

Bonus Ep 4: Stephen Evans – religious oaths

<https://www.secularism.org.uk/podcast/2020/09/bonus-ep4>

0:00:05.839,0:00:09.280

(Emma Park, EP): This is the fourth bonus episode in the National Secular Society's podcast

0:00:09.280,0:00:13.599

series hosted by Emma Park.

I will be speaking to Stephen Evans, CEO

0:00:13.599,0:00:16.320

of the NSS

about a topic close to the heart of the

0:00:16.320,0:00:20.480

society's founder Charles Bradlaugh

and his successors today: this is the

0:00:20.480,0:00:23.359

issue of oath taking in the courtroom in England and Wales

0:00:23.359,0:00:27.760

which Stephen wrote about in a recent blog post. When a witness takes the stand

0:00:27.760,0:00:30.640

in a court of law

and swears to tell the truth, what are

0:00:30.640,0:00:34.960

the rules about how it should be done?

what are the NSS's objections to them?

0:00:34.960,0:00:44.239

and is there a better solution than the current arrangement?

0:00:44.239,0:00:47.760

So I'm joined now by Stephen Evans.

Stephen,

0:00:47.760,0:00:51.760

Charles Bradlaugh, who's obviously the founder of the National Secular Society,

0:00:51.760,0:00:55.760

was unable to take his seat in

Parliament in 1880 because he refused to

0:00:55.760,0:00:59.199

swear the religious oath

that MPs were required to take in those

0:00:59.199,0:01:02.399

days.

Now does this mean that oaths are still

0:01:02.399,0:01:07.200

a particularly important

um or symbolic issue for the NSS today?

0:01:07.200,0:01:12.159

(Stephen Evans, SE): Hello. Um, well, you say Bradlaugh refused the oath - that, that's not actually quite

0:01:12.159,0:01:14.799

right. As an atheist and republican Bradlaugh

0:01:14.799,0:01:18.640

certainly preferred not to take the oath

of allegiance to God and Queen

0:01:18.640,0:01:22.320

but actually he was willing to do so if

it meant he could take his seat, albeit,

0:01:22.320,0:01:24.799

the words were obviously meaningless to him

0:01:24.799,0:01:28.960
but the House of Commons wouldn't allow
him to affirm

0:01:28.960,0:01:32.799
but because he was an atheist he wasn't
allowed to take the religious oath

0:01:32.799,0:01:37.439
either. So Bradlaugh was effectively
barred from taking his seat and after

0:01:37.439,0:01:42.240
initially being elected by
the people of Northampton it was, um, he

0:01:42.240,0:01:45.680
had to contest
four subsequent by-elections before

0:01:45.680,0:01:50.000
finally being allowed to take his seat
and when he did, it was his oaths act

0:01:50.000,0:01:53.439
back in 1880 that enabled non-religious
MPs to

0:01:53.439,0:01:56.880
affirm rather than swear the religious
oath, and obviously that's a right

0:01:56.880,0:02:01.439
enjoyed by many MPs to this day. So, yes, I
think it's fair to say that

0:02:01.439,0:02:05.280
the issue of oaths has been ever present
uh, something of a

0:02:05.280,0:02:09.679
totemic issue you could say over our 150
or so year history

0:02:09.679,0:02:12.879
and I think it remains an issue today
because we're still

0:02:12.879,0:02:15.920
using religious oaths and affirmations
whether it be in Parliament or in

0:02:15.920,0:02:18.319
courtrooms
and it's not entirely without its

0:02:18.319,0:02:21.920
problems.
(EP): So Charles Bradlaugh was, he wanted to

0:02:21.920,0:02:25.440
affirm did he initially
and he wasn't allowed to do that? (SE): Yes,

0:02:25.440,0:02:28.560
initially he wanted to affirm - he wasn't
allowed to do that - then he said 'Okay,

0:02:28.560,0:02:31.680
then I'll take the oath', but he wasn't
allowed to do that either, so if they haven't
got

0:02:31.680,0:02:35.200
you one way, they've got you another.
So as a non-religious prospective member

0:02:35.200,0:02:38.480
of MP back then
it was very difficult - there was no real

0:02:38.480,0:02:42.959
route into Parliament - so Bradlaugh paved
the way for non-religious MPs

0:02:42.959,0:02:47.440
to uh take their seats as
Parliamentarians. (EP): I see, so the idea was

0:02:47.440,0:02:50.080
that
basically Quakers normally affirm, don't

0:02:50.080,0:02:53.599
they, I think - they don't, they don't swear....
(SE): Yeah, there were arrangements in place

0:02:53.599,0:02:57.599
for Jews and Quakers but there was
nothing in place for atheists, so Bradlaugh

0:02:57.599,0:03:03.280
was very much, kind of, a
pioneering MP in, in making sure that

0:03:03.280,0:03:07.519
Parliament was more inclusive to
non-religious citizens.

