Islamophobia in Canada? Women's Rights, Modernity, Secularism

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The Public Management of Religion: From State Building to New Forms of Minorities' Mobilization

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Abstract

Policy-makers in Canada, as in other Western countries, must respond to new dilemmas over how to accommodate new religious minorities and oppose deeply rooted attitudes about religion's influence on civil society on the whole. Islam in particular is more than often perceived as a very serious source of conflict by ultra-secularists, feminist organizations and xenophobic segments of public opinions. In this paper we will describe the main postulates of these three groups' negative views of Muslims in Canada.

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Shall we go on conferring our Civilization upon the peoples that sit in darkness or shall we give these poor things a rest? . . . Would it not be prudent to get our Civilization-tools together, and see how much stock is left on hand in the way of Glass Beads and Theology, and Maxim Guns and Hymn Books, and Trade Gin and Torches of Progress and Enlightenment, and balance the books, and arrive at the profit and loss, so that we may intelligently decide whether to continue the business or sell out the property and start a new Civilization Scheme on the proceeds?

Mark Twain, *To the Persons Sitting in the Dark*, 1900[2]

Since the 1990s, we have seen three forms of negativity toward immigration in Western societies: xenophobia, a strong rejection of asylum seekers and illegal migrants, and Islamophobia (Cole 2009), a term coined in 1997 in Britain by Runnymede Trust to describe extreme hostility toward Muslims. In this paper, three ideological foundations of the hostility towards Islam by significant segments of the Canadian population will be

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[2] Text written during the 1900 U.S. election campaign, when the Republican Party referred to the "dark places of the earth".

described, i.e. the belief in the forward socio-economic and political progress of Western societies and in the backwardness of Muslim cultures and societies; a narrow, ethnocentric definition of gender roles; the opposition to any political influence by faith-based organizations and a fundamentalist view of the separation between State and Church. These ideological foundations help to understand the negative discourses on 'Islam' in Canada, notably in Quebec, where cultural nationalism, ultra-laicism, and defiance of judicial power are strong.[3]

Debates on religious minorities

As in France, where the debate on the wearing of the *hijab* has been ongoing since 1989, the first public debate on the wearing of the Islamic headscarf emerged in Québec in 1994–1995. The idea of it being impossible for Muslims to follow the precepts of modernity or of Muslims refusing to do so, in this case with regard to gender equality, underlay this debate, which abated with an opinion from the Québec Human Rights Commission on the legality of wearing religious markers in view of the right to religious freedom enshrined in the Québec Charter. Another public debate, which received extensive media coverage, began in 2001 after the terrorist attacks in the United States and the adoption of anti-terrorism measures. Starting in 2003 after the dissemination of data from the 2001 Canadian census showing a large increase in the Muslim population, religious markers in the public sphere, especially at school, and the debates on this issue in Europe, particularly in France, again attracted the attention of polls and the media. The renewed recourse to come to the notwithstanding clause allowing for Catholic and Protestant teaching in Québec public schools also generated controversy on the status of religion in the public sphere, and, in 2004, the general public's "discovery" of the existence of faith-based arbitration courts in Ontario sparked widespread debate across Canada. Several events then intensified this debate, which has been ongoing ever since: in 2006, the Supreme Court ruling on the legitimacy of wearing the *kirpan* at school, the setting up of the Québec Consultation Commission on Accommodation Practices Related to Cultural Differences (CCAPRCD 2008); in 2007, discussion surrounding the wearing of the *burqa* by female voters and the public funding of Catholic schools in Ontario; in 2008, the introduction of Québec's Ethics and Religious Culture Program; and since then, discussions on so-called honour crimes in Ontario, polygamy and forced marriages.

These debates have been accompanied by large media coverage of the incidents in question – often created by pressure groups and politicians – which gives the impression that Muslims are incessantly demanding recognition of special practices. Trivial facts have been turned into news widely disseminated by local newspapers: the wearing of the headscarf on a soccer team in Edmonton and on a judo team in Manitoba; the skirt length of a female employee at the Toronto airport (*National Post* 2007); the publication of the Hérouxville (population 1,300) town council's code of conduct in 2007 instructing newcomers that, in the village, women were not to be stoned, burned alive, or have acid thrown in their faces; the confusion of the Director General of Elections and the Prime Minister about the right to wear a *burqa* during the October 2007 voting.

The cultural and religious differences manifested by immigrants have been the subject of debates and open dissension amongst Canadians since the 1980s. In a 1991 poll (Angus Reid 1992; Helly 2004), before the emergence of public conflicts about Muslim and Sikh customs, 58% of Canadians agreed that the government should support the preservation of minority cultural customs as long as these customs respected rights and

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[3] The social mistreatment of Muslims in Canada, i.e. the socio-economic discrimination (access to jobs, job promotion), the victimization (hate crimes), and the criminalization (ethnic profiling, effects of anti-terrorism measures) have been described elsewhere, see Helly 2002, 2004, 2005, 2008, 2009a, 2009b, 2010.

freedoms. Therefore polygamy, arranged marriages, and the idea of men being superior to women should be prohibited. Responses to other questions in the same poll clarified the level of agreement: 42% thought that national unity was weakened by ethno cultural minorities persisting in their traditions, 32% that immigrants should forget their culture as quickly as possible, and 39% that, if immigrants wanted to preserve their customs, they should do so only in private. Moreover, 15% stated that marriage between people of different "races" was a bad idea, and 18% that multiculturalism was destroying the Canadian way of life.

