THE SECULAR STATE IN QUEBEC: CONFIGURATION AND DEBATES

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"DE FACTO" SECULARISM IN QUEBEC

Quebec does not have a national constitution (since it comes under the Canadian constitution) or a law proclaiming state secularism. However, the Charter of Human Rights and Freedoms adopted in Quebec in 1976, as well as the 1982 Canada Act, contain express clauses guaranteeing freedom of conscience and religion, equality, and freedom of expression for all citizens. No state religion is instituted (at the provincial or federal levels). Religious activities are not subjected to any constitutional constraints. No provision is made to financially support Churches, and the state does not collect any taxes to be redistributed to religious communities. Nor are buildings of worship maintained at the expense of the state. For several decades, in numerous decisions issued by various courts, the jurisprudence has reiterated that state neutrality is an obligation that the state must respect in order to ensure equality and freedom of conscience for all citizens.

The state of Quebec is therefore, de facto, a secular state: it is not associated with a religion, does not aim to advantage or disadvantage any religion, and guarantees freedom of conscience and religion (Milot, 2002). Paradoxically, according to the preamble to the 1982 Canada Act, "Canada is founded upon principles that recognize the supremacy of God and the rule of law." While some may see this as an indication that Canada and hence the provinces are not secular, it must be noted that in all decisions handed down by the Supreme Court and the Federal Court, reference to God is legally ineffective in the interpretation of the law (*O'Sullivan* c. *M.R.N.* [1992]; *Baquial* c. *Canada (M.E.I)* [1995] 28 C.R.R.).

Most democratic countries are also, de facto, secular states. But in fact, the criterion of official separation between Church and State is not always enough to determine whether a state is secular. In the case of England, for example, the country may still have an official religion, but general laws are promulgated without having first been submitted to the authority of the Church of England, and furthermore, all citizens enjoy equal rights.

DIFFERENT TYPES OF SECULAR STATES

Secularism doesn't exist in a "pure" form, but instead functions as a regulating ideal that takes on various configurations within each democratic society. Secularism is a "development of the political realm by virtue of which freedom of religion and freedom of conscience are guaranteed, in conformance with a will to establish equal justice of all, by a state that is neutral toward the various conceptions of the good life coexisting in society" (Milot, 2002).

There is therefore not one model of secularism; instead, there are different types of arrangements between states and religions, as clearly illustrated by Quebec, Indian and French modi vivendi with the secular state. These variations are not directly linked to the fundamental principles of secularism, such as neutrality, freedom of conscience and religion, or equality. Rather, their differences lie in the way governments, courts of justice and citizens interpret these principles, whether secularism is openly proclaimed by the state or not.

For example, neutrality can take the form of an equal distancing of all religious influences, with symmetrical support given to each denomination in the areas of social assistance, education or tax exemption. Conversely, neutrality can be interpreted as the radical absence of any form of state action in the religious domain. These dissimilarities are normal, since secularism—like democracy or law—takes shape in the context of a specific political and legal history. Contrasting attitudes can therefore be observed from one secular state to another, such as accepting or prohibiting distinctive religious symbols among employees in public institutions.

Hence, all democratic states guarantee the internal dimension of the freedom of conscience and religion. However, when it comes to the external dimension of religious belonging (religious practices and requirements), they are observed to adopt very different acceptance criteria with regard to the scope and limits of the freedom of expression. Moreover, secular states do not all share the same vision of the role of religion in public life.

Quebec and Indian secularism largely distance themselves from French republican secularism in the way they do not strictly relegate expressions of religious belonging to the private sphere (Baubérot & Milot, 2011). Quebec and Canadian secularism favours a strong protection of individual rights. This logic of individual rights includes protecting believers against the group pressure to conform. In other words, an individual may differently and sincerely interpret a religious requirement that is not applied as strictly by other adherents. This broad and liberal interpretation of rights relative to freedom of conscience may be seen as a hallmark of Quebec and Canadian secularism, since, even in the interpretation of the law, "Any ambiguity or hesitation should be resolved in favour of individual rights," (Multani, 2006) and "irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials" (Syndicat Northcrest, 2004).

In contrast, Indian secularism does not seem to conceive of political life without religion and the contribution of various religious communities in the public sphere (Bhargava, 2010; Das & Nair, *intra*). Although article 14 of the Indian Constitution sets out that "the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India," this guarantee is not equivalent to the logic of human rights as understood in the West.