0:03:07.519,0:03:11.680
(EP): That's, that's great and I mean, I assume
he was willing to take the religious

0:03:11.680,0:03:14.640
oath but at that point was it,
did Parliament just say 'No, we know

0:03:14.640,0:03:17.760
you're an atheist so it doesn't count if
you try to take the religious oath....'

0:03:17.760,0:03:20.800
(SE): Yeah, he was something of an
outspoken
uh,

0:03:20.800,0:03:24.959
notorious, you could say, atheist back
then so um, yeah, there was no question

0:03:24.959,0:03:28.799
of him being uh allowed to take the
religious oath because everybody knew it

0:03:28.799,0:03:32.640
would be meaningless.
(EP): I see, so it's sort of cheating. I see. Um
moving

0:03:32.640,0:03:35.360
on to today,
in a courtroom in England or Wales,

0:03:35.360,0:03:39.120

jurors and witnesses have to begin by
swearing an oath of some kind that

0:03:39.120,0:03:42.959
basically purports to guarantee their
good faith and truthfulness.

0:03:42.959,0:03:46.959
What from the NSS's perspective is the
problem with the way that this

0:03:46.959,0:03:51.360
oath taking procedure currently works?
(SE): Well, I suppose there's

0:03:51.360,0:03:57.519
three concerns really. First, it results
in witnesses being treated differently

0:03:57.519,0:04:01.360
depending on their personal beliefs.
Second it runs the risk

0:04:01.360,0:04:05.360
of prejudicing jurors for or against
witnesses

0:04:05.360,0:04:09.439
and Thirdly, it just seems to be a wholly
unnecessary breach of a witness's

0:04:09.439,0:04:14.480
right to privacy. So, like in Parliament
originally we, we only had the religious

0:04:14.480,0:04:18.239
oath in courtrooms then affirmations
were introduced to fix the problem of

0:04:18.239,0:04:22.160
religious minorities uh, primarily
Quakers and atheists, refusing to swear

0:04:22.160,0:04:25.520
the oath to God
so the way things work at the moment

0:04:25.520,0:04:30.000

before giving evidence witnesses
have to swear to tell the truth on the

0:04:30.000,0:04:34.080
holy book of their choice
be it the Bible, Bhagavad-Gita, Quran

0:04:34.080,0:04:37.040
whatever
or, if they so choose, they can affirm

0:04:37.040,0:04:40.639
which basically means
declining a holy book and instead simply

0:04:40.639,0:04:45.040
promising to tell the truth.
So, in our courtrooms, the first thing a

0:04:45.040,0:04:48.880
juror will find out
about a witness is their religious

0:04:48.880,0:04:52.560
affiliation or
perhaps lack of it and that just strikes

0:04:52.560,0:04:56.960
me as daft -
a witness' religion or lack of religion

0:04:56.960,0:05:01.520
is entirely irrelevant to the
proceedings - but with the way things are,

0:05:01.520,0:05:07.440
any juror who's harboring any sort of
prejudice uh, may be influenced by

0:05:07.440,0:05:10.400
someone swearing on a holy book or
opting not to, and,

0:05:10.400,0:05:13.440
and, you know, whether it's consciously or
unconsciously

0:05:13.440,0:05:17.520

they could regard them with suspicion or
or favoritism

0:05:17.520,0:05:21.600
um, because people may and do hold
prejudiced attitudes towards Christians

0:05:21.600,0:05:25.120
Muslims or atheists
or whoever else so, by making this

0:05:25.120,0:05:29.840
performative display
of a person's religious or, or atheistic

0:05:29.840,0:05:32.880
convictions,
it may actually get in the way of the

0:05:32.880,0:05:36.720
administration of justice.
And certainly some academics have argued

0:05:36.720,0:05:41.360
that any procedure that signals
someone's belief or disbelief in God

0:05:41.360,0:05:44.960
could be an influential cue of morality
or immorality

0:05:44.960,0:05:48.240
that could bias trial outcome in a
number of ways.

0:05:48.240,0:05:52.400
(EP): It certainly definitely seems like a big
breach of privacy.

