The Myth of Pluralism, Diversity, and Vigor: The Constitutional Privilege of Protestantism in the United States and Canada

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In their recent exploration of race and evangelicalism, *Divided by Faith*, Michael Emerson and Christian Smith tell the story of a couple who make a decision about the church they will attend using their own style of market research.

Take the real-life case of Al and Sue Jamison. They had recently moved to a new metropolitan area when we interviewed them. We were interested in how they found a place of worship, with over 3,000 options possible in their new location. They told us that having moved due to job transfers many times over the past ten years, they had, through trial and error, decided exactly what form of worship and doctrine they preferred. They had also determined that a loosely connected association of churches, all organized around the same guiding principles—the Willow Creek Association—came closest to their preferences. So the Jamisons called the local association in their new state. Of the over sixty such churches in the state, they determined that twenty-five were within acceptable driving distance. The Jamisons then began an “initial screen,” conducting a short telephone interview with a representative from each of these churches. Based on these initial interviews, they decided that five churches met their criteria most closely. They then spent the next month visiting each. From their first round of visits, they narrowed the list of five churches to three. Representatives from each of the three churches were then invited to the Jamison’s home, on successive nights, to provide more information about the congregations. When Al and Sue finished their in-home interviews and visited each of the three churches a second time, they selected the church that they concluded best matched their preferences. After two months, their church shopping was complete, and they were satisfied customers. (2000:140)

Such a scenario might be read as providing support for the notion that America is a religious marketplace, driven by consumers who make decisions about faith products based on rational choices about their needs, and the relative benefits and costs. There are two corollary assumptions that accompany this story, at least according to the current or “new” paradigm of thinking about religion in the United States (and to some measure Canada). The first is that such a marketplace is possible because there are no state-endorsed religions in America. The second is that the plethora of churches available to the Jamisons, and to the rest of us, represents religious diversity. Indeed there is much excitement these days about religious diversity—we are told that the market is teeming with consumers making choices: joining churches, leaving churches, exploring faith in a multitude of possibilities, including Sheilas, immigrants, new religious movements, and numerous fusion religions the likes of which we have never seen before. America’s pluralism is, we are told, at least a partial explanation for the religious fervor we are experiencing in such a variety of flavors.

In this article I will argue that all is not as it seems on the religious landscape. In their haste to be the first to map the “new” religious terrain in America, sociologists have assumed too much. First, they have been too anxious to take diversity for granted. Second, they have been too casual about the assumption that there is a separation of church and state that facilitates a religious marketplace that supports the possibility of multiple choices for people like the Jamisons. It is my contention that religious choice exists only within a narrow range of products. The department
store approach, the buffet of choices, or the religious marketplace should not be confused with religious diversity. The offering of communion on the first Sunday of each month as opposed to the last reflects religious diversity similar to the diversity faced when choosing orange juice—from concentrate, or not? With pulp, or without?—ultimately, though, the choice is still orange juice. The very existence of religions outside the mainstream is sometimes taken as evidence of diversity, of a flourishing margin that is eroding the hegemony of mainstream Protestantism and that represents the positive effects of a constitutional regime that officially separates church and state. In fact, there has been little erosion of the hegemony of the religious mainstream. Diversity is diversity of “brands” or style, and represents a shift in religious form that remains true to Protestant substance.

RELIGIOUS DIVERSITY

From where have these assumptions about religious diversity come? The first section of this article explores the notion of diversity as it has been used by social scientists of religion. The second section focuses on immigrant religions as an illustration of the importance of deconstructing the notion of diversity. The existence of substantive religious diversity in a society is an important measure of religious freedom. Immigrant religions present an interesting case study of a threat to religious hegemony for reasons elaborated in the second section. The final section uses four cases as examples of the tendency of law to keep marginal religions on the margins.

The current infatuation sociology of religion seems to be having with the psychologically based explanation for religious behavior—rational choice theory—presently in yet another reincarnation from its previous lives as classical theory and exchange theory (Homans 1967) has an illustrious group of participants. R. Steven Warner’s (1993) seminal essay, “Work in Progress Toward a New Paradigm for the Social Scientific Study of Religion in the United States,” has been much cited, celebrated, and discussed as an articulation of this focus on the pluralism of American religious experience. Rodney Stark (1997) cites Warner with approval, noting his own role in Warner’s argument. Stark argues that the rational choice model allows social scientists the freedom to focus on the supply side of religion, or on how suppliers are able to create a demand. Ultimately, Stark and Finke (2000) link the vitality of religion in a society to “whether the government regulates the economy in the direction of monopoly.” They articulate a proposition and a definition that are of relevance to this discussion:

Proposition 71. To the degree that a religious economy is unregulated, it will tend to be very pluralistic.

Definition 34. Pluralistic refers to the number of firms active in the economy; the more firms there are with significant market shares, the greater the degree of pluralism. (2000:284)

The difficulty with this proposition and the definition is that pluralism remains a relatively unexamined concept. Specialization and market differentiation are noted as being important, but the nature of the pluralism is assumed. The choices available to the Jamisons introduced at the beginning of this article fit neatly into this model. The fact that most of the choices are Christian, and Protestant, remains obscured.