The positions expressed in 1991 and the differences in public opinion that they showed changed little afterwards. Surveys show that about a third of other Canadians "do not feel comfortable" with Muslims. In general, Canadians have a more positive view of Christians and Jews than of Muslims. In a July 2006 poll (Association of Canadian Studies), 24% of respondents said they had a very or somewhat negative view of Muslims (compared with 10% having a negative view of Christians and 9% having a negative view of Jews). In October 2006 (Environics / *The Globe and Mail*), 37% of respondents said they had a generally negative impression of Islam, due to its treatment of women (21%), the violence associated with it (19%), its links to terrorism (17%), its intolerance (11%), and its extreme positions (11%). When the respondents knew some Muslims personally, their impression of Islam was more positive. A few months later (Sun Media poll, December 2006 – January 2007), 51% of respondents said that they were not racist at all, and 47% that they were. Moreover, 53% said that they had developed a high opinion of people of Arab origin, compared with a larger majority of respondents having a high opinion of people of Italian, Asian, Jewish or Black origin. In September 2008 (Léger Marketing poll), 36% of respondents said that they had an unfavourable impression of Muslims. And, in April 2009 (Angus Reid poll), 72% of respondents said they had a very favourable opinion of Christianity, 57% of Buddhism, 53% of Judaism, 42% of Hinduism, 30% of Sikhism and 28% of Islam (17% in Québec) (Geddes 2009).

A significant portion of Canadian public opinion finds it difficult to accept the presence of non-Christian minorities, and pressure groups and some currents of opinion are targeting Muslims in particular and generating an atmosphere of contempt, mistrust and ignorance in their regard. In examining the positions as described in the media or seen in briefs and during the CCAPRCD public hearings, one can distinguish two facets of this discourse of hostility: 1) the first is the stronger of the two and the one most often heard across Canada and reiterates modernist and scientist discourses that would like to limit, if not eliminate, the influence of religion; and 2) the second, inspired by nativism, invokes the loss of national culture and the threat to popular sovereignty posed by judges; it shows a nostalgia for pre-1945 democracies when cultural or religious majorities determined the fate of minorities with complete impunity. These two facets define the contours of a new Islamophobic Orientalism.

Learned and popular Orientalism

Orientalism is among the European currents of thought that idealize or vilify the "Oriental" world and treat the so-called Asian, Islamic, Confucian or Hindu universes as homogeneous cultural blocs, as civilizations. With regard to the Muslim bloc, beginning around the 12th century, a Christian theological Orientalism began to consider Islam as an irrational, violent, idolatrous and licentious religion (in reference to polygamy, among other things). This image, minus the licentious facet, has remained a cornerstone of Western popular representations of Islam up to the present day. Then, starting in the 18th century, knowledge about "Oriental" worlds increased and became more refined in Europe, resulting in the emergence of a passionate Orientalism, bolstered by the Enlightenment's conviction that, despite their cultural differences, all human beings are essentially the same. This

passionate Orientalism often emphasized the sensual aesthetic of the Arab world, seen as a universe without taboos upon which European sensuality could be projected (Makdisi and Nussbaum 2008; Bernstein 2009). At the same time, the British Empire also developed a positive vision of the "Orient" in its pursuit to maintain the colonial order: local languages, cultures and legal systems, including Muslim and Hindu ones were valued and respected. A change in ideology occurred, however, in the 19th century. A hierarchy of civilizations was invented, defended by the supporters of political liberalism:

> John Stuart Mill proclaimed self-rule as the highest form of government and yet argued against giving Indians and Africans self-rule. . . . They were not yet civilised enough to rule themselves. Some historical time of development and civilisation . . . had to elapse before they could be considered prepared for such a task. Mill's historicist argument thus consigned Indians, Africans and other "rude" nations to an imaginary waiting-room of history. (Chakrabarty 2000)

Up to the 19th century, in French intellectual milieus in particular, the Chinese Empire represented a model of the State, of centralized government, and "Black" Africa represented innocence, a continent beyond history. Then, with European colonial expansion, images of Africa and of the Confucian and Islamic "Orient" became more ambivalent. Whereas one scholarly school, French and German, affirmed the superiority of the Sanskrit, Arab and Sumerian heritages over the European heritage and was accompanied by a Jewish Orientalism (Reiss 2005), another current called for the gradual elimination of local cultures and religions. Africa became a land of barbarism, China a land of despotism (Dermigny 1964), and "Islam" a land of the rejection of modernity.

According to this intellectual tradition, which appeared with modernity, humanity includes civilizational poles with inalienable and perennial differences, and the historical and socio-political evolution of the "West" is a model for other civilizations. This tradition developed a dogma whereby historical change and modernity are seen as universal, non spatialized and non sociologized processes, and it ignored cultures' and societies' internal differences and power relations between and within countries and States. It constructed three ideological categories that were ahistorical and asociological: the "Orient" (Middle East), the Far East, and Europe, with the latter being the model pole, the most advanced due to its invention of the ideas of liberty, citizenship, rationality, equality and urbanity (comfort, pleasure, security). African and Indigenous cultures were ignored or relegated to a time before Civilization.

