
Book Review: The Disenchantment Of Secular Discourse, by Steven D. Smith

Lorne Neudorf

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>



Part of the [Law Commons](#)

Book Review

Citation Information

Neudorf, Lorne. "The Disenchantment Of Secular Discourse, by Steven D. Smith." Osgoode Hall Law Journal 48.3/4 (2010) : 681-689 <http://digitalcommons.osgoode.yorku.ca/ohlj/vol48/iss3/10>

This Book Review is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

Book Review

THE DISENCHANTMENT OF SECULAR DISCOURSE, by Steven D. Smith¹

LORNE NEUDORF²

OVER THE PAST SEVERAL YEARS, moral philosophers have increasingly expressed interest in the limitations of secular society. One such scholar, Charles Taylor, authored *A Secular Age*³ in 2007 and received the \$1.5 million Templeton Prize for arguing that “problems such as violence and bigotry can only be solved by considering both their secular and spiritual dimensions.”⁴ Continuing this focus on secularism with *The Disenchantment of Secular Discourse*,⁵ Steven D. Smith presents a pointed critique of what he terms “secular discourse,” or rational public conversation and debate in a secular society.

Smith begins the book by describing secular discourse on moral issues as flat and uninteresting. The lack of a rich discourse, he asserts, is surprising given the increasing diversity of perspectives in public life. Smith proposes two explanations for this hollow debate. First, a malaise has settled in due to a lack of confidence in reason’s capacity to lead to conclusive moral truth. Enlightenment thinkers promised moral clarity through rational argument, but after three hundred years of unmoving secular discourse, society has come to appreciate that reason alone will not answer nuanced moral questions. This malaise is reflected in shallow discussion: why bother investing resources in argument when reason alone cannot resolve the ultimate issue? By way of example, Smith

-
1. (Cambridge: Harvard University Press, 2010) 304 pages.
 2. B.Sc., LL.B., LL.M., of the Bar of Ontario; Postgraduate Researcher in Law, Cambridge University.
 3. (Cambridge: Harvard University Press, 2007).
 4. Templeton Prize, “Previous Prize Winners: Charles Taylor” (2007), online: <<http://www.templetonprize.org/previouswinners/taylor.html>>.
 5. *Supra* note 1.

points to the legal reasoning of judicial decisions and scholarship that appears vapid and lifeless, even though law is called upon to answer some of the most important moral questions of our time. The thinness of secular discourse is exacerbated by what Smith calls the “iron cage,” a metaphor for restrictions imposed on what can be validly expressed through secular argument. To Smith, these restrictions place participants in a double bind, for at the same time that the iron cage excludes religion and the supernatural, the secular vocabulary itself remains insufficient to express the full range of human convictions. Left with few other options, people end up smuggling their true values into their discourse through devices, such as malleable principles, which Smith spends the bulk of the book critiquing. As an example, Smith invokes Peter Westen’s 1982 article “The Empty Idea of Equality”⁶ to show how the principle of equality has several competing interpretations, and can therefore be used to mask authentic beliefs.

Smith illustrates the smuggling of values into secular discourse through case law by referring to two decisions of the US Supreme Court on assisted suicide: *Washington v. Glucksberg*⁷ and *Vacco v. Quill*.⁸ In both cases, the Supreme Court upheld state laws prohibiting physician-assisted suicide. While apparently agreeing with the outcome of these decisions, Smith finds the legal reasoning unconvincing and critiques the majority justices for smuggling their true views into the judgments through open-ended legal principles. For example, in *Vacco* Chief Justice Rehnquist cites the principle of causation to distinguish prohibited physician-assisted suicide from a patient’s refusal of lifesaving treatment because “when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication.”⁹ Smith argues that such a distinction cannot be upheld because both “killing” and “letting die” cause death under the “but-for” test. Furthermore, we think letting die *is* murder in some circumstances—*e.g.*, when a doctor who does not like his patient removes her feeding tube. Smith does not think the patient’s lack of intention explains this result because the doctor would still be liable for murder if he surreptitiously removed the tube of a suicidal patient. He concludes that a subtle understanding

6. (1982) 95 Harv. L. Rev. 537.

7. 521 U.S. 702 (1997).

8. 521 U.S. 793 (1997) [*Vacco*].

9. *Ibid.* at 801.

of morality, as articulated by legal principles, remains elusive when faced with a complex issue like assisted suicide, and that Supreme Court judges often use legal principles to mask the underlying basis for their decisions.