It is important to include a brief note of clarification about the nature of religion in society in Canada and the United States. Using traditional measures (such as church attendance), religiosity is higher in the United States, although the differences vary from study to study. Further, while Roman Catholicism in the United States has been somewhat marginalized, in Canada Roman Catholics comprise approximately half of those who identify a religious affiliation. This is shared almost equally with “mainline” Protestants. Canadians, for example, are as likely to elect a Roman Catholic as a Protestant prime minister. Thus the religious hegemony in Canada has a slightly different face than its U.S. counterpart. Throughout this article I will therefore characterize the
religious hegemony in Canada as Protestant/Roman Catholic. Although it might be easier to simply use the term “Christian hegemony,” there are a number of marginalized Christian groups that make this term problematic. In neither the United States nor Canada do groups outside of the Protestant/Roman Catholic mainstream make up significant numbers, a point that will be discussed in greater detail later in this article.

The focus by sociologists of religion on religious diversity or, perhaps more accurately, diverse religions, has a laudable background. It represents a shift in focus to the religiously marginalized, including Wiccans, aboriginals, immigrants, Jews, Roman Catholics (in the United States), and new religious movements generally. However, the effect of this has been to sometimes give the false impression that these groups represent a majority of religious participants who are assumed to be legally protected and socially accepted, and thus is created the illusion that they somehow hold an “equal” place in society.

Mine is not the first attempt to deconstruct the notion of religious diversity. Darren Sherkat challenges what “we all know”—“that religion in America is becoming increasingly diverse, and particularly that non-Judeo Christian groups are gaining popularity” (1999:551) by reanalyzing the category “other” in the 1973–1996 General Social Survey. He finds that almost half the “other” category, which were previously thought to be non-Judeo Christian faiths, are actually misclassified Christians. Interestingly though, what he begins by challenging—the notion of diversity—he ends by accepting by stating “in an increasingly diverse religious economy, we need this greater degree of precision to assess the importance of religion in society” (1999:557). Sherkat’s discussion raises an important point. However we conceptualize diversity, religious groups on the margins are not taken seriously in social surveys. Protestantism, and to some extent Catholicism, are constructed as the normal against which the “other” is established. An ancillary point is that it is nearly impossible to gain an understanding of the identity of those “others” from existing survey research.

This, of course, is where research like that of Mary Jo Neitz (1990), Thomas Robbins (1990), Wendy Griffin (2000), Helen Berger (1999), James Richardson (1995), and Susan Palmer (1996), to name just a few, helps to diminish the void of information about religions in the margins, or minority religious groups. Mary Jo Neitz (2000) documents the move of the religious margins to the center-stage of attention of sociologists. She examines the shift from reporting on mainline Protestantism to new religious movements and religion outside of North America in the articles published in the Journal for the Scientific Study of Religion. She argues that the shift in focus reflects, in part, a decline in the Protestant hegemony. I would take issue with Neitz on this point. Although sociologists (and, as Neitz points out, historians to some extent) may have decided that the margins are more sociologically interesting than the mainstream, statistics on affiliation show that, at least numerically, there remains a Protestant hegemony. Perhaps, as the findings of researchers such as Wade Clark Roof (1999) would suggest, even mainstream Protestants are committed to spiritual practices on the margins. But affiliation, added to the Protestant tone of civil society, means that those in the religious margins remain there.

Neitz does raise some important questions that add nuance to my somewhat rigid conceptualization of the center/margins. About who is included and excluded from the Protestant mainline, she asks:

Do we judge by numbers? Is the “Mainline” the “majority” religion in the United States? Is it a descriptive term that simply refers to numerical dominance? Or does it refer to cultural dominance as well? If the latter, how do we decide which religions are “culturally” dominant? Is it a term that only makes sense when contrasted with its opposite—the sects that consciously position themselves outside of the dominant culture? (2000:513)

Peter Beyer develops this point in a different direction, raising the issue of “otherness” and, in particular, the shifting boundaries of definitions of otherness. He examines this specifically in relation to the focus of SSSR/RRA scholars, and concludes that “it appears that we are paying
much more attention to various other religions and to the religions of various others because both of these are in fact becoming less and less other" (2000:530). At the same time, and further to the point of this article, Beyer points out that we may identify more readily with those on the other side of the world (in my argument, other Christians) than with those in our “back yard” (Hindus or Wiccans, for example) (2000:530).

Returning to the beginning point of this article—that diversity of style is often merged with diversity of content—the other body of research that explores “religious diversity” is that represented by the careful descriptions of the fusion of immigrant traditions with Christian religions in North America. Steven Warner, for example, examines the intersection of Christianity and the traditions of numerous immigrant groups. In their recent book, Helen Rose Ebaugh and Janet Saltzman Chafetz (2000) examine a variety of religious groups in Houston. A recently edited collection by Lowell W. Livezey (2000), Public Religion and Urban Transformation, maps some of the exciting fusions of different cultures with Christianity in Chicago. But, in each of the works mentioned, the map remains predominantly Christian. Rich, textured, and yes, diverse in style, as many of these groups are, nonetheless they are following in the tradition of the religious mainstream. They are indeed different, but not so different as to represent a threat to the religious hegemony.

