DANCING THE HORAH? "CHARTING" DIRECTIONS FOR STATE, RELIGION AND QUÉBEC VALUES

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The Charter of Québec Values can be held up to constitutional scrutiny and criticized for the lack of connection between their objectives and the mechanisms envisaged for achieving them. Beyond that analysis, however, it is helpful to employ the metaphor of the 'horah', a Jewish circle dance, to probe the connections between directed choreography (top-down) and the actual movements of the dancers (bottom-up). The paper suggests that social projects require distinctive variations created by active participants, and refers to the Ethics and Religious Culture course in Québec high schools as a rich illustration of the lessons learned from watching (or dancing) the horah.

In August of 2013, the Québec government leaked news of a proposed Charter of Québec Values: the province planned to curtail the wearing of prominent religious symbols and dress in order to underscore the secular nature of its institutions and governance. In the weeks that followed, the government issued a set of proposals explicitly intended to establish the religious neutrality of the state, offer clear rules that weigh requests for accommodation against a backdrop of respect for gender equality, and affirm values fundamental to collective Québec identity. This set of proposals was something meant to 'chart' the way forward, something that tried to fix the ways in which we constitute ourselves as Quebecers and construct the society to which we belong and within which we interact. These proposals culminated in Bill 60[1], officially the *Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests*, but still referred to as the *Charter of Québec Values*, that was introduced in November 2013 in Québec's National Assembly by the Minister responsible for Democratic Institutions and Active Citizenship.

Any "charter" or "constitution" embodies state desire to define community, articulate dreams, and express commitment. The already established Charters — whether that of Québec or Canada — indicate the importance of individual freedoms and the protection of individuals from infringement of those freedoms. In Québec, individuals can bring claims of discrimination against other individuals, as well as against the state; under the Canadian Charter, individuals are primarily protected from discriminatory state action. The newly introduced Charter of Québec Values insisted that gender equality be built into the assessment of such claims, that clients of state services be protected from explicit or perceived discrimination stemming from the religious identities of state employees, and that the collective "face" of the state be transparently secular. The most striking mechanism to be implemented in the name of these objectives was to prohibit state employees from wearing ostentatious symbols or items of clothing — including a cross, a hijab, a kippah, a turban — assumed to be imbued with religious meaning.[2]

The immediate and understandable reaction to the Charter of Québec Values — and to the guidelines and legislated rules it incorporates — is to hold it up for scrutiny against already established constitutional frameworks and Charters of rights and freedoms guarantees. When we focus on how courts would respond to a hypothetical challenge to a rule forbidding state employees from wearing conspicuous signs of religious identity, we quickly end up assessing the proportionality of the objectives behind such a rule against the impact on individual fundamental human rights to expression, association, and belief. Constitutional invalidity is a fairly easy conclusion to that hypothetical assessment. Without disagreeing with the "values" put forward as primordial by the Québec government — including gender equality and the separation of church and state, both already built into implicit and explicit institutional principles, policies, and practices — it is questionable at best to assert that the proposed limits on individual self-presentation are the only or even one appropriate way to promote or secure those values.

The constitutionality of the provisions of Québec's proposed new Charter – that is, their consistency with freedoms guaranteed in the *Québec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms* – is indeed significant. But, as I suggest in this short essay, analysis of constitutionality is best understood as a starting point or frame, rather than as an attempted conclusion to an ongoing conversation. What is more complicated, and yet crucial, is the dynamic interplay of religion and state, individuals and communities, that happens both before and beyond courts and the constitutional analysis in which they are expert. Like a dance, that interaction is characterized by ongoing motion, steps that must be learned but can be modified, and intricate rules governing the moves by each dancer[3]. The search for a template in response to anticipated conflicts, or for a fixed, clear model meant to promise and deliver certainty is certainly understandable. It is the search embarked upon by the Québec government as self-named choreographer of the dance. Instead, however, the dance may defy the kind of choreography in which the state specializes. Rather than following the explicit parameters of rules and regulations, it might take on a character and direction unarticulated and even unimagined by any choreographer or director.

The "horah" as a particular dance provides a more precise metaphor for a societal project whose framework is crucial, but whose content only appears through performance. The basic forms, steps and music of the Jewish "horah" are handed down — steeped in tradition, developed over time, and shaped by fundamental rules. Everyone moves in a circle, holding hands, and crossing one foot over and then one foot under. Easy to learn, the steps are basic. Easy to join in, there is always space for another dancer. The circles can be big or small; dancers might sing along as they move; there is always some occasion for celebration that is marked by the dancing of a horah. No one is excluded; everyone becomes part of a moving, swaying, joyful community remembering its past, marking its present, and looking to its future. The contemporary government of Québec in 2013 might not have known how to dance a literal horah in the National Assembly. But its attempt to articulate what it called the "sacred values" of a shared Québec has much in common with a circle dance with simple, basic steps that everyone is invited to learn.

If we move beyond this basic description of the dance, or of a framework articulated through institutions of governance, what do we discover through its ever-changing performance? What does the dance actually look like and feel like, in its intensity, its "mixité", its constantly changing rhythms and shapes? Removed from the strictures and structures of human rights jurisprudence or legislative initiatives, the dance takes on a more organic form, something that has to be described from the ground up[4]. The backdrop, the dance floor, the basic steps might well be sketched through formal law, state policies, and shared tradition. But, when we start to pay attention to all the permutations and combinations that capture the ways in which people actually move vis-à-vis each other, then the creativity of the individual dancers comes into focus. A younger dancer has to slow down to match the pace of the elderly women on either side; an overly enthusiastic dancer has to stop to retrieve his hat, lost due to the ever-increasing speed of his circle. One dancer's steps are cautious in precarious heels; another's are confident and even creative in integrating some of the hip-hop moves she knows.