Smith next takes aim at John Stuart Mill's harm principle, which provides that interference with an individual's liberty is only justified when it seeks to prevent harm to others.¹⁰ Instead of providing a useful moral standard, Smith sees harm as another empty vessel into which advocates pour their substantive views and values. To demonstrate the concept's flexibility, Smith examines two competing interpretations of harm, both of which fail to provide moral certainty. First, a subjective view of harm based on each individual's experience is unworkable in a pluralist society given that the behaviours and actions of others could cause harm to a person who does not participate. Smith takes the example of Roman gladiators fighting to the death and how the event would cause emotional distress (and therefore harm) to a person opposed to blood sport simply through mere knowledge of the event taking place. Second, Smith faults the logic of a utilitarian approach that seeks to define harm in terms of damage to particular societal interests. Mill adopted this approach himself by defining the "permanent interests of man" to include independent thought, individuality, and diversity in ways of life. Smith rejects these arguments for their circular reasoning: the harm principle is invoked to argue for favoured positions, but favoured positions are used to define harm in the first place.

Turning his attention to the separation of church and state—commonly perceived as one of the most "sacrosanct" principles of secularism—Smith posits that a decline in the legal doctrine separating the two is the logical consequence of secular society itself as opposed to any religious influence. Smith begins by citing Charles Taylor's history of the word "secular." According to Taylor, this word has its origins in a Christian, two-realm worldview consisting of spiritual and temporal planes (e.g., "Thy will be done in earth, as it is in heaven"¹¹). For much of Europe's Christian past, kings and popes battled over the jurisdictional lines between these two worlds when they were seen to conflict. However, the contemporary scope of the secular realm leaves no room for religion, given that

10. John Stuart Mill, *On Liberty and the Subjection of Women* ed. by Alan Ryan (London: Penguin Classics, 2006). *On Liberty* was first published in 1859. Alan Ryan writes, "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (at 16).

11. *The Holy Bible*, Authorized King James Version at Matthew 6:10.

secularists see the state as all-encompassing, vested with unlimited political and legal power. Smith claims that, as a result of this view, the division of powers problem between the two realms has disappeared entirely. In the absence of jurisdictional competition between church and state, what grounds are there to insist on a legal divide between the two? According to Smith, religion in a secular world is simply relegated to a private interest among many that the state must deal with, and there is no justification for a legal impediment to religious influence in the state.

Smith argues that malleable principles and a secular society with no room for the spiritual realm result in a morally-blank universe, despite attempts to identify some kind of secular moral framework. Efforts to replace the “old morality” of the spiritual realm with new objective criteria have failed to uncover a moral standard in a natural world stripped of its normativity. While nature offered moral guidance in the past, secularists tend to see nature as a set of raw, empirical facts through the lens of their rational tradition. Although certain fundamental laws are justified by secular moral theory through the hypothetical social contract, Smith dismisses this approach as open to competing interpretations of what is to be considered fundamental. Furthermore, Smith argues that in setting up the social contract, secularists end up removing the very characteristics of humanity that are ultimately valued by their theories. For example, John Rawls, in *A Theory of Justice*, constructs the “veil of ignorance” to hide class, political tradition, and faith from the initial position of humankind in which persons negotiate the meaning of justice.¹² Yet these characteristics end up becoming valued by Rawls’ definition of justice, implying that such reasoning simply justifies the author’s starting point as opposed to generating objective moral truth. Smith also rejects a social science approach to identifying essential human values on much the same grounds. In his view, because the essence of anything is difficult to determine, researchers end up transposing their own experiences onto the results. In particular, Smith criticizes Martha Nussbaum’s “capabilities approach,” which engages in cross-cultural research to locate universal capabilities that promote human dignity.¹³ Through this approach, Nussbaum identifies ten capabilities that are

12. See John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Belknap Press of Harvard University Press, 1999) at 118-22. *A Theory of Justice* was first published in 1971.

13. See Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge, U.K.: Cambridge University Press, 2000); Martha C. Nussbaum, “Constitutions and Capabilities: ‘Perception’ Against Lofty Formalism” (2007) 121 Harv. L. Rev. 4 [Nussbaum, “Constitutions”].

necessary for a just political system. Smith finds human dignity to be an ambiguous concept and questions what makes Nussbaum's capabilities morally worthwhile as compared to other human capabilities. According to Smith, Nussbaum's admission that her selection of ten capabilities relies to some extent on her intuitions regarding the nature of human life confirms that the list simply reflects her own cherished values.

