps alive a religious view of the natural world that is somewhat stifled by Protestantism in the 18th and 19th centuries, keeps it alive in such a way that when it re-emerges in the 1960's, it is accessible not only to those who hold conventional mainline religious worldviews, but to those who are seeking outside organized religion for a spirituality with which they find resonance.

The religious worldview in the beginning half of the twentieth century (at least in Canada) found itself more and more on the forefront of social (and sometimes advocating for economic) change. The message of the social gospel, however, was not focused on the natural world, but rather the "powers and principalities" of human socio-political structures that perpetuated poverty, lack of dignity and wretchedness. Like the rest of the western world, Christianity, also, had compartmentalized itself with the social gospel addressing the cause of egalitarian human flourishing and the naturalist romanticism intertwining with the conservation movement to keep the light of the precursors to eco-theology alive and well.

After the war years, and after the government incorporation of the social safety net once provided by the Churches in Canada several things emerged to act as catalyst for the inclusion of religious worldviews within the environmental movement. One was the ushering in of a period of "greater economic security and more leisure time encouraged Canadians to concern themselves with not only the necessities of life, but the amenities— clean air, clean water, pristine wilderness—that could only be provided by a healthy environment."[96] It is also possible to say that while the churches in Canada (particularly Protestant ones) flourished as centres for spiritual growth and community gathering in the 1950's, there also remained a population within the institutional churches focused on what we now call social justice issues. While this mostly found its outlet in mission work overseas

and various outreach programs at home, the activist strain was extant within the institutional church. Also, while the weight of its shadow establishment status was waning, the church still held a voice of moral authority in society, for some. In addition, Kearns also points to the development and use of the nuclear bomb as a catalyst for disenchantment at the promise of science alone as a cure for all of humanity's ills and that religious voices began to occupy some of the space hitherto filled only with the voices that put faith into a mechanistic scientific worldview, eschewing religion and other "non-rational" ways of knowing and being in the world.[97] Some of these religious voices, according to Kearns, embraced a "spiritual" worldview while being critical of the institutional church and embracing the idea of revelation as coming from myriad sources, including nature.[98] Kearns also provides a helpful entryway into thinking about the religious strands within the environmental movement by referring to a "two pronged shift" away from the authority of science and from a religious worldview that regards nature as completely "Other".[99] It must be clearly stated, however, that it was not science itself that was being criticized, but the worldview that accepted without question the assertion that science is objective and completely without bias. The suggestion that science could solve all of humanity's problems and answer all of humanity's questions was itself being questioned. This is not to claim that the churches were the drivers of the environmental movement. Merely to point out the shift in social imaginary that made the inclusion of religious voices possible.

The beginnings of any movement are complex. As mentioned above, there was a shift in the social imaginary that informed the environmental movement. As well, there were strands that wove together to create the environmental movement, I will mention but two of them. The peace movement that began slowly in the 1950's in response to the nuclear bomb and the Cold War had both secular and religious impetus (Quakers and Unitarians,

especially) and the awareness of the dangers of nuclear fallout led to a greater awareness and activism in regards to pollution and human health. Another strand was, as has been mentioned, that of the burgeoning field of ecology. This field arose, in part, from the conservation movement. Although Aldo Leopold (*A Sand County Almanac, 1949),* are Rachel Carson (*Silent Spring,* 1962) are often cited, and rightly so, as harbingers of the ecological understanding that underpins the environmental movement, Canadian conservationists also were raising their voices in concern.[100] In Canada, the strands coalesced in myriad forms, the Society for Promoting Environmental Conservation formed in 1968 at Simon Fraser University, the "back to the land" movement began, Pollution Probe, and the Ecology Action Centre. In the late 1960's Greenpeace was formed, the most concrete example of peace and ecology movements intertwining to create one vision.

The environmental justice movement also emerged from the environmental movement, driven by a growing concern for the plight of Aboriginals and other marginalized people in society in the face of expanding development—particularly in the area of hydroelectric projects (i.e. James Bay) and the Mackenzie Valley pipeline which saw the launching of the Berger Inquiry.[101] In Nova Scotia, the furor over Africville brought the issue home to many. The environmental justice movement is important to note, for churches have been deeply involved in this aspect of environmentalism.[102]

Although many people of faith were involved in the beginnings of the environmental movement in the 1960's, Kearns points out the institutionally, churches tend to run about 10 years behind secular society.[103] It should be noted, though, that concern regarding the "integrity of creation" were discussed at the General Council of the United Church of Canada in 1968 and that the United Council of Churches of the USA had introduced a Faith,

Man and Nature project in the 1960's.[104]   It is important to note the distinction between institution and individual here, for it has bearing on the larger argument. The institutional church in Canada was no longer a shadow establishment (in the case of the Protestant Church in English Canada) and, due to many factors—including the Quiet Revolution—the Roman Catholic Church no longer held the authority or presence that it did in French-speaking Canada.   However, individuals who joined the environmental movement were often, themselves, products of institutional faith communities, though many had distanced themselves from the institutions, they nevertheless brought the moral framework, the *ethos* of those institutions with them into the movements they joined. It was the activists who stayed affiliated, however, who eventually swayed the institutions to be aware and to, in some cases, become involved in the shaping of environmental policy from a global (i.e. through the World Council of Churches at Rio) to a local level.

The institutional response (including the theological scholarly response) came in the early 1970's—many (and varied) in response to Lynn White's essay mentioned earlier in this work. The development of ecotheology—the interconnection of ecological thinking with theological knowledge—is also important to this study, as it supports the contention that religious voices are continuously engaged with the issues normally ascribed to the public sphere. Christian eco-feminism[105] arose in this period, along with a rising concern for eco-justice, as was touched upon above.[106]

In the 1980's religious voices of all stripes—institutionally affiliated or not—began to find more and more room for their voices.   Kearns ascribes this to a growing establishmentarianism within the environmentalist movement: "(a)s the organizational aspect of the movement gained access to the centers of societies, it lost much of its moral

imperative, or at least the ability to couch it in such terms."[107]   Scientific rationalism had

again taken an upper hand in the social imaginary and the voices of religious worldviews

smacked somewhat of romanticism and "soft" science. Remembering the argument at the

beginning of this study is important at this juncture—religious worldviews couched in

language that does not represent what the "centres of societies" (the makers of policy and

the elite powerbrokers of society) see as relevant in the public sphere are discounted. What

had been both a moral (We have a duty to all creation to not pollute the water. One

consequence of pollution is that children get sick.) and a scientific (i.e., rational) argument

(there is a direct correlation between the soap being dumped in the river by the soapworks

upstream from the town and the rising number of children with stomachaches), loses the

need for the moral imperative once it is accepted as a fact by the mainstream electorate and

the power elite. If soap makes children sick, this is a drain on the healthcare system and an

economic problem to be remedied. It is also an electoral problem—if government is known

to be able to do something to keep my child from getting sick and does not do it; I am

unlikely to vote for that government again. The moral imperative, often driven by a religious

worldview, becomes secondary in the mix.   Religious and ecological voices had intertwined,

to an extent, at the beginning of the movement—united, in part, by disillusionment with

science as the definitive answer to humanity's temporal needs. In the 1970's, with the

development of ecology as a discipline and a grudging acceptance within some annals of the

scientific community that the universe might be dynamic and interdependent, science once

again rose as an answer to environmental concerns.

With the focus on specific global issues such as acid rain, the ozone hole, etc. many

in the environmental movement saw a lack of concern for interconnectedness—for looking

at the ways in which economic, gender and racial imbalances (to name a few) touched

environmental concerns.[108] This is where many with religious worldviews found themselves concentrating their efforts. The fields of environmental ethics and animal rights grew out of these rich discussions in the 1980's. Thomas Berry, Matthew Fox, Jurgen Moltmann and John Cobb all contributed works in these fields and raised the awareness of many practicing Christians of the importance of the natural world in the context of a religious worldview.

As has been mentioned elsewhere, salience of environmental issues was high in the late 1980's and very early 1990's. Religious voices were not silent, either, nor were they being discounted by many scientists. In 1990, cosmologist Carl Sagan and other scientists called for an alliance between science and religion. The appeal recognized "the power to shape behaviour" and also stated that "Many of us have had profound experiences of awe and reverence before the universe…Efforts to safeguard and cherish the environment need to be infused with a vision of the sacred."[109] Although the actuality of the dichotomy between science and religion that is assumed in this document is debateable, it does show that religious voices were present and were seen as constructive and necessary to the discussion of environmental issues. This supports, albeit in small way, a contention, often refuted but seldom adequately supported, that the voices of religious worldviews contribute to human knowledge in a way that gives policy depth and breadth. It is important to note, however, that while this is acknowledged at the international level in this case, it is not necessarily acknowledged by government at the national level.

It is vital, however, to understand that religious worldviews are integrally intertwined with the environmental movement:

> These many, varied ecological voices are not just theologians, but are emerging from a variety of activist and church-related organizations, for it is in this range that the immense and rich variety of eco-theology is translated into action and problem-solving. In other words, it is at the level of activism that the purpose of eco-theology—that is, to change the way Christians think about ecology—can bear fruit in terms of changing the way people and institutional actors behave.[110]

With this further context laid out, the story of *SARA* can now be explored in the context of environmental legislation in general and of the religious worldviews held by two of the players integral to its negotiation.

The Species At Risk Act

Under the *United Nations Convention on Biodiversity*, Canada's federal government was obligated to craft legislation listing and protecting species at risk. In the course of ratification of the *Convention*, the Parliamentary Standing Committee on the Environment, under the federal conservatives, held hearings in 1992 to determine whether or not the federal government would need additional tools in order to comply with the terms of the *Convention.* Environmental groups who testified to the Committee argued that endangered species legislation (akin to that in the United States) was necessary in order to fulfill the terms of the *Convention.* The initial findings of the committee was that there was no legislative gap[111] but later found that there was, indeed a gap and recommended that "the Government of Canada, working with the provinces and territories…take immediate steps to develop an integrated legislative approach to the protection of endangered species, habitat, ecosystems and biodiversity in Canada."[112]

The Conservative government fell in 1993 and the Liberals moved out of Opposition and into Government later that year. In 1994, a coalition of environmental groups met with Sheila Copps, who was Environment Minister at the time. The coalition brought along dozens of letters from school children all across Canada, asking the Minister to please enact legislation that would protect endangered species. During the briefing, Minister Copps agreed that such legislation was needed and ordered that it be drafted.

A Detour in the Interests of Chronology

While endangered species legislation was being discussed, the federal government and the provincial and territorial wildlife ministers negotiated and then endorsed (in 1996) the National Accord for the Protection of Species at Risk in Canada which stated goal is "to prevent species in Canada from becoming extinct as a consequence of human activity."[113] The phrase "as a consequence of human activity" is important and will be expanded upon below. What is significant about the Accord is that it commits all jurisdictions to "establish complementary legislation and programs that effectively protect species at risk across the country."[114]

The White Paper: Canada's Endangered Species Protection Act, Bill C-65

The ensuing White Paper (first draft) was technically informed by a multi-stakeholder advisory council and would, among other things, put into law what was currently only an administrative process used to list endangered species. The bill replaced the non-partisan, scientific Committee on the Status of Endangered Wildlife in Canada as the decision making body for that list with Cabinet. Under the bill, COSEWIC would make the list, but "the legal impact of listing would only arise after Cabinet approval."[115] Shifting the decision-making from an objective panel to one that could not help but be politically motivated was unacceptable to many of the stakeholders. The government's argument (at the beginning and all through the time period it took to pass the legislation) was articulated by Mr. David Anderson, Minister of the Environment from 1999-2004: "…Decisions taken under this proposed Act can have economic, social and legal consequences for many Canadians and Canadians who will be affected have the right to be heard. In our democratic process, it is essential that there be political accountability for the final decisions."[116] However, it must be stressed that COSEWIC itself did not find it wholly unacceptable and took a stance somewhat in the middle. [117]

The draft proposed to make it illegal to harm or capture a member of a listed species or to damage its residence. This applied only to species on federal land, aquatic species, and *Migratory Birds Convention Acts* species.[118] After a species was listed as endangered, the government would have one year to submit a plan stating how it intended to protect a species and assist in its recovery.[119] The draft was deemed by most environmental groups to be inadequate.[120] Part of the criticism was that habitat was not protected (80% of species loss is due to loss of a place to live)[121], killing of endangered species was not prohibited and that it only proposed to protect species that were on some federal lands. Environmental groups complained that the federal government had, yet again, taken too limited a view of its own jurisdiction, against the advice of "numerous constitutional law experts and the Canadian Bar Association".[122] There were protestations also that the proposed bill did not take into account the recommendations from its own advisory panel, composed of myriad stakeholders that included environmental groups and representatives of the agricultural and forest industries.[123] The panel agreed that it would be fortuitous to include an advance review process mechanism in the bill that would ensure that proposed projects did not threaten biodiversity. This spoke not only to the concerns of environmental groups that hazardous projects not go forward, but also to industry's concern that projects would be so embroiled in lawsuits and injunctions that investors would be discouraged from putting proposals forward. It was thought that a "single window" (meaning one government, not two) at the proposal stage of a process would benefit both environment and industry. It is fair to cautiously speculate that, while industry was voluntarily aligning itself with its traditional adversary (i.e. environmentalists) there was good reason for doing so. Industry would continue to lobby the federal government for voluntary rather than regulatory approaches, but foresaw (with good reason—given the time and expense having gone into

litigation over the Endangered Species Act in the United States since its enactment in 1973) huge expenditures looming if they did not work with environmental groups to present a united front to the federal government. The federal government, as has been discussed, was interested in crafting legislation that would not be litigated continually, but that would clearly delineate specific roles for all interested parties, thus moving the balance of power over discretion back into the government's favour (and away from environmental groups and the courts).

The government countered criticism of the proposed legislation by asserting that endangered species legislation was but one component of a "national strategy to protect species and their habitats throughout Canada."[124] Innovation and cooperation were also stressed as essential to the success of the endeavour. The provinces, it was argued, must also take responsibility for the natural resources under their jurisdictions and be encouraged to bring in legislation that would dovetail with the limited (as interpreted by the Ministry at the time) jurisdictional authority of the federal government. In essence, the federal government saw endangered species legislation as necessary, but only as a component to a larger strategy. The cautiousness of the initial legislation reflects several things, one of them being that the environment portfolio was not top of the priority list for this particular mandate. Another important factor indicated by the cautiousness of the proposed legislation is the dissent in cabinet over environmental issues. The clash between the Environment Minister and the Natural Resources Minister (Anne McLellan, L-Alberta)over climate change issues is well-documented.[125] It has also been seen that the Natural Resources Minister was able to persuade her colleagues that the economy must be given primacy over sweeping environmental paradigm shifts in order not to endanger the economy—a concern that was more and more apparent as the country felt the effects of the economic recession.[126]

As well, there is literary and precedential evidence that the bill fell prey to an overprotective and cautious bureaucracy from the start. The language limiting protection to species on federal lands is highly indicative of a territorial protectiveness that was explored earlier in the chapter. The deputy minister in charge of drafting the bill was himself from the Territories and well-versed in that protectiveness. As well, the cautiousness can easily be seen as indicative of parties either wishing to preserve provincial jurisdiction at all costs or wishing to ensure that the federal government (specifically the Ministry of the Environment and its sub-departments, all of which had seen their budgets cut substantially) would not bear the brunt of the expenses that would be incurred. These expenses are not limited to monetary ones, although it is certain that budget constraints were included in the reasoning behind the draft. The costs of enforcing species at risk legislation that may reduce or prohibit access to natural resources both to industry and to private landowners could be high in terms of votes and in terms of provincial-federal relations.[127] Considering that the draft legislation proposed only to protect specific species and not habitat, it is also possible that there were elements in the Canadian Wildlife Services that were alarmed at the prospect of having to implement and enforce such legislation. Toner observes that this type of legislation forces the federal government outside of the "tradition of multisectoral co-operation that has characterized the wildlife policy area"[128] into a potentially more confrontational positions with economic stakeholders. So in the end there were economic stakeholders concerned about the viability of commercial activity, environmentalists concerned about the protection of habitat as well as species, the provincial governments concerned about autonomous control over their own territories, federal departments concerned about their own autonomy, and the federal government concerned with balancing everything—and not losing political capital.

<u>Some Aspects of the Federal Role</u>

It was clear that there were some elements within the federal government (including the Minister of the Environment) which saw endangered species legislation as the "right" thing to do. Which is not to intimate that there was necessarily a moral impetus, merely to point out that not all political actions are craven and that many, many have good intentions at their inception. It was also clear that the government was looking for a way to meet its international obligations. The federal government is also charged, ideologically, with the job of attempting to see the "big picture", of looking beyond the immediate interests of a variety of interests and trying to legislate for the long term, keeping those interests in mind but also trying to interpret how everything must fall together to facilitate an optimum future for the country. This type of vision and leadership is particularly difficult in a country like Canada which not only is policy and program driven but also, as one politician has put it, "is governed (in practice) more by general consensus that 'this is a good idea' than it is by constitutional mandate."[129] That is to say that one point of view of how Canadian government works is a consensus facilitated, in part, by the federal government. This has been demonstrated elsewhere in this discussion when looking at the ways in which federal and provincial governments have negotiated the murky waters of environmental jurisdiction in Canadian politics. It is true that the courts have consistently affirmed that the federal government has greater jurisdictional clout than it often chooses to exercise. It is also true, however, that exercising such clout without the impetus of the courts precludes the facilitation of the kinds of consensus needed to make Canadian government work effectively. In addition, Harrison has opined that negotiations done in this spirit can lead to a "race to the bottom" and a settling for the lowest common denominator in terms of environmental regulations in the name of finding consensus.[130]

While it is clear that the federal government sees a particular role for itself and has carved out a niche accordingly, it is also clear that there is a profound gap between ideology (e.g. the environment must be protected and species at risk are a component of that protection) and actuality. Just as Kearns points out that the movement of environmentalist groups from the fringe of society to its centre necessitated a stepping back from the language of moral persuasion and of overtly religious worldviews and as a consequence, left an audience still hungering for that type of moral imperative, so too can be seen a similar case with the species at risk legislation. The idea of the legislation is launched with the best of intentions—moral and legal imperatives, protecting endangered species is not only morally right (and not just from a religious standpoint), Canada also has a legal obligation under the *Biodiversity Convention*. A gap is created when the drafters of the legislation bring their own biases to the crafting process and produce a document that falls short of the ideal once proposed.[131] A creation of greater and deeper compromise, the legislation moves towards the centre of the process leaving behind an audience (some of the original proposers of the legislation) looking for the ideological components of the legislation and voices that will champion those components. The point of this being that the electorate has an expectation that the federal government will take up the ideological/ethical/moral spirit of the proposed legislation and make that a central component—in this case an Act that has the ability to facilitate the ideology that suggested it in the first place, that is, to ensure the viability of a variety of species in Canada via species and habitat protection and nurturing. This moral/ethical role is one that, up until the 1960's in Canada, was played by the Churches as shadow establishments.