The two bodies of work described above—those that focus on religions outside of Christian mainstream traditions and those that focus on the diversity of Christian practice among immigrant populations—represent in some measure a shift in focus from the core to the periphery or margins. But, sociologists must be careful to remember that a religious hegemony does exist, and, at minimum, it works to erode, marginalize, and support the persecution of religious groups who fall outside the mainstream. The recognition of a Protestant hegemony does not deny conflict—groups and individuals are challenging the ways the religious “normal” is constructed. One goal of this article is to draw attention to the difficulties faced by groups on the margins when they challenge or attempt to permeate the boundaries of “normal,” a pattern that further evidences the fragility of the claim that substantive plurality exists in North America.

**RELIGIOUS HEGEMONY**

Hegemony is a concept rooted in the conflict tradition, and it is in this sense that it is used in this article. Derived from the work of Gramsci (1971), hegemony describes the status quo of ideas and implies the domination of one group over another, or others. In relation to religion, hegemony relies on a sense of what is “normal” religion. A critical stance does not rely on the notion of shared values in the Parsonian sense of promotion of one vision or social cohesion. Hegemony in this sense does work to construct borders and boundaries around normal religion. Although I think they exaggerate the critical position, Alexander and Smelser (1999) accurately distinguish it from the neo-Parsonian trends found in the work of Bellah et al. (1985, 1991) and others.

For their part, radical critics celebrate the end of common cultural values. Arguing that diversity and difference constitute the high moral goods of society, they view any attempt to connect this diversity to shared values oppressive. In the academy, this leftist position has contributed to the appearance and vitality of “cultural studies”, a new field challenging traditional disciplinary authority. Originating in British neo-Marxism and highly influenced by Foucault, cultural studies stress hegemony rather than common culture, and domination rather than civil solidarity. It has been in centers of cultural studies that the more radical programs in race, gender and ethnic studies have been launched. (1999:3)

Although Alexander and Smelser miss the point to some extent—critical theorists challenge the view that there ever was the degree of consensus postulated by consensus theorists—they do capture the importance to “radical critics” of accounting for diversity and the need to explore the domination and hegemonic processes.
In two of his most recent publications, Reginald Bibby (1999, 2000) challenges the notion that Canada is multicultural and therefore multireligious. Although Bibby’s argument brings us back to Neitz’s very important question—Are we just focusing on numbers when we talk about diversity?—his data does suggest that “breaking the Catholic/Protestant monopoly is more difficult than we might think, in part because of their overwhelming numbers. Fully 82% of Canadians identify with Roman Catholicism or Protestantism when asked about their religious affiliation.” Bibby sums it up: “Canada has an extremely tight religious market dominated by Catholic and Protestant ‘companies’. New entries find the going extremely tough” (Bibby 2000:237). Moreover, when North Americans switch religious affiliations, they tend to remain within the same denominational family (Bibby 1999:151; Hadaway and Marler 1993). The dominance of certain religious “companies” necessarily points to the need for a careful consideration of the levels of tolerance for religions outside of the Christian family, and substantive content of “diversity.” Bibby argues that there has been a softening of tolerance zones, based on his measure of the expressed comfort levels of his survey participants in worshipping in other groups, but nonetheless the overwhelming tone is mainstream Christian in character.

It is not difficult to miss Bibby’s call to action to organized Christian religion and to sense his frustration at the churches’ failure to respond. Nonetheless, his portrait of the dominance of Christian religion in Canada holds a great deal of credence. Whatever the agenda of Bibby and those who do similar work in the United States, their research maps important aspects of the religious landscape. It also raises critical questions. First, if people adhere to Protestantism in name only, does such a situation support the argument that there is a Protestant (and in the case of Canada, Protestant/Roman Catholic) hegemony? Second, what do survey questions gloss over in terms of religious behavior? Is knowledge of the Bible a measure of religiosity? What types of religious behavior/beliefs are excluded from the “standard” religion questions? Is it possible that viewing religious behavior in the religious marketplace framework minimizes the importance of alternative ways of working through spiritual needs and religious commitments? In other words, by seeing the choices available to the Jamisons, introduced at the beginning of this article, as representative of diversity, freedom to choose, and pluralism, what do we miss about the religious behavior of groups on the margins? Third, do portraits that map the mainstream using survey techniques fail to capture the dynamic nature of the religious landscape? Although new religious movements and immigrant religions have thus far not made a large dent in the overall numbers, ongoing research by Peter Beyer, for example, raises the possibility that we are on the verge of an important shift. Beyer argues that because the immigration to Canada (the same argument can be made of the United States) from non-European areas is a relatively new phenomenon, a longitudinal assessment is necessary to gain an accurate picture of the religious composition and direction of North America (Beyer 1999). Beyer’s argument is persuasive and offers some hope that an erosion of religious hegemony may occur to the point that freedom of religion and religious equality will extend to religious minorities. Nonetheless, in the meantime it is important to explore the contours of hegemony as it presently shapes religious beliefs, practices, and freedoms.

Assumptions about the nature of religion and what constitute “normal” beliefs and practices pervade the media, law, and academic writing. Although the media are not necessarily a good source of social scientific data, it is significant that groups on the religious margins are almost always portrayed negatively. New religious movements attract media attention for apocalyptic views and actions, and remain “cults” in public discourse (see Williams 1995). Muslims are the subject of biased media reports that seem to result in attacks on mosques and anti-Muslim sentiment (Coward, Hinnells, and Williams 2000:24; see also Fleras and Kunz 2001). Aboriginals, for whom daily life and the physical world are inseparable from spirituality, are constructed as “problematic” because of their demands for equality and restitution (see Fleras and Kunz 2001).

