

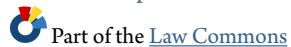
2014

Proselytism and the right to freedom from improper irreligious influence: the example of public school education

S de Freitas

*The University of Notre Dame Australia*, shaun.defreitas@nd.edu.au

Follow this and additional works at: [http://researchonline.nd.edu.au/law\\_article](http://researchonline.nd.edu.au/law_article)



This article was originally published as:

de Freitas, S. (2014). Proselytism and the right to freedom from improper irreligious influence: the example of public school education. *Potchefstroom Electronic Law Journal*, 17 (3), 868-887.

Original article available here:

<http://www.ajol.info/index.php/pelj/article/view/107836>

This article is posted on ResearchOnline@ND at [http://researchonline.nd.edu.au/law\\_article/60](http://researchonline.nd.edu.au/law_article/60). For more information, please contact [researchonline@nd.edu.au](mailto:researchonline@nd.edu.au).



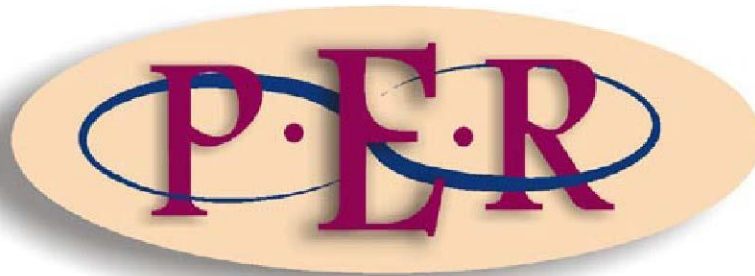
This article originally published in *Potchefstroom Electronic Law Journal*.

De Freitas, S. (2014). Proselytism and the right to freedom from improper irreligious influence: the example of public school education. *Potchefstroom Electronic Law Journal*, 17(3), 868-887. doi: [10.4314/pelj.v17i3.01](https://doi.org/10.4314/pelj.v17i3.01)

**Author: SA de Freitas**

**PROSELYTISM AND THE RIGHT TO FREEDOM FROM  
IMPROPER IRRELIGIOUS INFLUENCE: THE EXAMPLE OF  
PUBLIC SCHOOL EDUCATION**

ISSN 1727-3781



**2014 VOLUME 17 No 3**

<http://dx.doi.org/10.4314/pelj.v17i3.01>

---

**PROSELYTISM AND THE RIGHT TO FREEDOM FROM IMPROPER  
IRRELIGIOUS INFLUENCE: THE EXAMPLE OF PUBLIC SCHOOL EDUCATION**

**SA de Freitas\***

## **1 Introduction**

The words "proselytism" and "proselytise" descend from a Greek word *proselutos*, meaning "one who has come to a place" or "one who comes over". Jurisprudentially speaking, proselytism is a concept within the larger genus of the protection of religious rights and freedoms, and lends itself to differing opinions.<sup>1</sup> There are also different insights into proselytism emanating from the various traditional religions and the plethora of denominations within each.<sup>2</sup> However, a substantial school of thinking assumes that proselytism can take place only in a religious context. Lawrence Uzzell comments: "We live in an age of persuasion, in which we are bombarded by political and commercial messages designed to change our thoughts and actions, but the unfavourable term 'proselytism' is reserved for specifically religious persuaders."<sup>3</sup> Uzzell adds that "[s]ecular specialists on human rights and international law, even those who defend freedom of conscience, now use the word 'proselytism' to mean any attempt by any religious believer to win converts from other religions or from irreligion".<sup>4</sup>

The question arises whether improper proselytism is relevant only to "religious forms of improper influence" and excludes other forms of "improper belief influence". It is argued in the article that influencing the beliefs of someone improperly can include a kind of proselytising action pertaining to a belief, which is not only religious by nature but also of one that is irreligious. In addition to improper "religious" proselytism, improper proselytism should include an understanding of improper

---

\* SA de Freitas. BProc LLB LLM (UFS). Associate Professor, Department of Constitutional Law and Philosophy of Law, University of the Free State. Email: defreitas@ufs.ac.za

<sup>1</sup> Garnett 2005 *USTLJ* 465-466.

<sup>2</sup> See for example Witte and Martin *Sharing the Book*.

<sup>3</sup> Uzzell 2004 <http://www.questia.com/library/1G1-122989524/don-t-call-it-proselytism>.

<sup>4</sup> Uzzell 2004 <http://www.questia.com/library/1G1-122989524/don-t-call-it-proselytism>.

"irreligious" proselytism. This article illustrates this understanding by means of the risks embedded in exclusively irreligious public education and teaching.<sup>5</sup>

## 2 The right to freedom of religion, belief and education

From the *Universal Declaration of Human Rights*<sup>6</sup> and the *European Convention on Human Rights*<sup>7</sup> it is clear that freedom of thought is a basic right of "everyone". There is no age limit at which people begin to enjoy such a legal right. Young persons (and therefore pupils) have a right to freedom of thought. This right is important in the context of school education, where a student's freedom of thought may be restricted by ideological indoctrination.<sup>8</sup> Article 5(1)(b) of the *Convention against Discrimination in Education* places the emphasis on the protection of a person's (or group's) convictions as well as the protection of the liberty of parents to have their children morally educated in accordance with their convictions.<sup>9</sup>

---

<sup>5</sup> By this it is not implied that there are no public institutions in democratic and plural societies where religious knowledge is forced upon irreligious recipients. Nonetheless, the focus of this article is on those public teaching institutions in so-called democratic and plural societies, such as schools, where irreligious forms of knowledge are forced upon irreligious recipients. Needless to say, the argument presented in this article will also be of value to instances where religious knowledge is forced upon an irreligious recipient, or where a religion is forced upon a recipient loyal to another religion.