This negative view of the Islamic "Orient" was extensively criticized in the 20th century, particularly after 1945, for its reification of cultures and its myth of the irrational, despotic and dangerous "Orient" (MacFie 2002; Curtis 2009). E. Said (1978, 1993, 1997) insisted on its aim of domination, and B. Turner (1978) on its Eurocentric referents, which made the "Orient" into a world incapable of democracy and secularization.[4] Goody (1999) and others have also denounced this ideology.

But the opposition between the two hegemonies of the Cold War disappeared in 1989 and with it the idea of a useful alliance between religion and the Western camp. Since then, some academics have reiterated the idea of a polarity of civilizations: Lewis (1990), Barber (1996), Fukuyama (1994, 1999), Landes (2000), Pagden (2008) and Huntington (1996). However, while Barber schematically talked about a war between the West and Jihad, Huntington distinguished eight religious poles and advanced the idea that Western

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[4] The term "secularization" historically meant the transfer of religious property to civil authorities. Its current meaning is the decline of religiosity or of collective religious practice in a society.

civilization is unique but not universal, and concluded that Westerners must learn to deal with a world order organized on the basis of civilizations (1997: 17–18).

The idea of difference between cultural systems has been turned into a clash of cultures by politicians,[5] certain currents of opinion and pressure groups that talk about a cultural incompatibility between "Islam" and the "West." Islamist terrorism, repressive regimes and conflicts in the Middle East as well as nativist fears about the new Muslim presence in Europe (15 million people) are facilitating the expression of a popular Orientalism claiming that the Islamic world is completely opposite to Western civilization. It should be noted that communist China has not been ostracized by this popular Orientalism, and as Huntington mentioned (1996), the Confucian ideology is not referred to, to explain China's economic growth and lack of democracy.

The idea of humanity being divided into civilizational blocs has produced the representation of an Islamic bloc, whereas there can be no single Islamic entity, no more than there are single Catholic, Protestant, Jewish or Buddhist entities. As with these other religious traditions, the Islamic universe has been and remains a multiple one, riddled with rival currents: conservative, secularizing, radical, and modern. One must also remember three facts: 1) all Muslim believers may choose their particular religious school, and religious authority is fragile; 2) there is no one institution, even in Shiism, recognized as the unique locus for interpreting Islamic doctrine; and 3) Islam's "unity" is based on a few dogmas and pillars (Allah, Muhammad, the archangel Gabriel), some precepts in regard to worship, and one characteristic feature in relation to other monotheisms. In the Muslim universe, God's incarnation in the human realm is an impossible idea, whereas it is central in Christian religions. For Muslims, there can be no human intermediary between God and the believers.

However, segments of the uninformed public wish to see in "Islam" the symbol of a non-modern world, which is antithetical to their "world of progress." Since the 17th century, according to one interpretation of the Enlightenment,[6] there has been the idea of human beings' emancipation through reason, i.e. their adoption of a rational way of thinking as a result of incessant scientific progress, economic growth, better government and greater well-being and morality. In the 18th century, it was thought that commerce would lead to prosperity, prosperity to access to knowledge and reason, and reason to the development of morality on the part of both those governing and those being governed.

From the 1950s to the 1980s, this idea often took the form of the ideology of modernization, where the application of science and technology to the organization of industrial production was thought to lead to socio-economic progress, and the logic of causality and rationality to the renunciation of eschatological doctrines. Moreover, particular traditions would simultaneously decline.

It is illusory to define modernity as a dynamic of the affirmation of rationality. The debate on the flaws in this vision, which confuses modernity with modernization, began in the late 19th century, continued after the First World War and again after the Holocaust, and re-emerged with greater force with the post-modernist critique. To the modernist grand narrative of progress and positive advances in ways of thinking, government and economic management, one can oppose the exactions of modern States which killed, outside the context of an international war, 4% of their population in the 19th century and 7% in the

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[5] Note the declarations by Italian Prime Minister Berlusconi on Western cultural superiority in January 2002, those of the Danish Prime Minister, elected in November 2001, and of the leader of the Danish People's Party, Pia Kjaersgaard, who stated during the November 2001 election campaign that Muslims were undermining the cohesion of the real Denmark and its core values. There was also the British government's declaration about going beyond multiculturalist values to talk about "real British values" (*The Economist* November 10, 2001, p.12).

[6] This reconstruction of the Enlightenment gives a central importance to Condorcet's thesis of basing all morality on reason alone, and ignores the views of philosophers such as Voltaire and Locke, who valued what they saw as the social and moral role of religion.

20th century (Simon and Moore, 2000: introduction). One can point to the fact that communist regimes fully endorsed this optimistic vision and imposed it by force, or cite the murderous uses of scientific inventions: the bombs used on Japanese cities in 1945, and the inventions of the German chemical industry: aspirin, fertilizers, and Cyclone B for the Nazi gas chambers.

