

RESPONSE TO ROGER GREELEY

Henry Morgentaler

I'm still living in Montreal, Canada. In Canada we don't have the official separation of church and state which you've enjoyed for about 200 years. I listened yesterday with great interest to the beginnings of the Constitution, and the great constitutional fathers Jefferson and Madison. We don't have that. Canada has followed a different evolution from the United States. It did not have a revolution, and those people who fled from the American revolution came over to Canada and became very traditional people, faithful to the Anglican church and the Anglican crown. So that Canada's church-state relations are completely different from the United States.

Basically what happened is that as a result going back to the American revolution, King George III in order to insure that the French Canadian Roman Catholics will not rebel and throw in their lot with the American colonists who were in the process of preparing insurrection, assured them by an official act that their Roman Catholic religion would be respected and that their schools and their right to school their children in the Roman Catholic religion would be respected. What has dominated Canada for about 200 years is the fact that in the Province of Quebec, Roman Catholic rights were guaranteed and they were made guaranteed from 1867 when the British-North America Act was created. Therefore, the Province of Quebec was a Roman Catholic province with rights for Protestants, whereas the rest of Canada in a sense became a Protestant enclave.

In the Province of Quebec in which I live now, we still have a public school system which is denominational Roman Catholic and Protestant. That is, the public taxes go to this public school system, with only two schools available. One is a Protestant school system and the other one is a Catholic school system. Because of the tension between French Canadians and English Canadians, which has dominated Canadian politics and the Canadian political scene, the rights to education have always been left to the provinces, which are like the states in the United States. So we do not have official separation of church and state. What we have now, since about a year or so ago, is we have a new constitution. As you probably know our past Prime Minister, Pierre Trudeau, who has been in power for the past sixteen years, just stepped down recently. I think his greatest achievement has been to bring back the Constitution from England and to insert a Bill of Rights, a Charter of Human Rights, in the Constitution of Canada.

This Charter of Human Rights is patterned on the American Bill of Rights. So we do have a new constitution, we have a Charter of Rights now, and this charter guarantees freedom of conscience and religion. But there is no mention of separation of church and state. Hopefully this will eventually come about.

I live in a province which, as you probably know, is the French province

of Canada. I arrived there in 1950. At that point it was a Catholic Church dominated province. There was almost no secular state. The church and the state were intertwined. I mean the Catholic church at that point.

Quebec has followed a very interesting evolution since that time. In 1960 a new government came into power, with a lot of reformists and officially they coined the phrase, "La revolution tranquille," the calm revolution. What happened is that the state became modernized and secularized - de-sacrilized. I remember at one point as a medical doctor in Montreal I was called to testify at the trial, civil suit, of one of my patients. I was sworn in as a witness and I said I didn't want to swear on the Bible. I was a Humanist, and the lawyer for the other side got up and asked me if I believed in life after death. I said "No," and he said, "Your Honor, this witness cannot testify because article, paragraph so-and-so says that people who do not believe in life after death, are not eligible to testify in a court of law." I am glad to tell you that this has been changed. There has been a commission to review the civil code in Quebec, and now we can affirm solemnly without swearing on the Bible. We have civil marriage now, which we didn't have before. Then they created the new courthouse, they built - it's hard to take crucifixes away - but normal courthouses in Quebec they have a crucifix on the wall - taking them away is hard. It creates opposition. But when they built the new courthouse, suddenly there are no crucifixes there. So change has occurred, the society has become much more secular, and the Catholic Church has lost tremendous power, to the point where I will say maybe about 4 or 5% of the Quebec population will practice the tenets, the dogmas of the Catholic religion.

The Quebec society now has become probably one of the most progressive societies in Canada. There's been a recent poll on attitudes to abortion, and the question was, "Do you agree that abortion should be a private matter between a woman and her doctor?" and the general population poll was 72% in favor of that idea; Quebec had the highest percentage at 76%. I'm a bit proud of that because I believe that I contributed part of that with this raising of consciousness and awareness.

I wish to tell you about some of my own involvement in civil liberties and the fight for safe medical abortions in Quebec and in Canada. I was born in Poland in a Jewish atheist family. Regardless of my family, since my parents threw out the Jewish religion for a belief in socialism at that point, which meant social justice, involvement, being active in the society in which you lived, being here and now as citizens of the country in which you are, and trying to do your best for that society. I was an idealistic socialist at that point-I lost some of my idealism. I would consider myself more as a democratic socialist to a certain extent and basically as a Humanist.