<sup>6</sup> Article 18 of the *Universal Declaration of Human Rights* (1948) states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

<sup>7</sup> Article 9(1) of the *European Convention on Human Rights* (1950), which states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance." This reads exactly the same as Article 18 of the *Universal Declaration of Human Rights*.

<sup>8</sup> Clarke 1986 *ICLQ* 271. Neither the *Universal Declaration on Human Rights* nor the *European Convention on Human Rights* explicitly acknowledges the rights of children to freedom of thought in schools. The UN Declaration (Article 26(3)) provides that "parents have a prior right to choose the kind of education that shall be given to their children". A similar principle concerning the relative priority of parents' rights, is expressed by Article 2 of the *Protocol 1 to the European Convention on Human Rights* (1952) 271. From this it is clear that although the right to freedom of thought is guaranteed by the *European Convention* to everyone, the education initiatives of the state are explicitly limited only by reference to the "religious and philosophical conviction" of parents.

<sup>9</sup> The *Convention against Discrimination in Education* (1960), Article 5(1)(b): "The States Parties to this Convention agree that: (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians ... to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions."

Article 18 of the International Covenant on Civil and Political Rights and Articles 1 and 6 of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief may be affected by coercion or through religious persons being subjected to preaching that harm their beliefs.<sup>10</sup> The provisions of Article 19(1) of the International Covenant on Civil and Political Rights concerning the right to hold opinions without interference include the understanding that religious persons may not wish to be exposed to any type of indoctrination in any form.<sup>11</sup> Protocol 1 of Article 2 of the European Convention and Article 18(4) of the International Covenant on Civil and Political Rights deal with the liberty of parents and/or legal guardians to ensure that the religious and moral education of their children conforms to their own convictions. This should be read in conjunction with Article 13(3) of the International Covenant on Economic, Social and Cultural Rights.<sup>12</sup> Article 51(a) of the UNESCO Convention reaffirms the right of parents or legal guardians to ensure "the religious and moral education of the children in conformity with their own convictions, and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction".<sup>13</sup>

The issue of religious freedom at public schools is a controversial contemporary concern. At the annual sessions of the United Nation's Human Rights Council, the topic of religious instruction within the framework of the fundamental right to religious freedom is constantly on the agenda for discussion and resolution. The question regularly asked is if religious instruction should take place at public schools and, if so, how it should be implemented to do justice to the fundamental right to religious freedom in a constitutional state.<sup>14</sup> Stephen Carter states: "Too many of today's theorists of liberalism ... seem determined to use 'public' education to create a nation where everybody thinks the same way."<sup>15</sup> In this quest towards universal

---

<sup>10</sup> Lerner 1998 *EILR* 484. Lerner's referral to "preaching that harms their beliefs" is not sufficiently nuanced. Here one would rather talk about some form of "coerced preaching" as preaching *per se* is not necessarily coerced.

<sup>11</sup> Lerner 1998 *EILR* 484.

<sup>12</sup> Lerner 1998 *EILR* 514-515.

<sup>13</sup> Lerner 1998 *EILR* 539.

<sup>14</sup> Vorster 2010 *NGTT* 205. Here one needs to be careful in presenting the idea that public schools are connoted to only that which is irreligious.

<sup>15</sup> Carter 1997 *SHLR* 1224.

thinking there are those who take the view that "religious" content should be removed from teaching at public institutions. This endeavour to remove religion from teaching at public schools assumes that teaching can be divorced from religion and, therefore, that such teaching is belief free. In a truly democratic and plural society, public schools need to accommodate a wide range of cultural and religious backgrounds, which precludes their organisation in accordance with any thick concept of the good.<sup>16</sup>

The positivistic preoccupation in education with "elements of reality alone" or with the mere accumulation of "empirical facts" obstructs the relevance of these facts in their relation to human life in its totality.<sup>17</sup> Reverence for facts and the acquisition of scientific knowledge (in an exclusive manner) result in a national system of education that provides its students with manifold simplistic "answers", but is always painfully lacking in profound questions.<sup>18</sup> This positivism is also similar to humanist approaches towards education, which support the view that the scientific method is applicable to all areas of human concern, and is the only valid means for determining truth.<sup>19</sup> In many instances, school authorities, although not setting out to promote irreligious worldviews, have an underlying worldview of modern education that divorces humankind from its dependence on religious answers to many of the ultimate questions of human existence with irreligious answers. In this regard, irreligious education gives irreligious answers to ultimate questions and conveys its irreligious understanding of reality essentially as a matter of faith.<sup>20</sup> Just as there is a risk for a public school to place too much emphasis on a specific religious component in its teaching, there is the risk of a public school substantially withdrawing the religious element from its teaching curriculum. This has implications for how the irreligious dimension of improper proselytism should be understood, where irreligious knowledge stands the risk of exercising improper influence.