One has to note that both ridiculing and praising progress are related to a similar denial of political domination. Economic growth, scientific inventions and institutional change only bring about social, economic or political progress when harnessed by a political authority with such a vision. Also, it is not a matter of judging a society or culture by its capacity for scientific invention or social advances, but rather of analyzing the power relations that lead to and organize this capacity. The scientific and economic decline of the Arab world and the Ottoman Empire as of the 16th century is a fact to be analyzed and not essentialized with the goal of turning the Islamic world into a universe incapable of modernity. However, popular Orientalism's objective is not to analyze a historical reality but rather to use it in order to maintain its own ideology and dominant status. It is also to believe that the failures of progress are simply historical accidents and not inherent limitations of modernity. Its current expectations, however, imply eliminating an entire facet of humanity, which is said to be incapable of modernity, from the map of history.

Stereotypes repeated in the media and public debates are evidence of the existence of this popular Orientalism, which sees "Islam" and modernity as antagonistic: the so-called negative treatment of women in "Islam"; and the lack of any institutionalization of the State's authority over religion in any Muslim society.

Islamic backwardness

Autonomy and agentivity of Muslim women

In Western societies (Delphy 2006; Lorcerie 2005; Scott 2007), Muslim women are often depicted as captive victims of men, and, if they wish to wear a religious garment of their own free will, they are described as alienated and unintelligent or as dangerous political enemies allied with violent Islamists. In Canada, Muslim women are often represented as victims and alienated agents, and there are two sides to the proof of their unfortunate fate. The first is that in Muslim societies, women are denied individual rights and maintained in seclusion. Examples of this are said to be the situation in Afghanistan,[7] Saudi Arabia and Somalia, where women have no rights and are ill-treated. The second side is that "Islamic law" has developed the idea of an inalienable difference between women and men by placing women under men's protection and authority. Oversimplifications and amalgamations of diverse situations thus allow for conclusions about the condition of women in societies as diverse as Indonesia, Turkey, Iran, Algeria and Afghanistan. The very different fates of women in a universe of more than a billion people are being reduced to examples of some of the most oppressive examples of the treatment of women in Muslim countries historically speaking. Moreover, the difference between national and Islamic cultural norms is not clarified and "Islamic law" is not defined.

Without proof of practices such as polygamy, excision or customary ill-treatment among Muslim Canadians, the inequality experienced by Muslim Canadian women is thought to be found in their clothing and, since the *burqa*, *chador* or *niqab* are not often worn in Canada, the Islamic headscarf (*hijab*) has become the focus of attention. A 2007 poll (Environics Research Group / CBC) found that 60% of Muslim Canadian women did not wear any particular kind of "Islamic" clothing and 72% of Muslim respondents said that they were not worried by Muslim women taking on a more modern role in Canada.

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[7] Where presently 27% of Parliament members are women (68).

The stereotype of the Muslim woman as a victim of men, tradition and religion was nonetheless omnipresent during the so-called *shariah* law debate in Ontario. Due to their religious beliefs and differences in their political histories, many immigrants of all faiths would rather not see the State intervene in their private lives, which does not mean that they are necessarily mistreating women and children. Muslims are very attached to the application of Islamic precepts in family dispute resolution (Inglehart 2003). In Canada, in 2007, 53% of Muslim respondents said that they would like to see this kind of dispute resolution, and 34% said that they would not, as did 79% of non-Muslim Canadians (Adams 2009).

In Ontario, faith-based legal arbitration for families and businesses had existed among Christians, Ismailis, Aboriginal people and Jews since 1991. In 2004, a power struggle between Muslim currents was launched by a conservative group that planned to set up, according to its declarations, THE only legitimate faith-based arbitration court in Canada. A Muslim feminist organization strongly opposed this project, triggering a debate that was widely covered in the media and dominated by feminist groups wanting to protect Muslim women from male, religious and community power. During this debate, Muslims as a whole were described as pre-modern subjects, invading Canada and ready to impose *shariah* as Canadian law (Zine 2010). An analysis of 108 articles from the *Toronto Star*, *The Globe and Mail* and the *National Post* brought out one main representation: "Islam" restricts women's capacity to act, and Muslim women are victims, "with limited agency." Women were depicted as victims of the male parties in faith-based arbitration – spouses , fathers, imams (Korteweg 2008) – and "the reference to the triangle formed by (1) the imperilled Muslim Women, (2) the barbaric Muslim men and (3) the civilized (Western) Europeans" was omnipresent (Razack 2007: 5). Significantly, the female parties in these arbitration cases were not given a voice in the media, whereas one opponent of faith-based arbitration, Homa Arjoman, was quoted numerous times. Marion Boyd, appointed by the Ontario government to study faith-based arbitration courts, reported that:

> We spoke to many women, and even set up an anonymous phone line. We never heard any woman complain about an arbitration ruling. On the other hand, many Muslim women deplored the fact that a stereotypical image was being projected of them, as though they weren't able to defend themselves. (Gruda 2004) [*our translation*]