0:05:52.400,0:05:56.000
I, obviously this is a difficult one
because the whole point of being a juror

0:05:56.000,0:05:58.319
is that you have
privacy in terms of how you make your

0:05:58.319,0:06:03.520

decision but is there any evidence as to jurors being actually prejudiced by the

0:06:03.520,0:06:06.720

way they see witnesses affirming or swearing oaths?

0:06:06.720,0:06:11.600

(SE): As I say, I think some academics in, in - I'm not sure if it's Ireland or Northern

0:06:11.600,0:06:15.120

Ireland - something tells me it may be uh Queen's University in Belfast but

0:06:15.120,0:06:18.319

some academics have looked into this and I say, there is some

0:06:18.319,0:06:21.600

evidence that it, you know, if, if you make any sort of

0:06:21.600,0:06:24.639

statement or any signal of your belief or

0:06:24.639,0:06:29.199

disbelief in God it can certainly act as a cue

0:06:29.199,0:06:33.600

of morality or immorality as I say - so, yes, I think I, I don't think there's,

0:06:33.600,0:06:36.880

there's strong evidence either way but it certainly seems reasonable

0:06:36.880,0:06:42.800

to assume that some people may um take an opinion on someone on the basis

0:06:42.800,0:06:45.199

of their beliefs. I think it happens all the time.

0:06:45.199,0:06:50.800

Um, you also raise the point about it being a private matter and, and indeed

0:06:50.800,0:06:54.400

article 8 of the Human Rights Act protects everyone's right to respect

0:06:54.400,0:06:57.840

for privacy in such matters - so I don't think anyone should be

0:06:57.840,0:07:05.120

under any obligation or duty or pressure to disclose or give any indicators

0:07:05.120,0:07:08.800

as to their beliefs in this way, it just seems entirely unnecessary to me.

0:07:08.800,0:07:12.560

(EP): Absolutely, any more than you would be under an obligation to, to reveal your political

0:07:12.560,0:07:17.199

beliefs in a similar situation.

(SE): Absolutely, a witness' religious outlook is really

0:07:17.199,0:07:20.800

none of the jurors business but by making an issue out of religion in the

0:07:20.800,0:07:23.199

courtroom

we're making it their business and it,

0:07:23.199,0:07:26.800

just as I say, seems wholly unnecessary - it's, it's irrelevant

0:07:26.800,0:07:30.000

information. (EP): And, I mean, let's think about, I mean,

0:07:30.000,0:07:33.919

the original purpose of making people

swear an oath

0:07:33.919,0:07:38.720

on the Bible or on whatever holy book or
by whatever god in, in many different

0:07:38.720,0:07:41.759

societies
was presumably to remind them of the

0:07:41.759,0:07:45.440

seriousness of what they were doing
and also, if you like, to put the fear of

0:07:45.440,0:07:48.800

God into them -
almost to have a deity in the background

0:07:48.800,0:07:52.800

as a guarantee of their good faith,
in theory anyway, although it's not the

0:07:52.800,0:07:55.360

case that people have never lied before
in court.

0:07:55.360,0:07:59.199

Do you think it's still necessary today, in our
much less religious times, for witnesses

0:07:59.199,0:08:02.400

to make a public declaration
that they're going to tell the truth?

0:08:02.400,0:08:06.800

(SE): Well, I think it is important to convey
the importance of what witnesses are

0:08:06.800,0:08:09.440

saying
and, and the legal ramifications of not

0:08:09.440,0:08:12.800

telling the truth
so yes, I think there is a value in

0:08:12.800,0:08:16.319

requiring witnesses to acknowledge

publicly before they give evidence that

0:08:16.319,0:08:20.560

they are
under a solemn duty to do that, so

0:08:20.560,0:08:25.440

uh, some sort of declaration to, I don't
know, focus the mind and remind witnesses

0:08:25.440,0:08:28.560

that if they fail to tell the truth
they'll be committing an offense

0:08:28.560,0:08:31.759

uh that's no bad thing - i just don't
think in the modern age

0:08:31.759,0:08:36.399

the, the sort of uh, multi-faith mish-mash
we have of religious oaths and

0:08:36.399,0:08:39.200

affirmations is, is really the best way of doing
that -

0:08:39.200,0:08:42.719

I don't find the argument that religious
people are more likely to tell the truth

0:08:42.719,0:08:45.920

if they're allowed to swear on their
holy book very persuasive -

0:08:45.920,0:08:48.959

um, if they want to lie they could just
affirm,

0:08:48.959,0:08:52.240

of course, um and the idea that we need
to

0:08:52.240,0:08:56.480

strike the fear of God into people just
seems like an idea that belongs to

0:08:56.480,0:08:59.680

another age really.