---

<sup>16</sup> De Been "Quest for Neutrality" 183. Also see Vischer *Conscience and the Common Good* 103.

<sup>17</sup> Schoeman *Ideology, Culture, and Education* 146. Moral perspectives cannot be avoided. The very selection of curriculum materials (implicitly or explicitly) imports concepts of the moral nature of culture and society. What is deemed important and essential to know has strong moral dimensions, though these dimensions often fail to rise to the level of articulation.

<sup>18</sup> Schoeman *Ideology, Culture, and Education* 147.

<sup>19</sup> In this regard see McCarthy *et al Society, State, and Schools* 126-127.

<sup>20</sup> Greenawalt 2002 *JLP* 336. Also see McGarry 1983 *CL* 7.

Iain Benson comments:<sup>21</sup>

Just as it is an error to use 'faith' as a code word for religious faith because of our various forms of 'faith', and to continue to speak in blanket fashion of 'unbelievers' so it is an error to view a non-religious form of public education as one lacking 'faith' commitments.

Added to this is the erroneous understanding that "the public" is divorced from all religious content. The term "public education" is popularly understood in liberal societies in a manner that suggests that "religious education" is to be excluded from the public, and that "public education" means "irreligious education". In the words of Iain Benson, "A division between education called public and religious education also implies, if it does not expressly state it, that a bright-line exists between something we call the 'public' and something else, in this case education that is religious".<sup>22</sup>

This misconception of "the public", implying a sphere devoid of all religious discourse, could lead to "secular intolerance", where the state sets out to cleanse the public sphere from any actual reference to religious beliefs and practice.<sup>23</sup> This understanding that religion is a highly privatised matter poses the risk of creating an understanding of proselytism that is restricted to religious expression only. As soon as religion raises its head in the public domain, attempts are made at stifling it, lest it would overstep its "private" boundaries and hinder the so-called neutral space of the public. Consequently, irreligious forms of expression in the public domain (which includes public schools) and their potentially manipulative proselytising influence occur unchecked. This is also evident in the plethora of jurisprudence and case law where proselytism is dealt with mainly under the banner of "the religious". Another reason as to why "the irreligious" might seem foreign to proselytism is liberalism's understanding, in the context of education, of the idea that faith and rational reflection are mutually exclusive. This ignores the fact that no proof of anything can be so completely drawn as to eliminate its dependence on undemonstrable givens. When an individual relies on whatever constitutes his or her ultimate concern, this

---

<sup>21</sup> Benson "Are Religious Schools Public Schools?" 6. Also see Benson 2000 *UBCLR* 541 and Benson 2010 *JSR* 22, 25.

<sup>22</sup> Benson "Are Religious Schools Public Schools?" 1-2, 18-19, 26-27.

<sup>23</sup> Martinez-Torrón and Navarro-Valls 1998 *HM* 36. Also see Copley 2008 *JREA* 22.



constitutes an act of faith.<sup>24</sup> Therefore, where ultimate concerns rest on irreligious beliefs, then such ultimate concerns also stand the risk of being used in a manipulative manner. Therefore, in education the irreligious can also result in improper proselytism.

This dialectic between the religious and the irreligious in education becomes more fraught when the question of pupils' moral education is raised. In some courses, texts and teachers adopt a "values clarification" approach to moral issues, suggesting that pupils need to clarify and choose their values. Values clarification in its usual form is diametrically opposed to the belief that moral standards derived from religion are absolutely binding.<sup>25</sup> When the religious view is excluded from the entire curriculum, students may come to the conclusion that religion is somehow less than acceptable or a private matter not to be discussed openly.<sup>26</sup> In the context of courses such as social studies, history, current events, literature, health, hygiene, home economics and family living, typically a question is posed, diverse alternatives are suggested and considered, and the problem is freely discussed.<sup>27</sup> Arguments and factors of various types – with the exception of religious considerations – are raised and analysed, and both individual and group solutions are arrived at on an entirely secular basis.<sup>28</sup> This subtly provides an aggressive and intolerant approach towards anything religious and allows other beliefs (irreligious) in its place. In a study of textbooks in Missouri in America, for example, it was found that there are few theistic references in textbook descriptions of present-day life and literature. In this we find the inculcation of humanism (which represents a central belief system) by elimination of theism.<sup>29</sup> Needless to say, it is not only in Missouri where theistic references in textbook descriptions are substantially limited. This also has

---

<sup>24</sup> Budziszewski *True Tolerance* 130-131.

<sup>25</sup> Greenawalt 2002 *JLP* 338. This emphasis on values also overlaps with humanism's emphasis on cultural relativism, in other words the belief that values are grounded only in a given culture and have no transcultural normativity. In this regard, see McCarthy *et al Society, State, and Schools* 128.

<sup>26</sup> Wilson 2003 *TRLP* 424.

<sup>27</sup> McGarry 1983 *CL* 5-6.

<sup>28</sup> McCarthy *et al Society, State, and Schools* 127. For example, the fact that Martin Luther King was a pastor and that the black churches played a key role are ignored in political events of particular importance, such as the Montgomery, Alabama bus boycott of 1955-56.

<sup>29</sup> McCarthy *et al Society, State, and Schools* 122. Also see McGarry 1983 *CL* 6.

implications for how the irreligious dimension of improper proselytism should be understood, where irreligious knowledge stands the risk of exercising improper influence.