Smith concludes with the hope that public discourse will free itself from the shackles of secularism by opening debate to include deeply-held spiritual beliefs. Although religion may stifle debate in a pluralist society, its inclusion would at least promote conversation about peoples' genuine views:

[W]hether conversation among differently minded people will occur and what form it will take are matters impossible to predict in the abstract. The fact of difference ... in no way precludes the possibility of conversation. But whether the conversation will actually occur, and if so what it will look like, cannot be known in advance. The only thing is to try and see.¹⁴

Through Smith's writing, the reader cannot help but feel a tinge of nostalgia for the past when people engaged with their true moral convictions instead of concealing them with secular principles. Unfortunately, this nostalgia tempts the reader to see the past, through rose-coloured glasses as some kind of viable alternative to secular discourse—especially as Smith neglects to describe the lengthy historical development of secularism and so fails to appreciate its opposition to public policy carried out under what was believed to be divine ordinance. Prior to the Enlightenment, Belgian scholar Justus Lipsius described the widespread destructive impact of European religious fanaticism:

Good Lord, what firebrands of sedition hath religion kindled in this fayrest part of the world? The chiefe heads of our christian common wealths are at strife amongst them selves, and many millions of men have bin brought to ruine and do dayly perish, under a pretext of piety.¹⁵

If anything, the "iron cage" of secular discourse emerged in this religion-dominated age in order to claim space in public discourse for a critical discussion and evaluation of ideas that avoided the pitfalls of religious debate. Prior to the

14. *Supra* note 1 at 223.

15. Jürgen Overhoff, *Hobbes's Theory of the Will: Ideological Reasons and Historical Circumstances* (Lanham, MD: Rowman & Littlefield, 2000) at 97, citing Justus Lipsius, *Sixte Bookes of Politickes or Civil Doctrine*, trans. by William Jones (London: Richard Field, 1594) at IV.3, 63.

development of secular discourse, any view that was seen to oppose or undermine religious dogma was rejected as heretical and swiftly condemned through institutions that would not hesitate to impose physical punishment or worse.¹⁶ In fact, so-called heretics were singled out for the most severe punishments because they not only risked their own souls but also those of innocent people who adopted their teachings. The unfortunate case of Spanish humanist and physician Michael Servetus is instructive. After publishing a pamphlet in 1531 challenging the Christian doctrine of the Trinity, based on his personal study of the original scriptures, Servetus was arrested for heresy. Upon escaping from prison he was sentenced to death *in absentia* for his views. Later apprehended in Geneva, Servetus met his fate for challenging established dogma by being slowly burned along with his own publications.¹⁷ Notably, one of his texts contained the first European description of pulmonary circulation, a significant medical breakthrough that was not re-discovered until years later. Even during the early days of the Enlightenment, over a century later, secular thinkers felt compelled to mask their rational deliberation through accepted religious teaching. For example, in his seminal work, *The Leviathan*, Thomas Hobbes spent more than half the text dealing with the finer points of scriptural interpretation and how to best avoid the “Kingdome of Darknesse.” Yet despite this masking of rationalism by religious doctrine, Hobbes was still accused of atheism and wickedness (fortunately for Hobbes, his former pupil King Charles II helped to ensure his protection).¹⁸

In addition to neglecting a thorough account of the historical events that led to the development of contemporary secular discourse, Smith’s assertion of widespread apathy to reason appears overstated. Although secular discourse may seem dull compared with awe-inspiring religious imagery, there is no indication either quantitatively or qualitatively that society has given up on rational debate. If Smith’s descriptions of legal reasoning as vapid and lifeless are accurate, one would expect to find courts drafting crudely-worded, terse judgments. Yet the opinions

16. See e.g. Michael Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation*, 3d ed. (Cornwall: Blackwell, 2002).

17. See M. Hillar & Claire S. Allen, *Michael Servetus: Intellectual Giant, Humanist, and Martyr* (Lanham, MD: University Press of America, 2002).