In this regard, Muslim women have submitted many complaints to Québec and Ontario courts concerning family disputes (Helly and Hardy-Dussault 2010). These women appear to understand the function of law: when it is a matter of repudiation by their spouse, they do not condemn this practice in itself but rather the lack of respect shown by their spouses for the prescribed procedures. According to the modernist view, however, a woman cannot be both modern and a believer, and one feminist position is that the State should protect Muslim women from their families and communities, which are dangerous places for them. Razack rightfully shows how this position reaffirms the modernity/pre-modernity opposition:

> Ideas about women's rights and secularism are part of the neo-liberal management of racial minority populations who are scripted as pre modern and requiring considerable regulation and surveillance. The West is once more understood as culturally committed to the values of enlightenment while the non-West remains incompletely modern at best or hostile to modernity at worst. And, if Muslim women won some protection, it was only at the cost of increasing anti-Muslim/anti-immigrant racism and consolidating the idea of civilized Europeans. (Razack 2007: 29)

Use of the word *shariah* illustrates how a historical notion is being turned into an ideological category. In the discourse arising from people hostile to Islam and religion, the word rings out like a magic formula evoking barbarism, physical mutilation and misogyny. It is the "sesame" that opens the door to the Muslim universe and reveals its civilizational backwardness. The socio-political, historical and contemporary reality of *shariah* is being ignored. *Shariah* is not an abstract and overarching law of God but rather a few moral principles like those set out in Christian or Jewish sacred texts. In itself, s*hariah* does not exist and is not a State law, or positive law. It may be a State law, and the principles that define it consequently differ according to the State in question. The versions of *shariah* applied in Pakistan, Saudi Arabia, Somalia, Egypt, Morocco and other countries, or during the innumerable mediations effected by imams in the West or in Muslim countries, vary. The spectrum of interpretations ranges from physical violence to the imposition of a divorce on the spouse refusing one by British *Shariah* Councils, in the name of spouses' rights. But popular Orientalism amalgamates diverse situations to create a terrifying image of Islam.

Stereotypes of the Muslim woman as a victim of men, an alienated subject, or as a dangerous rebel show a view of the Muslim woman that is at once contemptuous, sordid, and paternalistic (Delphy 2006), as well as revealing an ignorance of Islam's complexity, of the disputes between religious schools on women's status, and of Muslim feminists' struggles against Islamist rigourism (Kandiyoti 1991; Sahgal and Yuval-Davis 1992; Abu-Lughod 1998; Lamrabet 2000, 2004; al-Hibri 2000; Badran 1995, 2001; Mojab 1998, 2001; Yegenoglu 1998). They ignore polls in Muslim countries indicating a desire for democracy and the inclusion of women in the public sphere, as well as one single notable difference from Western societies: sexual puritanism (Inglehart 2003). They are constructing essentialist images of Muslim women, in crystallizing the differences between "Islam" and the "West" (Göle 1996–2003; Mernissi 2001; Wadud 2006) and depicting them as insurmountable (Said 1980).

These stereotypes are also Eurocentric. A. Phillips (2007: 34–37) has proposed placing certain limits on any cultural system: the protection of minors from any harm, the prohibition of physical and mental violence, and equality between men and women in the sense of an equal choice of lifestyle. This latter principle means that a woman may choose to define women and men as different and to think that equality does not mean similarity, a representation that many Western feminist doctrines have combatted and considered outdated. For Phillips, personal autonomy is a fundamental value, and does not necessarily mean rejecting religious belief or subscribing to the definition of femininity prevalent in the West. Moreover, choices that go against our beliefs cannot be interpreted as the decisions of victims. According to a study in Montréal (Perreault 2007):

> Muslim women are calling for gender equality in the areas of education, work, politics and the legal sphere. They consider themselves equal to their spouses, although they admit to not having the same role. Men are the providers, whereas women are responsible for family life. They feel that men and women are equal in this complementarity. [*Our translation*]

In the face of the ethnocentrism and authoritarianism of feminist currents wishing to liberate Muslim women from their faith and culture, some scholars are re-examining the concept of social actors' agency and refuting the image of Muslim women as victims of men, religion and themselves or of challenging the Western order because of a piece of their clothing. These scholars are insisting on Muslim women's right to develop other models for gender roles, to invest strongly in a religious faith (Mahmood 2005) and to participate in the debate in which they are at the centre. Hadj-Moussa (2004), Phillips (2007), Shachar (2001), Benhabib (2002), Razack (2007), Deveaux (2006), Malik (2009), Frazer (2009), Bassel (2007, 2010) and Bilge (2010) want to give Muslim women the status

of full-fledged social actors that is their due and are proposing various approaches to ensure that Muslim women are involved in defining the "problem" that they are said to embody.

Invasion of the public sphere by religion

A second widespread stereotype is that Muslims are refusing to privatize their religious practice, as "Islam" is incapable of considering the primacy of political power over religious authority. It should be remembered that some States in the Muslim world do ensure this primacy (Tunisia, Algeria, Turkey, pre-1979 Iran, Indonesia), and that Islam's withdrawal from the secular path (Esposito and Tamimi 2000) or resurgence on the political scene dates from the 1970s and 1980s.