I did go through a concentration camp - I am a survivor of the holocaust; I was in a large ghetto in the concentration camps of Auschwitz and Dachau. Confronted with all that evil, I think, for a while I lost faith in the ideals of Humanism or socialism and decided to become a benefactor of mankind by becoming a doctor and doing my best for people.

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It was after a while, I think it was around 1963, that I went to a meeting of the Humanist Fellowship in Montreal and I heard a speech by Jerome Nathanson, who was one of the leaders of the Ethical Society here. After the speech I said, "Oh, this man says all the things that I always believed in." I became involved in the Humanist Fellowship in Montreal; eventually I became its president. The question was always, what do we do about our beliefs? It was necessary to talk - not just to talk among ourselves - but to translate these beliefs into some meaningful action and do something about things - about the things we believed in.

The first thing we did, was I created a committee for what we called the "neutral schools"; it was a committee for public, nondenominational, non-confessional schools. That created a big stir, lots of people who joined, the usual liberals - Unitarians, other people who believe in the same kind of thing. And I must say we have not accomplished much. We still have a non-secular system. It's very hard to change with the denominational schools, but I think that most of the accomplishment was in the fact that people became aware of the principles of freedom of religion and conscience. They learned that the Protestant school system which had accepted all those people who could not fit in the Catholic system - like Jews and Greek Orthodox and atheists and agnostics, rationalists, Humanists - became, in fact, a non-denominational system. The Lord's Prayer, which was always said, was taken out; religious schooling was sometimes completely taken out and it had become optional. Whereas the Catholic system still at this point is quite confessional.

As you probably know, we had a government that came into power about 1976, which wanted to separate the Province of Quebec from the rest of Canada in order to create a French state because they're worried about the survival of the French culture. This government introduced a very severe language law in which they forced the children of immigrants to go to French schools and there they hit the thing about religion. The only thing they could come up with was the fact that all these children who were not Catholics would be exempted from religious instruction.

The second big issue that came up was, of course, the question of abortion. You know this has been hotly debated over the last 20 years. I was a medical doctor and at the time there was a meeting of the House. The Parliament, had a special committee debating new laws on abortion. I presented a brief to that House committee in the name of three Humanist groups. It was the first time that a responsible, public body has advocated that women should have a right, not a privilege, to have safe medical abortions in the first three months of pregnancy.

Well, that created a big stir on TV, radio, panels and so on. The result of that, what happened, was that women started to come to my office as a medical doctor, "Tell me, doctor, we know your views, could you help me? I'm pregnant, I can't possibly go on with this pregnancy; can you help me?" That presented a terrible dilemma to me. The penalty for practicing abortion in the criminal code in Canada is life imprisonment. I would tell

these women, "No, I sympathize with you, but I can't help you. If I do; I can lose my practice, go to jail; I have a family with two children, I can't possibly help you."

As things went down, I was going public with this on conferences and panels, and whatever. Women were streaming to my office asking for this type of thing. Over a number of months it became clear to me that it's not enough to try to change the law in the future, which takes a long time, but these people needed help now. In a sense I saw myself as being a coward and a hypocrite for proposing one thing; preaching one thing, and when the crunch came I didn't do anything about it.

Eventually I decided it was my duty as a human being, as a doctor, as a Humanist, to help these women and let the consequences go where they may. In a sense I was sure that if I came before a jury, I would be acquitted. I would tell them why I did that, and I would be acquitted.

I remember at one point, I was in the throws of this dilemma. I asked Paul Kurtz, who was the editor of *The Humanist* at the time, about his opinion. He said, "Why don't you write me an article about it?" I wrote an article which was published anonymously in *The Humanist*. I changed my identity to a certain extent, "The Dilemma of a Doctor Who Wanted to Help Women Who Needed Abortions and Could Not," and at that point expressed at the end of the article the hope that if it came to a jury trial I would be acquitted.

This is exactly what happened. I was tried, there was a jury composed of 12 French Canadian Catholics. At the end of a four-week trial, they acquitted me. I was an atheist Jew. I did not swear on the Bible in front of them, and one of the questions of the judge was, "Why does someone not swear on the Bible?" The judge told them that it has the same validity, that people do that because of religious beliefs, or non-religious beliefs. At the end of that trial I was acquitted, which was a great victory. It looked like we might finally have the breakthrough in Canada; that women henceforth will be able to get safe medical abortions without hassle.