The Churches not only relinquished physical control of a social safety net to the federal government in the first half of the twentieth century. In many ways, it also relinquished moral control—the State may have no place in the bedroom of the nation, but it does, in the eyes of many, have a place in the ethical framework of society. One way in which the public assumes and sometimes demands that the federal government take charge of that ethical framework is by providing legislation that will facilitate greater human flourishing. When the government does not—or feels it cannot, in the interests of other considerations—take a strong moral stance on an issue, in this case, that of endangered species protection, a gap is left, the position of moral spokesperson is empty and must be filled. In this case, environmental groups initially filled that position.

Moral Voices: Compromising and Not—The Saga Continues

Convinced that legislation ready to be tabled was worth more than legislation promised in the Throne Speech, the coalition of environmental groups that had initially briefed Copps on the necessity for the legislation insisted that flaws could be ameliorated as the draft legislation went through committee. Elizabeth May, who reluctantly agreed to go with the consensus of the coalition, later indicated her certainty that the bill would not improve, "…my inner voice said, 'That's never going to work…it never did work. It's a very bad piece of legislation."[132] The bill did not reach First Reading under Copps and was introduced as the *Canada Endangered Species Protection Act,* Bill C-65 in October of 1996 under the new Minister, Sergio Marchi with no revisions. While improvements of a sort were made in committee hearings held by the Standing Committee on Environment and Sustainable Development (i.e. making federal protection of international species mandatory), environmental groups still argued that the bill was inherently flawed by excessive "political discretion[133] and loopholes…the absence of automatic habitat protection…a weakening of

331

federal protection in the Territories and a series of powers to exempt activities from the *Act…*"[134] [135] When the amended bill returned in March of 1997, reaction from the Department of Fisheries and Oceans, resource-based industries from fisheries, agriculture and forestry was vehemently negative and a concentrated effort to undermine the bill was launched.[136] Under pressure, government amended the bill yet again and in late March of 1997, introduced a series of amendments that environmentalist groups stated weakened the bill further by, among other things, including a requirement that "recovery plans' cost-benefit analyses pay particular attention to the "socio-economic costs and benefits…"[137] Asserting that this amended bill as worse than nothing, Elizabeth May described the bill as a "permitting system for legal extinctions."[138]

It must be remembered here that there were several points of view regarding endangered species legislation, some of those views are mentioned above—I will elaborate on two of them here. The government saw it as a component of a larger strategy. It is important to note that the 1995 referendum in Quebec was still quite fresh in everyone's minds and the necessity of proving that "flexible federalism" was not just a catch-phrase was paramount—in the government's opinion. Environmentalist groups wanted legislation like the Endangered Species Act in the United States. This broad, sweeping legislation mandates species and habitat protection regardless of what state government or industry might say. Failure to comply with the Act led to expensive and mostly, for industry at least, losing litigation. Environmentalist groups were not convinced that a multi-faceted approach towards preserving biodiversity would work if federal legislation was not as comprehensive as the courts averred it could be. They saw the proposed endangered species legislation as needing to be the enforcer of the biodiversity rink. Here can be seen the spectre of the debate mentioned in Chapter Four, with the federal government pushing towards regulation

and administrative recourse while the environmental groups were firm in their conviction that legislation with teeth must be non-discretionary so as to be concretely viable for potential litigation.

That the federal government did not act more assertively in the face of inter-governmental, inter-departmental and industry pressure is not surprising, despite polls that showed strong public support for assertive legislation.[139] Harrison has shown that salience in environmental issues was low at that time period and, given the reluctance of the federal government to be assertive in environmental matters at periods of low salience, neither the lack of teeth in Bill C-65 nor the propensity of the government to give weight to arguments put forth by environmentalists should come as any surprise.[140] The power of the voices of environmentalists is buoyed by salience in the electorate and that was not extant in the time period. Bill C-65 died on the Order Paper when Chretien called an election for June of 1997.

<u>Another Kick at the Can</u>

During the 1997 federal elections, The Sierra Club and other environmental groups ran an ad in *The Globe and Mail* protesting the proposed *Act*. Complete with pictures of endangered species and a caption referring to the Red Book as the "Liberal Book of the Dead", the ad was deemed "too political" by other members of the original coalition of environmental groups involved in the *SARA* process. The Sierra Club was no longer affiliated with the original group of environmentalists lobbying for the legislation.[141] When the Liberals won a new mandate, there were calls from The Sierra Club, the Sierra Legal Defence Fund and other environmental groups for the new Environment Minister, Christine Stewart to scrap C-65 and begin again. According to one source inside the negotiations of the legislation, Ms. Stewart had stated that she would consider amendments from

environmental groups and from industry if they could put forward a consensus.[142] In 1998, the Sierra Club formed the Species at Risk Working Group (SARWG) with the Canadian Pulp and Paper Association, the Canadian Nature Federation, the Mining Association of Canada, the National Agriculture Environment Committee, and the Canadian Wildlife Federation. The mix of environmentalists and industry stakeholders was in keeping with the recent trend towards collaboration in crafting environmental legislation. Two of the recommendations that were put forth were that COSEWIC alone would have the say in which species went on the list and that the killing of species anywhere in Canada would be prohibited.[143] Before these could be considered by Ms. Stewart, Mr. David Anderson took over the portfolio. An election was called in April 2000 and bill C-33 died on the Order Paper amidst rumours that the new minister was not open to amending the Bill and that it would be re-introduced as-is.[144] Hearings on the third-time proposed legislation (to become Bill C-5) began in front of the Standing Committee on Environment and Sustainable Development in the fall of 2000.[145]

The Third Kick and A Glimpse of Worldview Reflected in Policy

In these hearings, Mr. Anderson clearly articulated first the government's underlying philosophy and policy for *SARA:*

> …the first principle to remember is the first principle of ecology, and that is that all things are interdependent. We cannot separate species out one from the other or species from their habitats, just as we cannot separate the people who live in this country and who work on the land, on the water, or in the woods from their relationship with the skies, the lands, and the waters where those species of animals and plants happen to live.

The above is important to consider when reflecting on views regarding the relationship between humanity and the natural world. The position articulated by Mr. Anderson reflects an inclusiveness that actually sees human beings as embedded in the

natural world. Granted, it is also a political statement of policy that is meant to convey the government's position that human needs and concerns needed to be considered on equal footing with those of the species with which human beings cohabitate. It is a statement of pragmatism also meant to reassure industry and landowners that their concerns were being considered in the stated policy. But, on the flip side, it is also a recognition (albeit somewhat forced) of an aboriginal worldview of absolute embeddedness and the delicate work needed to maintain a sustainable balance. I am in no way equating the Chretien government's environmental policy with Aboriginal spiritual traditions or worldviews, but I believe that the parallel is worth noting. It goes towards supporting a contention that religious worldviews have a practical component to them and that Western liberal democrats are not above resorting to religious allusions when striving to prove a point. Nor is the comment overtly religious unless one is conversant with the ways in which religious worldviews are reflected in everyday language within the public sphere—then the allusions become clear. So, while one would be hard pressed to have most politicians in Canada assert that they are using the observations of a religious worldview to make a political point, the fact is that the articulation of the policy by the Minister does incorporate aspects of religious worldviews. The religious worldviews in our society are part of our intellectual heritage and a tool in the arsenal of politicians trying to reinforce a particular agenda. As seen below, the embeddedness articulated in the policy becomes a dichotomy when species are considered to be at risk from two different reasons: human activity and natural selection. It reinforces the traditional stance of disembeddedness, for human activity is seen as separate from "natural" selection.[146]

The Practicalities of Policy Re-Invented as Strategy

In the 2000 hearings, Mr. Anderson stated the government's "three-pronged" strategy for "protecting species from becoming extinct as a consequence of human activity": the "cornerstone" was the proposed *Species At Risk Act (SARA)*—which included the COSEWIC list and an agreement to integral traditional ecological knowledge (TEK) into the process; partnership with the provinces and territories which the Minister reminded the Committee, "have constitutional responsibility for land and property rights…their active and willing participation is key." Mr. Anderson referred to the Accord of 1996. The third component was "building partnerships with Canadians to promote stewardship programs for species and their habitats." This included the federal Habitat Stewardship Program—a partnership program of government, environmental non-governmental agencies (NGO's), private citizens and Aboriginal peoples. In addition there were a variety of tax incentives introduced to promote the donation of private lands to the government as protected habitats.

During the course of the year, hearings were held by the Standing Committee that involved myriad stakeholders, including SARWG who stated that it had been "…working to develop creative solutions for the protection and recovery of species at risk that would reconcile the need for wildlife conservation and the needs of those whose livelihoods are dependent on natural resources."[147] The legislation was tabled in February of 2001 amidst cautious optimism that the government was amenable to cooperating with a variety of stakeholders (as opposed to just the provinces and economic stakeholders—an accusation made by several environmental groups) and would also consider the recommendations proposed by the Standing Committee. Bill C-5 focused on stewardship and incentives, offering compensation to individuals whose land use was curtailed by the *Act*. TEK and the input of Aboriginal peoples were entrenched. In addition, Bill C-5 contained more

discretionary language than its predecessor—deferring more to the provinces and stressing cooperation rather than coercion. An important aspect of Bill C-5 was the "safety net" which allowed the federal government to step in to protect a species and its habitat if the Minister of the Environment sees that the provincial government is not acting to protect the species. The safety net provision requires the Minister to take the situation to Cabinet and request that the federal government act to protect the species. Environmental groups argued that this was politically untenable as it was positing that the federal government would act completely against historical precedence and risk alienating a province over an environmental issue.[148] The government countered that the provinces and territories were involved in the species at risk effort by virtue of their constitutional jurisdiction and to craft legislation that attempted to override that jurisdiction was not only doomed at the level of the constitution but at the practical level as well. Legislation that was deemed untenable to a smooth working relationship with provincial authorities ran the risk of being repealed, challenged in the courts or ignored.[149] Environmental groups responded that the legislation, but acknowledging provincial precedence might weaken a federal position should the federal government decide to assert jurisdiction by enacting the safety net. Each side argued that theirs was the more constitutionally viable position.

By 2001, after First Reading of Bill C-5 and into the hearings, there were myriad points of contention. Some of the most virulent were: compensation to individuals potentially affected by the *Act*, whether or not Cabinet should have the final say in which species identified by COSEWIC should actually go onto the official list of endangered species, and mandatory protection of species on federal lands (the government insisted that "federal lands" was too vaguely defined—in a legal sense—for the *Act* to make that stricture and be constitutionally defensible. Environmental groups scoffed at that and asserted that

federal lands and jurisdiction had been defined clearly enough by the courts for the wording to be on sound constitutional footing.). The Committee tabled its report in late 2001 and recommended that the House adopt amendments that would (among other things) make the COSEWIC list legal without cabinet approval (much like the Endangered Species Act in the US) and prohibit the killing of endangered species on federal lands. The government considered and then rejected the amendments, announcing that it would call for a vote on Bill C-5 as tabled.

A small group of Liberal backbenchers (40 in all) banded together and refused to support the Bill if substance was not changed to make the listing process non-political and the protection of all species on federal lands mandatory. Karen Kraft Sloan, Charles Caccia and Clifford Lincoln eventually were able to come to an acceptable compromise with the Prime Minister's Office (PMO) at the last minute that allowed for the COSEWIC list to be the legal list, but the Cabinet reserving the right to reject the listing of any species within nine months. Mandatory protection of critical habitat on federal lands was also included with the caveat of extensive landowner involvement and the acceptance by the federal government of a recovery plan.[150] The *Species at Risk Act* passed in 2002 and was proclaimed as law.

Some Aftermath

Some of the provisions of the Bill were delayed. The COSEWIC listing was delayed from 30 days to 3 years so that traditional ecological knowledge could be included in the analysis. The Sierra Club noted that this was admirable in species like the bowhead whale but perhaps not particularly helpful in cases where TEK was not directly integral to the species. In addition, some of the "Green" Liberals were further disappointed when the

Minister of the Environment accepted COSEWIC's first list, subject to Cabinet rejection as per the *Act*—but proceeded to post the list on the internet and solicit public comments. Cabinet then used the comments from the public (comments that were alleged by environmental groups to have been the product of campaigns engineered by industry and other interest groups) to reject some of the listings. In their 2005 *Rio Report Card*, the Sierra Club went as far as to accuse the government as "ignoring the spirit of the law".[151]

The government remained stalwart in their assertion that this was the best bill possible for the time and for Canada's unique jurisdictional configuration. Their position continued to be that cooperation and compromise were the only ways in which species at risk legislation could have any meaningful impact: "I still believe firmly that with goodwill, quite pedestrian legislation will probably be very successful; with bad will the best legislation in the world will be unsuccessful. It's basically a question of attitude that is going to protect endangered species, not law."[152]

Some Preliminary Analysis

The story of the *SARA*, from international treaty to integration with policy to development of legislation to proclamation of law reveals the not-so-astonishing fact that development of law is labyrinthine and influenced by myriad factors. The development of legislation, for instance, is quite complex and, as has been shown, quite public. Even if the public at large (the electorate, for instance) is not fully cognizant of how the whole process is achieved (white paper, first reading, referral to committee, etc.), the players and stakeholders in whatever realm the proposed legislation affects are aware to some extent and either follow the process closely themselves or delegate someone to do so and to report back. So public a process, theoretically makes it difficult for one particular ideology or worldview to become entrenched either in the process or in the substance of the legislation itself. A product of

compromise, legislation is very rarely ideologically uni-focused. Therefore, while the Minister of the Environment may state clearly in a public hearing on environmental legislation that, "I've sometimes thought we don't really need this legislation at all; we just have to have the 104th Psalm, verses 26-32. That's all you really need for endangered species protections.", he also goes on to acknowledge that, "…(t)here are other religious or background approaches that we could work into legislation, but I won't go down that line…"[153] And indeed, there is nothing overt in the language of the *SARA* itself that would suggest that one particular religious worldview was being supported. The closest the wording ever comes is in the preamble of the legislation where the environment is referred to as part of the "spiritual" heritage of the Canadian people.[154] This is not in any surprising. A piece of legislation in a legal document—the wording within it is, hopefully, precise and vetted by the government's legal experts. Where religious worldviews (or any worldviews, for that matter) can become apparent are in the policies that drive the legislation, the ways in which the legislation is championed (or fought against), the ways in which the legislation is or is not implemented and, of course, in the ideology that undergirds the legislation itself-integrally intertwined with policy.

Policies and Legislative Ideology

As has been shown, the Liberal government in the 1990's and the Conservative government in the 1980's included the environment as components of their policy platforms. It has also been demonstrated by Harrison's work that federal governments are not traditionally motivated to be proactive on environmental issues except when salience of those issues is high with the electorate. This is an important point to note because it goes to an argument that neither party had a firm ideological conviction in regards to environmental protection. This is not to say that neither party has passed solid environmental legislation,

but it does go towards the assertion that in terms of a hierarchy of importance, relations with the provinces and industry related to natural resources and basic economic concerns (jobs, balanced budgets, etc.) combine with desire for re-election to put issues of environmental protection *for the environment's sake* fairly low either practically or ideologically.

The policies of the first Liberal Red Book are clear, on the one hand, the Liberal Party of Canada supports sustainable development as defined and outlined in a bevy of international studies and documents, including the *Biodiversity Convention* and the principles of the first Earth Summit in Rio. Canada gained a lot of international attention and accolades and the public salience, while not stellar, was high enough that the Red Book took full advantage of the terminology (and in the popularity of the Green Plan before it) of the summit when it announced the paradigm shift that it wanted to effect within the federal government and in the country as a whole. I have discussed the possible religious worldviews spoken to by the first Red Book above. The language used reveals a saliency on behalf of the authors of the existence of a traditional, mainline religious worldview in the Canadian electorate even as it alludes to Aboriginal worldviews and to the romanticism of conservationism that reverberates with environmentalists who consider their relationship with nature spiritual while remaining denominationally unaffiliated. The language also reflects, in a small way, the language of the Earth Charter which unabashedly uses some religious language while it ensconces itself firmly in a pluralist and humanist worldview. In addition, the policies that go towards cooperation and communal responsibility are used both in a practical sense (we must all work together), but in a less plebeian way, as well— there are subtle calls to a spirit of cooperation and a sense of community that belie a theological undertone, a religious worldview that sees humanity as collectively accountable to one another and to God. This dovetails well into Locke and Grotius also, of course. This

policy position was the one in which an endangered species act was first introduced at the federal level in Canada. That it (and other environmental legislation) was not firmly championed by the PMO in the face of vociferous contention by the Fisheries Minister and the Minister of Natural Resources speaks volumes regarding the ideological stance behind the policy position.[155] To be sure, the emphasis was on partnership and cooperation, self-effacing to the extent that the federal government was positioned as an entity that needed to essentially lead by example—a belief that change originated from the top down. These positions did not change drastically in the second Red Book. What can be said is that, although there seems to be recognition of the saliency of a limited variety of religious worldviews that should be spoken to in terms of environmental policy, there is no firm evidence that religious worldviews were particularly important in the laying of environmental policy. The fact that the language is used in 1992 is important, though because it does offer a very small indication that the tradition of referring to religion as a matter of course in public affairs (traditionally until the 1960's, in both English and French-speaking Canada) had not become uncomfortable for mainstream politicians in the early 1990's. Obviously, one cannot build an entire theory around such an infinitesimal observation, but the connection is interesting nonetheless.

In the 1997 Red Book, overly religious language is gone completely, as was discussed above. Many factors can probably be attributed to this. The Liberal government's focus had grown more and more aimed at a particular definition of fiscal responsibility, the Quebec Referendum in 1995 still loomed large and the rise of the Reform Party in the West bore watching, even if it did not yet elicit sharp alarm. It is not surprising that the second Red Book concentrated heavily on fiscal responsibility and economic issues considering the eventual focus of the Liberal government's first mandate on balancing the budget and

eliminating the deficit. Environmental policy still focuses on sustainable development, but now it rests ideologically on flexible federalism, practicality and the necessity of considering human/industry needs to be on par with those of the environment. While the first Red Book was concerned with balancing human and environmental needs, the trend towards the economic over the environmental is more overt. As stated above, overtly religious language is missing, even as a nod towards Aboriginal Spirituality. It is not untoward to posit that the rise of an American-style version of the religious right within the populist political right in Canada also led to a careful distancing on the part of the authors of the Book.[156] Aiming for voters who were mainstream—politically and religiously speaking, a lack of religious language would do no harm, especially if those who were affiliated with the religious mainstream would take it as a matter of course that the values espoused in the Red Book incorporated those of the traditional shadow establishment. There were, of course, voices on the left of the religious spectrum who argued that traditional mainstream Canadian Christian values were not being reflected in government policies—but these voices were largely raised in the realm of economic concern.[157] This dovetailed quite clearly with the long-held view of the liberal elite that the Canadian public sphere was essentially secular and that it should remain so—Mr. Anderson's remarks to the Standing Committee on Environment and Sustainable Development highlight that sense. The elimination of religious language in a small way had the effect (intended or not) of reinforcing that point of view. In short it does seem that there is a parallel—not necessarily a correlation—between environmental policy and overt religious language. The federal government supported and/or used both when it was expedient to do so and when public salience was at a low ebb (i.e. with jobs and the economy looming larger than environmental issues which come to be seen as expensive and/or bad for the economy) or was somewhat wary of what it perceived

343

to be "extremism" (i.e. with the rise of a vocal American-style religious and political right)—protection of the environment for any goal more abstract than that of human health or economic gain and overtly religious language were both quietly put aside.

