Religion and the State:

in Defense of *la Laïcité Inclusive*

Marc Gold

Marc Gold is Vice President of Maxwell Cummings and Sons Holdings Ltd. and an Adjunct Professor of Law at McGill University. As a volunteer, he serves as President of Federation CJA and Co-President of *La Fondation de la Tolérance*.

ABSTRACT

This article considers the issue of the relationship between religion and the state from the perspective of recent developments in Quebec, notably the reasonable accommodation debate, and addresses the meaning attached to the concept of *la laïcité* as the framework for addressing the issues. The author offers a conception of *la laïcité inclusive* that is rooted in the historical and constitutional traditions of Quebec and Canada.

Introduction

The role of religion in Canadian society has been in the news across Canada for some time now, so no ink need be wasted on justifying the relevance of this edition of *Canadian Diversity*. Nevertheless, it is important to recall that this is not a new issue. The relationship between religion, society and state has been a core driver in the evolution of the modern western state for the past five centuries, and has been an ongoing theme in Canadian public life, both before and since Confederation. As I will argue, the Canadian way of addressing these issues demonstrates a wisdom upon which we can and should rely as we confront the questions currently being debated.

This article addresses the issue from the perspective of recent developments in Quebec, notably the reasonable accommodation debate and the establishment of the Bouchard-Taylor Commission.[1] This is not because the issue is limited to Quebec. On the contrary, the debate in Quebec both reflects and informs what has and will be played out in the rest of Canada and the western world, albeit in different keys and tempos. But the specific history of Quebec and the rapid social and demographic changes that have characterized the past fifty or so years give the issue a particular dimension and focus that is both unique and instructive.

Framing the issue: on the meanings of *la laïcité*

If the reasonable accommodation debate in Quebec has turned on (and been fueled by) the intense media focus on a number of discrete incidents – most of which have nothing to do with the notion of reasonable accommodation as a legal concept – the intellectual debate in Quebec has centered on the concept of *la laïcité*, a concept which can be translated only imperfectly as secularism.[2] More particularly, the debate has been on which conception or interpretation of *la laïcité* ought to be adopted in Quebec.

To understand the significance of the issue in Quebec, one must say a few words about history, the role of the Church and the current state of anxiety about the future of Quebec identity.

As is well known, organized religion in general, and the Roman Catholic Church in particular, played a larger role in the public life of Quebec than it did elsewhere in Canada. Indeed, up until the mid twentieth century, the Church exercised many of the functions that were otherwise assumed by the state elsewhere.[3] This changed radically in the post-war period with the Quiet Revolution, a central element of which was the displacement of the Church from its previously dominant role and the rise of an activist state. This legacy has resulted in a fear that any recognition of religion in the public sphere would represent a step backwards from the hard-won achievements of personal freedom and equality that are invoked as the achievements of the Quiet Revolution. At the same time, there remains the perennial concern amongst many Quebecers of French origin that, as a minority within both Canada and North America, their culture and identity remains fragile and in need of special protection. In the face of the increasing number of immigrants from non-Christian backgrounds and their demands (real and perceived) that their religious and cultural practices be accommodated, many Quebecers are insisting that the state not yield to those demands but should legislate to preserve, if not indeed privilege, the patrimonial (read Catholic) heritage of Quebec.

This complex dynamic informs the current debate in Quebec concerning the role of the state and religion. For some, the invocation of the concept of *la laïcité* is sufficient in itself to resolve the debate. Given that the state is now *laïc*, religion simply has no place in the public sphere. And so it has been argued that all religious symbols ought to be removed from public space; that public employees ought to be prohibited from displaying their religious affiliation in their manner of dress or ornamentation; that no accommodation on religious grounds should be permitted for public employees, and so on.

But this is to adopt one and only one interpretation of *la laïcité*, one that is inspired by the model in France as it is currently understood. Notwithstanding its virtue of apparent simplicity, one should not adopt the French model uncritically. First, it is deeply rooted in the particular history of France, in the religious conflicts that marked its history and in its choice of a republican model of government. Moreover, it took over a century before it was formally adopted in France, and it remains the subject of a vigorous debate and reevaluation, as its limitations as a tool of integration are becoming more manifest.[4]

But most importantly, it simply is not our model. There is a Canadian and Quebec conception of *la laïcité*, even if the term has not been used to describe it up to this point. This conception has the twin virtues of being grounded in our history and social context and of providing the best answer to the modern challenges of life in an increasingly diverse and pluralistic society.