A central task of public schools in a democratic and plural dispensation is to transmit and reproduce the specific cultural, religious and political traditions of the communities they serve. A school that takes this task seriously, whilst simultaneously adopting a posture of strict neutrality by means of any secular or religious worldview, is oxymoronic.<sup>30</sup> There is a problem in education in defining neutrality, because making a neutral choice in education is making a choice.<sup>31</sup> Neutrality, when applied as a principle, holds that other principles (for example, those based on religious convictions) may not be included or even accommodated. It is this kind of purported "strict neutrality" which feeds a positivistic approach into school education. The argument against a neutral education can be understood by reference to Nagel's more general claim that liberal theory is non-neutral, because it discounts conceptions that depend on interpersonal relations. Indeed, the family, and particularly the parental bond, constitutes such relations, ignored by the call for religiously neutral education.<sup>32</sup> In fact, the "neutral" law will inevitably collide with the moral obligations of individuals, especially in cases where the state assumes the prerogative to organise the curricula of schools without considering the religious or philosophical convictions of parents in the pursuit of supposed "neutrality".<sup>33</sup> Against the background of *Lautsi and Others v Italy*, where the ECtHR dealt with whether crucifixes could be displayed in classrooms, Wouter De Been comments that:<sup>34</sup>

... a growing body of evidence ... suggests that it is impossible to section off a distinct category of artefacts that sends out a symbolic meaning from another set of objects that does not. Our experience of the world is inescapably qualitative, drenched in emotive and aesthetic meaning. Consequently, taking away the cross will not result in an absence of symbols, but in a symbol of absence, a symbolic absence of religion within a ring-fenced space created by a secular initiative.

---

<sup>30</sup> De Been "Quest for Neutrality" 183.

<sup>31</sup> Scolnicov, cited in Langlaude 2006 *ICLQ* 935.

<sup>32</sup> Scolnicov 2007 *IJCR* 260.

<sup>33</sup> Martinez-Torrón and Navarro-Valls 1998 *HM* 32-33.

<sup>34</sup> De Been "Quest for Neutrality" 182. Also see Copley 2008 *JREA* 31.

The same applies to efforts in many liberal paradigms towards ridding public education from anything religious. Having therefore looked at religion and belief in teaching, its protection in human rights instruments, the understanding that religion forms part of the public domain, as well as to how, for example, the teaching of positivist values and calls for neutrality introduce a dominant irreligious influence in the classroom, the relevance of improper proselytism to such irreligious teaching is investigated next.

### **3 The irreligious as improper proselytism in teaching**

The potential of improper proselytism finds special relevance in matters related to the nature and parameters of the teaching at school of specific modules such as history, literature, physics, biology, and life skills. In this regard, the overlap between a predominantly irreligious education and "inappropriate", "coercive" or "manipulative" forms of proselytism is investigated, and here the risk of improper proselytism as the coercion of learners towards exclusively irreligious influences is addressed. It is in this regard that positivism, the teaching of values and calls for neutrality (referred to earlier) in education pose risks of improperly influencing pupils. Scholarship on improper irreligious proselytism and, more specifically, the improper influence of the teaching of irreligious knowledge at public schools have received little attention in human rights scholarship.

For the purposes of this article an understanding similar to Ted Stahnke's understanding of proselytism is applied, namely that proselytism is "expressive conduct undertaken with the purpose of trying to change the religious beliefs, affiliation, or identity of another".<sup>35</sup> However, an important addition is suggested here (and as mentioned earlier), namely that not only should proselytism be linked to the changing of *religious* beliefs, but also of *irreligious* beliefs.<sup>36</sup> This is also

---

<sup>35</sup> Stahnke 1999 *BYULR* 255.

<sup>36</sup> In *Kokkinakis v Greece* ECtHR No 14307/88, 25 May 1993, Judge Pettiti, in his partly concurring opinion in this well-known proselytism case in the ECtHR, states that the reasoning of the judgment could also have better reflected the fact that Article 9 of the *European Convention on Human Rights* (referred to earlier) also applies to *irreligious philosophical beliefs* (author's emphasis).

supported by dictionary meanings ascribed to the term "proselytise".<sup>37</sup> Proselytism understood as a form of *persuasive*<sup>38</sup> expression should include not only religious, but also *belief* expressions.<sup>39</sup> Why should "persuasive expression" be limited only to religious beliefs and not non-religious beliefs as well?

In international human rights there is no definitive consensus about whether proselytism is a manifestation of religion or belief and therefore encompassed within the concept of the right to freedom of religion or belief.<sup>40</sup> This lack of any direct recognition of proselytism may be an indication of the sensitivity of states to the issues it raises and the difficulty of delineating agreeable standards.<sup>41</sup> Prohibitions on proselytism have been enacted regarding the exertion of influence on people whose capacities or circumstances render them vulnerable. This is understood as a form of *improper* manipulation.<sup>42</sup> It is interesting to note that this form of manipulation applies almost solely to the conversion of *religious* beliefs. The manipulation of other ideas and beliefs in similar circumstances (ranging from political persuasion to the

---

<sup>37</sup> Stevenson *Oxford Dictionary* 1427: "Convert or attempt to convert someone from one religion, belief, or opinion to another"; Simpson and Weine *Oxford English Dictionary* 664: "to cause to come over or turn from one opinion, belief, creed, or party to another".