So it can be seen that the policy position of the federal Liberal government towards environmental issues while *SARA* was being negotiated was not as a whole ideologically undergirded by a religious worldview. However, it is curious to note, as I did above, that the first Red Book uses a stream of language that can be construed as coming from a religious worldview exclusively in the chapter on environmental sustainability. It is reasonable to posit that, beyond the pragmatic (some might say cynical) reasons for using such language to attract voters from particular populations (the Red Book was, after all, an election tool), it is also a tacit acknowledgement that environmental issues had/have a transcendent component to them. Environmental law was moving beyond the strictly regulatory phase into one where it was beginning to be recognized institutionally what grassroots movements across the globe had been saying for three or four decades, that the effect of humanity on the rest of the natural world was larger in scope and perhaps more dangerous in scope than was possible to calculate and possibly ameliorate without the input and hard work of a plurality of effort and expertise. In other words, one or two groups of scientists in one or two countries alone could not solve the larger problems of environmental degradation. Hence, the eventual Earth Summits and the preceding committees and commissions. Religious worldviews are integral here. Especially Aboriginal ones, but also the western Christian ones. The first Red Book reflects, as noted above, the language of the international community's workings on environmental issues. There is a sense by the authors of this particular chapter that it makes sense to use the kind of language that not only had been integrated into the Earth Charter and the work of Rio but was familiar on an essential

344

cultural level. The language stops short of recognizing a complete embeddedness (an Aboriginal worldview) but does reflect a sense of what in law is called "duty of care" where a responsible party is expected to do everything possible to assure the health/safety/well-being of entities that fall into their jurisdiction of responsibility. This is reflective of the two other theological points of view discussed earlier—the Franciscan (or, rather, neo-Franciscan) view of stewardship—beings at the top of the hierarchy have a duty of care for the rest of creation mandated by the Creator, even if those at the top are not completely embedded in the natural world by virtue of their special natures; and the dominion—nature is our tool to use, the Creator has said so, and we must take care of our tools if we want them to remain effective for our use. Neither position, it is important to note, posits humanity as embedded in the natural world—supporting a position of both secular and religious worldviews that humanity is set apart from the rest of the natural world by virtue of its cognitive ability and scientific acumen or by virtue of the Creator as having made humanity something more, something ontologically superior, to the rest of the natural world. However, mainstream Christian worldviews regarding the natural world and humanity are represented clearly alongside what could be called the secular or non-religious worldviews. This same clarity of representation is not, as mentioned, apparent in the 1997 Red Book. The religious language morphs somewhat into the quasi-religious language of conservationism and is represented in the notion of stewardship. Here, there is no "vision" but a call for a common sense of our "heritage" and the responsibility of all to protect that "heritage" by being good stewards of our resources. Where in the first Red Book it is left up to the individual to determine just who or what calls us to be good stewards—God, humanity or the State (to name a few choices)—in the second Red Book it is clear that the State implores all members to remember a collective bond with the natural world that gives

345

the citizenry a sense of common ownership and identity. Again, a call towards something larger than the individual, but nothing that could be construed as overtly religious (unless one desires to explore the idea of a Canadian civil religion which this study emphatically does not).[158]

It can be seen, then, that issues of the environment remained ones that could be spoken of in terms that were quasi-religious if not overtly religious—the natural world was something that was seen not only as a source of economic prosperity, but also as a tool for national identity and unity. We might disagree about who has jurisdiction over the grizzly bear's habitat, but we can agree that the majesty and beauty of both animal and habitat are part of our identities as Canadians. Therefore, the policies do reflect what is a traditional theological stance or religious worldview, that humanity is not embedded in the natural world but that it has a responsibility towards it (either as a responsible user of tools or as a steward). As well, even as humanity is not embedded *in* the natural world, the natural world notwithstanding is a transcendent force in the Canadian collective consciousness— reminding citizens of their unity as a people, even in the midst of profound differences. A romantic call to national unity, but one that had resonance, nonetheless.

Specifically SARA

The development of *SARA* spanned two Red Books, three federal elections, and four Environment Ministers. It came before Parliament and the Standing Committee on Environment and Sustainable Development three different times (as C-65, C-33, and C-5— respectively). Although there were changes and amendments, the Bill as passed in 2002 was not significantly changed in its essence from the draft bill in the early 1990's. The policies behind the Bill were myriad—all of them reflected, in part, by the official policies laid out in

346

the Red Books of 1992 and 1997. The government policies as stated were to be good neighbours by honouring international agreements and to be good stewards by (among other things) protecting biodiversity in part by protecting species at risk and their habitats. In this, the government was led by polls that showed Canadians desiring to protect biodiversity. *SARA* also had to respond to other policies of the government, though—honouring the jurisdiction of the provinces and maintaining and promoting economic stability and growth. *SARA* had to promote the lofty goals of protecting biodiversity, maintain Canada's environmental reputation abroad, satisfy environmental groups that it was effective, fulfill the promise of stewardship and do its part to support national unity all while not disturbing natural resource industries and provincial jurisdiction claims. In addition, it had to dovetail with the government's policies towards Aboriginals while also incorporating Traditional Ecological Knowledge into its eventual ultimate permutation. So the policies that underlay *SARA* were not just those on the environment, but on natural resources, economic development, foreign policy, and intergovernmental relations. The religious worldviews reflected were, initially, those covert ones of the federal government observable in the statements regarding humanity's relationship with the natural world. As more input was given towards the development of the bill, the underlying religious worldviews being reflected in it became somewhat more diverse. While it is apparent in the bill itself, a dichotomy of religious worldviews (in terms of humanity occupying a singular place in creation) is faintly discernable. In the preamble of the *Act*, paragraph one, it states that: "Canada's natural heritage is an integral part of our national identity and history, wildlife, in all its forms *has value in and of itself…*" (italics mine)[159] This is reflective of a religious worldview that holds that the natural world has value regardless of human activity or need. It reflects a non-Lockean point of view that gives value to an entity irrespective of human

agency. It is akin to an Aboriginal sense of complete embeddedness and also reflective of a

Christian eco-theology that can be seen as neo-Franciscan as it ascribes a complete

egalitarianism to all of Creation.[160] So it can be seen that, although religious worldviews and

theological ideology can be traced fairly easily through the policies of the federal government

at the time, they do not translate in an appreciable way into the legislation itself.

<u>Championing Legislation—the Total Story</u>

It bears repeating that, while worldviews certainly do come into play when

negotiating legislation, they are unlikely to become wholly entrenched if the legislative

process is followed in the traditional manner.[161] *SARA* was negotiated by government

representatives, environmental groups, private individuals and corporate interests

representing a plethora of viewpoints. The environmental groups, at least, were firmly

convinced that they held the moral high ground and it is reasonable to state that other

stakeholders did as well. No one ideological position was wholly encapsulated in the final

legislation, although the government's stance was, as is to be expected since the Liberals did

have a majority, more fully represented than was, say the Sierra Club of Canada's. This is

important to note, because two key players in the story of *SARA*: Mr. David Anderson and

Ms. Elizabeth May are both practicing Christians—members of the Anglican Church of

Canada. Both of these individuals held powerful, vocal positions during the course of the

negotiation of *SARA* and both have firm, clear theologies that are reflected in their

worldviews and stances towards humanity and the natural world (or environment).

An exploration of these two players in the context of the *SARA* is instructive as it

shows how and where the worldviews of individuals touch and influence what are

considered to be separate spheres—public and private, with politics in one and religion in

the other. Mr. Anderson himself was adamant in an earlier quote in regards to the

separation of the two spheres. Ms. May, as well, has been careful to delineate her personal religious views from her party at large and from her position as a potential public servant. However, this exploration will demonstrate that it is not possible to remove ones worldview entirely from one's public life and that this is not, in a legislative sense, necessarily a negative outcome. As will become apparent, although Mr. Anderson and Ms. May have profound differences, their theologies are not, in the end, incongruent—although their conviction regarding what constitutes workable, lasting legislation certainly is. I will compare them on four points: worldviews, theologies, anthropologies (view of humanity)—including a view of the natural world and humanity's place in it, views of the political process in general and of *SARA* in particular.

Elizabeth May, the Sierra Club, SARWG, and SARA:

Introduction

Elizabeth May begins this section because it was she who was present at the beginning of the *SARA* story. Ms. May had worked with the Conservative government under Brian Mulroney as an advisor to the Minister of the Environment. She resigned her position over issues regarding the federal government's disinclination to perform an environmental assessment. Ms. May was at Rio the Earth Summit, a participant in the designing of the Earth Charter and also had a hand in the

Biodiversity Convention. As executive director of the Sierra Club, she worked with a variety of coalitions, as mentioned above, to bolster, amend and improve what she and other groups saw as deeply flawed legislation. Even today, as leader of the Green Party of Canada, she remains convinced that the legislation as passed is ineffectual and poorly constructed.[162] Ms. May saw herself and the coalitions of which she was a part as important components of the entire process—a reflection of the power of cooperation of disparate interests working

towards a goal that they all agreed was important, even if they did not agree on the ways that goal should be achieved. Her conclusions regarding the process of *SARA* include a conviction that the Liberal government in general (save for a few backbenchers who formed the informally named "Green Caucus), Cabinet—the Environment Minister included, were difficult to work with, compromising with the provinces and within Cabinet so much so as to render the legislation untenable and best and detrimental at worse.

Worldview

The question, "What is your worldview?" was asked before questions of religious affiliation and theology because the term "worldview" encompasses more than theology, it is the construct by which individuals make meaning in their own lives and the template with which they use to make meaning of existence in general. Ms. May's worldview centres on her beliefs as a practicing Christian and as an environmentalist. It would be fair to say that the two are integrally intertwined in her worldview. She believes that it is important to ask large questions and to strive to find the meaning of our existence—for her, the natural world is inseparable from that quest: "I'm very focused on the survival of this planet as a moral responsibility and also as an aspect of our spiritual growth and development as human beings to think beyond our own greed and immediacy think about what does it mean for future generations and what does it mean for our immortal soul—how we treat this planet, how we treat each other."[163] Ms. May looks beyond a mechanistic universe to one that is organic, interdependent and dynamic. In this worldview, humanity is both embedded in the natural world but also, in a sense, transcendent by virtue of humanity's responsibility towards creation and towards the Creator: "My largest sense of a worldview is in the physical plane of planet earth as completely unique…the notion that we're in an evolving universe and that we can be participants in that creativity and in that evolving universe and that our role of

humans we are a species of enormous potential for obviously for good or for ill…"[164] Her

worldview includes, but it is necessary to stress that it is not governed by, a belief in an

afterlife. The stress here is important because it is not a point of view that relies on right

behaviour or belief to gain salvation, but rather a sense that responsibilities for one another

and for the natural world are responsibilities for which human beings will have to make an

accounting, that there are expectations of us as a species that will have ramifications beyond

our present, temporal reality. She speaks of societal paradigm shifts as collective feats of

human spiritual (and social) growth and touches briefly on the idea that God challenges

humanity to grow through humanity's mistakes and tangible ramifications of human

brokenness (i.e. climate change, pollution, eradication of other species).[165]

Theology

Ms. May is a theist whose commitment to the Anglican Communion is integral to

her theological expression. This is important to note because often persons who experience

the sacred in the context of the natural world are seen to be (or call themselves) pan-theistic.

It is important to state at the outset that Ms. May's theology on one hand seems very

traditional—that is, approached conventionally in the context of Anglican worship and

personal prayer. Along these lines, the God of Ms. May's theology is not the God of

Pentecostals or of more evangelical traditions first encountered in her youth:

> "(we called them) the 'God Squad'—people who thought that God would help
> you pick out what shoes you would wearing in the morning, you know—'Oh yes
> I ask God… I ask Jesus for help and the answer's there. And if I'm not sure
> how I'm going to do on my exam I pray to the Lord…and I thought oh boy, oh
> boy…I had a sense that there's things you bother G about and things you
> should handle on your own…"[166]

Ms. May's theology seems to have developed along neo-Franciscan lines. This means, in

part, that the Abrahamic God, in all of the complexities and permutations that appellation

carries with it has called Creation into communion with Godself and calls humanity, in

particular to a level of responsible stewardship, the fulfilling of which is a profound expression of love, devotion and completion of purpose.[167]

The commitment to Anglicanism as integral to Ms. May's Christian theology is clear when she speaks of the reasons that she continues to practice. The aspects of Anglicanism that seem to particularly undergird Ms. May's theology are that of the Eucharist, sacred space, community and education. In answering questions regarding why she still practices, Ms. May recounted the sense of continuity, welcome and communion that she experiences when she attends services all over the country—when the priest will sometimes call her by name. She speaks of being nourished by this sense of community and by the mass itself. Her sense of ritual importance and of sacred space are also apparent when she recounts teaching English as a Second Language at her parish in Connecticut when she was a teenager—she recalls asking the others not to play in the sanctuary and showing them what the various parts of the building meant and explaining aspects of the Book of Common Prayer[168] Her conviction that religious education is important in the life of the church is also apparent—as she has taught Sunday School from the time she was a young teen until the present. Again, the themes of responsibility and commitment and sense of purpose appear and loom consistently large in her theology. This sense of purpose seems to be both a collective and an individual aspect of Ms. May's theology—that God calls humanity to grow and move in a particular direction and also calls individuals to responsibility and personal accountability. God is personal and loving and expects partnership from humanity even as God is acknowledged by humanity as Creator and as Wisdom.

Anthropology

In Christianity, a person's anthropology (or their view of human nature, including their soteriology) is inextricably intertwined with their theology. Traditionally, the lower

one's anthropology, the higher one's Christology and vice-versa. A lower anthropology means, among other things, that one holds a belief about human nature that sees it as broken and depraved. In this paradigm, the relationship between God and humanity became broken at the time of the fall by a lack of hubris on the part of humanity and the relationship can only be mended by the redemptive power of Jesus Christ—fully human, fully divine. This particular end of the spectrum is especially conducive to a "faith over works" construct, as there is nothing a human being can do to achieve redemption—salvation belongs to God alone. A higher anthropology—at the other end of the spectrum—sees humanity as broken, but not genetically flawed. Humanity's relationship with God is broken in the same way, but is not depraved, merely lost and the relationship may be mended by humanity's realization of its need for God as partner and guide, as model for what it means to be redemptive in the world. In this paradigm, Jesus is still Christ, but Christ as model of what true communion with God can achieve in the world. Jesus Christ becomes Jesus of Nazareth, teacher, model of holiness, redemptive force but fully human—the spark of divinity within him recognizable as the spark of divinity present in all of humanity. This end of the spectrum is conducive to the "works over faith" construct—human beings can achieve redemption if they work hard enough. Grace is present all through the spectrum as the aspect of God that freely gives of redemption, knowledge, whatever one deems to be necessary for the relationship with God (and consequently with humanity) to be made whole.

Ms. May's anthropology falls somewhat in the middle of the spectrum, she quotes the Quaker Ursula Franklin who speaks of faith and works being intertwined—that the Christian must have one foot in faith and one in works.[169] Ms. May's anthropology reflects a deep sense that humanity is eminently teachable, that they are dynamic (like all of creation) and are endowed with intellect and curiosity that is to be harnessed to move forward as a

species. The "moving forward" incorporates awareness that one's "immortal soul" is dependent upon taking moral stands in regards to how one treats the rest of creation (including human beings) and remaining (as Ms. May puts it) uncorrupted in one's pursuit of those goals.[170] There is no indication in Ms. May's theology or anthropology that speaks of eternal damnation or non-acceptance by God if one fails in one's mandate to do all they can to move humanity and the cause of mending creation (in the physical and the metaphysical sense) forward. It is a positive theology and anthropology that rests on the capacity of humanity to work with the rest of creation to fulfill God's vision of what creation can be.

This anthropology has humanity firmly embedded in nature, as mentioned above. Humanity does not necessarily have more value than the rest of the natural world, but it has more responsibility. Ms. May refers to her theological studies at St. Paul's University in Ottawa as substantiating her intuitive knowledge regarding the natural world, that all of creation is interconnected and that it all has meaning beyond the temporal. Humanity *is* part of the natural world and responsibility towards ones another is akin to responsibility towards the rest of creation—not more valued, but more responsible. Her anthropology and her theology both assume a capacity for integrity and singularity of purpose that, she believes, work to bring about paradigm shifts in human society—which she describes as "spiritual breakthroughs".[171]

The Political Process: Vision

Ms. May has been an environmental activist for much of her life.[172] She has a history of working in cooperation and in collaboration with grassroots community groups, environmental NGO's, government[173] and, in the case of *SARA*, with natural resources industry groups. Ms. May is a strongly principled person who sees the mending of creation both as a moral and as a pragmatic imperative: "I think that ecological awareness…is the

next step up for humanity as a whole and if we don't take that step we're doomed..."[174] This sense of mission and of principles is vital to understanding Ms. May's interaction with the political process as it pertains to *SARA*. Ms May is driven by a worldview that is undergirded by a theology firmly rooted in God's proscription to humanity to maintain the integrity of creation. This manifests itself in action that sets environmental integrity—balance, health of all species, preservation and nurture—as the paramount objective for humanity in general and for Canadians in particular. This does not mean that Ms. May has a uni-focus, however. What it does mean, in terms of the political, is that all government action should keep the imperative of environmental integrity (and by this I mean reversing global warming, not polluting the natural world, conserving species and their habitat, among other things) as the primary focus. It is fair to infer that Ms. May would see as ethical Cabinet asking at each turn, "Does this affect the health of the natural world and if so, is it an adverse or positive affectation?" If the answer cannot be in the positive, then the action should either be modified so that it is not adversely affective or it should not be taken at all. It is a different kind of bottom line thinking that is, in some ways, in keeping with the goals set forth in the first Red Book of 1992. So Ms. May's vision of the political process is that it be focussed on what is most important to humanity (and to the rest of the natural world) at this point in history and that is the health of the natural world. Ecological awareness that leads to positive human action.

The Political Process: Goals

Extrapolating from Ms. May's own words and from her career, it is clear to see that the political goals she sets affirm the vision named above. It is also quite clear that, although she espouses a Christian worldview, that worldview does not overtly inform her actions taken in light of her goals and vision. That is to say that her worldview and the vision set

and the goals that are set in the furtherance of that vision are undergirded by a deep personal faith, but that the faith itself does not overtly enter into the conversations and actions of Ms. May in the public sphere:

> So I might be in prayer (depending on the day) a whole bunch of times during the day but when I'm in negotiations or a strategic discussion or trying to organize or motivate people…I'd go into them with a pretty clear conviction of what needs to be done and that need is around survival and stewardship—survival of species, functioning ecosystems, avoiding the climate crisis—so those are so integral, those decisions are already in my mind when I go into a negotiation…[175]

Goals that further the vision are supported by a "profound belief that you can do it right." And by "right" she means not just the political sense, but the moral sense—a "rightness" that maintains ecological integrity and metaphysical balance. Achieving those goals in the political arena, however, is a temporal action, one that depends on strategy and planning and not one religious coercion.