18. A.P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge, U.K.: Cambridge University Press, 2002) at 1. See generally Tom Sorell, ed., *The Cambridge Companion to Hobbes* (Cambridge, U.K.: Cambridge University Press, 1996).

of the US Supreme Court have become increasingly detailed and are near an all-time high in terms of length.¹⁹ In similarly lengthy decisions in Canada, judges use language when discussing moral issues that can hardly be described as lifeless.²⁰

Ironically, and perhaps indicative of the inescapable nature of rationalism in today's pluralist society, Smith's most valuable contribution comes in the form of his own rational critique of secular principles. As noted above, Smith identifies a number of logical weaknesses in different interpretations of legal principles, such as equality and harm. While Smith's criticisms have merit, his conclusion that these principles are rendered meaningless simply because they are not perfectly formulated to avoid disputes over their interpretation does not follow. Such an approach throws the baby out with the bathwater. That secular principles cannot provide immediately clear solutions to nuanced moral questions is not fatal to the process of rational thinking, nor is this problem caused by secularism. Instead, it is a problem that arises from the general nature of principles. Revealed wisdom and its teachings may be equally abstract and often fail to provide precise directions when faced with complex questions. It is clear that the meaning of all principles, whether secular or religious, must be interpreted when applied to a concrete problem. This process involves a hermeneutical approach and requires the interpreter to prioritize some values over others. Different interpretations are apt to lead to different conclusions, even within the same religion: profound disagreements over the correct meaning of religious doctrines have caused numerous ecclesiastical divisions.

As seen through Nussbaum's capabilities approach, secular discourse seeks to give meaning to principles that reflect common values of a pluralist society, drawing from both rigorous conceptual analysis and human experience and putting competing ideas and interpretations to the test. Nussbaum's capabilities are identified as those that best serve her starting position of human dignity, which she justifies as being shared among most of the world's great religious traditions.²¹ While people can disagree as to what human dignity means and how it is best achieved, such debate is encouraged by secular discourse as the means to further

19. Ryan C. Black & James F. Spriggs II, "Empirical Analysis of the Length of U.S. Supreme Court Opinions" (2008) 45 Hous. L. Rev. 621 at 635.

20. See *e.g.* the recent decision of the unanimous Court of Appeal for Ontario that dealt with sentencing for terrorism offences, *R. v. Khawaja*, [2010] O.J. No. 5471 at paras. 231, 248, 250 (QL).

21. See Nussbaum, "Constitutions," *supra* note 13 at 10.

refinement of views and, ultimately, the best possible interpretation. This is a lengthy process, and it seems premature for Smith to declare rationalism as a failure simply because of the overly optimistic outlook of Enlightenment thinkers who hoped that rational thought would yield conclusive answers in short order. Who can fault their enthusiasm in looking to reason to deliver them from the suffering they witnessed? The religious experience itself has made it clear that the construction of a generally accepted definition of any doctrine is a complex process that can take many hundreds of years, *within* the context of an over-arching hierarchical authority.²²

Once secular discourse is seen in this way, Smith's exposé of smuggling values into secular discourse largely loses its revelatory power. Indeed, what Smith calls "smuggling" is really nothing other than how people come to terms with secular principles. As the first step toward speaking a common language in a pluralist society, it is hardly surprising that persons impress secular principles such as equality, harm, or justice with ideologically similar religious or traditional standards. This act of interpretation keeps faith with pre-existing values and provides a necessary starting point for subsequent discussion and debate from a variety of perspectives. It also allows ideas to be challenged and discussed in a rational environment that need not fear treading on faith-based moral views. In such a way, secular discourse opens a channel that facilitates the discovery of shared human values.

Given Smith's book-long portrayal of secular discourse as thin, flat, and boring, the reader longingly anticipates his conclusion to illustrate just the kind of rich and thick discussion that is needed. However, at a mere sixteen pages, Smith's parting words fall flat, and the reader finishes the book largely uninspired by his final observations. By this point in the text, Smith has become so focused on pointing out examples of malleable principles that he ends up sabotaging his own conclusion that secular discourse should be more "open" by admitting that the very idea sounds just like one of those empty principles.²³ Smith's conclusion would have benefited from a thick description of how the problem of interpretation is resolved in the non-secular realm—*i.e.*, through authority, which would

22. See *e.g.* Graham Greene, "The Catholic Church's New Dogma: The Assumption of Mary" *Life* (30 October 1950) 51. Greene describes how the Roman Catholic doctrine of the Assumption of Mary was proclaimed as infallible truth by Pope Pius XII in 1950, culminating more than a thousand years of development.

23. *Supra* note 1 at 213.

have provided a useful starting point for determining whether such a tradition is compatible with contemporary discourse. Furthermore, it would have been interesting to see Smith respond to an argument that a legal doctrine separating church from state is necessary as a historical marker to remember the lessons of the past. Finally, while the state of public discourse can certainly be improved, Smith's acknowledgment that the inclusion of faith-based values may operate to stifle the debate ultimately leaves the reader questioning the desirability of his approach.