Academic research is also embedded with assumptions about the nature of religion and religious diversity. The recently published “For Goodness’ Sake: Why So Many Want Religion
to Play a Greater Role in American Life” focuses primarily on mainstream religion. Although the authors note that they have included religious minorities only to the extent that such minorities are represented in a random sample of the population as a whole, the authors admit that “the pragmatic reality is that authoritative research comparing the views of multiple subgroups comes at a stunningly high cost, and this consideration has limited the scope of our current work” (Farkas et al. 2001:8). Nonetheless, some rather bold generalizations are made about religious minorities based on the admittedly limited sample included in the study, such as “groups in the minority, such as Jewish or nonreligious Americans, are more cautious about religion gaining more influence in society” (2001:10). Unfortunately, there is little critical reflection about the definition or parameters of what sort of religion it is that Americans want to play a role in public life. Yet there is little doubt that the religion referred to is mainstream Protestant religion.

Similarly, in his excellent historical overview of religion and the state in Canada, Roger O’Toole (2000) states that he does not want to define religion because he simply means “organized religion in the conventional Western societal sense.” O’Toole assumes that there is a “conventional sense” in which we define and understand religion, and that we all know what it is. One final example will suffice to make the point. Well-known and respected feminist philosopher Martha Nussbaum constructs a detailed analysis of religion and women’s equality in India. One of her arguments is that religion is (and should be) given a great deal of constitutional deference because of its role in “transmitting and fostering moral views of the conduct of life” (2000:348). However, Nussbaum’s subsequent statements reveal that she makes assumptions about what constitutes “real” religion.

We may, and do, however, judge that any cult or so-called religion that does not contain this conduct-improving element does not deserve the honorific name of religion. Thus U.S. law has persistently refused to give religion status to Satanist cults and other related groups. Controversies over Scientology have a similar character: insofar as states judge that it is really a money-making scheme, they refuse to give it the honorific status of religion. (2000:349)

Exclusion from major research projects about “what Americans want,” assumptions about ordinary religion, and the characterization of new religious movements as “money-making schemes” all contribute to the preservation of religious hegemony that reinforces the boundaries of religious normalcy around particular beliefs and practices.

In summary, then, rumors of the decline of God, through the loss of a Protestant dominance, and the birth of the Goddess, the Creator, Muhammad, and Buddha have been greatly exaggerated. Church-state and sociology of religion literature is rife with pronouncements about the existence, decline, and loss of a Protestant civil religion. Yet there is little data to support a declaration of a loss of a Protestant (and in Canada a Protestant/Roman Catholic) stronghold. Although the work of researchers such as Wade Clark Roof certainly supports the notion that the waters have become muddied, even his findings suggest that many people are still seeking within a mainstream framework. The numbers hold fast, even if the depth of commitment does not. These numbers, together with the traditional dominance of mainstream Protestantism, mean that a religious hegemony exerts a persuasive pull against which religious minorities are in tension. The reality of diversity and pluralism is one of conflict, struggle, and discrimination.

IMMIGRANT RELIGIONS AND THE RELIGIOUS “OTHER”

Why the concern over diversity? Challenging the way we are thinking about diversity does not mean that there are not diverse religious groups in North America. But many, if not most, of those groups remain on the margins. What does it mean to talk about the religious margins? Although my
concern is with all religious groups outside the Christian mainstream, it is immigrant religions that are the potential flash point for religious persecution, and that illustrate the need for concern about minority religions generally.

Last October I was flying from Houston to Lethbridge, Alberta after attending the SSSR meetings. I began a casual conversation with a fellow traveler, John Doe, in the shuttle bus on the way to the airport in Houston. As it turned out, he too was traveling back to western Canada after attending a professional conference. The usual “what do you do” queries were made, and I talked about my interest in religious minorities and the interesting role of immigrants in the picture of religious freedom. His response was, I believe, representative of a pervasive attitude. He stated that immigration is a real problem because immigrants come and live off of “our” resources, expecting to reap the benefits of Canada’s social safety net while contributing nothing to “our” society.

In her book, Immigration and the Legalization of Racism, Lisa Marie Jakubowski reviews some of the data from Gallup, Decima, and Mcleans polls about Canadian attitudes toward “outsiders.” She notes a marked increase in intolerance as the level of non-European immigration has risen. In 1957 the vast majority of immigrants to Canada were Europeans or Americans, but by the mid 1980s these groups made up only 24 percent of Canada’s immigrants (Kopvillem 1990:40, as cited in Jakubowski). In the Mcleans poll, only one in five respondents, “regardless of age, income, level of education … welcomed the increase in immigration from Asia, the West Indies and other, mainly Third World, countries. The rest of the sample described immigration from these areas as either ‘bad’, ‘very bad’, or ‘simply a fact of life’” (Wood 1993:26, as cited in Jakubowski).