The Political Process: Compromise

When one holds firm convictions compromise can be considered anathema. And indeed, Ms. May does say that during a negotiation you must, "hold in your mind the crystal clear view of what it looks like when you've won. You've got to hold onto that. And if you start making compromises and saying, 'okay, it wouldn't be too bad if we got half of what we want…', those are fatal determinations in terms of doing the right thing."[176] And yet, Ms. May is known for her ability and predilection for bringing parties together and for forming coalitions and cooperatives: "…my philosophy is always try to get everybody to the table…to try to get everybody to work together try to find a solution"[177] In this paradigm, then, compromise of the vision itself is not possible for it would corrupt the process by diluting the principles which would be temporally and spiritually detrimental. What is important is cooperation in service of a

common goal. This view requires that people hold the same vision as inviolate—even if they do not agree on how to get there. There can be no compromise when it comes to the vision itself, but there can be compromise in terms of which goals are set and how one goes about achieving those goals.

The key concept here is the notion of compromise in terms of moral imperatives. If something is truly a moral imperative, one cannot in good conscience compromise its principles without some sort of important, even dire, consequence. It would be easy to assert at this point then, that Ms. May's religious worldview did indeed have direct bearing on the ways in which the *SARA* negotiations took place. If issues of the environment went beyond a scientific cause for her (and they do—they are integral to her ontology and cosmology), then would that not guide her actions in the entire process? Yes and no. I have already demonstrated that Ms. May's religious worldview undergirds her environmental activism.[178] The question is, does it drive her actions in the political sphere? Because of who she is, yes. But that is not the crux of the matter for it has been shown that religion is not overtly present in the heat of the battle of the negotiating table. In this sense, Ms. May models what David Novak explicates in his article on Jew and secularism in modern, liberal democracies. Novak says, in essence, that it is perfectly acceptable to be religiously motivated, to have your moral imperatives informed by a religious worldview. But, he goes on to argue, that this is not enough in a secular state. In a secular context one must expect to undergird one's objectives for the most part with evidence and arguments that are objective and universal enough that everyone at the table can weigh them and discuss them with a measure of objectivity and acceptance.[179] This is precisely what Ms. May recounts when discussing how *SARA* was approached by herself and the other groups with

which she worked during the process. Religion enters into the discussion only to the extent that it motivates the participants. It does not, as such, further or even enter the public discussion because it is not a powerful tool for debate in and of itself. And a tool that is not powerful is not useful in the political arena. In this way, religion is both present and influential as a personal motivator while at the same time being only one small component of the overall process.

SARA

The vision held by Ms. May and by others in regards to the Species at Risk Act was held in tandem with the ideals spelled out in the *Biodiversity Convention*. The *Convention* requires signatories to preserve biodiversity in their respective geopolitical arenas. In addition, signatories also agree to adhere to the precautionary principle which, in this case, means that if a species is at risk, a lack of definitive scientific evidence should not obviate the responsibility to err on the side of caution and move to protect the species.

The vision was of a Species at Risk Act that would (much like the Endangered Species Act in the United States) legislate a scientific (as opposed to political) listing of endangered species, give legal protection to endangered species and their habitats, protect all species regardless of whether or not they or their habitat was on federal land—protection includes the prohibition of killing or destroying members of species on the list.

The way that the White Paper was originally structured, as has been noted, that vision was not fulfilled in its entirety. The federal government deferred to the provinces in terms of jurisdiction, COSEWIC was given legal status by being embedded in the *Act*, but Cabinet had veto power.

Ms. May manoeuvred through the many years of negotiation with her eye firmly on the vision of what would create a workable piece of legislation. Her political philosophy in this regard is pragmatic, even as it is driven by a vision. "If you leave a legislative hole," she says, "politicians will work to fill it. If you pass a bad piece of legislation—they will consider the hole fixed and not worry about going back to rectify the bill."[180] From her perspective, then, it was imperative to get the legislation in line with the vision the first time around. The group with which she (in her capacity as director of the Sierra Club of Canada) eventually partnered, (SARWG), worked cooperatively and emerged from their process with recommendations for *SARA* that did not compromise the vision of what *SARA* was to do and be, but that suggested (in essence) strengthening the role of the federal government in the process: "Our core recommendations are founded on the federal government demonstrating strong leadership by taking responsibility for species at risk in areas where it has clear jurisdiction and by playing an active coordination role."[181] The changes that SARWG proposed were myriad but the underlying theme (a strong federal voice that, in clearly stated and tightly defined terms, embraced and wielded all of the jurisdictional power that the judiciary had consistently ruled it (the federal government) had) was one that ultimately served a vision that could be construed as having a metaphysical undergirding that regarded humanity as embedded firmly in the natural world with rights and privileges thereof. That Environment minister of the time (David Anderson), along with Cabinet, did not adopt the suggestions was seen by the group as a defeat, even though the bill (C-33) did pass and was proclaimed. It's weaknesses, protested the group, were too large to give it effectiveness. Ms. May had fought with

the moral conviction of the correctness of her vision. Where the vision was stymied

was at the Cabinet level of the government of the day.

David Anderson, Government, Right Relationships, and SARA

Introduction

David Anderson was Minister of the Environment for five years under both

Jean Chretien and Paul Martin. He grew up experiencing cultures other than Canada

first hand, spending time in Hong Kong and Switzerland. These early experiences had

a profound impact on his adult worldview. He also has a twin history of public service

(the Canadian Department of External Affairs, as an Olympic athlete, provincial and

federal politics as an MLA and an MP) and environmental activism. His

environmental activism was incorporated in both his political and his non-political

career—particularly in the area of coastal and wetland protection. He taught at the

University of Victoria, as well, in environmental policy (among other subjects). As

Minister of Fisheries and Oceans (his portfolio before being shuffled to Environment)

Mr. Anderson had a reputation as a conservationist and as a skilled negotiator.

When Mr. Anderson first came on as Environment Minister, there was some

controversy in regards to *SARA*. A remark Mr. Anderson had made regarding not

being willing to amend the legislation to the extent that it would "…destabilize (and)

destroy the intention of the bill." led to the belief that the legislation would be passed

"as is" and that the Minister was going to be intractable, despite committee hearings

and recommendations to the contrary.[182] This was in June. When hearings resumed in

the fall session, Mr. Anderson clarified his remarks and pronounced himself willing to

consider amendments that would not destabilize the bill. This incident is important as

it highlights Mr. Anderson's experience as a public servant—*SARA* was controversial in Cabinet and, as has been postulated, it is not likely that Mr. Chretien would have gone out of his way to champion it, given other issues that were also requiring attention at the time.[183] C-55 had been amenable to Cabinet and amending it too much would mean that it would have to be re-negotiated around the Cabinet table. Mr. Anderson, as will be shown, is a politically pragmatic. Irrespective of an initial bad start, Mr. Anderson was instrumental in the eventual passage of *SARA*. His perspective of the process differs markedly at points from Ms. May's despite the fact that they both were focused on passing effective species at risk legislation. Just as Ms. May's religious worldview plays an important supporting role in her part of the *SARA* saga, so too does Mr. Anderson's. Once again, however, it can be seen that although this worldview is integral, it does not adversely affect the outcome of the process.

Worldview

A question that was taken literally, Mr. Anderson describes his worldview as just that—a global perspective. At its essence, Mr. Anderson's worldview has to do with big pictures and the idea that one is responsible (either as an individual or as a corporate entity—like government) for more than oneself or one's country. His worldview is one of contexts and possibilities where fairness and justice are not black and white but complexities. He speaks of this being established at a very young age when living abroad, especially in Asia. He recounts the realization that he was not any better or smarter than the people he interacted with—just luckier in terms of material resources and opportunity.[184] When pressed, Mr. Anderson condenses the above into a worldview resting on the "Christian tradition of the Golden Rule—Do unto others what you would have them do unto you."[185] This aspiration is not always achievable,

he says, but one always strives towards it.[186] Mr. Anderson's worldview, then, is composed of a sense of responsibility towards all people and of an ethic that compels one to look beyond oneself and one's own backyard to the implication one's actions have on the global community. It is not a paternalistic worldview, but rather a sense of mutual obligation with one's fellow creatures (especially humanity) towards one another.

This contrasts with Ms. May's worldview in that Mr. Anderson, while he does see the interconnectedness and interdependence of the natural world, does not form his worldview around that precept. Yes, humanity is part of the natural world, even embedded in it and humanity has a responsibility to protect it. But Mr. Anderson does not see the protection of the natural world as the spiritual exercise that Ms. May does. He is passionate and does care about the natural world in and of itself, not just as a tool for human use. But his worldview is exceedingly complex—he remarks frequently that there are myriad answers to problems and myriad paths to the truth and each answer and path has ramifications that are not immediately apparent to the outside observer. So there is a pragmatism and a complexity to Mr. Anderson's world view that differs from Ms. May's—this difference is important, for it informs the ways in which each sees God, humanity and the legislative process.

In terms of *SARA*, this came into play as a commitment to trying to see all sides of the issue and to find compromises that would assure the most effective balance of protection, regulation and compensation. Not in the sense that *SARA* had to be all things to all people, but in the sense that it was responsible to look beyond the species at risk and protection of habitat to the lifestyle consequences for people

and for the ways in which everyone could be brought on board to adhere to the legislation rather than ignoring it.

Theology

Mr. Anderson does not come from a highly religious family, although his grandmother was a practicing Anglican and the grandchildren went with her to church and also attended Sunday School. As a young adult, Mr. Anderson remained loosely affiliated, attending services occasionally as it felt "comfortable".[187] When he met and married his partner, he became more involved as she was quite active in her parish. They had two children and attended church regularly as a family-both in Victoria and in Ottawa. Now that the children are grown, Mr. Anderson and his partner still attend church regularly. Mr. Anderson voices appreciation for his religious tradition on several levels. On one level is the aesthetic of the service itself—the music, the liturgy, the literature of the Bible. Another level is that of the intellect, where one listens to sermons and the scripture readings. Intertwined with this is what Mr. Anderson refers to as the "moral discipline" of not only listening to sermon and scripture but allowing oneself to be "pushed into different ways of thinking."[188]

Although Mr. Anderson does not speak on metaphysical terms nor mention God per se, some cautious conclusions can be made in regards to his theology. God, in the paradigm that Mr. Anderson seems to construct, is more interested in how one behaves in regards to one's morals than God is interested in "show". For example, Mr. Anderson was somewhat dismissive when discussing the issues of Parliamentary Prayer breakfasts. "We are here in a partisan capacity," he says, "if you're not going to extend the 'we're all Christians here' attitude to the House, why pretend?"[189] In that same vein, Mr. Anderson believes that religion teaches one to look beyond one's own

interests, to try to find the good for others and to see a broader perspective. Religion is the sphere in which humanity is invited to stretch oneself and to gain the capacity to think and act outside of one's own narrow, single-minded perspective. At the same time, although humanity is compelled to act in the public sphere—God and religion are private, not in the sense that they are shameful, but in the sense that they provide insight, fortitude and instruction for work in the more public sphere.

In terms of public and private spheres, it is interesting to note that while Mr. Anderson is suspicious of religion espoused overtly in the current domestic political arena, he speaks more favourably of its being referenced in the international arena where religion is not so much one's political stance, but the invocation of which is more a statement of cultural perspective that should be considered equally among other such perspectives.[190] It is easy to draw the conclusion that Mr. Anderson feels that religion invoked in the international arena has more substance than when it is invoked by a Canadian politician. This reflects the traditional conviction of the Canadian elite that religion invoked in domestic politics is not desirable nor should it be taken seriously as public invocation of it is not only polarizing (which is detrimental to the legislative process which is, after all, all about negotiating) but a cynical attempt to curry favour with a particular constituency. To be clear, I am in no way putting these words into Mr. Anderson's mouth or intimating that he does not take religion or religious people seriously. I am, however, extrapolating from our discussions an example of the paradigm of thought present in the Canadian elite described in Chapter One.

Mr. Anderson's theology contrasts somewhat with Ms. May's at several points although there are points in common that are important. They are both, as has been

mentioned, practicing Anglicans. Anglicans do share, by and large, an appreciation of the sacred as manifest in ritual and ambience and this appreciation is evinced by Mr. Anderson and Ms. May. And for both people, the educational aspect of their faith is important. Ms. May is not only a life-long Sunday School teacher, but is engaged in theological studies. Mr. Anderson speaks clearly about the intellectual stimulation of the sermons and of the scripture readings. And they have a common bond in their belief that their religious praxis calls them to look beyond themselves and to consider issues of morality and ethical frameworks that lie beyond their personal needs and experiences. They both have a moral framework that is inextricably intertwined with their Christianity. It is also interesting to note that, while both Mr. Anderson and Ms. May are firmly rooted in the Christian tradition, both appear to be pluralist in the sense that they remain open to the truths and worldviews of other faiths. Mr. Anderson remarks at several points that one of the results of religious practice is that it "broadens the picture," that it keeps one from being narrow because one learns to look beyond oneself.[191] This is important because it places both of them close to the middle of the theological spectrum—neither fundamentalist-get-right-or-get-left Christianity nor completely relativist.[192]

What is also interesting is that they also share a conviction born of the Reformation in which society is seen as needing to be put in order. This has been discussed in length elsewhere but it bears a brief repetition in the context of both Ms. May's and Mr. Anderson's vision of a moral order that is intertwined in their theologies. Ms. May speaks of remaining "incorrupt and incorruptible" and trying to "bring back order and sanity to the world and what is fair."[193] Mr. Anderson, too, speaks of the responsibility of fairness and of the mandate of a government to see the

bigger picture of society and a vision of the future and to try to shape that so it might render a more equitable and just society.[194] This fits with a theology that reflects a God who expects one to do the right and proper thing. A God that is not necessarily judgemental, but who has provided one with the equipment to do justice in the world and expects one to move forward and do just that.

Where Mr. Anderson and Ms. May appear to differ most is in their theology of ecology and, as a consequence, in their anthropology. Although it is still theological in nature, since anthropology is integral to the discussion, ecological theology and anthropology will be discussed together under the next heading..

Anthropology

Ms. May, as has been discussed, sees humanity as embedded in the natural world. Mr. Anderson does also—to a point. Mr. Anderson has a different metaphysic than does Ms. May. His theology is rooted, as mentioned above, in moral precepts and issues of justice, fairness and good judgement. He looks upon environmental issues very much as moral issues, but not as the metaphysical teaching tool that Ms. May posits. Mr. Anderson very much evinces a classic stewardship perspective whereby the natural world is the responsibility of humanity and, though it most certainly has intrinsic value, it is a tool. Humanity is part of the ecology, but humanity is also disembedded to the extent that it can (and must, in the interest of human flourishing) assign value to the components of the natural world. By "value" I do not mean economic measurements exclusively. I mean also the value of a species in the context of human needs. For example, there are two highly endangered subspecies of Pacific Salmon that spawn in a particular lake in British Columbia. They are sub-species, not the entire species itself. Environmental groups are deeply concerned that

these sub-species will be extinct. Industry and others have argued that to protect those sub-species would entail complications to the fisheries that would result in a severe lack of income for the communities that depend upon the species in general for their livelihood. Mr. Anderson has stated that the continuation of that sub-species is not particularly important, given the context and the bigger picture. Now, it is important to remember that Mr. Anderson has been recognized nationally and internationally for his work in protecting salmon and salmon habitat so one cannot say that he is callous when it comes to the protection of species.[195] But what this does show is that Mr. Anderson's theology differs at this point from Ms. May's. A stewardship model is one that invites care and nurture but that permits a hierarchy of needs within the natural world with humanity being at the top of that hierarchy. Ms. May's notion of complete embeddedness implies a hierarchy only where responsibility is concerned, not in terms of value. Humanity may be special and thus have more required of it, but it remains part of the natural world so much so that to value one part over another is not ethical. Again, it is vital to be careful at this juncture and not overstate the case. Ms. May does not de-value human life. What she argues is that humanity is so embedded in the natural world that to refrain from protecting any habitat or species or aspect of biodiversity is to ultimately hurt humanity in a pragmatic as well as in a metaphysical sense. Human needs are important in both systems, but in with important differences.

Mr. Anderson, like Ms. May, has a high anthropology. This is common in people who hold moderate, mainstream theologies. Mr. Anderson sees humanity as capable of not only understanding its mistakes but of correcting them. There is a sense that Mr. Anderson believes that human beings are not completely capable of

following the Golden Rule perfectly and consistently, but that they are able to aspire to that achievement and that the redemption (my words, not his) is in the aspiration, not necessarily in the culmination. Mr. Anderson reveals an anthropology that is compassionate in that he believes that human beings are equal in value, that it is circumstance that creates inequality. As well, this anthropology lends itself to a belief in the role of government that is not quite paternalistic—as it is (in theory, at least) collaborative to the extent that myriad voices and concerns are heard and considered—but that rests in government being vested with the power to make decisions in light of a vision that should see a bigger picture than that beheld by the electorate. I say that this is not paternalistic as there is no connotation of "Daddy knows best, don't ask questions." On the other hand there is a strong component of "You hired us to do the job and it is our business to be more informed about the complexities than you are." All in all, this is an anthropology that sees humanity as mandated to be one another's "keeper" and which has the tools to carry out that mandate.

In terms of the compare/contrast, it is the theology and the anthropology surrounding the natural world that marks the most difference between Ms. May and Mr. Anderson. And those theological stances were clear and present in the debates over *SARA*. Mr. Anderson believed in the morality of species protection. His arguments against the vision held by Ms. May and SARWG and other environmental groups had less to do with the vision itself as it did with scope and implementation. His actions were highly motivated by his anthropology (human capacity to look after one another and to be good stewards) and view of the political process.

The Political Process: Vision

Mr. Anderson is a career public servant as well as a consultant and an environmental activist. His activism appears to be shaped by his experience in the public sector. His vision is highly tempered (which is not at all to say corrupted) by pragmatism—long experience with how people work hierarchical systems. Mr. Anderson's political vision is informed by his religious worldview to the extent that he holds a moral conviction that human beings have a responsibility towards one another and towards the greater good of humanity. Protection of the natural world beyond humanity is a component of that vision.