What happened was something which you Americans will find hard to understand in the sense that this does not exist in the United States or indeed, anywhere else. In the United States when you are acquitted by a jury the state cannot appeal. In Canada it can appeal. And the state did appeal. Not only did the state appeal, but in Canada at that time, the Court of Appeal, the higher court, had the right to reverse a jury verdict of not guilty. This is exactly what they did in my case. I was found not guilty by a jury, the Court of Appeal of Quebec, composed of five French Canadian conservative Catholics, declared unanimously that I was guilty. I was condemned to 18 months in prison. The thing went to the Supreme Court, and the Supreme Court by a majority of six to three, confirmed the judgment by the Court of Appeal. In spite of the fact that I was acquitted by a jury, I had to go to prison.

While I was in Prison, the state wanted to crush me completely, and

brought another charge against me for another illegal abortion against another person. I went to a second trial, same arguments, so on; a 17-year-old Italian girl was the supposed victim (she wasn't complaining). When the trial was finished, it took the jury 55 minutes to declare me not guilty. Here I was declared not guilty twice by a jury, but I was still in jail. That, of course, created a tremendous furor in Canada from all the civillibertarian groups, and many people who were even against abortion saw this as an attack on fundamental civil liberties going back to the Magna Carta.

What happened then was that the Minister of Justice declared that the first trial was going to be reheard. That was, if you have a law here against double jeopardy, this was triple jeopardy. I was tried, I was acquitted, I was tried by a Court of Appeal and found guilty here, I was tried again on the same charges, same person. Again, a French Canadian Catholic jury for a third time acquitted me. So I was acquitted by three juries. Finally, due to a change of government, the new government of the Province of Quebec declared at that point that no more trials will be held against me or any other doctors providing safe medical abortions; that the law was unenforceable, that the law needed to be changed by the federal authorities because the law is a federal law, but enforced in each particular province by a provincial government.

From that time on the Province of Quebec has become the province with the best access to medical abortions. I have trained about 25 doctors for abortion clinics with a method which I have perfected and pioneered in Canada, which is now used everywhere in the United States, in Canada and across the world - as the vacuum suction method - for clinics which are now run by the government of the Province of Quebec.

The law in Canada is such that it permits abortion in the hospital, which has to be accredited and only after a three-man board of doctors has proved that this abortion is justified because the continuation of the pregnancy would endanger the health or life of the woman.

Now these clinics in the Province of Quebec now don't bother with this kind of law. That is, they're done in clinics which are not hospitals; they don't use a three-man board. The Province of Quebec, the most Catholic province 25 years ago, was still the most Catholic province, in fact is the most advanced not only on this issue, but on many other issues as well.

What happened was that in many of the provinces, the anti-choice movement became strong and organized, just as in the United States; it's manned chiefly by Catholics, fanatic Catholics, and the Fundamentalists. Slowly the access to abortion in many other provinces diminished, because they put pressure on hospital boards not to do abortions. They have a very conservative policy.

There are some provinces where that access does not exist at all; there are some provinces like Newfoundland there's only one hospital, with a small quota, and these people have to travel a distance - sometimes 1500

miles. In our clinic in Montreal, or other clinics in Montreal or through the United States, they get something which is their absolute right, to protect their health and their lives sometimes.

So about a year and a half ago I said, "well, I've accomplished something for the Province of Quebec. This situation is still terrible; thousands of women are still suffering from this. I'm going to try to do the same thing in other provinces." Therefore I opened the clinic in the Province of Manitoba, in Winnipeg, and another one in Toronto, in the Province of Ontario. Of course, these clinics were shut down by the police, and now I'm facing charges with two of my colleagues of performing illegal abortions again, and another charge of conspiracy to perform illegal abortions.

How we've had already a challenge to the law under the new Charter of Rights in the Canadian Constitution, and we hope that this possibly will result in a good decision. Just about a month ago, the judge in the case after hearing submissions for about six months, many of them coming from American authorities, declared that there is no violation of the Charter of Rights in the new constitution, and therefore we go on trial again on September 17.

That was just a bit of a background story. I agree with Roger Greeley, that church-state issues - especially issues which affects people directly, not people individually but the mass of people: the question of birth control, abortion, over-population - these are tremendous issues affecting all of us. We have to deal with this and I agree with his activist stance - you've got to be active, vocal, and you've got to do something about it and not remain silent.