(EP): Absolutely but, but at the same time, as

0:08:59.680,0:09:04.320
you say, there, there does seem to be a
value in making people take what they're

0:09:04.320,0:09:07.680
saying seriously by
publicly declaring that they're going to

0:09:07.680,0:09:11.120
tell the truth.

(SE): Absolutely. (EP): In terms of, you've
spoken of

0:09:11.120,0:09:15.920
the mish-mash of the current system,
as is the case in many aspects of um

0:09:15.920,0:09:18.959
the British system as we've seen in
previous podcasts

0:09:18.959,0:09:22.000
there are lots of mish-mashes in, in
British law whether it's to do with

0:09:22.000,0:09:26.320
marriages or oaths
um or anything. So, as far as the oaths go,
what would

0:09:26.320,0:09:29.680
the NSS like to see in place of the
current system and why would your

0:09:29.680,0:09:33.360
proposal be better? (SE): Well, I think the
most
sensible thing to do would be to replace

0:09:33.360,0:09:36.000
the current system we have of religious
oaths and affirmations with

0:09:36.000,0:09:41.519
a simple universal declaration
of the solemn duty to tell the truth - so

0:09:41.519,0:09:43.760
a straightforward
statement of truth that would ensure

0:09:43.760,0:09:46.240
that all witnesses make the same
statement,

0:09:46.240,0:09:50.320
everyone's treated equally, jurors would
not be given the opportunity to make

0:09:50.320,0:09:53.519
value judgments about the witnesses
choice of oath so

0:09:53.519,0:09:57.440
uh, you know, a single declaration is the
way I would go

0:09:57.440,0:10:01.279
that would best protect everyone's right
to respect to a private life

0:10:01.279,0:10:04.160
as I say which is enshrined in the
Human Rights act so, some sort of

0:10:04.160,0:10:07.920
standardized oath
in which uh a witness is required to

0:10:07.920,0:10:10.640
promise
very sincerely to tell the truth and to

0:10:10.640,0:10:13.279
state that they understand that if they
fail to do so

0:10:13.279,0:10:16.880
they'll be committing an offence for which
they could be punished. This would

0:10:16.880,0:10:21.360
remove any distinction between witnesses,
um it would introduce a level playing

0:10:21.360,0:10:24.240
field that takes away the need for the person to reveal

0:10:24.240,0:10:28.640
their religious beliefs before they even give evidence, so it seems like a very

0:10:28.640,0:10:32.000
simple solution to me. (EP): That certainly sounds like, yeah,

0:10:32.000,0:10:36.079
clearing up some of the mess. Um, is.... What about in other European countries or

0:10:36.079,0:10:38.560
elsewhere around the world, are there any precedents for these,

0:10:38.560,0:10:42.560
this sort of proposal? (SE): Well, from what I know, I think the

0:10:42.560,0:10:46.160
the, situation in Europe is largely similar to

0:10:46.160,0:10:50.079
what we have in the United Kingdom. I think the secularization of Europe, this,

0:10:50.079,0:10:52.000
this shift away from religion that we've

0:10:52.000,0:10:56.720
seen has happened relatively quickly and I think the religious demographics have

0:10:56.720,0:11:00.160
probably changed faster than legal systems tend to in most European

0:11:00.160,0:11:02.959
countries - there will be a link between court proceedings

0:11:02.959,0:11:07.680
and religious beliefs because, as you indicated earlier, in an age of

0:11:07.680,0:11:11.600
pious beliefs swearing to God was thought to be the best means for encouraging

0:11:11.600,0:11:14.959
truthful testimony, I don't think that's the case now if it ever was,

0:11:14.959,0:11:22.399
so most European countries these days will allow witnesses who object to oaths to substitute it for some sort of secular affirmation

0:11:22.399,0:11:26.399
but I know France have a secular statement of truth and I think Denmark too

0:11:26.399,0:11:30.880
has abolished all oaths in legal proceedings so, if we

0:11:30.880,0:11:33.279
were to go down this route of a universal

0:11:33.279,0:11:37.040
standardized oath, I don't think we would be the first country to do it

0:11:37.040,0:11:40.959
but, you know, given that the UK is one of the most secular nations on Earth, albeit in outlook

0:11:40.959,0:11:44.720
not in constitution, of course, I think it

0:11:44.720,0:11:47.760
would be uh reasonable to lead the way on this one.