Pragmatism born of experience is the other component of Mr. Anderson's political vision. While he and Ms. May both emphasize the importance of mediation, negotiation and cooperation, Mr. Anderson incorporates into his vision a belief that, as was stated above, the legislative process is just that, a process. Although environmental issues are no less urgent for him than for Ms. May, his vision of the place of legislation as an important component of the answer to the problem is less all-encompassing. While Ms. May uses consultation and cooperation to further a vision that must remain inviolate, Mr. Anderson uses consultation and cooperation to modify and become informed about the motivations and possible pitfalls that certain clauses or assertions may dissuade potential allies. This is not to say that one person is more canny or more astute—these are two viable ways of proceeding politically and simply two ways of being effective. They are both undergirded by the religious worldviews— the one of a humanity embedded in the natural world and the other of a humanity with tiered levels of responsibility towards the natural world. Whereas Ms. May's vision revolves around the strong axis of a moral certainty, Mr. Anderson's vision is more like a cross-section of mica, each layer painstakingly built upon the other until

the whole has been composed. Some layers are stronger than others, some almost translucent, but each layer adds to the eventual solidity of the whole.

A deep awareness of the complexity of human society and the natural world also informs Mr. Anderson's experience of the political process. For example, when asked about what frustrations he faced as a person with a religious worldview in the political arena he replied that the lack of the ability to be nuanced and to frame issues in terms of their complexities rather than in terms of sound bites.[196] There is a strong feeling that in politics one must be less than candid when discussing issues publically and that, to a religious person, this feels uncomfortable.[197] So knowledge of the complexities, the place an issue has within the bigger societal picture and the religious worldview that provide part of the impetus for public service undergird Mr. Anderson's vision of the political process but are not overtly obvious

Thus, for Mr. Anderson, the vision one brings to the political process is principled, but tempered by the knowledge that it must be flexible if it is to be manoeuvred through the perilous waters of party politics and public consultations. Mr. Anderson remarks that the ideologies and/or vision that first inspired a piece of legislation will always be modified and will never reach proclamation intact. He points to the review process (*SARA* passed with a mandate to review it in 5 years—the review is still in progress at the time of this writing) as the place where amendments can be guided through and holes can be remedied.[198]

Mr. Anderson's vision of the political process is also anthropocentric. Unlike Ms. May's which puts the natural world at the centre of each political decision, Mr. Anderson's places people and the natural world. He states that he was always pushing to look beyond the economic to what he called the "lifestyle" component—the human

and the natural world component.[199] How will the political decision affect the lifestyle of the people who are connected with that ecology? There are two questions to be asked in Mr. Anderson's vision, with the human one being primary and the natural world one a very, very close second.

The essential core belief that Mr. Anderson seems to bring to the legislative process in terms of a vision is that it is government's responsibility to see the bigger picture and to plan for the future with that bigger picture in mind—to determine what is in the public interest in the long term. To be sure, one must consult broadly, but to rely completely on public opinion is not sustainable, for public opinion will change over time.[200] This vision reflects Mr. Anderson's theology and his anthropology in that it firmly rests in the belief that human beings have a responsibility to look after one another. In terms of *SARA*, this vision was manifest first in the sense that such legislation was a *component* of a moral imperative. Not only was it the right thing to do, to protect biodiversity, but it was an international treaty obligation and mandated by the Red Book. Mr. Anderson's vision of *SARA*, then, was different than Ms. May's in that he saw it as a component of a broader picture of environmental stewardship—not a moral imperative in and of itself.

And so Mr. Anderson's vision of the political process is that of a process—it ties with his belief in the Golden Rule being a principle towards which one strives. This contrasts somewhat with Ms. May's vision of *SARA*, for example, as being the personification of a principle that must be embraced and codified. Unlike Ms. May, who needed to form the vision and compel others to embrace it and find ways to work towards it, Mr. Anderson saw *SARA* as a stepping stone towards a potentially more complete piece of legislation in the future.

In addition, Mr. Anderson brought a pragmatism to the process that was different than Ms. May's.[201] His vision of the political process is one of flexibility, the bigger environmental, political and socio-economic picture and of compromise. There are right things to do, but myriad ways to get to the right things. While morality is always undergirding the vision encapsulated in the legislation (in this case, *SARA*), the details of the legislation must be allowed to work within the political framework and the social-economic context of the day.

In this way, Mr. Anderson and Ms. May disagreed vehemently on the vision of *SARA*. Mr. Anderson viewed environmental groups as special interest groups that were too narrow in scope to be helpful in the process. He has stated that he actually found the environmental groups detrimental to the process in part because the narrowness of focus led them to suggest changes that would have been unacceptable to other stakeholders in industry, in the House and in Cabinet.[202][203] The inflexibility of the vision put forth by environmental groups and even by SARWG, Mr. Anderson intimates, would result in legislation that would be ignored at best and blatantly defied, at worse.[204]

The Political Process: Goal

In terms of *SARA*, Mr. Anderson was intent upon passing legislation that would be effective in what he deemed "Canadian" terms. One argument against what he perceived as a politically unworkable vision and goal held by environmental groups is one that was discussed in a previous chapter.[205] Mr. Anderson states that the environmental groups wanted the legislation crafted in an "American" way—that is legislation that was ultimately interpreted and enforced by the courts.[206] In Mr. Anderson's view, the only effective way to implement *SARA* was to adhere to the

Canadian tradition of society run by policy and programs. In other words, to empower the public service to implement and enforce the precepts of the legislation.[207] The goal was to put forth legislation and get it passed so that components of the larger vision of environmental protection could start to be put in place. Again, it is process-driven rather than vision-driven at the outset—the layers as opposed to the axis, the slow working towards a moral goal.

The Political Process: Compromise

It is in this section on political process that the most marked difference between Mr. Anderson and Ms. May can be seen. For Mr. Anderson, politics are all about compromise—this is the heart of the whole process. For Ms. May, compromise has the connotation of corruption. I want to be careful here, though, for the words "compromise" and "corruption" can be easily misconstrued in this context. Compromise here is used (for Ms. May) in the sense that one can compromise a position or one's values—it is a willingness to allow a chink into the armour of one's moral certitude and is thus a negative. Corruption is not used here in the sense that one often finds it used in the context of politics. Rather, it is like the connotation of compromise—a corruption of the moral imperative, the allowing of a half-hearted effort when only a full effort will do. For Mr. Anderson, compromise is negotiation, cooperation, a willingness to give when the other party gives, an acknowledgement that no one gets exactly what they want in the political process and that ideologies must be modified to fit the reality of human imperfections. And this is where anthropologies come to bear on the process for both Mr. Anderson and Ms. May. Both of them have high anthropologies, as was mentioned and both see human beings as ultimately responsible for the moral choices they make as a species. The difference

373

lies in Ms May's conviction that humanity must, as a whole, make a paradigm shift in its view of the natural world in order to achieve spiritual growth (and also to just survive). Mr. Anderson sees the dire nature of the situation and is also convinced of the need for humanity to step forward and do something. But he sees this as a responsibility that humanity has towards one another. It is one more layer in achieving that responsibility—it is not a paradigm shift causing spiritual growth, it is another layer of understanding what it means to follow the Golden Rule.

In a pragmatic sense, in terms of *SARA*, Mr. Anderson remains adamant that the bill could not have been modified any further and still found support within Cabinet. Cabinet had already compromised with him on the "safety net"—the clause that gave the Environment Minister the power to bring an emergency listing to Cabinet, should a provincial government be reluctant or recalcitrant in its moving to protect a species or a habitat. The provinces were chary of a bill that could potentially limit their ability to foster economic growth through natural resources industries, and the Chretien government was keenly aware of this tension. It is possible that, although SARWG proposed amendments vetted both by industry and by environmental groups, Mr. Anderson saw the majority of these suggestions as too narrowly focused and potentially threatening to the provinces. In addition, there was internal fighting over adequate funding for implementation.

Funding was another reason that Mr. Anderson felt the bill had to be passed with alacrity. Money had been allocated in the budget before C-33 had even been passed and the likelihood of retaining that money for *SARA* was slim if the legislation was not proclaimed quickly. Compromises were necessary, according to Mr. Anderson, if the legislation was to be funded.

On the question of jurisdiction and the failure of the bill to protect species not found on federal lands that were neither covered by the *Migratory Birds Act* or that were not marine aquatic species (something that environmental groups were determined could not be compromised), Mr. Anderson states that geographic limits were misleading and that the protection of species could not be confined to that kind of argument. *SARA*'s job was to prevent the elimination of species by human means (Mr. Anderson is quite clear on the need to differentiate human-caused species depletion and natural selection).[208] The focus of *SARA*, from the government's perspective, was more on cooperation with stakeholders and concern with out and out endangerment rather than with extirpation. The compromises, in the government's eyes, meant that *SARA* could be a viable component of a multi-faceted effort to preserve biodiversity because it emphasized cooperation with the provinces, stewardship by all Canadians, especially landowners, and a scientifically initiated list of species at risk which precipitated the composition of an action plan to protect the listed species. The plan would be binding on all stakeholders.

So it can be seen that Mr. Anderson's religious worldview does inform his view of the political process to the extent that it guides the principles by which he manoeuvres between interest groups, stakeholders, Cabinet and caucus. His deep concern for the environment and for people is intrinsic to that worldview and is manifest in his belief that compromise in a political context is one way in which one gains perspective and allows oneself to be principled and flexible at the same time. "Doing unto others what you would have them do unto you" is a dictum that can have many nuances and manifestations. The flexibility of Mr. Anderson's political vision (especially in the case of *SARA*) reflects that.

It is also quite clear that, although undergirded, in part, by a religious worldview, Mr. Anderson's political movement in the public sphere is not affected in a detrimental way by that worldview. Again, he even states in his comments before the Standing Committee that "religion and politics must be kept separate" directly after quoting the Psalms. He is entirely comfortable with his own religious worldview and those of his colleagues but remains sceptical (as has been shown) of religious worldviews that are espoused publically and in concert with political statements. I will touch on this more completely in the conclusion to the overall study.

Conclusions

The language of the *SARA*, which, even in the preamble is fairly devoid of overtly religious language, adheres more closely to the stewardship language of the second Red Book. The implementation of *SARA*, also is not particularly revealing in regards to religious worldviews being upheld. The safety net has only been successfully invoked once and that at the insistence of a court order. Even still, that court order is itself being challenged by the original litigants who are eager to see salmon habitat protected in order that an Orca population begin to thrive. The vision of *SARA* held by both Ms. May and Mr. Anderson has not been sustained in a meaningful way—which one could point to as a sort of dismal triumph of the kind of anthropology that posits the worst about human nature in its propensity to chase the short-term gain at the expense of a sustainable future. In this sense, neither religious worldview has had an impact.

What eventually comes to be the more difficult component in negotiating *SARA* is not a difference in religious worldviews, but a fundamental difference of opinion regarding what works in Canadian legislation and what does not—this also includes the legislative process. This may seem like an obvious conclusion, but in a political climate where religion

has come to be seen as the banner waved by social conservatives, creationists, intolerant homophobes and laissez faire market capitalists who shift ever closer to libertarianism, a conclusion that lays the bones of contention at the feet of pedestrian reasons such as differences in economic, political and social theories rather than at the feet of religious ideology is somewhat fresh. As I will show in the conclusion to this study, it is not religion in the public sphere (at least in Canada) that is so much the issue as it is political expediency and the desire to acquire and hold onto power that makes religion and politics behind- the-scenes political bedfellows and it is this desire for power and votes and an ideology beyond religious social conservatism (although that has been co-opted and integrated) that it might be wise to track in general rather than one MP or another's predilection for creationism if Canadians truly desire an open, pluralist, secular society.

Mr. Anderson and Ms. May are examples of persons with religious worldviews who live, move, and have their being in the public sphere of Canadian politics. While neither is shy about stating their religious views (Ms. May even less so than Mr. Anderson), both are clear about the fact that while their religious worldviews inform the ethical framework out of which they operate, their religious worldviews do not directly inform the minutiae of their negotiations in the legislative process. This is consistent with what has already been discussed in terms of Canadian environmental policy and legislation which reflects, in different times and places, both a dominion and a stewardship perspective that has deep roots in earlier theological constructions of humanity's relationship to and with the natural world.

The earlier phases of environmental research, phases one and two that were discussed in chapter four, can be said to have firm underpinnings of dominion theology, although with phase two, the stirrings of a stewardship model begin to be formed. These

policies focused on regulating the natural world in order that human beings might be able to better utilize it as a tool—regulating resource use and reflecting a confidence that human beings are capable of cleaning up whatever mess they make quickly and with great efficiency so that the resource can be made available again to further human flourishing. Phase three recognized that environmental protection is a long-term process and it is here that the underpinnings of a stewardship theology are more apparent than those of dominion. The natural world might still be a tool, a pool of resources necessary to human flourishing, but humanity has responsibility towards itself and towards the rest of the natural world to ensure the continuity of these resources. Two important ideologies underlying this phase are an embracing of ecology as a discipline, which stressed the interrelatedness of the natural world, humans included, and the development of and the increasing dispersion of eco-theology which, among other things, presented and pushed a model of stewardship that was in line with other theological developments arising out of the 1960's and 1970's as part of the Christian church's search for transformation and new relevance in Canadian society. This theology is clear in both Ms. May and Mr. Anderson's approach.

*In t*he forth phase of environmental law which is theoretically moving towards comprehensive approaches, planning and assessment is underpinned by a theology that is moving towards a worldview of embeddedness rather than disembeddedness, but there is still conflict over the costs (economic and social, mainly) of this shift and, as such, environmental policy and policy makers appear to be in the throes of entering, rather than being ensconced in, this worldview. At this point, those with the kind of vision embraced by Ms May are being frustrated in their efforts by a vast public service and system of government that is (like most institutions) slow to accept small changes, let alone a paradigm shift as is outlined in the 1992 Red Book. That Ms. May and Mr. Anderson share an eco-

theology of interrelated systems is also apparent. Where one difference seems to lie is, as was shown above, is in their concept of how governmental power should be exercised: through persuasion and the total adherence to a single, focused vision or through compromise and flexibility of purpose. Thus it is the way in which power should be exercised and focused that the arguments really lie, not in theological debates or the desire to convince the other based on a purely religious grounds. To be sure, there is the insistence of a moral imperative, but this moral imperative, although it is firmly rooted in theological substance, is not to be seen as authoritative by others in the public sphere because of divine mandate but because it is the "right" thing to do to further human flourishing. Thus the theologically-grounded moral imperative speaks to the modern quest for creating order out of chaos so that human flourishing can be furthered. This is effectively a secular end to a theologically-motivated ideal.

---

[1] Kathryn Harrison, *Passing the Buck: Federalism and Canadian Environmental Policy* (Vancouver: UBC Press, 1996), 9.

[2] Janice M. Morse, "Sampling in Qualitative Research", in *The SAGE Encyclopedia of Social Science Research Methods, Vol. I,* Michael S. Lewis-Beck, Alan Bryman, Tim Futing Liao, eds. (Thousand Oaks, CA: SAGE Publications, 2004), 994.

[3] Ibid., 995.

[4] Ibid.

[5] Harrison, 120.

[6] Ibid.

[7] Ibid.

[8] Linda F. Duncan, "Trends in Enforcement: Is Environment Canada Serious About Enforcing its Laws?" in *Into the Future: Environmental Law and Policy for the 1990's.* ed, Donna Tingley (Edmonton: Environmental Law Centre (Alberta) Society, 1990), 52.

[9] For a pithy and comprehensive account of how The Green Plan came about and was negotiated, see Harrison, p 120-123.

[10] Glen Toner, "Canada: From Early Frontrunner to Plodding Anchorman," in *Implementing Sustainable Development-Strategies and Initiatives in High Consumption Societies,* ed. William M. Lafferty and James Meadowcroft (Oxford: Oxford University Press, 2000), 59.
 http://0-dx.doi.org.mercury.concordia.ca/10.1093/0199242011.001.0001 (accessed 15 July 2010).

[11] Ibid.

[12] Ibid.

[13] Ibid, 123.

[14] Ibid.

[15] For a more detailed discussion on the coalescing of the environmental movement into groups that were increasingly influential at both the grassroots and the governmental levels, see Harrison.

[16] *Canada's Green Plan and the Earth Summit* (Ottawa: Supply and Services Canada, 1992)

[17] One way in which this inclusivity was maintained was through the "Projet de société", a representative assembly put together to draft a concept paper that would then become integral to the national sustainable development strategy (NSDS) required by the agreements reached in Rio (specifically, Agenda 21). See Toner, 61-62 for an expanded explanation and analysis of the process.

[18] Toner, 60-61

[19] Harrison, 5-6; 118; Conclusion.

[20] Toner. Also Harrison, 124.

[21] Harrison, 115.

[22] Ibid, 142

[23] Ibid.

[24] The Platform Committee, *Creating Opportunity: The Liberal Plan for Canada*, Haviva Hosek and Paul Martin, Co-Chairs, (Ottawa: Liberal Party of Canada, 1993), 63.

[25] Ibid, 64.

[26] Ibid, 67.

[27] Ibid, 70.

[28] Ibid.

[29] Ibid.

[30] Ibid, 64.

[31] Ibid.

[32] Ibid, 56.

[33] Ibid, 57.

[34] Ibid, 64.

[35] Ibid, 67.

[36] Ibid, 63.

[37] *Creating Opportunity,* 63.

[38] Ibid.

[39] Harrison, 118.

[40] *Creating Opportunity*, 64-65.

[41] Ibid, 63.

[42] Toner, 64.

[43] *A Guide to Green Government* (Ottawa: Supply and Services Canada, 1995) quoted in Toner, 64.

[44] Harrison, "Conclusions", 162-177

[45] For a deeper discussion of the cases that were brought forward in this matter, see Harrison, 144-152.

[46] Harrison, 163.

[47] Toner, 69.

[48] *Canada in the World* (Ottawa: Foreign Affairs and International Trade, 1995), Quoted in Toner, 69.

[49] Terence Corcoran, "The Godzilla Effect," *The Globe and Mail*, Wednesday, June 17, 1998. Although the poll mentioned is for 1998, Harrison's evidence has indicated a decline in the salience of environmental issues among voters starting in the early 1990's. The Pollara poll mentioned here merely confirms her trajectory.

[50] "Environmental Stewardship" in *Securing our Future Together* (Liberal Party of Canada, 1997), 50-55.

[51] Ibid, 54.

[52] Ibid.

[53] Ibid.

[54] Ibid. For a discussion on the background of this accord, see Harrison's discussion of the Council of Canadian Ministers for the Environment regarding the goals of harmonization beginning in 1993 in *Passing the Buck*, pp 158-160.   From this discussion, it is evident that one danger of the proposed harmonization is the formulation of standards that are composed of the lowest common denominator rather than the impetus to consistently high standards touted by the 1997 Red Book.

[55] Toner, 65.

[56] Toner, 64-68. See also CESD (Commissioner of the Environment and Sustainable Development), *Report of the Commissioner of Environment and Sustainable Development to the House of Common,* (Ottawa: Public Works and Government Services, 1998)

[57] Sierra Club of Canada, "Federal" in *Rio Report Card* (Ottawa: Sierra Club of Canada, 1997)

[58] Ibid, see also reports from years 1998-2002.

[59] Toner, 62.

[60] Harrison.

[61] Ibid.

[62] Harrison, 57-62.

[63] The *Clean Water Act* and the *Amendments to the Fisheries Act* reflect different approaches to conservation and to the ways in which the federal government justifies unilateral jurisdiction. The conflicts thereof are peripheral to the study, but illuminating. For a brief overview see Harrison, 64-70.