In Public Needs, Private Attitudes, John Roth (1997) takes up the concern about immigration and the potential vulnerability of immigrants. He makes some observations about the links between present-day anti-immigration sentiment and the social climate that fostered the Holocaust. We should not need to be reminded of the extremes to which the very real consequences of the social construction of particular groups as “dangerous” or “surplus” can run. Roth challenges the source of rights, contending that “it is no longer clear that anything but human power does secure a person’s rights, and if rights depend on human power alone, then they may well be natural and unalienable in name only” (1997:180). Roth’s argument becomes even more disturbing when he reminds us that the 12 million human beings murdered by the Nazis, half of whom were Jews, were constructed as “surplus” human beings. The potential for the same interpretation is high as “anti-immigration sentiments grow around the world and in the United States in particular.” The melting pot ideology of the United States may mean that as immigrant populations grow, become more visible, and more visibly different, the social construction of immigrants as “surplus” becomes increasingly possible.

In his somewhat apocalyptic Utopistics, Immanuel Wallerstein echoes these concerns. He states:

> The white pan-European world is becoming de facto, far less White. Not all the migrants are non-White, of course, but they are all so defined socially. While the pan-European bloc of countries probably cannot stop the actual flow of migrants and their subsequent faster demographic progression within the pan-European world, they can rig the political structure so that these migrants have no (or fewer) political and social rights than “citizens”, and can certainly rig it so that the migrants have the least well-paying jobs. (1998:61)

Although Wallerstein develops this scenario to make his argument that capitalism will collapse, or at least the current world system will meet its end, I am more interested in his identification of the “rigging” of the political structure in relation to rights, and further to the argument of this article, religious rights in particular (although they form only one part of the overall denial of equality to immigrants). In the next section of this article I offer some case studies that illustrate the subversion of rights talk to preserve mainstream interests.
What, then, is the role of law in the preservation of religious hegemony? Freedom of religion is an important site of the social and legal construction of the boundaries of normalcy. Immigrant religions, like other religious minorities, are often constructed as “the other,” to be tolerated as long as they do not pose any real threat to the social order, or a “drain” on social resources that threatens to impinge on the standard of living of nonimmigrants. The comments of John Doe represent a dangerous coming together of beliefs that support and underscore the concerns raised by both Roth and Wallerstein. Immigrants are being constructed as surplus, but beyond that, as costly surplus. The degree to which immigrants are protected in their religious practices is an important barometer of the extent to which North American society is willing to consider diversity that moves beyond varieties of Christianity and shades of white. When economic times are good, society may be more willing to “tolerate” and protect diversity, but as Roth argues, in times of social stress (including economic stress), “unwanted” people may be targeted because they “cost too much” (Roth 1997:185; see also Jakubowski 1997).

**THE CONTRIBUTION OF LAW TO BOUNDARY MAINTENANCE: FOUR CASE STUDIES**

To return to Stark and Finke’s proposition—that an unregulated religious economy produces pluralism—the United States is cited as a model of an unregulated religious economy in which pluralism is booming. But this is too simplistic an interpretation of both the meaning of “unregulated” and “pluralism.” The First Amendment is held up as the cornerstone of deregulation, promoting both free exercise of religious freedom and the separation of church and state. Debates over the First Amendment come from what amounts to two camps: those who think there is not enough religion in the public square (Carter 1993; Neuhaus 1984), and those who think that there is too much (Hammond 1998; Jelen 2000). The latter group argues for strict separation of church and state. Their greatest contribution to the debate is their recognition that there is a Protestant hegemony that continues to dominate public debate. Beyond but embedded in the public square debates is the interaction of law and religion. In the courts we see a consistent pattern of preservation of the religious mainstream.

There are essentially four types of minority religious groups that seek protection under free exercise provisions: new religious movements—Scientologists and “Moonies”; established but marginalized religious groups—Native Americans, Wiccans, and Jews; marginalized Christian groups such as Jehovah’s Witnesses, fundamentalist Christians, and the Society of Friends; and immigrant religions such as Buddhism or Islam.

Case law is an important barometer of the treatment of religious minorities in society. Ultimately, interpretations of religious freedom are guided by what constitutes a normal religion, and what constitutes a normal religion is rooted in mainstream Protestantism, and in Canada, Protestant and Roman Catholic tenets. In the following sections, four cases will be presented to illustrate the manner courts marginalize minority religious groups, thus maintaining the status quo. The manner a court talks about religion is critical to understanding the social construction of the religious normal. While three of the four cases are Canadian, case law from the United States is no more promising than its Canadian counterparts. Courts on both sides of the border use techniques of boundary maintenance that include a blurring of the sacred and the secular (religious symbols of the majority are stripped of their religious symbolism); the notion of a greater “purpose” (the weighing of state interests vs. the protection of religious interests of individuals); and the upholding of a “sacred” trust (a search for the intention of the “founders”). These processes involve a “balancing” of interests that are increasingly being resolved in a manner that minimizes the religious freedom of minority groups.
Aboriginal Exclusion

Native Americans have had a long and difficult struggle to gain constitutional protection for their spirituality.\(^{23}\) In part this difficulty is rooted in a colonialist desire to eliminate the culture of First Nations peoples through the destruction of their language and their religion (see Sakej Henderson 1999; Fiske 2000; Pettipas 1994). In the United States, an additional challenge is posed to claims for constitutional protection by the reticence of courts to consider claims based on group interests (see Williams and Kubal 1999). Further, there is a wide gulf between mainstream Protestantism, with its emphasis on church building as sacred space, and Native spirituality, with its multiplicity of sacred spaces. This gap has led to the dismissal of Native-American claims for the protection of sacred space. Courts have minimized the impact of the appropriation of such sacred spaces and allowed “development” to continue at the expense of the desecration of sacred spaces and the destruction of Native-American spirituality (see, e.g., the Lyng case).\(^{24}\)