Towards a home-grown model: *la laïcité inclusive*

The Canadian approach to the relationship between the state and religion has evolved over time, but it finds its modern expression in the jurisprudence based upon the *Canadian Charter of Rights and Freedoms*[5] and the *Quebec Charter of Human Rights and Freedoms*,[6] as well as upon the human rights legislation at the federal and provincial levels. This approach rests on three main pillars: (1) the neutrality of the state vis-à-vis religion; (2) the guarantee of freedom of religion; and (3) the concept of reasonable accommodation as a legal response to an infringement of rights. In Quebec, one should add a fourth element, that of the recent deconfessionalization of the education system.[7] To join issue with the language of the current debate in Quebec, one can describe this as a model of *la laïcité inclusive*.[8] In broad terms, this model provides the framework through which to address many of the issues of the day.

The state should be neutral with respect to religion in the sense that it should not promote one religion over another. But the principle of the neutrality of the state does not mean nor require that the state banish all signs of religion from the public space. State neutrality towards religion does not necessarily mean state hostility towards religion. Nor should it.

Many citizens take their religious beliefs seriously as being fundamental to their identity. They see the expression of those beliefs as an important part of who they are in all aspects of their life, both private and public. This does not necessarily entail a rejection of a vision of Quebec or Canadian society that is secular and democratic, nor a desire to remove themselves from full participation as citizens. In a society that is increasingly diverse and global, it is increasingly clear that we all have multiple and composite identities that cannot be reduced to one Procrustean model.[9] Nor in a free and democratic society should we be required to deny those dimensions of our personhood that are most central to our existence.

These considerations underpin the constitutional guarantee of freedom of religion we find in both the Canadian and Quebec Charters of Rights. Properly understood, freedom of religion is an important element in our conception of the neutrality of the state with respect to religion, not a value that is in conflict with it.

The concept of the neutrality of the state also requires that individuals and groups be treated equally, and that rules and practices that discriminate on the basis of religion be avoided to the fullest extent possible. It is in this respect that the concept of reasonable accommodation is best understood, as a legal concept designed to militate against an infringement of rights. To be sure, the public debate in Quebec has almost totally stripped this term of its proper legal meaning and scope, applied as it has been to all matters of private arrangements between neighbours, to individual initiatives of entrepreneurs, and so on. Nevertheless, properly understood, the concept of reasonable accommodation is an important and necessary component to our commitment to equality and to the neutrality of the state in matters of religion.[10]

What then of the issue of religious symbols in public spaces? The short answer is that it depends. In this regard, one can and should distinguish between different kinds of public buildings and spaces. Different answers may well be appropriate when dealing with hospitals as compared with schools, or as between schools and official government buildings. Furthermore, one can and should distinguish between the different roles that people play in those public spaces, whether we are dealing with teachers and students, or judges and their support staff. One might also sensibly draw lines between religious symbols that are permanent, and those that are temporary or seasonal.

Consider for example the question of the wearing of religious symbols in public schools, an issue raised on a number of occasions before the Bouchard-Taylor Commission. The general rule in Quebec is that students are free to display their religious conviction in their dress.[11] As for teachers, there is no hard and fast rule. The current debate seems to turn on whether teachers ought to be prohibited from displaying religious symbols in their dress so as to communicate the secular nature of the public school system, or should be free to express their religious belief through their dress, thereby educating students about the diversity of their society. I find the latter argument more compelling, but reasonable people may and do disagree.

Limited space permits only a broad examination of all the issues at hand, and in a sense, entering into a detailed examination would contradict one of the central points of my argument. There is rarely one right answer to many of the issues, and much depends on the context and the judgment of the actors seized with the particularities of the decision. What is important is that all of the rights, interests and social policies at stake be taken seriously, and that the analysis should not be short-circuited by a rigid adherence to an inflexible and static model. Often the best one can hope for is a sensible choice from amongst the range of options that are reasonable and not unjust.

Conclusion

I have argued for a conception of *la laïcité inclusive* as the model for addressing the reasonable accommodation debate in Quebec and elsewhere in Canada, based as it is on the principles and values embodied in the Canadian and Quebec Charters of Rights. This is not to defend every

decision of the courts. Indeed, one may disagree with how the Supreme Court struck the balance in any one of their recent decisions.[12] Nevertheless, this basic approach to resolving these issues – taking seriously the rights in question and the policy justifications for their limitation – remains sound.

One may object that this approach and the model of *laïcité* are simply not up to the task of resolving the hard questions that arise in particular circumstances. To admit that there may be no uniquely right answer, or that reasonable people may disagree, is to admit that the model resolves nothing at all.

But in a deep sense, this is the point. The model provides the framework for a conversation and debate about what is truly important to us as citizens. This is both healthy and necessary in a democratic and pluralistic society.[13] What do we share together as common public values, and how do we structure our lives together in light of what may be differences that are fundamental to our own unique and multiple identities? The approach that we have developed over time – the neutrality of the state with respect to religion, a commitment to freedom of religion and to equality – provides us with both the space and the opportunity to engage in this conversation as citizens.