[64] Glen Toner, "Whence and Whither: ENGOs, Business and the Environment," mimeo, undated; George Hoberg, "Environmental Policy: Alternative Styles," in Michael Atkinson, ed., *Governing Canada: State Institutions and Public Policy* (Toronto: HBJ Holt 1993). Both quoted in Harrison, 128n. 61.

[65] Harrison, 132.

[66] Tingley, "Conflict and Cooperation on the Environment," In Douglas Brown, ed., *Canada: The State of the Federation, 1991.* (Kingston: Institute of Intergovernmental Relations, 1991), 145.

[67] Minutes from the Standing Committee on Environment and Sustainable Development. December 4, 2001. http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=10412438&Language=E&Mose=1&Parl =37&Ses=1 Accessed 25 July 2010. For an environmentalist point of view, see Stephen Hazell, *Canada v. The Environment: Federal Environmental Assessment 1984-1998* (Ottawa: Canadian Environmental Defence Fund, 1999). For an provincial insider's view of the issue, see George N. Hood, *Against the Flow: Rafferty-Alameda and the Politics of the Environment* (Saskatoon: Fifth House Publishers, 1994)

[68] Harrison, 135.

[69] Ibid.

[70] Toner, 82.

[71] Christopher Alcantara, "The Harmonization Accord: Stakeholder Influence on the Canada-Wide Standards for Dioxins and Furans," *Journal of Canadian Studies/Revue d'Atudes canadiennes* 39:2 (Spring 2005):156. http://muse.jhu.edu/journals/journal_of_canadian_studies/summary/v039/39.2alcantara.html. Accessed 28 July 2010. See also Canada, *A Canada-Wide Accord On Environmental Harmonization* (Ottawa: Canadian Council of Ministers of the Environment, 1998). http://www.ccme.ca/assets/pdf/accord_harmonization_e.pdf. Accessed 28 July 2010.

[72] Ibid.

[73] Canada, *Harmonization and Environmental Protection: An analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment* (Ottawa: House of Commons Standing Committee on Environment and Sustainable Development, 1997).

[74] Harrison, 95.

[75] Aboriginal Nations are also a component, but will be commented on in a later discussion.

[76] Harrison, 97.

[77] This is especially pertinent when one remembers that at the time of Confederation and the proclamation of the *Fisheries Act*, Canada and the United States had been engaged in prolonged negotiations and tussles over the east coast fisheries.

[78] Taylor

[79] Harrison, 64.

[80] This is not, of course, to argue that every person in government was only out for economic gain at the expense of the environment—far from it. I am merely pointing out the worldviews that seem to be present and the relationship towards the natural world that they appear to reflect.

[81] Convention on Biological Diversity. http://www.cbd.int/convention/about.shtml. Accessed 28 July 2010.

[82] Ibid. http://www.cbd.int/convention/guide/?id=nataction.

[83] Ibid.

[84] Sierra Club of Canada. *Sierra Club of Canada-Rio Report Card* (Ottawa: Sierra Club of Canada, 1996). http://www.sierraclub.ca/national/rio/1996/rio_fed.html. Accessed 24 July 2010.

[85] Laurel Kearns "The Context of Eco-theology" in Gareth Jones, ed. *The Blackwell Companion to Modern Theology* (Oxford: Blackwell Publishing Ltd., 2004) 474.

[86] United Nations *Rio Declaration on Environment and Development* (New York: United Nations Environment Programme, 1992). http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163. Accessed 28 July 2010.

[87] G.B Doern and T. Conway, *The Greening of Canada: Federal Institutions and Decisions,* (Toronto: University of Toronto Press, 1994) in Toner, 80. While Toner does not directly address the environmental groups in his comments, he does note that, "…a wave of public concern about the environment combined with economic

prosperity and the emergence of sustainable development as a *public policy paradigm to soften the confrontational nature of environmental politic*s" (italics mine).

[88] Toner, 81.

[89] Stephen Bocking "The Background of Biodiversity: A Brief History of Canadians and Their Living Environment," in Stephen Bocking, ed. *Biodiversity in Canada: Ecology, Ideas, and Action* (Peterborough: Broadview Press Ltd, 2000) 13.

[90] Toner, 55. For a history of the development of the uses and views of Canada's natural resources, see Stephen Bocking "The Background of Biodiversity: A Brief History of Canadians and Their Living Environment."

[91] *Growing Opportunities*, 55-6.

[92] Kearns, 466.

[93] This study, as been noted before, focuses on Christianity but this should in no way be taken as a statement that other religious worldviews were not present nor vocal in their contribution to environmental activism.

[94] Kearns, 471.

[95] Ibid.

[96] Samuel Hays, *Beauty, Health and Permanence: Environmental Politics in the United States, 1955-1985 (*Cambridge: Cambridge University Press, 1987).

[97] Kearns, 473.

[98] Ibid.

[99] Ibid. I say "completely Other" because there is a religious strand in the environmental movement that, as I have pointed out elsewhere, still sees a dichotomy between humanity and the natural world even as it admits to fellowship and kinship with it. That is concurrent with Kearn when she points to the evangelical Christian environmentalist and the stewardship model which is still inherently hierarchical and anthropocentric.

[100] For an example, see Roderick Haig-Brown, "Philosophy and Conservation" in *To Know A River: A Haig-Brown Reader,* Valerie Haig-Brown, ed. (Vancouver: Douglas & MacIntyre Ltd, 1996) 335-373. See also Rex Weyler, *Greenpeace: How a Group of Ecologists, Journalists and Visionaries Changed the World,* (Vancouver: Raincoast Books, 2004).

[101] For an insightful report and consideration of the Berger inquiry, see Roger Hutchinson, *Prophets, Pastors and Public Choices: Canadian Churches and the Mackenzie Valley Pipeline Debate*, (Waterloo: Wilfred Laurier Press, 1992).

[102] http://jrank.org/history/pages/7160/environmental-movements.html. Accessed 30 July 2010.

[103] Kearns, 474.

[104] http://www.united-church.ca/ecology. Accessed 30 July 2010; Kearns, 474.

[105] For more on ecofeminism, see Heather Eaton, "A Vision of Transformation: Ecofeministy Spiritualities in Canada" in Melody Hessing, Rebecca Raglon, and Catriona Sandilands, eds., *This Elusive Land: Women and the Canadian Environment,* (Vancouver: UBC Press, 2005) 300-315.

[106] Kearns, 474.

[107] Ibid.

[108] Kearns, 475.

[109] Global Forum of Spiritual and Parliamentary Leaders on Human Survival, *Preserving and Cherishing the Earth: An Appeal for Joint Commitment in Science and Religion*, (Moscow: Global Forum, 1990).
 http://fore.research.yale.edu/publications/statements/preserve.html. Accessed 30 July 2010.

[110] Kearns, 477.

[111] Elizabeth May, *Personal Interview,* July 2009.

[112] Standing Committee on Environment and Sustainable Development, *A Global Partnership: Canada and the Conventions of the United Nations Conference on Environment and Development* (Ottawa: Government of Canada, 1993), 30.

[113] Richard D. Lingren, *The Species at Risk Act: An Overview* (Toronto: Canadian Environmental Law Association, 2001) 8.

[114] Ibid.

[115] Sierra Club of Canada (1997) 6.

[116] Standing Committee on Environment and Sustainable Development/Comité Permanent De L'Environmmement Et Du Développement Durable. *Evidence* of Mr. David Anderson, Minister of the Environment. Tuesday, 19 September 2000. 1645.

[117] Report to the Standing Committee Thurs 19 October 2000

[118] Ibid.

[119] Toner, 77.

[120]In fact, when briefed about the draft and asked to say something positive, Elizabeth May recalls retorting, ``What should I say? I love the title but the rest of it stinks?" *Personal Interview*, July 2009.

[121] Sierra Club of Canada, 7.

[122] Sierra Club of Canada, (1997)5.

[123] Ibid.

[124] David Anderson, *Evidence*. 19 September 2000. 1630. *Although these hearings took place some eight years after the original white paper, the Chretien government does not seem to have changed its point of view during the entire, eventually ten year process. Mr. Anderson's observations are pithy and articulate clearly the government's perpetual stance on the legislation.*

[125] Toner

[126] Ibid.

[127] Toner, 77.

[128] Toner, 78.

[129] The Honourable David Anderson, *Personal Interview,* July, 2009

[130] Kathryn Harrison, "Are Canadian Provinces Engaged in a Race to the Bottom?" Evidence and Implications," in Kathryn Harrison, ed. *Racing to the Bottom? Provincial Interdependence in the Canadian Federation,* (Vancouver: UBC Press, 2005).

[131] Of course it is impossible *not* to bring ones biases to any work that one does. My point here is that the biases reflected in the crafting of this draft were likely either not apparent to the drafter(s) or, as is most likely, not seen as problematic given the context.

[132] *Interview*

[133] "Discretion" means just that—the government crafts legislation in such a way as to let itself make exceptions to the law. In the history of environmental law, it was the lack of discretion in an Act that enabled a lawsuit to be launched on behalf of the public that eventually forced the courts to rule that the federal government had more jurisdiction than it was exercising in environmental matters. The argument against such discretion is that it gives the government opportunities to perhaps defy the spirit of its own laws. Discretion is common in Canadian legislation. An interesting contrast can be made with the United States, where a deep suspicion of the other two branches of government (judicial and executive) lead legislators to eschew discretion, lest their purposes be thwarted upon enactment or judicial review.

[134] Sierra Club (1997) 6.

[135] See also, Sierra Club of Canada, *Brief to the Standing Committee on Environment and Sustainable Development*, presented by Elizabeth May, executive director, Sierra Club of Canada (Ottawa: Sierra Club of Canada, 2001)

[136] Ibid, also Toner, 78.

[137] Sierra Club (1997) 6.

[138] Ibid.

[139] Toner, 78.

[140]Harrison, 119.

[141] Elizabeth May, *Personal Interview*, July 2009.

[142] Ibid.

[143] Elizabeth May, *Interview.*

[144] Ibid.

[145] The bill was introduced for First Reading in February 2001, Debated at Second Reading, February 19, 21, 27, 28 and March 16, 2001; Second Reading and referral to the Standing Committee on Environmental and Sustainable Development, March 20, 2001. (Lindgren, *Overview*) n.2

[146]I am well aware that natural selection is a complex process and that one does not usually consider human agency as contributing towards it. However, human beings are part of the ecology and, as such, do contribute to (or take away from) the conditions under which natural selection takes place. This being the case, if all of the natural world is interrelated, to count human agency as distinct from natural selection could be seen as a false dichotomy.

[147] http://www.sierraclub.ca/national/programs/biodiversity/wilderness/sarwg-comments-sara-090-00.pdf. Accessed 31 July 2010.

[148] Indeed, to this date, the safety net has been used only once and that under the duress of a court order. Ecojustice (formerly the Sierra Legal Defence Fund) filed suit on behalf of some environmental groups to protect the habitat of the resident Orca population in British Columbia. The courts ruled that the habitat must be protected under *SARA*. The groups have gone back to court as of June 2010, claiming that the protection must be extended to the salmon upon which the Orca population feeds. Lack of salmon, they claim, is leading to the decimation of the Orca population—which is severely malnourished. The argument is that protecting

the salmon's habitat is paramount in protecting the Orca population. A decision is expected by December 2010. Other requests for the safety net to be applied have been made—most notably on behalf of the spotted owl, again in British Columbia. Some careful reading shows that reluctance to apply the safety net seems mostly based on the rationale that the species under discussion appear to be in danger of extirpation (disappearing from Canada, but not from other countries) rather than extinction. The spotted owl, for instance, is extant in the Pacific Northwest of the United States.

[149] David Anderson, *Evidence.* 1705

[150] Sierra Club of Canada. *Rio Report Card: Rio +10* (Ottawa: Sierra Club of Canada, 2002) 6. http://www.sierraclub.ca/national/rio/rio2002-federal.html. Accessed 31 July 2010.

[151] Sierra Club of Canada. *Rio Report Card: Rio +13.* (Ottawa: Sierra Club of Canada, 2005). http://www.sierraclub.ca/national/rio/rio2005-federal.html. Accessed 31 July 2010.

[152] David Anderson, *Evidence.* 1705.

[153] Ibid, 1645. In the same quote, Mr. Anderson is quite clear about his own position when he states that "we must separate religion and politics."

[154] Government of Canada, *The Species at Risk Act* (Ottawa: Government of Canada, 2002)

[155] To be fair, it must be pointed out that Jean Chretien championed environmental legislation in the 1970's that ushered in the mandatory use of unleaded gasoline in Canada in the face of strong provincial opposition. One key to a government deciding to weather provincial displeasure seems to be in finding an environmental issue that can be linked clearly and concisely to human health.

[156] It should be noted that the religious right in Canada is quite complex and cannot be reduced to simple, American-style fundamentalist, "moral majority" faction. In fact, the traditional Canadian religious right tended to be more "red Tory" in ideology: fiscally conservative, Biblically conservative but socially progressive.

[157] Not that the environment was not an issue embraced by the religious left—far from it. I merely point out that social justice in the late 1990's was still seen by the mainstream Christian establishment as revolving around the issues of poverty, education and healthcare.

[158] It should be noted that this is due to a lack of world enough and time and not to a paucity of interest on the subject.

[159] Species at Risk Act.

[160] I say "neo-Franciscan" because, as has been shown, there was little that was non-hierarchical about St. Francis and so this view of his take on spirituality and stewardship that ascribes egalitarianism to him is anachronistic.

[161] i.e. by having a government that legislates and negotiates rather than proroguing at the slightest hint of controversy or dissention.

[162] Elizabeth May, *Personal Interview*, July 2009.

[163] Ibid.

[164] Ibid.

[165] Ibid.

[166] Ibid.

[167] Ibid.

[168] Ibid.

[169] Ibid.

[170] Ibid.

[171] Ibid.

[172] For more details regarding Ms. May's environmental activism and her background see Elizabeth May, *How to Save the World in Your Spare Time* ()

[173] Ms. May was, in fact, a consultant to the Mulroney government on issues of the environment—resigning her position in the throes of the _____controversy. She was compelled to tender her resignation over the disagreements regarding the federal government's role in conducting environmental assessments.

[174] Elizabeth May, *Interview.*

[175] Ibid.

[176] Ibid.

[177] Ibid.

[178] Although I believe that it could be argued that her environmental activism and sense of embeddedness in the natural world transcends her Christianity and would be part of her ontology regardless of her religious affiliation

[179] David Novak

¹⁸⁰ Ibid.

¹⁸¹ Species at Risk Working Group, *Conserving Species at Risk Cooperatively: A Response to the Species At Risk Act: Brief Presented to the Standing Committee on Sustainable Development and the Environment* (Ottawa: Sierra Club of Canada, 1998) http: www.sierraclub.ca/national/programs/biodiversity/wilderness/sarwg-comments-sara-09-00.pdf Accessed 30 July 2010.

¹⁸² David Anderson, *Evidence*, 1715.

¹⁸³ Not the least of which was political intrigue within the Liberal party itself.

¹⁸⁴ Personal Interview, July 2009.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ I say "current" because Mr. Anderson-who began his federal career in Trudeau's government—feels that religion manifests itself differently since the early 1980's, becoming almost part of a politician's "check list" along with an attractive family, as things that voters look for in their potential representatives. And outward trapping rather than an interior conviction, as it were.

¹⁹¹ David Anderson, *Interview.*

¹⁹² "Get right or get left" is a reference to a fundamentalist slogan that encapsulates the point of view that if one does not repent and accept Jesus Christ as one's personal saviour, one will find oneself left behind on earth when Jesus returns to take the faithful "home".

¹⁹³ Elizabeth May, *Interview.*

¹⁹⁴ David Anderson, *Interview.*

¹⁹⁵ Ibid.

¹⁹⁶ Ibid. It should be noted that Ms. May, also, has expressed similar frustration.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ It is important to say at this point that the pragmatism was just that—different. Ms. May also brought a pragmatism; it was just from a very different perspective.

²⁰² David Anderson, *Interview.*

²⁰³ Indeed, Mr. Anderson remarked that industry was much easier to deal with in *SARA* negotiations than were the environmental groups. Industry, he explained knew the importance of being flexible, had institutional memory and sent negotiators who were more professional to negotiations.

²⁰⁴ Ibid. For example, Mr. Anderson voices the concern that legislation that was too restrictive could result in a farmer, upon discovery of an endangered species on her land, quietly destroying the species and its habitat rather than attempting to preserve it, for fear of prohibitive bureaucratic processes or costs.

²⁰⁵ The discussions regarding what was legally and practically workable for the implementation of *SARA* to be a success are myriad. For further insight, see the Minutes of the Evidence from the Standing Committee on Environment and Sustainable Development, esp. the briefs provided by the Sierra Club, SARWG, COSEWIC and the Minister of the Environment.

²⁰⁶ Ibid. Indeed, the American Endangered Species Act (passed in 1973) was pointed to time and again as the legislative model for *SARA*. The argument of the Chretien government against this approach was the contention that the Endangered Species Act, first off, was passed as a completely uncontroversial bill and as such did not have nearly the hurdles that *SARA* would have. Secondly, the Endangered Species Act engenders so much litigation that is estimated that a disproportionate amount of its budget goes to legal fees every year. Mr. Anderson argued that to place the Canadian public service in that same predicament was unfeasible.

²⁰⁷ It must be noted that Mr. Anderson and the Chretien government held different points of view regarding jurisdiction than did Ms. May and other environmental groups. This, as has been shown, is nothing new in Canadian politics and policy—merely a continuation of a traditional argument.

²⁰⁸ David Anderson, *Interview.*

Bibliography

Alcantara, Christopher. "The Harmonization Accord: Stakeholder Influence on teh Canada-Wide Standards for Dioxins and Furans." *Journal of Canadian Studies/Revue d'Attudes canadiennes* 39, no. 2 (Spring 2005).

Allen, Richard. "The Social Gospel as the Religion of the Agrarian Revolt." In *The Prairie West: Historical Readings*, by eds. R.D. Francis and H. Palmer, 561-572. Edmonton: University of Alberta Press, 1992.

—. *The Social Passion: Religion and Social Reform in Canada, 1914-1928.* Toronto: University of Toronto Press, 1971.

Anderson, David, interview by Mary Hale. (July 2009).

Antonides, Harry. *Stones For Bread: The Social Gospel and its Contemporary Legacy.* Jordan Station, ON: Paideia Press, 1985.

Appleby, Martin Marty and R. Scott. *The Glory and the Power: The Fundamentalist Challenge to the Modern World.* Boston: Beacon Press, 1992.

Ardith Walkem an dHalie Bruce, eds. *Box of Treasures or Empty Box?: Twenty Years of Section 35.* Canada: Theytur Books, Ltd., 2003.

Austin, Richard Cartwright. *Reclaiming America: Restoring Nature to Culture.* Abingdon, VA: Creekside Press, 1990.