One of the most discussed cases on aboriginal spirituality is Employment Division v. Smith (494 U.S. 872), in which the U.S. Supreme Court rejected free exercise claims of two drug rehabilitation organization employees who had ingested peyote for sacramental purposes. The two were subsequently denied unemployment compensation, essentially because they were dismissed “with cause.” The Supreme Court characterized the issue as a request for special treatment, which runs counter to the type of individualism championed by liberals and that has so effectively quashed any serious attempt to address adverse impact discrimination through affirmative action. The characterization of the issue as one of special treatment in the form of an exemption from criminal law in the face of a war on drugs transformed the case into one in which freedom of religion became subsumed by a “greater” societal cause. The Court uses strange logic to justify sameness of treatment.

Precisely because “we are a cosmopolitan nation made up of people of almost every conceivable religious preference,” Braunfeld v. Brown, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. (para. 888)

The Court presumes both diversity and equality in its statement, without any close examination of the lived reality of the day-to-day negotiation involved in being a religious minority in North America. The Smith decision is viewed by many as a blow to free exercise generally, its implications extending beyond Native Americans to any minority religious group whose beliefs/practices collide with those of the state/religious mainstream (see Gordon 1991; Mazur 1999).

Immigrant Religions

Like the cases involving aboriginals, those in which immigrant religions claim protection also reflect a narrow interpretation of the boundaries of religious freedom. In Bhinder v. CN, a Canadian National Railway employee refused to wear a hard hat at his place of work because he was a Sikh who could wear only a turban. The Supreme Court of Canada upheld Bhinder’s dismissal, stating that the requirement to wear a hard hat was a bona fide occupational requirement. The Court held that “the test does not vary with the special circumstances of the complainant,” and exceptions would “rob the requirement of its character as an occupational requirement.” Thus, the Human Rights Act, which protected freedom of religion, had not been violated. The fact that there was a significant adverse impact against Sikhs both individually and as a group was overlooked by the Court, which was able to hide behind precedent, statutory interpretation (the “plain meaning” of the statute is referred to), and the characterization of the issue as an employment and safety discussion rather than one about religious freedom.\(^{25}\)
In cases like *Bhinder*, the courts displace the individual from the group and are thus able to ignore the widespread impact of discriminatory legislation. The individual is constructed as an “exception” who is seeking special dispensation for exemption from what is inevitably characterized as a “sensible” rule. Again we see a minority religious claim characterized as a request for special treatment. By so doing, the court is able to construct the immigrant as the “other” and the religion in question as “abnormal.” Thus any decision in favor of the minority group can be viewed as an accommodation or an exception to the “rule.”

**Marginalized Christian**

Although mainstream Protestantism makes up the dominant strand of religious hegemony, on occasion some Christian groups stray so far away from the flock that they are likely to be denied claims to protection under freedom of religion provisions. Such was the case for Jerilynn Prior, a Quaker, whose religious belief values, and indeed sees as central, peaceful resolution of conflict. In *Prior v. R.* ([1989] 2 C.T.C. 280), the Canadian Federal Court of Appeal struck down an action by Ms. Prior to exempt a portion of her taxes from payment into general revenue.26 Jerilynn Prior paid a portion of her taxes to the Peace Tax Fund in order to avoid supporting the military. Perhaps the most troubling aspect of the decision is its brevity. The reasons do not give any clear sense of why Prior’s actions fall outside of the Charter protection, the Court abruptly stating: “I have no difficulty in saying with the motions judge that neither the payment of income tax nor the defence expenditures of the Government of Canada in any way affect, curtail, diminish, or infringe the appellant’s conscience or religion within the meaning of s. 2(a) of the Charter” (para 7). The Court uses peculiar language to describe the appeal, twice referring to the case as an “attack” on the decisions of the lower courts.27 The Court gives little consideration to the fact that to dismiss the Friends’ commitment to nonviolent solutions and consensus is to ignore their free exercise of religion. Prior’s convictions seem to have little weight in the face of state needs, as they are identified by the Court, and the implication is that Prior is not behaving in a logical manner or like a “real” citizen. Once again the religious adherent is characterized as seeking special treatment. In this case the paying of taxes is presented as being so normal that the request to vary the practice is not given serious consideration. The Court’s description of Ms. Prior’s appeal is not only disrespectful, but a means of constructing her as being unreasonable and perhaps out of control.