This said, differences between conceptions of the place of religion in the public sphere arise more sharply when they clash within the same society. This is the case in Quebec, as we will see, but also in India, where secularism is more strongly criticized today than it was when it was written into the country's constitutional preamble in 1976 by the 42nd Amendment. This criticism has come from different currents, including the Bharatiya Janata Party that promotes a Hindu national ideology (Sen, 2005).

SOCIAL AND POLITICAL USAGE OF THE NOTION OF SECULARISM

Before the turn of the present century, the word "secularism" rarely came up in Quebec debates. In 1999, a task force working on the place of religion in schools published a report recommending that the public school system be secularized (Task Force, 1999). The school was the last public institution to remain legally denominational (Catholic or Protestant), even if the internal secularization of schools was the rule rather than the exception. The recommendation was put forward as way of respecting the freedom of conscience and the equality of all citizens, as well as the need for the school to align itself with the secularization of Quebec society. On July 1st, 2000, public schools in Quebec relinquished denominational status.

At the time, even if the report's title included the word "secular," the social and political usage was instead to talk about "deconfessionalization," a neologism that sought to mark a distance from the radical representation of French secularism. The report went so far as to describe the secularization promoted in its recommendations as "open secularism." It thus wished to assert that secularization did not mean schools would reject any individual expression of religious belonging or any religious instruction. To the contrary, the report reaffirmed that freedom of conscience and religion remained an individual right protected by the Charter of Rights, and it recommended that religion be taught from a cultural standpoint to promote a better understanding of diversity. Today, a class on ethics and religious culture is offered in all schools throughout Quebec.

However, several years were to pass before secularism would arise in social and political debates, and when it did, it was linked with the expressions of religious belonging in public life. More specifically, a number of citizens, politicians and secular advocacy groups strongly reacted to accommodations granted for religious reasons so individuals could respect religious requirements relating to dress, culinary habits, or work schedules in public institutions. Indeed, "reasonable accommodation" is a legal obligation, an extension of the right to equality.

By declaring accommodation obligatory, the Supreme Court wished to remedy cases of involuntary discrimination, referred to as "indirect" discrimination. Reasonable accommodation applies to all cases in which discrimination is prohibited by art. 15 of Constitution Act, 1982 (race, national or ethnic origin, colour, religion, sex, age, mental or physical disability). An example is work schedules that are established for all employees, but conflict with moments of worship for certain denominations. If legitimate and evenly applied norms, regulations or policies produce indirect discrimination against certain persons, then institutions or businesses must seek accommodations taking these individual needs into account, within reasonable limits. These limits can be based on the excessive cost of a request, its hindrance to the functioning of an institution, or the rights of others (Woehrling, 1998).

Among other things, accommodation offers a way to eliminate obstacles to the participation in or dealing with public institutions. Hence individuals do not need to choose between maintaining expressions of religious belonging (for example carrying a religious symbol) and enjoying inclusion as members of a public institution. Reasonable accommodation therefore preserves the neutrality of the state, which, consistent with this principle, should not infringe on any religious belief.

Even so, requests for accommodations made in the name of religion produce greater disturbance than any other motives. A woman undergoing chemotherapy and wearing a headscarf is not a problem, while a similar veil worn by a Muslim woman is perceived as an ostentatious and ideological symbol at odds with the value of equality between men and women. This example illustrates how, even if we live in a society that values individual autonomy, accommodation requests stemming from personal "choice" (particularly religious) appear to be less admissible than those arising from "circumstances" (an accident or illness). And yet, the Charter of Human Rights precisely includes freedom of conscience and religion with a view to protecting personal choices.

DIVERGING CONCEPTIONS OF SECULARISM IN QUEBEC

In Quebec, highly contrasting conceptions fuel debates on secularism: on one hand, a national and French-style republican conception, and on the a pluralist and liberal conception of integration (Milot, 2009a).

Issues of secularism in Quebec involve factors associated with a specific social context. Quebec is the only Canadian province with a majority of French speakers, but also of declared Catholics. For this population—a minority in Canada—the question of identity is especially acute. The complex problem of secularism is very revealing of this fact, as it is situated at the crossroads of common values, citizen integration, and, more fundamentally, national identity. It is in Quebec that the starkest criticism has arisen about the apprehended social effects of accommodations granted to individuals in public institutions for religious reasons. In 2007, a commission on accommodation practices related to cultural differences was mandated by the Quebec government to look into the situation (Commission, 2008). It concluded that the problem had to do with "perceptions," since accommodations do set guidelines and can promote integration.