I would go one step further. The model of *la laïcité inclusive* expresses a deep and profound vision of society, one that is no less profound for having evolved incrementally as opposed to having been designed rationalistically. This vision affirms the importance of a common set of public values that are constitutive of our political culture, as expressed in our constitutional documents and jurisprudence and, in the case of Quebec, with the affirmation of French as the official language. It is a vision that respects and protects the liberty and autonomy of individuals and insists that people be treated as equals and with respect. At the same time, it recognizes that people are more than simply rights-holders, that there is a complex integrity to human personality that our legal and social structures must reflect. Accordingly, while protecting the important values of individual liberty and autonomy, this vision also recognizes the extent to which religious and other communities are constitutive of personal identity,[14] thereby melding the protection of individual and collective rights into our constitutional framework.[15] Simply put, we have developed an approach which takes into account the fundamental facts of social coexistence while accommodating the competing demands of personal autonomy, equality and social solidarity.[16]

If what we have achieved is precious and worth preserving, one should not lose sight of its fragility. We need political and intellectual leadership that explains and defends the magnificent achievement of our pluralistic democracy, not leadership that exploits citizens' anxiety about their future or rests silent as others pander to peoples' fear of "the other". We need our schools better educate our children about the common values that we share as citizens, about the richness and diversity of our increasingly pluralistic society, and of the ways in which the inevitable social frictions that arise in such a society can be managed in a civilized and neighbourly fashion. Let us not take for granted what we have built together. Much still needs to be done to secure it for our future.

Notes

1 *La Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles*, Décret 95-2007.

2 In France the concept of *la laïcité* refers essentially to the separation of Church and State, but it has become the battleground for different conceptions of what that separation entails. I use the French concept here to maintain the tension surrounding the meaning to be given to it, a tension that would be blunted if not lost by using the more familiar, but not totally accurate, translation of secularism.

3 Notable examples include the areas of education, health care and welfare services.

4 See Beaubérot, J. (2006). *L'Intégrisme républicain contre la laicité.* La Tour d'Aigues: Éditions de l'Aube.

5 *The Constitution Act, 1982*, Part I, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

6 R.S.Q. C-12

7 Milot, M. (2005). Neutralité politique et libertés de religion dans les sociétés plurielles : le cas canadien. In J. Beaubérot and M. Wieviorka (Eds.), *De la séparation des Églises et de l'État à l'avenir de la laïcité* (pp. 274). La Tour d'Aigues : Éditions de l'Aube.

8 Supra note 4.

9 See Maalouf, A. (1998). *Les Identités meurtrières.* Paris : Éditions Grasset. See also Maclure, J. (2003). *Quebec identity: The challenge of pluralism.* Kingston: McGill-Queens University Press.

10 See Woehrling, J. (1998). L'obligation d'accommodement raisonnable et l'adaptation de la société à la diversité religieuse. *Revue de droit de McGill*, 43, 325.

11 See, e.g. *La laïcité scolaire au Québec. Un nécessaire changement de culture institutionnelle.* Avis au ministre de l'Éducation, du Loisir et du Sport. Octobre 2006. www.mels.gouv.qc.ca/affairesreligieuses/CAR/PDF/Avis_LaiciteScolaire.pdf

12 Notable examples include *Multani v Commission scolaire Marguerite Bourgeoys*, [2006] 1 S.C.R. 256, concerning the wearing of a *kirpan* in school; Syndicat *Northcrest v. Amselem* [2004] 2 S.C.R. 551, concerning the erection of a *sukkah* on a condominium balcony; and *Bruker v. Marcovitz*, 2007 SCC 54, concerning the validity of an agreement that the husband grant a religious divorce (*get*) immediately upon the civil dissolution of their marriage.

13 One might go so far as to say that one of the most important functions of our core values like freedom, equality, democracy and so on are that they exist to be argued about. In this respect, the notion of *la laicité*, like so many of our important notions, is best understood as a contested concept, one that admits of a number of different conceptions or interpretations. They may share the same conceptual and linguistic form, but cash out quite differently as applied in the world. See Connolly, W. (1983). *The terms of political discourse.* Princeton: Princeton University Press.

14 See Taylor, C. (1989). *Sources of the self: The making of the modern identity.* Cambridge: Harvard University Press.

15 See Kymlicka, W. (1995). *Multicultural citizenship*. Oxford: Clarendon Press.

16 For a philosophical defense of this vision of society, see Rawls, J. (2001). *Justice as fairness: A restatement.* Cambridge: Harvard University Press.