**New Religious Movements**

No case involving a new religious movement has come before the Supreme Court of Canada, and few have been heard at the Supreme Court level in the United States.28 In both countries (and worldwide), the Church of Scientology has been involved in litigation to protect its religious rights and has also been the target of criminal prosecution. An Ontario Court of Appeal decision29 is representative of the ways Scientology is characterized. In that case, the validity of the search and seizure of documents from the head office of the Church in Toronto was the focus of the court’s deliberations. Some 30 Ontario Provincial Police officers seized 39,000 files and books. The Church was charged with three counts of fraud. In its decision, the court waffles about the nature of Scientology. Although references are made to Church beliefs and practices, the information is not gleaned from Scientologists or from experts on religion, but from a court case from the United States. While the Ontario Court of Appeal seems prepared to accept that Scientology is a religion (p. 467 of judgment), it is adamant that this does not exclude the group from either criminal or civil sanctions under the law. But the Court goes further: “The Crown is seeking judicial assistance for an experienced police officer who has sworn that the appellant Scientology is an organization that has hidden behind the fabric of a church to commit significant criminal acts” (p. 469). The Court cites or refers to this “experienced police officer” several other times throughout
its decision in its references to the Church: “one could conclude that the appellant Scientology, in the instances alleged by the informant, has gone well beyond postulating controversial religious beliefs and, through its senior officers, is committing a number of serious offences” (p. 470). Not surprisingly, the court recasts the freedom of religion arguments by the Church as attempts to exempt itself from civil and criminal responsibility. It is not entirely clear, though, how the practices of Scientologists differ significantly from other religious groups.30 One of the counts of fraud related to the payment of leaders from Church funds. But many churches pay their leaders from profits—whether accumulated through collections from congregants, investments, or church bingos. As Hall (1997:15) points out, “we all know that organized religion is commercial in character which the state supports with tax exemptions and the ordinary man upholds in his pew.” To single out Scientologists for prosecution on this basis seems to be thinly disguised discrimination against a religious minority. Similar to the findings in Prior, Section 2(a) Charter rights are given short shrift. The Church of Scientology is constructed as being so far outside the boundaries of the contemplated protection of religious freedom that the court seems to see little reason to consider the issue in any great depth.

CONCLUSIONS

What do these cases tell us? One thematic thread that runs through religious minority cases is the construction of the request for protection of religious freedom as a “special” circumstance requiring accommodation where it is reasonable, can be justified in a free and democratic society, or is not counter to state or society’s interest. The duty to accommodate is an explicit consideration in employment cases. Day and Brodsky (1996) argue that the notion of reasonable accommodation is prefaced on an understanding that there is a “normal” standard, set by powerful groups against which minorities are measured and, if warranted, accommodated. This, they argue, reinforces the notion that minority groups are “different.” Such a sameness/difference paradigm is, they contend, both inadequate and inappropriate as a legal mechanism for assessing minority rights.31 In the discussion at hand, the binary opposition of sameness/difference is reflected in Protestant/minority religion in which mainstream Protestantism is representative of the “normal.”

Courts interpret claims to religious freedom against a backdrop of religious normalcy that is rooted in mainstream Protestant (and in Canada, Protestant and Roman Catholic) hegemony. Does this mean then that sociologists of religion should return their focus to the Protestant hegemony, devoting as many resources and as much energy to it as the numbers might suggest is necessary? I agree with Mary Jo Neitz that “it no longer makes sense for social scientists of religion to center our studies in the ‘mainline’”(1999:513). And yet, focusing on the margins has its dangers too, in that we can easily lose sight of the hegemonic forces of mainstream Christianity.

I would like to encourage a deconstructing of religious diversity and pluralism. Greater attention does need to be paid to the ways mainstream religion works to keep religions on the margins precisely there. Hegemony binds, restricts, and excludes in ways that have yet to be fully explored. To be sure, the very existence of the groups briefly discussed in this article—new religious movements, established but marginalized groups, marginalized Christian groups, and immigrant religions—challenges hegemony. I hope that this discussion will not be interpreted as a call for the elimination or erosion of mainstream Protestant faith and its communities. The identification of processes and practices that work to marginalize some religions may help us to work toward meaningful and substantive diversity and freedom of religion for all.