Those who oppose accommodations for religious reasons see them as a threat to Quebec identity and a risk of losing ground in gender equality, since religions are "by their essence" unfavourable to women (the veil carried by Muslim women is especially cited in this regard). Secularism is thus defined by the prohibition of any public manifestation of religious belonging and is a gauge of sharing common values. Additionally, in this vein, government employees displaying religious symbols contravene the neutrality of the state. Republican secularism requires the "apparent" or visible neutrality of individuals. The French model of secularism, at least in some of the forms it has taken—such as the March 15th, 2004, law on the wearing of religious symbols, or the requirement of apparent neutrality among employees—is attractive to the proponents of this position.

Other population segments favour a conception of secularism that is more welcoming of all public manifestations of religious belonging. In this view, religious expression has its place in the public sphere as long as it respects the rights of others and the public order. The adherents of this position maintain that religious expression in public life is not a negation of common values. From the perspective of an open secularism, individuals can be non-secular in their personal lives, while being full-fledged members of a secular political society. Likewise, from this standpoint, it is impossible to presume that religious symbols worn by state employees interfere negatively with the accomplishment of their work. Furthermore, the appearance of neutrality does not mean that non-apparent convictions (racism, etc.) cannot induce a bias in the work of state employees.

Although a plurality of conceptions is normal and healthy in a democratic society, it appears difficult to reconcile these antagonistic visions. Since each political party adopts a different vision of secularism, it remains to be seen what impact the integration of diversity might have on a charter of secularism, as promoted by the Parti Québécois, which is leading a minority government at the time of writing (Milot, 2009b). One of the aims of this charter is to ban religious symbols in the public sphere. It is not as yet evident if this will nurture a more inclusive common sphere of citizenship and the ability to live together.

REFERENCES

Baubérot, J. & Milot, M. [2011] *Laïcités sans frontières*. Paris: Seuil.

Bhargava, R. [2010] *The Promise of India's Secular Democracy*. Oxford: *Oxford University Press*.

Commission sur les pratiques d'accommodement liées aux différences culturelles *Building the Future: A Time for Reconciliation*, Québec, 2008.

Milot, M. [2002] *Laïcité dans le Nouveau Monde. Le cas du Québec*. Bibliothèque de l'École des Hautes Études, Turnhout: Brepols Publishers.

Milot, M. [2009a] «L'émergence de la notion de laïcité au Québec: résistances, polysémie et instrumentalisation», dans P. Bosset P. Eid *Appartenance religieuse, appartenance citoyenne. Un équilibre en tension*, Québec: *Presses de l'Université Laval*: 29-71.

Milot, M. [2009b] "Modus co-vivendi: Diversity in Canada." International Migration and the Governance of Religious Diversity. P. Bramadat et M. Koening (Ed.) *McGill-Queen University Press*, 2009: 105-129.

Multani *c.* Commission scolaire Marguerite-Bourgeoys [2006] CSC 6.

Sen, A. [2005] *The Argumentative Indian. Writings on Indian History, Culture and Identity*. London, Penguin Books.

Syndicat Northcrest c. Amselem [2004] 2 R.C.S. 551, 2004 CSC 47.

Task Force on the Place of Religion in Schools *Religion in Secular Schools: A New Perspective for Quebec*, Quebec, Gouvernment of Quebec [1999].

Woehrling, J. [1998] «L'obligation d'accommodement raisonnable et l'adaptation de la société à la diversité religieuse», *Revue de droit de McGill/McGill Law Journal*, 43: 325-401.

L'ÉTAT LAÏQUE AU QUÉBEC: CONFIGURATION ET DÉBATS

Même si le Québec a connu un réel processus de laïcisation pendant les deux derniers siècles, celui-ci s'est déroulé sans incorporation explicite dans le droit du principe de laïcité ou de séparation de l'État et des religions, comme ce fut le cas en France ou aux États-Unis. Le Québec est néanmoins un État laïque qui n'est lié à aucune Église, qui ne favorise ni ne défavorise aucune religion et qui garantit la liberté de conscience et l'égalité de tous les citoyens. La laïcité québécoise se distancie largement de la laïcité républicaine française, en ce qu'elle ne relègue pas à la stricte sphère privée l'expression de l'appartenance religieuse. La laïcité québécoise et canadienne privilégie une protection forte des droits individuels. Cependant, cette approche est critiquée par les tenants d'un nationalisme identitaire au Québec et il y a débat sur les modes d'intégration de la diversité, notamment religieuse, à la société québécoise.