The basic choreography of the horah doesn't contain these details in the directions. Rather, it invites participants into the circle of a shared dance, and then hands over to those dancers the possibility of improvisation and variation. Indeed, the peculiarities of each dancer's interactions with others turn into the common material from which the dance is formed. The horah is thus both a simple communal activity, and a dance with endless variations - dependent on the occasion, the venue, the music, and most importantly, the people. By analogizing the Charter of Québec Values to a horah, we might imagine secularism as the dance floor and the related provisions as the fundamental dance steps. But, just as the space and directions don't capture the energy of the dance, there are limits inherent in drafting a project that tries to anticipate and resolve all conflicts between religious and state norms and narratives, principles and practices. Even the most explicit "lignes directrices" will count on real people to color in the lines. The dancers will assert their identities through their steps, their encounters with each other, and their shared but distinctive commitments to sustaining the horah's spirited swirl.

The "Ethics and Religious Culture" (ERC) course, a mandatory part of Québec's secondary school curriculum since 2008, is a concrete example of the lessons to be learned through this metaphorical reflection[5]. The ERC course is designed to enrich understanding of a variety of religious traditions and

to provoke discussion of ethical issues from diverse perspectives; no matter their own faith or cultural heritage, all Québec teenagers are expected to participate. In the coming months, the Supreme Court of Canada will decide an appeal from a Catholic high school whose request to meet the ERC requirement with an equivalent course taught from a faith-based perspective was refused by the Minister of Education[6]. Québec insists on the need for a uniform course, unmodified by the identity, history and vision of any particular school; Loyola High School insists that the government's cultural and faith-neutral approach to the course violates the school's confessional approach to its substance and pedagogy. There are lessons in the image of the horah for both. The high school, like any of the dancers, can accept its responsibility to execute the same basic steps as everyone else. And the government, as imagined choreographer, can accept the inevitability, and indeed desirability, of variations on a theme.

It is easy to see the parallel with discussion over the Charter of Québec Values. The suggested principles and rules were articulated in the name of communal endeavour or societal aspiration. In response, individuals and religious communities insisted that they could be part of the overall project without sacrificing crucial identity and protected rights. Just as was anticipated with an eventual constitutional challenge to the proposed Charter, the Loyola litigation will end with a court decision that articulates boundaries and provides conflict resolution. And yet the important conversation about religious diversity in the teaching of ERC — a principal site for ongoing reflection on the identity and institutions of today's Québec — will continue no matter the constitutional outcome. As with the horah, participants in Ethics and Religious Culture — teachers, administrators, parents, students, religious community leaders, and government representatives — will shape the ongoing delivery and content and repercussions of the course. Indeed, focusing on what actually happens in classrooms and corridors when adolescents learn and talk about Ethics and Religious Culture may well provide more guidance to the province and its educational institutions than any anticipated Supreme Court of Canada judgment.

As they learn the dance steps, and gain the confidence to imbue them with individual character, people will give meaning and value to their shared projects. It is their contributions that will inspire and fill out what have been labeled by a Québec government as the "sacred values" of a society. They will remind us that rules need flexibility, human interactions need supportive space, identity is always multi-faceted, and implementing a collective vision requires respect and celebration of the individuals and groups who come together. "Charting" the way ahead is not exclusively in the hands of the state and its governing institutions and tools; a "charter" takes on content and meaning only when it's figuratively claimed by everyone, dancing in circles together.

NOTES

[1] Bill 60, Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests, 1st Sess, 40th Leg, 2013, Québec (first reading). [Charter of Québec Values]

[2] Ibid . For types of employees affected and prohibited types of items see ss. 5 and 8. Also note the dual prohibition of religious symbols which cover an individual's face, which is embodied generally in s. 5 and specifically in s.6. This particular prohibition regarding face covering equally applies to individuals receiving government services and not only employees, see s.7.

[3] See Shauna Van Praagh, "Identity's Importance: Reflections of - and on — Diversity", (2001) 80 Canadian Bar Rev. 605-619.

[4] See Shauna Van Praagh, "Sidewalk Stories: Sites of Encounter and Co-Existence" in S. Azmi, L. Foster & L. Jacobs, eds., Balancing Competing Rights in a Diverse Society (Toronto: Irwin Law Books, 2012), and 'Sharing the Sidewalk' (2010) Canadian Diversity (Association of Canadian Studies) 6 (Special Issue on "Balancing Competing Human Rights")

[5] See Shauna Van Praagh, "From Secondary School to the Supreme Court of Canada, and Back: Dancing the Tango of 'Ethics and Religious Culture'" (2012) Fides et Libertas 102 (Journal of the International Religious Liberty Association; Volume Title: "Secularism and Religious Freedom: Conflict or Partnership?"), and "You Say 'Multi', I Say 'Inter', but Don't Call the Whole Thing Off", (2012) Canadian Diversity (Association of Canadian Studies) 21 (Special Issue on "Multiculturalism and Interculturalism: Convergence or Divergence")

[6] Québec (Procureur général) c. Loyola High School, 2012 QCCA 2139