In Canada, this so-called incapacity has become part of discussions on religious markers in the public sphere, faith-based arbitration and the funding of Catholic schools. An analysis of Québec newspaper articles from the 1990s shows that the affirmation of laicism (laïcité) was one of the main arguments against allowing the wearing of the Muslim headscarf (Ciceri 1998). S. Guilbaut (CanWest 2008) states, for example:

> The Quebec government should adopt a charter of secularism that forbids public servants from exhibiting any form of religious expression on the job, whether that means wearing a crucifix around their neck or a Sikh turban on their head. . . . The *hijab* is more than just a piece of cloth. It's a discourse. And I don't think anyone who works for and represents the state should be a vehicle for any kind of religious or political discourse. . . . In the street, anyone can dress like she wants. But in a public institution that's inherently secular, no way.

In January 2007, the mayor of Québec City told *Le Soleil* newspaper that there would never be any veiled women at city hall as long as she was there (Cloutier 2007: 9). Proportions of the Canadian public share a similar viewpoint. According to an October 2009 Angus Reid / *La Presse* poll, 59% of Quebecers wanted a more radical measure: the prohibition of religious markers in public places. In 2007, to oppose the Conservatives' promise to invest $400 million in funding religious schools (of all faiths), Ontario's Green Party proposed the elimination of this funding and the holding of a referendum on the relevance of funding Catholic schools (Radio Canada 2007). And, in early 2009, atheist bus ads on transit vehicles in Toronto proclaimed: "There's probably no God. Now stop worrying and enjoy your life." Similar advertising by the Canadian Atheist Bus Campaign was refused in London and Ottawa, and a debate took place in Calgary. A Muslim community leader, Syed Soharwardy, told the *Calgary Herald* that he wanted to raise funds to mount an ad campaign offering a faith-based message:

> In a free society, if the atheists have a right to express their opinion, then people of faith should come forward and speak up. . . . This campaign message will not be a particular Muslim, Jewish or Christian point of view. Our concept of God may be a little different, but we all believe in a divine power, a creator. (Baklinski 2009)

The danger of authorizing Muslim practices in the public sphere is said to be the return in force of religious obscurantism. Two postulates underlie the certainty that this projected catastrophe will occur. One is the normative character attributed to secularization, the socio cultural dynamic leading individuals toward greater rationality and the abandonment of any type of religious faith. The other is a truncated ideological definition of one form of the relationship between State and Church, i.e. laicism.

Based on their belief in the continual progress of the West toward greater autonomy for people of all beliefs and their conviction as to the superiority of the Western mode of historical development, supporters of the modernist paradigm would like to see the death of religion. In their view, religious expression cannot be maintained in the face of scientific advances, the dissemination of knowledge and the democratization of education in the schools. Like all superstitions, religion is supposed to disappear or become socially ineffective, invisible and relegated to the realm of personal faith and the private sphere.

Max Weber (Wirtschaft und Gesellschaft 1956, Halbband, Tübingen) used the expression "disenchantment of the world" to describe the decline of religious explanations of human and natural phenomena. Christian Churches in fact continued to lose their influence throughout the 20th century, as conflicts between believers and atheists diminished in intensity. Then, during the 1990s, religion re-emerged as a visible element of social and political life, and as an evident socio cultural fact.

The contemporary evidence for the permanence of religious belief and the affirmation of people's religious senses of belonging as social identities represents a clear refutation of the modernist paradigm. The renewed demands over the past twenty years, in the name of the freedom of religion, to have religious practices respected by private and public organizations are heightening the uneasiness and hostility of the supporters of this paradigm. And this is happening all the more strongly when these individuals have been socialized in historically Catholic societies, societies where the dogma and authoritarian power of a religious institution have thwarted the democratization of rights, cultural choices and politics.

The idea that the human universe is a logical entity and that the ideals of liberty, equality, knowledge, security and personal interest only conflict because of the irrationality of the actors is naïve and unrealistic. I. Berlin (1969: 21–25) deconstructed the idea of rationality as the sole basis for human behavior, and, for S. Neiman (2008), liberal political theory offers a tragic description of humanity: it develops the idea of human beings' capacity to do evil and the idea that they are the only source of good. The popular modernist paradigm, however, ignores any moral dilemma and distorts the meaning of rationality by limiting it to its instrumental version, under the influence of the economy in capitalist societies. But rationality is not at all the exercising of intellectual logic to define and affirm one's opinions, choices and interests; it is the capacity to put aside one's convictions; it is irony, the doubt that leaves room for restraint, tolerance and the acceptance of conflicts and differences of opinion.

History has shown how mistaken the modernist thesis is. Democracy and the dissemination of knowledge do not lead to a decline in religious belief. This form of development occurred in the societies of Northern and Western Europe, but not in those of Central and Eastern Europe, nor in the United States or the countries of the South (Sadria 2009). Shmuel Eisenstadt (1999) talks about multiple modernities and reminds us of the facts. Community, religious and ethnic traditions do not disappear as a result of democratization and capitalist expansion, and religious traditions (Christianity, Buddhism, Shintoism, Judaism, Islam, Hinduism) are often still key elements in the definition of States and national identities (Hutchinson 1996; Davie 2000). Moreover, trends toward secularization have fluctuated throughout history (Martin 1978), and, no more than economic globalization represents the universal dissemination of one form of capitalism, there is no universal model of secularization and of the regulation of relations between the State and religion. Every society is a particular combination of religious and secular elements (Spohn 2003). The latter point is central for those who would now see Islam as THE symbol of the ill-fated "return" of religion in the public sphere. The primacy of the State over Church, and laicism are often invoked in these debates.