Bainbridge, Rodney Stark and William. *A Theory of Religion.* New York: Lang, 1987.

—. *The Future of Religion.* Berkely: University of California Press, 1985.

Beaman, Lori G. *Religion and Canadian Society: Traditions, Transitions, and Innovations.* Toronto: Scholars Press, 2006.

Bellah, Robert. *Beyond Belief.* New York: Harper & Row, 1970.

Benidickson, Jamie. *Environmental Law.* Ottawa: Irwin Law, 2002.

Berger, Peter. *The Sacred Canopy: Elements of A Sociological Theory of Religion.* New York: Anchor Books, Doubleday, 1967.

Berkes, Fikret. *Secred Ecology: Traditional Ecological Knowledge and Resource Management.* Philadelphia: Taylor & Frances, 1999.

Berneshawi, Suzanne. "Resource Management and the Mi'kmaq Nation." *The Canadian Journal of Native Studies* XVII, no. 1 (1997): 115-148.

Beyer, Peter. "Religious Vitality in Canada: The Complementarity of Religious Market an dSecularization Perspectives." *Journal for the Scientific Study of Religion*, June 1997: 272-288.

"Beyond Lenski: A Critical Review of Recent "Protestan Ethic" Research." *Journal for the Scientific Study of Religion* 12 (1973): 141-155.

Bibby, Reginald. *Restless Gods: The Renaissance of Religion in Canada.* Toronto: Stoddard Publishing Company, Ltd., 2002.

Bishop, John Douglas. "The Lockean Basis of Iroquoian Land Ownership." *Journal of Aboriginal Economic Development* 35-43.

Blackburn, Carole. *Harvest of Souls: The Jesuit Missions an dColonialism in North America, 1632-1650.* Montreal: McGill-Queen's University Press, 2000.

Blake, Cassels & Graydon LLP. "Environmental Law in Ontario and Canada." http://www.blakes.com/pdf/EnvLawOntCan.pdf (accessed April 21, 2010).

Borch, Merete Falck. *Conciliatioin, Compulsion, Conversion: British Attitudes Towards Indigenous People, 1763-1814.* Amsterdam: Rodopi B.V., 2004.

Boyd, David R. *Unnatural Law: Rethinking Canadian Environmental Law and Policy.* Vancouver: UBC Press, 2003.

Bragg, Billy. "Rotting On Remand." *Victim of Geography.* Comp. Billy Bragg. 1997.

Bramadat, Paul. "Our Current Interregnum an dthe Decline of Secular Modernity." *Metropolis.* October 27, 2007. http://canada.metropolis.net/pdfs/Bramadat_e.pdf (accessed August 26, 2010).

Brison, Jeffrey D. *Rockefeller, Carnegie, and Canada: American Philanthropy and the Arts & Letters in Canada.* Montreal: McGill-Queen's University Press, 2005.

Brock, Rita Nakashima. "Pacific, Asian, and North American Asian Women's Theologies." In *Feminist Theologies: Legacy and Prospect*, by ed. Rosemary Radford Ruether. Minneapolis: Fortress Press, 2007.

Bruce, Steve. *God is Dead: Secularization in the West.* Oxford: Blackwell, 2002.

Bruce, Steve. "Secularization and the Impotence of Individualized Religion." *The Hedgehog Review* 8, no. 2-1 (Spring-Summer 2006): 35-46.

Bryan Gamer, ed. *Black's Law Dictionary, 7th ed.* St. Paul, MN: West Group Publishing, 1999.

Burkinshaw, Robert K. "Evangelical Colleges and Seminaries in Twentieth Century Canada." *Papers presented to the Conference on the Canadian Evangelical Experience.* Kingston, ON, 1995.

—. *Pilgrims in Lotus Land: Conservative Protestantism in British Columbia, 1917-1981.* Montreal: McGill-Queen's University Press, 1995.

Burkinshaw, Robert. *Mark Noll, What Happened to Christian Canada? A Response From an Evangelical Perspective.* Edited by The Centre for Research on Canadian Evangelicalism. October 2008 2:1. http://files.efc-canada.net/min/rc/cft/V02I01/Burkinshaw_WHTCC.pdf. (accessed August 28, 2010).

Calhoun, Craig J., ed. *Habermas and the Public Sphere.* Cambridge, MA: MIT Press, 1992.

Callicot, J. Baird. "Genesis Revisited: Murian Musings on the Lynn White, Jr. Debates." *Environmental History Review* 13, no. 1-2 (Spring-Summer 1989).

Canada, Government of. *A Canada-Wide Accord on Environmental Harmonization.* Ottawa: Canadian Council of Ministers of the Environment, 1998.

—. *A Guide to Green Government.* Ottawa: Supply and Services Canada, 1995.

Canada, Government of. "Answer of the Canadian Minister of Justice to the contentions of the American Ambassador in regard of the proper interpretation of the Fishery Treaty of 1818." Victoria Sessional Papers (No. 12B), 1818.

—. *Canada in the World.* Ottawa: Foreign Affairs and International Trade, 1995.

—. *Canada's Green Plan and the Earth Summit.* Ottawa: Supply and Services Canada, 1992.

—. "Canadian Environmental Assessment Act." *Department of Justice Canada.* http://laws.justice.gc.ca/en/C-15.2/ (accessed April 21, 2010).

—. "Evidence of Mr. David Anderson, Minister of the Environment." Ottawa: Standing Committee on Environment an dSustainable Development, September 10, 2001.

—. *Harmonization and Environmental Protection: An Analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment.* Ottawa: House of Commons Standing Committee on Environment and Sustainable Development, 1997.

—. *Minutes from the Standing Committee on Environment and Sustainable Development.* Ottawa: Government of Canada, 2001.

Canada, Government of. "Sessional Papers Volume 11 ." Second Session of the Sixth Parliament of the Dominion of Canada, Friday, 11th November 1887 from 10:30am to 12:30pm., No. 1 Precis Writing.

Canada, Sierra club of. "Brief to the Standing Committee on environment and Sustainable Development." Ottawa: Sierra Club of Canada.

Canada, Sierra Club of. *Rio Report Card.* Ottawa: Sierra Club of Canada, 1992-2004.

Canada, The Liberal Party of. *Creating Opportunity: The Liberal Plan for Canada.* Ottawa: The Liberal Party of Canada, 1993.

—. *Securing Our Future Together.* Ottawa: The Liberal Party of Canada, 1997.

Careless, Ric. *To Save the Wild Earth: Field Notes from the Environmental Frontline.* Vancouver: Raincoast Press, 1997.

Casanova, Jose. *Public Religions in the Modern World.* Chicago: University of Chicago Press, 1994.

—. *Rethinking Secularism: Secular, Secularizations, Secularisms.* October 2007, 25. http://blogs.ssrc.org/tif/2007/10/25/secular-secularizations-secularisms/ (accessed August 31, 2010).

Casanova, José. "Rethinking Secularization: A Global Comparative Perspective." *The Hedgehog Review* 8, no. 1-2 (Spring-Summer 2006): 7-23.

Casanova, Jose. "Secularization Revisited: A Reply to Talal Asad." In *Powers of the Secular MOdern: Talad Asad and His Interlocutors*, by eds. David Scott and Charles Hirschkind, 12-30. Stanford: Stanford University Press, 2006.

Casanova, Jose. "What is a Public Religion?" In *Religion Returns to the Public Square: Faith and Policy in America*, by eds. Hugh Heclo and Wilfred McClay, 111-140. Baltimore: Johns Hopkins University Press, 2003.

Centre, Pew Research. *Publications 2010.* January 2010. http://pewresearch.org/pubs/614/religion-social-issues. (accessed January 2010).

Chaves, Mark. "Secularization as Declining Religious Authority." *Social Forces* 72 (1994): 749-775.

Chavex, Mark. *Secularization in the Twentieth Century United States.* PhD Dissertation: Harvard University, 1001.

Choquette, Robert. *Canada's Religions: An Historical Introduction.* Ottawa: University of Ottaw Press, 2004.

Christiano, William H. Swatos Jr. and Kevin J. "Secularization Theory: The Course of a Concept." In *The Secularization Debate*, by Jr. and Daniel V. A. Olson William H. Swatos, 1-20. Oxford: Rowland & Littlefield Publishers, Inc., 2000.

Christie, Nancy. "In These Times of Democratic Rage and Delusion: Popular Religion and the Challenge to the Established Order 1760-1815." In *The Canadian Protestant Experiences 1760-1990*, by ed. George Rawlyk, 9-47. Montreal: McGill-Queen's University Press, 1994.

Connolly, William E. *Plualism.* North Carolina: Duke University Press, 2005.

Connolly, William. *Neuropolitics: Thinking, Culture, Speed: Theory Out of Bounds.* Minneapolis: University of Minnesota Press, 2002.

Convention on Biological Diversity. http://www.cbc.int/convention/about.shtml (accessed July 28, 2010).

Conway, G. Bruce Doem and Thomas. *The Greening of Canada: Federal Institutions and Decisions.* Totonto: University of Toronto Press, 1994.

Corcoran, Terence. "The Godzilla Effect." *The Globe and Mail*, June 17, 1998.

Craven, Paul. *An Impartial Umpire: Industrial Religions and the Canadian State, 1900-1911.* Toronto: University of Toronto Press, 1980.

Cross, Michael S. *The Frontier Thesis and the Canadas: The Debate on the Impact of the Canadian Environment.* Toronto: Copp Clark Publishing, 1970.

Cruikshank, Ken. *Close Ties.* Montreal : McGill-Queen's University Press, 1992.

David Freeland Duke, ed. *Canadian Environmental History.* Toronto : Canadian Scholar's Press, 2006.

David Yamane, Charles E. Mellies, and Teresa Blake. "Playing for Whom? Sport, Religion, and the double Movementof Secularization in America." In *Sociology of Sport and Social Theory*, by ed. Earl Smith, 81-94. Champaign, IL: Human Kinetics, 2010.

Davie, Grace. "Is Europe an Exceptional Case?" *The Hedgehog Review* 8, no. 1-2 (Spring-Summer 2006): 23-35.

Deloria, Vine. *Red Earth, White Lies: Native Americans and the Myth of Scientific Fact.* Golden, CO: Fulcrum Publishing, 1997.

Deneen, Patrick. "Christopher Lasch and the Limits of Hope." *First Things*, 2004.

Denevan, William. "The Pristine Myth: The Lanscape of the Americas in 1492." In *Canadian Environmental History: Essential Readings*, by David Freeland Duke. Totonto: Canadian Scholar's Press, 2006.

Deth, Kenneth Newton and Jan W. Van. *Foundations of Comparative Politics.* Cambridge: Cambridge University Press, 2005.

Development, Commissioner of the Environment and Sustainable. *Report of the Commissioner of environment and Sustainable Development to the House of Commons.* Ottawa: Public Works and Government Services, 1998.

Development, Standing Committee on Environment and Sustainable. *A Global Partnership: Canada and the Converntions of the United Nations Conference on Environment and Develoopment.* Ottawa: Government of Canada, 1993.

Die, David Lyon and Marguerite Van, ed. *Rethinking Church, State and Modernity.* Toronto: University of Toronto Press, 2000.

Die, Marguerite Van, ed. *Religion and Public Life in Canada.* Toronto: University of Toronto Press, 2001.

Donna Tingley, ed. *Into the Future: Environmental Law and Policy for the 1990's.* Edmonton: Environmental Law Centre (Alberta) Society, 1990.

Douglas Brown, ed. *Canada: The State of the Federation, 1991.* Kingston: Institute of Intergovernmental Relations, 1991.

Dunn, John. *The Political Thought of John Locke: An Historical Account of the Argument of the Two Treatises of Government.* Cambridge: Cambridge University Press, 1990.

Durkheim, Emile. *The Elementary Forms of Religious Life: A Study in Religious Sociology.* New York: Macmillan, 1915.

Dworetz, Steven M. *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution.* Raleigh, NC: Duke University Press, 1990.

Dyer, Christopher. "Conflict in the Lanscape: The Enclosure Movement in England, 1220-1349." *Landscape History*, 2007: 21-30.

Dyson, R.W. *St. Augustine of Hippo: The Christian Transformation of Political Philosophy.* New York: Continuum International Publishing Group, 2005.

E.L. Hughes, A. R. Lucas, W.A. Tilleman. *Environmental Law and Policy.* Toronto: Emond Montgomery Publications Ltd., 1998.

"Faith an dPublic Life: Challenges, Choices and Opportunities. Proceedings of the Faith and Public Life Coference." Citizens for Public Justice and Queen's Theological College, October 1999.

Flores, Dan. "Place: An Argument for Bioregional History." *Environmental History Review* 19 (Winter, 1994).

Florovsky, Georgy. "The Christological Dognma and Its Terminology." In *Christ in East and West*, by eds. Paul Fries and Tiran Nersoyan. Macon, GA: Mercer University Press, 1987.

Forkey, Neil S. *Shaping the Upper Canadian Frontier: Environment, Society, and Culture in the Trent Valley.* Calgary: University of Calgary Press, 2003.

Foucault, Michel. *The Order of Things: An Archaeology of the Human Sciences.* London: Routledge Classics, 2004.

Fraser, John. *National Post*, June 2000.

French, Goldwin. "The Evengelical Creed in Canada." In *The Shield of Achilles*, by ed. W. L. Morton, 16-35. Toronto: McClelland & Stewart, 1968.

G.B. Doem, T. Conway. *The Greening of Canada: Federal Institutions and Decisions.* Toronto: University of Toronto Press, 1994.

Gareth Jones, ed. *Blackwell Companion to the Modern Theology.* Oxford: Blackwell Publishing, Ltd., 2004.

Gauvreau, Michael. *The Evangelical Century: College and Creed in English Canada From the Great Revival to the Great Depression.* Montreal: McGill-Queen's University Press, 1991.

Gauvreau, Nancy Christie and Michael. *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940.* Montreal: McGill-Queen's University Press, 2001.

Geraint Parry, ed. *John Locke. Vol. VIII of "Political Thinkers".* UK: Geroge Allen & Unwin, 1978.

Gidney, Catherine Anne. *A Long Eclipse: The Liberal Protestant Establishment and the Canadian University, 1920-1970.* Montreal : McGill-Queen's University Press, 2004.

Glacken, Clarence J. *Traces on the Rhodian Shore: Nature and Culture in Western Thought from Ancient Times to the End of the Eighteenth Century.* Berkeley: University of California Press, 1976.

Gottlieb, Roger S. *A Greener Faith: Religious Environmentalism and Our Planet's Future.* Oxford: Oxford University Press, 2006.

Grant, John Webster. *The Church in the Canadian Era: The First Century of Confederation.* Edited by John Webster Grant. Vol. 3. Toronto: McGraw-Hill Ryerson Ltd., 1972.

—. *The Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534.* Toronto: University of Toronto Press, 1984.

Grenier, Louise. *Working with Indigenous Knowledge: A Guide for Researchers.* Ottawa: International Development Research Centre, 1998.

Grotius, Hugo. *De Jure Praedae Commentarius.* Translated by Gwladys Williams. Buffalo: William S. Hein, 1995.

—. *The Righs of War and Peace.* Translated by A.C. Campbell. Vol. Book I. Washington & London: M. Walter Dunne, 1901.

Group, Species at Risk Working. *Conserving Species at Risk Cooperatively: A Response to the Species At Risk Act: Brief Presented to the Standing Committee on Sustainable Development and the Environment.* Ottawa: Sierra Club of Canada, 1998.

Habermas, Jürgen. *The Structural Transformation of the Public Sphere.* Translated by Thomas Burger. Cambridge, MA: MIT Press, 1989.

Hadden, Jeffery. "Desacralizing Secularization Theory." *Social Forces* 65 (1987): 587-611.

Haig-Brown, Roderick. *To Know a River: A Haig-Brown Reader*. Edited by Valerie Haig-Brown. Vancouver: Douglas & MacIntyre Ltd., 1996.

Harrison, Gary. "Romantic Circles: Romanticism, Ecology and Pedagogy." *Romanticism, Nature Ecology: Introduction*. http://www.rc.umd.edu/pedagogies/commons/ecology/harrison/harrison.html (accessed February 6, 2010).

Harrison, Kathryn. *Passing the Buck: Federalism and Canadian Environmental Policy*. British Columbia: University of British Columbia Press, 1996.

Harrison, Mary Illical and Kathryn. "Protecting Endangered Species in the US and Canada: The Role of Negative Lesson Drawing." *Canadian Journal of Political Science* 40, no. 2 (June 2007): 367-394.

Hauser, Gerard. *Vernacular Voices: The Rhetoric of Publics and Public Spheres*. Columbia, SC: University of South Carolina Press, 1999.

Hays, Samuel. *Beauty, Health and Permanence: Environmental Politics in the United States, 1955-1985*. Cambridge: Cambridge University Press, 1987.

Hazell, Stephen. *Canada v. the Environment: Federal Environmental Assessment 1984-1998*. Ottawa: Canadian Environmental Defence Fund, 1999.

Heelas, Paul. "Challenging Secularization Theory: The Growth of "New Age" Spiritualites of Life." *The Hedgehog Review* 8, no. 1-2 (Spring-Summer 1996): 46-59.

Hervieu-Leger, Daniele. "In Search of Certainties: The Paradoxes of Religiosity in Societies of High Modernity." *The Hedgehog Review*, Spring-Summer 2006: 59-69.

Hindmarsh, Bruce. "The Winnipeg Fundamentalist Network, 1910-1950: The Roots of Transdenominational Evangelicalism in Manitoba and Saskatchewan." *Papers presented to the Conference on the Canadian Evangelical experience*. Kingston, ON, 1995.

History, University of Calgary Applied. *Canada's First Nations*. http://www.ucalgary.ca/applied_history/tutor/firstnations/myghs.html (accessed October 28, 2009).

Holyoake, G.J. *the Origin and Nature of Secularism*. London: Watts and Co., 1896.

Hood, George N. *Agianst the Flow: Rafferty-Alameda and the Politics of the Environment*. Saskatoon: Fifth House of Publishers, 1994.

Hourani, George F. *Reason and Tradition in Islamic Ethics*. Cambridge: Cambridge University Press, 1985.

Hutchings, David L. Vanderzwaag and Jeffrey A. "Canada's Marine Species at Risk: Science and Law at the Helm, but a Sea of Uncertainties." *Ocean Development and International Law* 36, no. 3 (2005): 219-259.

Hutchings, Dr. Kevin. *Romanticism in Canada: Environment, Culture, and Representation: Overview.* http://web.unbc.ca/~hutchink/crc.html. University of Northern British Columbia, February 6, 2010.

Hutchinson, Roger. *Prophets, Pastors and Public Choices: Canadian Churches and the Mackenzie Valley Pipeline Debate.* Waterloo: Wilfred Laurier Press, 1992.

Ibrahim, John Biles and Humera. "Religion and Public Policy: Immigration, Citizenship and Multiculturalism--Guess Who's Coming to Dinner?" In *Religion and Ethnicity in Canada*, by eds. Paul Bramadat and David Seljak, 154-177. Toronto: University of Toronto Press, 2005.