<sup>38</sup> Garnett 2005 *USTLJ* 457.

<sup>39</sup> Uzzell 2004 <http://www.questia.com/library/1G1-122989524/don-t-call-it-proselytism>. It is interesting to note that the term *proselytism* had a meaning beyond that of the religious during the eighteenth and nineteenth centuries. For example, Edmund Burke in 1790 applied it to the anti-Christian *philosophes* of the French Enlightenment.

<sup>40</sup> Stahnke 1999 *BYULR* 275.

<sup>41</sup> Stahnke 1999 *BYULR* 275: However, here it is important to note that the essence of the "freedom of religion", as defined by the Supreme Court of Canada in its first case about religion, namely *R v Big M Drug Mart Ltd* 1985 CANLII 69, [1985] 1 SCR 295 (Canada), is that the right not only encompasses the right to hold a belief in private, but *inter alia* the right to "manifest", "teach" and "disseminate" it. Thus, these things cannot really be offences against others as long as they do not spill over into "coercion".

<sup>42</sup> Referring to the ECtHR's view in the *Larissis v Greece* ECtHR No 140/1996/759/958-960, 24 February 1998 judgement, Stijn Smet states that: "... if the addressee finds herself in a particularly vulnerable relationship towards the proselytiser, who in turn stands in a position of authority or power *vis-à-vis* the addressee, measures may be taken to protect the latter's autonomy, provided it is effectively impaired. However, if the proselytism does not impair the addressee's autonomy, the conflict is decided in favour of the proselytiser" (Stijn "Freedom of Religion v Freedom from Religion" 119). The manipulation of the addressee or the exertion of an improper influence of a belief (whether religious or non-religious) on an addressee can also be linked to practices where a specific belief is conveyed to the recipient or addressee (who is in a vulnerable position), thereby excluding any other belief that might be of fundamental importance to that recipient. This in turn has the potential to result in an improper form of proselytism towards the recipient. Where the proselytiser is in a position of influence and authority and the addressee is vulnerable, then the withholding of valuable information can constitute a form of manipulation. This is of special relevance to the relationship between teacher and pupil.

inducement to purchase products by means including advertising) generally remains legal and even desirable in a society predicated on a free marketplace of ideas. This distinction between the change of religious beliefs and change of any other belief lacks any coherent justification,<sup>43</sup> though it may be said that it does support arguments about the dominance of coercive fundamentally anti-religious irreligious understandings.

The wider understanding of the protection and limitation of religious belief, which is reflected in regional human rights instruments and in the constitutions of many democratic and plural countries, understands such protection and limitation to include irreligious beliefs as well.<sup>44</sup> Therefore, when we talk of freedom of religion and freedom from improper religious influence, then this also includes freedom of irreligious beliefs and freedom from improper influence by irreligious beliefs. Preventing the "proselytiser" from expressing her religious or irreligious beliefs may violate her freedom to manifest her belief, whilst the recipient or addressee may argue that the "proselytiser" may not improperly interfere with her freedom to hold a religious or irreligious belief.

Fortunately, the ECtHR has taken a wide or inclusive approach to the definition of religion. According to the ECtHR, religion includes claims concerning scientology, druidism, pacifism, communism, atheism, pro-life, Divine Light Zentrum, and the Moon Sect.<sup>45</sup> The ECtHR case law tends to revolve around the definition of "belief" rather than that of "religion", and the term "belief" is considered in its jurisprudence to require a worldview rather than a mere opinion.<sup>46</sup> An understanding of "religion" as including both belief and disbelief of a certain type makes the notion broad enough to include even the religiously "neutral" values inculcated at state schools. In this regard, there is a sound basis for the objections of those arguing that irreligious

---

<sup>43</sup> Scolnicov *Right to Religious Freedom* 199-200.

<sup>44</sup> See for example, the European Convention on Human Rights (1950) Article 9; the Constitution of the Republic of South Africa, 1996 section 15; the Canadian Charter of Rights and Freedoms, 1982 section 2; the African Charter of Human and Peoples Rights (1981) Article 8; the Universal Declaration of Human Rights (1948) Article 18; the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981).

<sup>45</sup> Hill "Bracelets, Rings and Veils" 310-311.

<sup>46</sup> Hill "Bracelets, Rings and Veils" 311.

schools are not neutral with respect to religion; they implicitly endorse one type of religion (which is humanism) to the exclusion of others. In doing this, they violate the freedom of thought of pupils who are educated at public schools.<sup>47</sup>

One of the pioneers of educational psychology, John Dewey, explained that the morals of pupils are influenced by the school's curriculum, which is the moral environment found at all schools, conveyed by the school rules, the moral orientation of school staff, and text materials.<sup>48</sup> Courts appear to have accepted that teachers exert an influence over pupils not only through the advice or through instruction they give but also by the example set. As the Canadian Supreme Court observed in *Ross v New Brunswick School District No 15*, "[t]eachers occupy positions of trust and confidence, and exert considerable influence over their students *as a result of their position*".<sup>49</sup> The Court quotes Canadian legal academic Allison Reyes:<sup>50</sup>

Teachers are a significant part of the unofficial curriculum because of their status as 'medium'. In a very significant way, the transmission of prescribed 'messages' (values, beliefs, knowledge) depends on the fitness of the 'medium' (the teacher).