The religious neutrality of the State

Many analysts deem that the idea of the State's complete religious neutrality is illusory, given that whether the State follows principles that are rooted in a secular or religious philosophy, it makes a choice,[8] and only appears neutral in the eyes of citizens that support that choice (Rosenfeld 2009). The freedoms of worship and conscience, and the primacy of the State over any religious authority are fundamental principles in Western States. Some States have maintained a religious identity or a special relationship with one or more influential Churches in their territory. This relationship is linked to the philosophy of secularity, which affirms a divine end to the human and natural universes and advances the idea of a distinction between the temporal, historical and political worlds and the spiritual and religious worlds. According to this current of thought, a relationship can be maintained between State and religious institutions, as religious normativity is a positive fact. Religious beliefs and practices are community realities and constitute a legitimate and socially useful way of life.

Another philosophy, termed "secularism," rejected all religious authority over the temporal world. It did not condemn religion in itself or reject a peaceful coexistence with Christianity if the latter favoured the good of all, but it did advance the idea of the State's recognition of a non-transcendent ethics (Kosmin and Keysar 2007). It sought to separate Church and State. The precept of the primacy of the State over any religious authority can thus be described in terms of two approaches, which are opposed on one fundamental point in regard to the institutionalization of relations between the State and religion, that is, the valuing of religious normativity and the definition of the religious neutrality of the State. The State's religious neutrality and State control over Churches are not in fact equivalent. All modern Western States control the power of religious institutions in their territories but all of them do not define their religious neutrality, i.e. their protection of all philosophical orientations, as the absence of a relationship between the State and religious institutions may indicate.

Religious freedom, like cultural freedom, has been seen as either a negative or a positive right. As a negative right, it means the prohibition of any interference by the State in the expression of religious belief. As a positive right, it means State protection for the believer's right to act in all areas according to his religious values. This means the believer's right to follow his or her values in all areas of social life where he or she deems that this is necessary, and not just in the private sphere. The State must consequently offer believers the material possibility of having institutions where they can put their particular values into action, and help to fund religious institutions: places of worship, educational systems, charitable and social organizations, media, etc. A democratic argument is often invoked to establish this positive definition of religious freedom. Luxembourg's Minister of Religious Affairs (Ministre des Cultes) summarized it thus:

> There are States like ours that adopt a benevolent neutrality in regard to religious communities because we believe that religions play a public role, whereas others consider this a private matter. . . . If there are strong currents of opinion, they must be expressed, and I find it normal for religious communities to be able to play a role in public opinion just as others do. ("Entrevue," *Le Jeudi* January 30th, 2003, in *Plural Oracle Hors série 3*, 2003: 3) [*our translation*]

The two conceptions of the relationship between the State and religion have fostered a variety of forms under the pressures of political compromise particular to each society.

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[8] A choice central to the controversy over the teaching of evolutionism, creationism and intelligent design.

Four factors are said to be involved (Martin 1978): 1) the role of religion in the building of a national identity; 2) the influence of the Protestant Reformation; 3) the importance of liberal and socialist currents; and 4) the position of Churches in regard to the Enlightenment and democracy (unlike Protestant Churches, the Catholic Church did not accept democratic regimes until the late 19th century).

The secularity regimes

The secularity regimes developed by many European States follow the principle of the primacy of the political over the religious sphere. The State facilitates the reproduction of religious institutions and their socially useful activities, notably the school systems. It may also assume responsibility for the salaries for religious personnel, the operating costs of places of worship, the maintenance of buildings and the social and charitable activities of religious NGOs. It may permit a Church to levy a tax, or allow it tax exemptions (Christians 2005). Beyond these characteristics, secularity regimes are varied, with the following types being found in Europe and North America:

National religions
When a majority faith has helped to forge the national identity, the State has "established" a religion, recognized it as the national religion, and subsidizes its institutions, except in the case of England. The clearest and most anachronistic (given its intolerance) national religious regime is Orthodoxy as the State religion of Greece. The Orthodox Church led the 1821 revolution against the Ottoman Empire, the Greek Republic was founded "in the name of the Holy and Indivisible Trinity," and Church and State, Orthodoxy and Hellenic identity are inextricably linked. Article 1 of the 1975 Constitution affirms Orthodoxy as the "dominant religion," there is a cross on the national flag, civil servants and the President swear an oath on the Bible, icons decorate public administration buildings, and before the Primate of Greece minority religions have no legal personality, atheists and the non-Orthodox cannot be buried in municipal cemeteries, and Greece is the only European country where legally there are no mosques.[9] Another similar case was the Catholic State regime in Spain under Franco.