0:11:47.760,0:11:51.839

(EP): So how likely is it that, that your proposal, that the NSS' proposals, will

0:11:51.839,0:11:55.839
actually come into effect in the UK anytime soon?

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(SE): I think it's possible. Um, getting anything changed in this country,

0:12:00.399,0:12:04.560
as we know, uh, takes time but at the NSS um

0:12:04.560,0:12:08.959
we are in it for the long haul, um, but we will probably need to get the Law

0:12:08.959,0:12:12.399
Commission on board.
(EP) So the Law Commission aren't on board at the moment - it's

0:12:12.399,0:12:16.880
not something you've been talking about?
(SE): I don't think it's been uh within their

0:12:16.880,0:12:21.360
radar um, in recent years but in Ireland

0:12:21.360,0:12:24.639
uh, the Law Commission - there they've been quite vocal on this - they've been

0:12:24.639,0:12:26.880
campaigning to remove the oath based system

0:12:26.880,0:12:30.560
in its entirety in Ireland um, they want to

0:12:30.560,0:12:34.240
remove it to reflect the diversity and the inclusivity of Ireland they say.

0:12:34.240,0:12:37.360
They've also highlighted the tension between religious oaths and the right to

0:12:37.360,0:12:40.079
privacy so,
so, they clearly get it in Ireland and

0:12:40.079,0:12:42.959
there have been some changes in Ireland recently so

0:12:42.959,0:12:48.480
- you had to swear, make a religious oath, when you swore an affidavit in

0:12:48.480,0:12:51.519
Ireland that's,
that's been removed um so that was

0:12:51.519,0:12:55.920
removed in England and Wales some years ago
but that's recently been reformed and

0:12:55.920,0:12:58.480
the Irish Law Commission are saying you should go

0:12:58.480,0:13:01.839
further and actually come up with some sort of universal

0:13:01.839,0:13:06.320
affirmation as I'm suggesting here. That, that is exactly, precisely the

0:13:06.320,0:13:10.399
suggestion of the, the Law Commission in Ireland but in terms of the

0:13:10.399,0:13:13.360
Law Commission of England and Wales, I don't think this is something they have

0:13:13.360,0:13:15.920
raised yet but we'll certainly be lobbying them to,

0:13:15.920,0:13:20.079
to maybe put this within their scope of
work um, but it has been an issue in

0:13:20.079,0:13:23.760
England and Wales too -
the uh, the Magistrates Association back

0:13:23.760,0:13:28.000
in 2013
debated a motion to end swearing of

0:13:28.000,0:13:31.680
oaths
that was considered by the, I think the

0:13:31.680,0:13:35.440
AGM
of the Magistrates Association. Um, so

0:13:35.440,0:13:39.120
that was uh..... (EP): So that did not go
anywhere then
in the end?

0:13:39.120,0:13:43.120
(SE): No, it's a very similar uh suggestion to
what I'm suggesting - so just replace

0:13:43.120,0:13:46.720
oaths and affirmations with a
promise to very sincerely tell the truth

0:13:46.720,0:13:50.240
um and whilst it gained some support, it
was ultimately rejected

0:13:50.240,0:13:54.720
and I think some people argued that it
would problematically, in their view,

0:13:54.720,0:14:00.720
signal the erosion of Christian heritage
in Britain which - I don't think is a very

0:14:00.720,0:14:03.600
strong argument - but nevertheless, it was

defeated

0:14:03.600,0:14:07.760
but it does show that this issue is on
the radar and certainly some lawyers

0:14:07.760,0:14:11.360
recognize it as being a problem, so if we
can get the Law Commission on board

0:14:11.360,0:14:14.399
then perhaps we'll see a change um but
obviously

0:14:14.399,0:14:17.600
whilst we've still got an established
church and entrenched religious

0:14:17.600,0:14:20.639
privilege in this country,
any reforms that upset the religious

0:14:20.639,0:14:24.160
lobby or make them think that
Christian heritage has been eroded, uh

0:14:24.160,0:14:26.720
clearly it faces
an uphill struggle but I think the

0:14:26.720,0:14:31.199
proposals that I've set out are sensible
and, you know, hopefully sooner or later

0:14:31.199,0:14:34.560
we'll get there.
(EP): Stephen Evans, thank you very much.

0:14:34.560,0:14:38.390
(SE): Thank you.

0:14:41.920,0:14:44.959
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