Alison Mawhinney states that the susceptibility of children to a pervasive message presented in an uncritical manner is a fact recognised by the ECtHR, which has consistently drawn attention to the impressionable age of children.<sup>51</sup> Bearing this in mind, there can be no reason why the teaching of knowledge by a teacher to pupils cannot meet the requirements for improper proselytism, where the "attributes of the source and the target"<sup>52</sup> are such that the target may not be able to exercise free choice in accepting or resisting the change in beliefs emanating from the source.<sup>53</sup>

---

<sup>47</sup> Clarke 1986 *ICLQ* 299.

<sup>48</sup> Santrock *Educational Psychology* 100.

<sup>49</sup> Lenta 2009 *SALJ* 853.

<sup>50</sup> Lenta 2009 *SALJ* 853.

<sup>51</sup> Mawhinney "Crucifixes, Classrooms and Children" 107.

<sup>52</sup> For more on these requirements see Stahnke 1999 *BYULR* 327-330.

<sup>53</sup> Stahnke comments that it is a basic assumption that a person should be able to make a considered and unrestrained choice in matters of religious belief and affiliation. Therefore, the more proselytism interferes with that ability to choose freely, the more the regulatory power of the state may be attracted, Stahnke 1999 *BYULR* 327.

Roland Pierik proposes that, in the context of school education, there should be an evaluation as to the extent to which the curriculum is conveyed in an objective, critical and plural manner and in an atmosphere free of proselytism. This requires an assessment of the way in which the curriculum is drafted, and whether certain elements give rise to a reasonable doubt regarding whether or not the curriculum is violating the requirements of objectivity and pluralism.<sup>54</sup> In addition, it was stated in a judgement by the ECtHR, namely that of *Folgerø and Others v Norway* that:<sup>55</sup>

... the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgement or misplaced proselytism.

Until recently, according to Mawhinney, the requirement for conveying religious or philosophical knowledge in an "objective, critical and plural manner" and the prohibition on the aim of indoctrination constituted the two core principles applied in cases arising under Article 2 of *Protocol I*<sup>6</sup> of the *European Convention of Human Rights*. However, with the 2006 ECtHR decision in *Sefika Köse v Turkey*,<sup>57</sup> an additional standard was added, namely the requirement of the State to maintain an atmosphere free of any proselytism at schools.<sup>58</sup> Mawhinney comments that, arguably, in the *Zengin* case, the ECtHR could have relied solely on the "objective, critical and plural" standard to reach its conclusion, but it chose instead to restate the *Köse* norm, which places a duty on States to ensure that proselytism does not take place at schools.<sup>59</sup> The ECtHR has warned schools that they have to be alert to circumstances under which teachers might use their influence over students as an occasion for improper proselytism.<sup>60</sup>

---

<sup>54</sup> Pierik "State Neutrality" 207.

<sup>55</sup> Temperman "Religious Symbols" 164.

<sup>56</sup> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions."

<sup>57</sup> *Sefika Köse v Turkey* ECtHR No 26625/02, 24 January 2006.

<sup>58</sup> Mawhinney "Crucifixes, Classrooms and Children" 97. This requirement on the state to maintain an environment free from proselytism is seen again in the 2007 case of *Zengin v Turkey* ECtHR No 1448/04, 9 October 2007 98.

<sup>59</sup> Mawhinney "Crucifixes, Classrooms and Children" 99.

<sup>60</sup> Evans 2008 *HRLR* 464.

The source in the teaching environment has an "intellectual influence" over the target, namely the pupil.<sup>61</sup> The primary concern with the attributes of the proselytism target relates to the perceived susceptibility of the target to the types of persuasion that may be employed by the source. The greater the perceived vulnerability of the target, the more likely that proselytism directed to it will be restricted. Children, for example, may be susceptible to a change in religious beliefs.<sup>62</sup> Other factors are also used to determine whether there is a form of improper proselytism, for example, the "nature of the place" where the proselytism takes place, as well as the "nature of the action" of proselytism.<sup>63</sup> Schools, for example, can be places where the persons are required to be present for the most part.<sup>64</sup> Stated otherwise, schools are places where people are present by force of law – "where the listeners are a captive audience".<sup>65</sup> What should also be kept in mind is the authority carried by textbooks, which are not only read, but are reviewed, discussed and digested.<sup>66</sup> This gives textbooks also a position of authority and consequent influence.

From the above it is evident that there should be a more inclusive understanding of proselytism, which includes irreligious forms of improper influence as well. The ECtHR has emphasised not only the protection of religious beliefs, but also that of irreligious beliefs. The ECtHR has also made a point of referring to proselytism and has expressed the importance of States having to maintain an atmosphere at schools that is free of any improper proselytism, as argued in the above. The relationship between teacher and pupil provides much potential for the practising of irreligious improper proselytism, also bearing in mind that the irreligious, or the absence of the religious, has the potential for influencing improperly.

---

<sup>61</sup> See for example, Lerner 1998 *EILR* 515.

<sup>62</sup> Stahnke 1999 *BYULR* 332.

<sup>63</sup> See Stahnke 1999 *BYULR* 334-338.

<sup>64</sup> Stahnke 1999 *BYULR* 334.