J. Peter Meekison, Roy J. Romanow, William D. Moull. *Origins and Meanings of Sectioin 92A: The 1982 Constitutional Amendment on Resources.* Montreal: Institute for Research on Public Policy, 1985.

Jaenen, Cornelius J. *The Role of the Church in New France.* Toronto: Canadian Historical Association, 1985.

Jensen, Derrick. *Listening to the Land: Conversations About Nature, Culture, and Eros.* White River Junction, VT: Chelsea Green Publishing Co., 2002.

Jitse M. van der Meer and Scott Mandelbrote, eds. *Nature and Scripture in the Abrahamic Religions: Up to 1700, Vol. 1.* The Netherlands: Koninklijke Brill, 2008.

Joan Thirsk, ed. *Chapters from The Agrarian History of England and Wales: Volume 3-Agricultural Change: Policy and Practice, 1500-1750.* Cambridge: Cambridge University Press, 1990.

John Grim, ed. *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community.* Cambridge, MA: Harvard University Press, 2001.

John J. Shepard, ed. *Ninian Smart on World Religions: Volume 2 Traditions and Challenges of Modernity.* Burlington, VT: Ashgate Publishing Company, 2009.

Julie Robin Solomon, Catherine Gimelli Martin, eds. *Francis Bacon and the Refiguring of Early Modern Thought: Essays to Commemorate the Advancement of Learning (1605-2005).* Vermont: Ashgate Publishing Co., 2005.

Kathryn Harrison, ed. *Racing to the Bottom? Provincial Interdependence in the Canadain Federation.* Vancouver: UBC Press, 2005.

Kauffman, Stuart A. *Reinventing the Sacred: A New View of Science, Reason, and Relligion.* New York : Basic Books, 2008.

Keene, Edward. *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics.* Cambridge: Cambridge University Press, 2002.

Kinsley, David R. *Ecology and Religion: Ecological Spirituality in Cross-Cultural Perspective.* New Jersey: Prentice-Hall, 1995.

Kley, Dale K. Van. "Civic Humanism in Clerical Garb: Gallican Memories of the Early Church and the Project of Primitivist Reform 1719-1791." *Oxford University Journals Past and Present.* 2008. http//past.oxfordjournals.org/cgi/content/full/200/1/77 (accessed February 14, 2010).

Lasch, Christopher. *The Revolt of the Elites and the Betrayal of Democracy.* New York: W. W. Norton & Company, 1996.

Lenski, Gerhard. *The Religious Factor: A Sociological Study of Religion's Impact on Politics, Economics, and Family Life.* New York: Doubleday & Co., 1961.

Lilla, Mark. *The Stillborn God: Religion, Politics, and the Modern West.* New York: Knopf, 2007.

Lingren, Richard D. *The Species at Risk Act: An Overview.* Toronto: Canadian Environmental Law Association, 2001.

Locke, John. *Two Treatises of Government.* Edited by Peter Laslett. Cambridge: University of Cambridge Press, 1988.

Lorraine Daston and Michael Stolleis, eds. *Natural Law and Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural Philosophy.* Surrey: Ashgate Publishing Ltd, 2008.

Makarova, Krishan Kumar and Ekaterina. "An Interview with Jose Casanova." *The Hedgehog Review* 4, no. 3 (Summer 2002): 91-108.

Manning, Preston. "Canadians Must Learn to Bridge Separation of Church and State." *Edmonton Journal*, June 26, 2003: A18.

Margaret D. Kamisuka, ed. *The Embrace of Eros: Bodies, Desires, and Sexuality in Christianity.* Minneapolis: Augsburg Fortress, 2010.

Marguerite Van Die, ed. *Religion and Public Life in Canada: Historical and Comparative Perspectives.* Toronto: University of Toronto Press, 2001.

Marie Battiste, ed. *Reclaiming Indigenous Voice and Vision.* Vancouver: UBC Press, 2000.

Marshall, David B. "Canadian Historians, Secularization and the Problem of the 19th Century." *Historical Studies* (Canadian Catholic Historical Association), 1993-1994: 69-71.

—. *Secularizing the Faigh: Canadian Protestant Clergy and the Crisis of Belief, 1850-1940.* Toronto: University of Toronto Press, 1992.

Martin, David. *A General Theory of Secularization.* Oxford: Blakewell, 1978.

—. *On Secularization: Towards a Revised General Theory.* Burlington, VT: Ashgate Publishing, 2005.

—. *Pentacostalism: The World Their Parish.* Oxford: Blackwell, 2002.

Martin, David. "Towards Eliminating the Concept of Secularization." In *Penguin Survey of the Social Sciences*, by ed. J. Gould, 169-182. Baltimore: Penguin, 1965.

Martin, William. *With God on Our Side: The Rise of the Religious Right in America.* New York: Broadway Books, 1996.

May, Elizabeth, interview by Mary Hale. *Personal Interview* Halifax, Nova Scotia, (July 2009).

McDonald, Marci. *The Armageddon Factor: The Rise of Christian Nationalism in Canada.* Toronto: Random House Canada, 2010.

Melody Hessing, Revecca Raglon, Catriona Sandilands, eds. *This Elusive Land: Women and the Canadian Environment.* Vancouver: UBC Press, 2005.

Merchant, Carolyn. "Dominion over Nature." In *Worldviews, Religin, and the Environment: A Global Anthology*, by ed. Richard Foltz, 39-48. Toronto: Wadsworth, 2003.

—. *Earthcare.* New York: Routledge, 1995.

Michael Atkinson, ed. *Governing Canada: State Institutions and Public Policy.* Toronto: HBJ Holt, 1993.

Michael Gauvreau & Ollivier Hubert, eds. *The Churches and Social Order in 19th and 20th Century Canada.* Montreal: McGill-Queen's University Press, 2006.

Miller, J.R. *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada.* Toronto: University of Toronto Press, 2009.

Mills, A. *Fool for Christ: The Political Thought of J. S. Woodsworth.* Toronto: University of Toronto Press, 1991.

Mittlestaedt, Marin. "Canadians Dismayed by Ottawa's Record on climate Change." *The Globe and Mail*, November 21, 2009: A11.

Moir, John S. *The Church in the British Era: From British Conquest to Confederation.* Edited by ed John Webster Grant. Vol. 2. Toronto: McGraw-Hill Ryerson, Ltd, 1972.

Moore, J.W. "Ecological Crises in the Making of the Modern World 1300-1600." *All Academic.* 2005. http://www.allacademic.com/meta/p22456_index.html (accessed May 25, 2009).

Munch, Richard. *The Ethics of Modernity: Formation and Transformation in Britain, France, Germany and the United States.* New York: Rowman & Littlefield Publishers, Inc., 2001.

Nash, Roderick. *The Rights of Nature: A History of Environmental Ethics.* Madison: University of Wisconsin Press, 1989.

Nations, United. *United Nations Rio Declaration on Environment and Development.* 1992. http://www.unep.org/DocumentsMultilingual/Default.asp?documentid=78& (accessed July 28, 2010).

Naylor, James. *The New Democracy.* Toronto: University of Toronto Press, 1992.

Negri, Michael Hardt and Antonio. *Multitude: War and Democracy in the Age of Empire.* New York: The Penguin Press, 2004.

Nelles, H.V. *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1850-1940.* Toronto: MacMillan and Co., 1974.

Nesses, Christopher and H.V. *Monopoly's Moment: The Orgainization and Regulatin of Canadian Utilities, 1830-1930.* Philadelphia: Temple University Press, 1986.

Noll, Mark. *What Happened to Christian Canada?* Toronto: Regent College Publishing, 2007.

Novak, David. "Maimonides and Aquinas on Natural Law." In *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, by Mark Latkovic, Richard S. Myers, eds. John Goyette. Washington D.C.: The Catholic University of America Press, 2004.

Novak, David. "Secularity Without Secularism: The Best Political Positioin for Contemporary Jews." *The Hedgehog Review* 8, no. 1-2 (Spring-Summer 2006): 107-116.

Oates, William J. Baumol and Wallace E. *The Theory of Environmental Policy: Externalities, Public Outlays and the Quality of Life.* New Jersey: Prentice-Hall, 1975.

Oelschlaeger, Max. *The Idea of Wilderness: From Prehistory to the Age of Ecology.* New Haven: Yale University Press, 1993.

Olson, William H. Swatos & Daniel V.A. *The Secularization Debate.* Oxford: Rowman & Littlefield, 2000.

O'Toole, Roger. "Religion in Canada: Its Development and Contemporary Situation." *Social Compass* 43, no. 1 (1996).

Owram, Doug. *The Government Generation: Canadian Intellectuals and the State, 1900-1945.* Toronto: University of Toronto Press, 1986.

Paper, Jordan. *Native North American Religious Traditions: Dancing For Life.* Westport: Praeger, 2007.

Paul R. Muldoon, Alastair Lucas, Robert Gibson, Peter Pickfield. *An Introduction to Canadian Environmental Law and Policy in Canada.* Toronto: Emond Montgomery Publications, 2009.

Pennington, Kenneth. *Catholic University of America.*
http://faculty.cua.edu/Pennington/Canon%20Law/NaturalLaw.htm (accessed April 26, 2010).

Pestel, Mihajlo Mesarovic and Eduard. *Mankind at the Turning Point: The Second Report to the Club of Rome.* New York: E.P. Dutton and Company, 1974.

Peter Birks and Grant McLeod, trans. *Justinian's Institutes.* Ithaca: Cornell University Press, 1987.

Philippe Sands, ed. *Greening International Law.* New York: The New Press, 1994.

Phillip E. Hammond, ed. *The Sacred in a Secular Age: Towards Revision in the Scientific Study of Religion.* Berkeley, CA: University of California Press, 1985.

Porter, John. *The Vertical Mosaic: An Analysis of Social Class and Power in Canada.* Toronto: University of Toronto Press, 1965.

Rawlyk, George. "Religion in Canada: A Historical Overview." *"Being and Becoming Canada" Annals of the American Academy of Political and Social Sciences*, March 1995: 131-142.

Reimer, Sam. *Evangelicals and the Continental Divide: The Conservative Protestant Subculture in Canada and the United States.* Montreal: McGill-Queen's University Press, 2003.

Rich, Ben A. *Strange Bedfellows: How Medical Jurisprudence Has Influenced Medical Ethics.* New York: Kluwer academic/Plenum Publishers, 2001.

Richard Allen, ed. *The Social Gospel in Canada.* Ottawa: National Museums of Canada, 1975.

Richard J. Regan, ed and trans. *Aquinas: A Summary of Philosophy.* Indianapolis: Hackett Publishing Co., 2003.

Richard L. Knight, Suzanne Riedel. *Aldo Leopold and the Ecological Conscience.* Oxford: Oxford University Press, 2002.

Robert B. Anderson and Robert M. Bone, eds. *Natural Resources and Aboriginal People in Canada.* Concord: Captus Press, Inc., 2003.

Robert Bireley, S.J. "Early-Modern Catholicism as a Response to the Changing World of the Long Sixteenth Century." *The Catholic Historical Review* (219-239), April 2009.

Robert Boardman, ed. *Canadian Environmental Policy: Ecosystems, Politics, and Process.* Oxford: Oxford University Press, 1992.

Robert E. Goodin and Phillip Pettit, eds. *A Companion to Contemporary Political Philosophy.* Oxford: Blackwell, 1995.

Robert Paehlke, ed. *Conservation and Environmentalism: An Encyclopedia.* London: Routledge, 1995.

Roger J.P. Kain, John Chapman, Richard R. Oliver. *The Enclosure Maps of England and Wales 1595-1918.* Cambridge: Cambridge University Press, 2004.

Russell J. Dalton & Hans-Dieter Klingmann, eds. *Oxford Handbook of Political Behaviour.* New York: Oxford University Press, 2007.

Sale, K. *Dwellers in the Land: The Bioregional Vision.* San Francisco: Sierra Club, 1985.

Saxe, Dianne. *Environmental Offences: Corporate Responsibility and Execuive Liability.* Aurora: Canada Law Book, Inc., 1990.

Sayers, Dorothy L. *Gaudy Night.* London: Harper Torch, 1995.

Schultz, Kevin M. "Secularization: A Bibliographic Essay." *The Hedgehog Review,* Spring-Summer 2006: 170-178.

Shiner, Larry. "The Concept of Secularization in Empirical Research." *Journal for the Social Scientific Study of Religion* 6 (1967): 207-220.

Smart, Ninian. *Worldview:Crosscultural Explorations of Human Beliefs.* New Jersey: Prentice-Hall, Inc., 1995.

Snyder, David C. "Locke on Natural Law and Property Rights." Edited by 723-750. *Canadian Journal of Philosophy,* December 1986.

Sorrell, Roger Darrell. *St. Francis of Assisi and Nature.* New York: Oxford University Press, 1988.

Stark, Roger Finke and Rodney. *The Churching of America, 1776-1990: Winners and Losers in Our Religious Economy.* New Brunswick, NJ: Rutgers University Press, 1992.

Stephen A. Barney, W.J. Lewis, J.A. Beach. *The Etymologies of Isidore of Seville.* Translated by Oliver Berghof. Cambridge: Cambridge University Press, 2006.

Stephen Bocking, ed. *Biodiversity in Canada: Ecology, Ideas, and Action.* Peterborough: Broadview Press, 2000.

Stevenson, Michael Ornstein and H. Michael. *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State.* Montreal: McGill-Queen's University Press, 1996.

Stiller, Brian. *Jesus and Caesar: Christians in the Public Square.* Toronto: Castle Quay, 2003.

Survival, Global Forum of Spiritual and Parliamentary Leaders on Human. *Preserving and Cherishing the Earth: An Appeal for Joint Commitment in Science and Religion.* Moscow: Global Forum, 1990.

Taggart, David Dyzenhaus and Michael. "Reasoned Decisions and Legal Theory." In *Common Law Theory: Cambridge Studies in Philosophy and Law,* by ed. Douglas E. Edlin. Cambridge : Cambridge University Press, 2007.

Taylor, Charles. *A Secular Age*. Cambridge, MA: The Belknap Press of Harvard University Press, 2007.

—. *Modern Social Imaginaries*. Durham, NC: Duke University Press, 2004.

—. "Modernity and the Rise of the Public Sphere." *The Tanner Lectures, Stanford University*. February 25, 1992. www.tannerlectures.utah.edu/lectures/documents/Taylor93.pdf. (accessed August 2010, 23).

—. *Philosophical Arguments*. Cambridge: Harvard University Press, 1995.

—. *Sources of the Self: The Making of the Modern Identity*. Cambridge: Cambridge University Press, 1989.

—. *The Explanation of Behaviour*. London: Routledge, 1964.

Tebbit, Mark. *Philosophy of Law*. London: Routledge, 2000.

Terrence Murphy, Roberto Perin, Gille Chausse, eds. *A Concise History of Christianity in Canada*. Oxford: Oxford University Press, 1996.

Todd, Douglas. "Christians Have Led Environmental Movement for Decades." *The Vancouver Sun*, May 29, 2008.

Toner, Glen. "Canada: From Early Frontrunner to Plodding Anchorman." In *Implementing Sustainable Development: Strategies and Initiatives in High Consumption Societies*, by eds. William M. Lafferty and James R. Meadowcroft, 53-84. Oxford: Oxford University Press, 2000.

Tschannen, Olivier. "The Secularization Paradigm: A Systemization." *Journal for the Scientific Study of Relgion* 30 (1991): 395-415.

Tuan, Yi-Fu. "Treatment of the Environment in Ideal and Acutality." *American Scientist* 58 (1970): 244-249.

Tuck, Richard. *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant*. Oxford: Oxford University Press, 1999.

Tully, Jams. *An Approach to Political Philosophy: Locke in Contexts*. Cambridge: Cambridge University Press, 1993.

USA, National Council of Churches. *Yearbook*. 2009. http://www.ncccusa.org/news/090130yearbook1.html (accessed January 25, 2010).

Wallis, Steve Bruce and Roy. "Secularization: The Orthodox Model." In *Religion and Modernization*, by ed. Steve Bruce, 8-30. Oxford: Oxford University Press, 1992.

Warner, Michael. *Letters of the Republic*. Cambridge, MA: Harvard Universtiy Press, 1990.

Warner, R. Stephen. "Work in Progress Toward a New Paradigm for the Sociological Study of Religion in the United States." *American Journal of Sociology*, March 1993: 1044-1093.

Weaver, Reginald W. Bibby and Harold R. "Cult Consumption in Canada: A Further Critique of Stark and Bainbridge." *Sociological Analysis* 46, no. 4 (1985): 445-460.

Weber, Max. *The Protestant Ethic and the Spirit of Capitalism.* New York: Penguin, 2002.

Weeramantry, CG. *Justice Without Frontiers: Furthering Human Rights, Vol 1.* The Hague: Kluwer Law International, 1997.

Wendy J. Deichmann Edwards and Carolyn De Swarte Gifford, eds. *Gender and the Social Gospel.* Illinois: Board of Trustees for the University of Illinois, 2003.

Weyler, Rex. *Greenpeace: How a Group of Ecologists, Journalists and Visionaries Changed the World.* Vancouver: Raincoast Books, 2004.

White, Lynn. "Continuing the Conversation." In *Western Man and Environmental Ethics*, by ed. Ian Barbour. Reading, MA: Addison Wesley Publishing Company, 1973.

White, Lynn. "The Historical Roots of Our Ecological Crisis." In *Worldviews, Religion, and the Environment: A Global Anthology* , by ed. Richard C. Foltz, 30-37. Toronto: Wadsworth, 2003.

Whited, Tamara L. *Forests and Peasant Politics in Modern France.* New Haven: Yale University Press, 2000.

Whitehorn, A. *Canadian Socialism: Essays on the CCF-NDP.* Toronto: University of Toronto Press, 1992.

William Connolly, Samuel Allen Chambers, Terrell Carver. *William Connolly: Democracy, Pluralism and Political Theory.* Milton Park: Routledge, 2008.

William M. Lafferty, James Meadowcroft. *Implementing Sustainable Development strategies and Initiatives in High Consumption Societies.* Oxford: Oxford University Press, 2000.

Wilson, Bryan. *Religion in Sociological Perspective.* Oxford: Oxford University Press, 1982.

Wilson, Bryan. "Secularization: the Inherited Model." In *The Sacred in a Secular Age: Towars Revision in the Scientific Study of Religion*, by ed. Phillip E. Hammond, 9-20. Berkeley, CA: University of California Press, 1985.

Wordie, J.R. "The Chronology of English Enclosure 1500-1914." *Economic History Review* 36, no. 4 (1983): 483-505.

Wynn, Graeme. *Canada and Arctic North America: An Environmental History.* Santa Barbara, CA: ABC-CLIO, 2007.

Yamane, David. "Secularization on Trial." *Journal for the Scientific Study of Religion* 36, no. 1 (March 1997): 109-122.

——. *The Catholic Church in State Politics: Negotiating the Prophetic Demands and Political Realities.* Oxford: Rowman & Littlefield, 2005.