

**The Structure of a Legal Revolution on Religion
The Case of Trinity Western University
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Outline for 2015 ICLRS Law and Religion Symposium

PART I - INTRODUCTION

Albie Sachs, the great South African jurist, once wrote, “All revolutions are impossible until they happen; then they become inevitable.”¹

Revolution: Common Theme in Human History

Religious
Political
Scientific
Legal

Legal Revolution on Religion

Special Status of Religion

Religion is assumed a priori as a public good by the legal norm. It means that religion (the practise of religion) is granted exceptions and accommodations to the generally applicable laws. This concept has grounding in liberal democratic theory

Challenge to Special Status

Research Question

Why has religion received special status? What is the nature, or essence of religion that has resulted in it being treated special by the law? Should that protection continue today?

Thesis

The special constitutional and legal protection of religious freedom is necessary for the survival of the democratic project.

PART II – Before the Revolution: The Special Treatment of Religion in Liberal Democratic Theory

Liberal Democratic Theory

Its special project is to maximize individual freedom and maintain civil peace.

Liberalism’s Problem with Religion

Religion is inaccessible by the public – it is irrational. It cannot be used for public policy. It must be private.

Religion’s Problem with Liberalism

The religious note that the rational argument is important but insufficient – ideas of tradition and virtue also need to be discussed; as opposed to centring on the individual religion argues that the individual has a responsibility to the community; and finally the state

is not neutral it has been taking sides all along – what is needed is the ability for all positions to have an opportunity for dialogue.

Religious Accommodation – Special Treatment

Why Religion?

philosophical

historical

pragmatic

The Necessity of Religion To Make Liberal Democracy Work

PART III - The Anatomy of Revolution

Kuhn's Structure of Scientific Revolutions

Scientific Community

Paradigm

Anomalies

Eureka

Resistance

Adoption

Consolidation

Structure of Legal Revolution

Legal Community

Paradigm

Anomalies

Eureka

Resistance

Adoption

Consolidation

Analysis of Scientific and Legal communities

Differences in mission

Differences in method

PART IV – The Gathering Revolution: Trinity Western University School of Law

The Precursor: Trinity Western Education Degree Accreditation

Explicit Arguments Reject Religion's Status

Religion's Status Conditionally Maintained

Belief and Conduct

The Intercession: Push & Pull on Religion

Emerging Arguments for Religion's Status

-Chamberlain

-Amselem

-Marriage Reference

-Multani

-Loyola

Emerging Arguments against Religion's Status

-Bruker

-Marriage Reference

-Hutterian Brethren

-NS

-Loyola

-Saguenay

The Main Event: Trinity Western School of Law Accreditation

Law School Proposal

Opposition

Early Court Decisions

Supreme Court Express

PART V – The Legal Revolution on the Place of Religion

The Animus Toward Religion in a Sexular Age

Redefinition of Marriage

The Public Dimension of Religion Diminished

Legal Community's One Accord

Fear of Bigot Label

What is Legal Should be Illegal

Discrimination

Religious Freedom

What Does Precedent Got To Do With It?

Similarities of TWU 1 and TWU 2

Differences of TWU 1 and TWU2

Rule of Law

Stare Decisis

The End of Religion's Status State Divinity

God and King One in the Same

The Cessation of Public Debate: Winners Declared

Religious Community Must Accept New Legal Norm as its Moral Norm

PART VI - The Revolution's Consolidation: End of Liberal Democracy (as we know it)

Liberal Democratic Project at an end

Covergent Liberalism Has Triumphed

The Prototypical Right Is Removed

Loss of Freedom of Speech

Loss of Freedom of Assembly

The Legal Community

Law Ruled By Passion Not By Reason

Rule of Law

Consolidation of Power and Influence

Removal of Those with Different Views
Attrition
Community shaming

PART VII - Conclusion

“Ages are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and it is certain that many opinions, now general, will be rejected by future ages, as it is that many, once general, are rejected by the present.” JS Mill On Liberty

¹ Albie Sachs, “Towards a Bill of Rights for a Democratic South Africa,” *Journal of African Law*, Vol. 35, No. 1/2, *Recent Constitutional Developments in Africa* (1991), pp. 21-43, at p. 21.