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2. It might be argued that this is true of all religions, that is, that in the end all expressions of spirituality are one version or another of religion. But this begs a central point of this article, which is that some religions make up a hegemony that marginalizes other religions. This in turn has a real impact on religious freedom, as is illustrated by case law from both U.S. and Canadian courts. Diversity of style is much in evidence in North America. Diversity of content is not.
3. Kevin Christiano develops an insightful analysis of the differences between Canada and the United States in their approaches to religion, and to diversity. He says “the United States encounters diversity straight ahead and attempts effectively to hurdle it. In contrast, Canada seems to enfold and to absorb difference, the better to handle it” (2000:74).
4. It is, I think, important to note that two of the major funding agencies for religious research in the United States—Pew Charitable Trusts and the Lilly Foundation—continue to focus on the religious mainstream.
5. See Livezey’s interesting chapter for a description of a diverse neighborhood and a consideration of issues around the theme of diversity.
6. For a comprehensive examination of the bifurcated categories “mainstream” and “minority” and their many variations, see Wright (2001). To be sure, these categories are not without difficulty, especially because their boundaries are fluid and shifting, like most social categories. As John Hinnells put it: “In one sense definitions are concerned with drawing the appropriate boundaries around subjects, but there are times when strictly drawn boundaries are artificial” (2000:4).
7. In his recent foray into the world history of religion, Stark states: “where a relatively secure monopoly exists, a substantial amount of religious nonconformity will be tolerated to the extent that dissenters are perceived as posing no threat to the power of the religious elite” (2001:121).
8. For a fascinating discussion of the possibility of multiculturalism within the boundaries of liberalism, see Taylor et al. Taylor makes an important link between Western liberalism and Christian hegemony: “Western liberalism is not so much an expression of the secular, postreligious outlook that happens to be popular among liberal intellectuals as a more organic outgrowth of Christianity” (1994:62).
9. Fleras and Kunz include Bibby in what they describe as a group of academics who see multiculturalism as irrelevant or divisive (2001:1). O’Toole also identifies the “persistently Christian character” of Canadian society.
10. Just what this measures is unclear. For example, Bibby does not include Islam, Hinduism, Wicca, or aboriginal spirituality in his choices for response.
12. Roger O’Toole notes that Canadians are not content to simply say they are Christians, but insist on identifying their denomination affiliation as well. O’Toole is unwilling to make firm conclusions about this fact, but he does raise it as an interesting note in his discussion of the Christian nature of Canada (2000:46).
13. I have no desire to resurrect or contribute to the ongoing qualitative/quantitative debate I spent many hours on in graduate school by asking this question. It is important to ask, as Neitz does, to what extent numbers dictate the way we see the big picture. This returns us once again to a central problem raised here: using numbers to argue that marginalized religious groups aren’t that significant misses an important part of the religious landscape. But focusing only on marginalized groups without contextualizing them in a larger picture of dominance and resistance also results in a limited picture.
14. This article was written prior to September 11, 2001. The tensions around Islam and the targeting of Muslims for persecution has been dramatically exacerbated since then.
15. Some writers talk about the “Judeo-Christian” tradition. I believe this obscures the pervasiveness of anti-Semitism in the modern world.
17. If this sounds extremist, one need only look at the situation of African Americans, an unwilling immigrant population who have now been part of the social landscape in the United States for some time. Emerson and Smith are convincing in their argument that religion, specifically evangelical Christianity, has helped to construct and maintain African Americans as the “other” (2001).
18. The legal construction of boundaries in relation to immigrants (and other marginalized groups) has a long history. Comack (1991) document the implementation of opium laws as a means of socially controlling Chinese immigrants in Canada in the early 1900s. In Colour-Coded, Constance Backhouse explores the legal history of racism in Canada. She argues that labor laws were “anything but racially neutral.” Specifically, Saskatchewan’s “White Women’s Labour Law” prohibited “Japanese, Chinamen, and other Oriental persons” from employing white women. In an illustration reproduced in Backhouse’s book, “oriental” employers are identified as a “growing problem” (1999:143). Thus new immigrants were prevented from having full access to the labor force they needed to build successful businesses and, ultimately, from meaningful citizenship.
19. While the U.S. Constitution deals with religion in two clauses—the establishment clause and the free exercise clause—I am not separating the two in my analysis. U.S. constitutional scholars have expressed frustration at the two strands of analysis that have developed around the two parts of the religion clause. Ultimately, both clauses impact on the ability of a religion to exist, survive, and thrive.

20. I realize that the categorization of Wicca as an “old” religion is contentious. I am also aware that “established” is a bit of an arbitrary characterization and that Buddhism is an established world religion. The religions within these categories must, to some extent, be treated individually in order to capture all of the nuances of discriminatory practices against them.

21. The post-Charter Supreme Court of Canada case law can be summarized in this way: in most cases in which freedom of religion is considered in relation to a minority religious group, the decision is against the minority claim. The exception seems to be in cases involving accommodation by employers for religious holidays. In these cases the religious minority has consistently won. However, when practices beyond holidays are introduced (as in Bhinder v. C.N.R. [1985] 2 S.C.R. 561) the minority has lost. Sunday closing laws were initially struck down as being unconstitutional (R v. Big M Drug Mart [1985] 1 S.C.R. 295), representing a victory for religious minorities, but were then upheld (R v. Edwards Books and Art Ltd. [1986] S.C.R. 713). In addition, the preservation of the protection of Roman Catholic denominational schools in Ontario and Protestant schools in Quebec has been upheld, with the Court consistently refusing to extend state support to schools for minority religious groups such as Jews and fundamentalist Christians (see Adler v. Ontario, 140 DLR 4th, 385).

22. For an extensive discussion of these categories and some specific case illustrations, see Beaman (forthcoming).

23. For a more complete discussion, see Beaman (2001).

24. In Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439, the Supreme Court held that the government permitting timber harvesting or road construction through a portion of the national forest that has traditionally been used by three Native-American tribes for religious purposes did not violate the free exercise clause.

25. See Mossman (1986) for an extensive development of these ideas in relation to gender. I am indebted to Mossman’s work for her critique of the framework through which law preserves the status quo.

26. Despite the result in Prior, it may be that tax cases stand in opposition to the more restrictive interpretation of religion illustrated by the cases discussed in this article. For example, the very recent McGorman v. Canada ([1999] T.C.J. No. 133) found that the interpretation of the words “religious order” in the Income Tax Act needed to be interpreted to include those religious groups outside of the majority religions.

27. Paragraph 3: “The attack against the judgment of the Trial Division is led on many grounds,” and Paragraph 4: “I see no merit in any of the grounds advanced against the judgment under attack.”

28. Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, arguably involves a new religious movement, but given that the Santeria religion dates to the 19th century, it is probably more accurately described as an immigrant religion.

29. Re Church of Scientology and the Queen (No. 6) 31 CCC (3rd) 449 Ont CA.

30. I do not want to fall into the normalizing tendency to justify Scientology because they are like mainstream religion. Rather, I am suggesting that “normal” is socially constructed.

31. The deconstruction of the sameness/difference paradigm is familiar to feminist scholars both in the realm of law (Rhode 1989) and as a general critique of the limitations of the binary oppositions that have pervaded modernity (Nicholson 1990).

REFERENCES