Par rapport aux débats canadiens concernant l'aménagement de la diversité religieuse, les débats entourant la laïcité au Québec intègrent des variables liées au contexte spécifique du Québec. Même si les politiques québécoises attestent de l'importance de l'immigration, il s'agit de la seule province canadienne avec une majorité francophone, mais également de catholiques déclarés. Pour cette population, minoritaire au Canada, la question identitaire se pose de manière plus aiguë. La problématique relative à la laïcité en constitue un excellent révélateur. Elle croise la question des valeurs « communes », de l'intégration citoyenne et, plus fondamentalement, celle de l'identité nationale. Ainsi, c'est au Québec que se formulent les critiques les plus vives concernant les effets sociaux appréhendés des accommodements consentis aux individus dans les institutions publiques, pour des motifs religieux.

Soulignons que le terme laïcité est entré récemment dans l'usage social au Québec, principalement en lien avec la question des aménagements de la diversité religieuse dans la sphère publique. On peut aisément discerner au cœur de cette soudaine appropriation populaire du terme laïcité des attentes pour que l'État définisse clairement la laïcité québécoise et les exigences qui en découleraient. Ces attentes révèlent une tension vive au sein de la société québécoise entre deux conceptions divergentes de la laïcité: une conception plus stricte de la laïcité, évacuant toute expression religieuse de la sphère publique pour favoriser le partage des valeurs communes ; une laïcité qualifiée d'« ouverte » qui allie l'expression de la diversité religieuse à un gage d'intégration. Il existe un spectre de positions à l'intérieur de chacune, mais il s'agit de deux tendances lourdes, portées par des acteurs différents, et qui sont illustrées, entre autres, par deux manifestes parus à quelques semaines d'intervalle en 2010: le « Manifeste pour un Québec laïc et pluraliste » et le « Manifeste pour un Québec pluraliste ».

D'une part, le Parti québécois, des groupes laïcistes militants et des segments nationalistes-conservateurs de la population se font les défenseurs d'une conception de la laïcité justifiant une limitation stricte des diverses formes d'expression religieuse dans la sphère publique. La religion et les préceptes qui en découlent devraient être confinés à la sphère privée. Ce positionnement est basé sur le postulat que la religion relève de l'ordre de l'option personnelle (parfois même une forme d'aliénation) et que son expression publique peut entrainer un non-respect des valeurs communes, notamment le principe d'égalité hommes-femmes, et entraver le processus de convergence identitaire. Afficher une appartenance religieuse peut devenir une menace pour le vivre ensemble. La laïcité est alors

présentée comme une valeur de la société québécoise. D'autre part, d'autres segments de la population se montrent favorables à une conception de la laïcité plus accueillante à l'ensemble des manifestations publiques de l'appartenance religieuse. Reflétant une approche libérale et inclusive, la laïcité « ouverte » invite à reconnaître l'importance de la neutralité de l'État et de ses institutions, mais également, l'importance tout aussi grande de la liberté de conscience et de religion, permettant aux citoyens d'exprimer leurs convictions religieuses dans la mesure où cette expression n'entrave pas les droits et libertés d'autrui. Cette approche, pour ses défenseurs, favoriserait une meilleure intégration que la non-reconnaissance de la diversité religieuse et donc, de composantes fondamentales de l'identité de plusieurs citoyens.

Si les pratiques d'accommodements raisonnables s'exercent depuis plus de vingt ans au Canada, dont au Québec, elles paraissent menaçantes pour une partie de la population qui craint l'effritement de l'identité québécoise et la neutralité de l'État. Pourtant, les lois et les politiques publiques doivent prendre en considération le fait qu'un État qui ne veille pas à apporter des correctifs aux discriminations indirectes que subissent des citoyens, même si celles-ci ne sont pas voulues par lois générales, perd sa neutralité, car il laisse se produire des inégalités. C'est ainsi que les accommodements raisonnables sont compatibles avec la neutralité de l'État et parfois nécessaires pour la préserver.

Toutefois, il est remarquable de constater à quel point les demandes d'accommodement dérangent davantage si elles sont formulées au nom de la religion plutôt que d'un autre motif. Ainsi, il est tout à fait accepté qu'une femme qui subit des traitements de chimiothérapie porte un foulard pour couvrir sa tête, alors qu'un voile semblable arboré par une femme musulmane est perçu comme un signe ostentatoire et idéologique, allant à l'encontre de la valeur d'égalité entre les homme et les femmes. Cet exemple illustre que même si nous vivons dans des sociétés où l'autonomie individuelle est valorisée, les demandes fondées sur un « choix » personnel (religieux tout particulièrement) semblent moins recevables que celles relevant de « circonstances » (accident, maladie). Pourtant, c'est précisément pour protéger ce choix personnel que les Chartes des droits de la personne incluent la liberté de conscience et de religion.