<sup>65</sup> Lerner 1998 *EILR* 486. Althusser comments that: "Children from every conceivable class in society spend most of their most 'vulnerable' childhood years at school. Here ... a certain amount of 'know-how' wrapped in ... 'simply the ruling ideology in its pure state (ethics, civic instruction, philosophy)' is literally drummed into them ... and ... 'no other ideological State apparatus has the obligatory (and, not the least, free) audience of the totality of the children ... eight hours a day for five or six days out of seven" (Schoeman *Ideology, Culture, and Education* 143).

<sup>66</sup> McCarthy *et al Society, State, and Schools* 123.



#### **4 Conclusion**

As complex and diverse as the concept of proselytism may be, there is a popular understanding that it relates only to improper or manipulative *religious* forms of influence. The privatisation of religion in many democratic and plural societies around the world today has almost provided a paranoid sensitivity towards religion expressing itself in the public domain. This has contributed to the view that it is only improper religious belief expressions that are related to forms of improper proselytism, hereby not realising that irreligious belief expressions can also be manipulative or improper towards the recipient or the addressee, thereby constituting improper proselytism. Improper proselytism not only pertains to religious forms of improper influence, but also to irreligious forms of improper influence, including the preclusion of appropriate access (by religions) to the public sphere. Within the public domain, one finds both religious and irreligious beliefs and therefore there are communicative activities within the public sphere that include expressions of both religious and irreligious belief that run the risk of being manipulative or improper.

The argument here is that proselytism has to do as much with a religious action as with an irreligious action. Where the expression of belief, whether religious or irreligious, amounts to any form of manipulative or undue influence, improper proselytism is applicable. To understand proselytism in this manner places all beliefs, whether religious or irreligious, on an equal footing with one another. Improper religious forms of expression should be no more suspect than improper irreligious forms of expression, with both versions having the potential for giving rise to improper proselytism. By critically looking at education and teaching in public institutions it becomes clear that irreligious forms of influence run the risk (as do religious forms of influence) of being improper or manipulative, thereby qualifying improper irreligious belief influences as part of improper proselytism. Viewed in the way I have argued in the above, the popular notion of improper proselytism as being exclusively linked to religious forms of influence is dismantled and coercive viewpoints of either religious or non/anti-religious perspectives are seen for the improper coercive frameworks they could be.

**BIBLIOGRAPHY****Literature**

Benson 2000 *UBCLR*

Benson IT "Notes Towards a (Re) Definition of the 'Secular'" 2000 *UBCLR* 519-549

Benson 2010 *JSR*

Benson IT "Taking Pluralism and Liberalism Seriously: The Need to Re-understand Faith, Beliefs, Religion, and Diversity in the Public Sphere" 2010 *JSR* 17-41

Benson "Are Religious Schools Public Schools?"

Benson IT "Are Religious Schools Public Schools? The need for a Religiously Inclusive Understanding of the Public" Royackers Lecture delivered at Regis College, University of Toronto (28 March 2012, revised 11 September 2012)

Budziszewski *True Tolerance*

Budziszewski J *True Tolerance. Liberalism and the Necessity of Judgment* (Transaction Publishers New Brunswick 1992)

Carter 1997 *SHLR*

Carter SL "Parents, Religion, and Schools: Reflections on Pierce, 70 Years Later" 1997 *SHLR* 1194-1224

Clarke 1986 *ICLQ*

Clarke DM "Freedom of Thought in Schools: A Comparative Study" 1986 *ICLQ* 271-301

Copley 2008 *JREA*

Copley T "Non-indoctrinatory Religious Education in Secular Cultures" 2008 *JREA* 22-31

De Been "Quest for Neutrality"

De Been W "The Quest for Neutrality and the Stench of History" in Temperman J (ed) *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Martinus Nijhoff Leiden 2012) 179-200

Evans 2008 *HRLR*

Evans C "Religious Education in Public Schools: An International Human Rights Perspective" 2008 *HRLR* 449-473

Garnett 2005 *USTLJ*

Garnett RW "Changing Minds: Proselytism, Freedom, and the First Amendment" 2005 *USTLJ* 453-474

Greenawalt 2002 *JLP*

Greenawalt K "Teaching About Religion in the Public Schools" 2002 *JLP* 329-386

Hill "Bracelets, Rings and Veils"

Hill M "Bracelets, Rings and Veils: The Accommodation of Religious Symbols in the Uniform Policies of English Schools" in Hunter-Henin M (ed) *Law, Religious Freedoms and Education in Europe* (Ashgate Farnham 2011) 307-326

Langlaude 2006 *ICLQ*

Langlaude S "Indoctrination, Secularism, Religious Liberty, and the ECHR" 2006 *ICLQ* 920-944

Lerner 1998 *EILR*

Lerner N "Proselytism, Change of Religion, and International Human Rights" 1998 *EILR* 477-561

Lenta 2009 *SALJ*

Lenta P "Taking Diversity Seriously: Religious Associations and Work Related Discrimination" 2009 *SALJ* 827-860

Martinez-Torrón and Navarro-Valls 1998 *HM*

Martinez-Torrón J and Navarro-Valls R "The protection of religious freedom in the system of the European Convention on Human Rights" 1998 *HM* 25-37

Mawhinney "Crucifixes, Classrooms and Children"

Mawhinney A "Crucifixes, Classrooms and Children: A Semiotic Cocktail" in Temperman J (ed) *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Martinus Nijhoff Leiden 2012) 93-111

McCarthy *et al Society, State, and Schools*

McCarthy R *et al Society, State, and Schools: A Case for Structural and Confessional Pluralism* (William B Eerdmans Grand Rapids 1981)

McGarry 1983 *CL*

McGarry DD "The Unconstitutionality of Exclusive Governmental Support of Entirely Secularistic Education" 1983 *CL* 1-34

Pierik "State Neutrality"

Pierik R "State Neutrality and the Limits of Religious Symbolism" in Temperman J (ed) *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Martinus Nijhoff Leiden 2012) 201-218

Santrock *Educational Psychology*

Santrock JW *Educational Psychology* 5<sup>th</sup> ed (McGraw-Hill New York 2011)

Schoeman *Ideology, Culture, and Education*

Schoeman PG *Ideology, Culture, and Education: Between Domination and Emancipation* (Tekskor Bloemfontein 1997)

Scolnicov 2007 *IJCR*

Scolnicov A "The Child's Right to Religious Freedom and Formation of Identity" 2007 *IJCR* 251-267

Scolnicov *Right to Religious Freedom*

Scolnicov A *The Right to Religious Freedom in International Law. Between Group Rights and Individual Rights* (Routledge London and New York 2011)

Simpson and Weine *Oxford English Dictionary*

Simpson JA and Weine ESC (eds) *The Oxford English Dictionary Vol 13* 2<sup>nd</sup> ed (Clarendon Press Oxford 1989)

Stahnke 1999 *BYULR*

Stahnke T "Proselytism and the Freedom to Change Religion in International Human Rights Law" 1999 *BYULR* 251-350

Stevenson *Oxford Dictionary*

Stevenson A (ed) *Oxford Dictionary of English* 3<sup>rd</sup> ed (Clarendon Press Oxford 2010)

Stijn "Freedom of Religion v Freedom from Religion"

Stijn S "Freedom of Religion v Freedom from Religion: Putting Religious Dictates of Conscience (Back) on the Map" in Temperman J (ed) *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Martinus Nijhoff Leiden 2012) 113-142

Temperman "Religious Symbols"

Temperman J "Religious Symbols in the Public School Classroom" in Temperman J (ed) *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Martinus Nijhoff Leiden 2012) 143-176

Vischer *Conscience and the Common Good*

Vischer RK *Conscience and the Common Good: Reclaiming the Space between Person and State* (Cambridge University Press Cambridge 2010)

Vorster 2010 *NGTT*

Vorster JM "Religious instruction in public schools in view of the fundamental right to religious freedom: A Christian ethical perspective" 2010 *NGTT* 205-216

Wilson 2003 *TRLP*

Wilson D 2003 "Neutrality and Evolution in Public Schools" *TRLP* 423-466

Witte and Martin *Sharing the Book*

Witte J Jr and Martin RC (eds) *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Orbis Books New York 1999)

### **Case law**

*Folgerø v Norway* ECtHR No 15472/02, 29 June 2007

*Kokkinakis v Greece* ECtHR No 14307/88, 25 May 1993

*Larissis v Greece* ECtHR No 140/1996/759/958-960, 24 February 1998

*Lautsi v Italy* ECtHR No 30814/06, 18 March 2011

*R v Big M Drug Mart Ltd* 1985 CANLII 69, [1985] 1 SCR 295 (Canada)

*Ross v New Brunswick School District No 15* [1996] 1 SCR 825 (Canada)

*Sefika Köse v Turkey* ECtHR No 26625/02, 24 January 2006

*Zengin v Turkey* ECtHR No 1448/04, 9 October 2007

### **Legislation**

*Canadian Charter of Rights and Freedoms*, 1982

*Constitution of the Republic of South Africa*, 1996

### **International instruments**

*African Charter of Human and Peoples Rights* (1981)

*Convention against Discrimination in Education* (1960)

*Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief* (1981)

*European Convention on Human Rights* (1950)

*International Covenant on Civil and Political Rights* (1966)

*International Covenant on Economic, Social and Cultural Rights* (1966)

*Protocol 1 to the European Convention on Human Rights* (1952)

*Universal Declaration of Human Rights* (1948)

### **Internet sources**

Uzzell 2004 <http://www.questia.com/library/1G1-122989524/don-t-call-it-proselytism>

Uzzell LA 2004 *Don't Call it Proselytism* <http://www.questia.com/library/1G1-122989524/don-t-call-it-proselytism> accessed 10 May 2013

### **LIST OF ABBREVIATIONS**

BYULR	Brigham Young University Law Review
CL	Catholic Lawyer
ECtHR	European Court of Human Rights
EILR	Emory International Law Review
FT	First Things: A Monthly Journal of Religion and Public Life
HM	Helsinki Monitor
HRLR	Human Rights Law Review
ICLQ	International and Comparative Law Quarterly
IJCR	International Journal of Children's Rights
JLP	Journal for Law and Policy
JREA	Religious Education: The Official Journal of the Religious Education Association
JSR	Journal for the Study of Religion
NGTT	Dutch Reformed Theological Journal
SALJ	South African Law Journal
SHLR	Seton Hall Law Review
TRLP	Texas Review of Law and Politics
UBCLR	University of British Columbia Law Review
USTLJ	University of St. Thomas Law Journal