Other societies with national religions have evolved differently. In Sweden (until 1999), Norway, Iceland and Denmark, Lutheranism is the State religion. This is also the case in Finland, where Lutheranism has equal standing with the Finnish Orthodox Church. In these countries, the operations of religious organizations and religious instruction classes in schools are funded by public moneys or by a tax levied on the faithful (Finland). In Norway and Denmark, the King or Queen is head of the Church, as is the case in England and Scotland, where the Reformed Church has been established and religious teaching is mandatory in public schools, although the State does not fund Anglican institutions. All of these States respect the rights of religious minorities, with Denmark being the European country where it is easiest for Muslims to set up Islamic schools and where women judges and lawyers may wear a veil. There are presently only a few regions with a Catholic State religion: Andorra, Malta, the Vatican and some Swiss cantons.

The special status of Christian churches
Some States have developed a very close cooperation with certain Christian Churches, and grant them special rights in order to ensure the reproduction of their institutions or fund these institutions directly (salaries for church ministers, costs of building construction and maintenance). In Austria, Spain, Finland, Italy, Ireland, Germany, Poland, Alsace-Moselle, Portugal and Luxembourg, the Catholic Church and/or Protestant Churches have a special

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[9] Athens has about 60 non-legalized prayer halls in neighborhoods with a Muslim population and about 300 other halls have been opened in northern Greece, where a Turkish minority has historically been established.

status as a result of agreements. The German State is the clearest example today of this granting of privileges, which are in this case major ones, to Churches.

In 1948, the Allies wanted to set up a secular public school system in Germany, but the Churches opposed this. The German Federal Republic's Fundamental Law explicitly refers to God: the preamble states that this Law was developed with an awareness of the German people's "responsibility" "before God and man." Among the objectives of teaching cited in the Länders' constitutions is the fear of God. The Law guarantees religious freedom, requires the State and its agents to adopt a neutral attitude to religious belief, and sets out a State responsibility to contribute to the development of the forces of civil society, including religious institutions. It defines State religious neutrality as an obligation to ensure religious development and to cooperate with the Churches in areas of common interest, such as the social, medical, educational and fiscal spheres.

The Law stipulates that religious education, an area of responsibility of the Länders, is mandatory in public schools (Article 7.3) except in schools that have been declared secular (atheist), and that the Churches have control over the content and the teaching. Teachers trained in public universities, who are sometimes non-believers, are given an ecclesiastical mandate, and the courses (2 to 3 hours a week) deal with religious and social issues (environment, disarmament, human rights). Parents and students over 14 years of age may refuse these courses and, in most Länders, students must then take ethics or philosophy courses. The Fundamental Law also guarantees the right to set up private schools with the Länders' approval as well as faith-based teaching (Article 7.4). Besides non religious public schools, there are three types of public schools according to the sort of religious teaching given: Catholic, Evangelical or inter-faith, with the latter being the most widespread.

In order to be recognized as an institution cooperating with the State and obtain funding for its activities, a religious community must have a representative organization that takes note of the principles of the Fundamental Law and is organized in a sustainable and hierarchical manner so as to enable public authorities to communicate with its leaders. Communities with an atheistic vision of the world and four religions, Evangelical, Catholic, Jewish (Orthodox/Conservative) and Orthodox, are recognized as the result of a series of concordats and agreements.

In 1979, 1984 and 1994, the Spanish State – the democratization of which had just been achieved in a society with a powerful anti-clerical movement – signed agreements with the Holy See in the name of social peace. According to these agreements, the State funds religious teaching staff in public schools and in private denominational schools (of all faiths), as well as restoration of the Catholic built heritage and, in part, schools called *concertadas*.[10] In 1992, in the name of the historic Muslim presence in Spanish society, it recognized Islam as Spain's second major religion and devised Europe's most liberal treatment of Islam, which would however remain on paper only (Helly 2005).

Institutionalized pluralism

The Netherlands has developed a so-called system of pillars. A pillar is a life community serving as a frame of reference for various aspects of an individual's existence. The Protestant and Catholic Churches have historically formed such communities by providing their members with political parties, unions, hospitals, media, schools, universities and community organizations. During the 20th century, non-religious, liberal, humanist and socialist currents were accorded the status of pillars, and the State in part funds the operations of institutions connected with these various currents of thought. The 1917 Constitution instituted equality between public schools and Christian schools and provided for their entire public funding. In 1920, the Primary Education Act authorized the setting up

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[10] *Concertadas* are Catholic schools where at least 5% of the student enrollment must be non-Catholic or of no religious faith.

of Christian religion courses in public schools, said to be neutral, at the parents' request. The Churches were responsible for the courses, teacher recruitment and the production of teaching materials; they might receive subsidies at the municipalities' discretion. The 1962 Act on the public funding of Church buildings concerned all faiths. The humanist current and Muslims were assimilated with churches, and the first subsidized building of a mosque dates back to 1975, in Almelo.

The Netherlands abandoned the system of pillars during the 1970s and 1980s, as it eliminated public funding for the building of places of worship (1982) and stipends for Reformed Church ministers (1981), and it left the costs of maintenance of places of worship to the municipalities' discretion (1983). Articles 1 and 6 of the 1983 Constitution protect freedom of religion, and the equality of religions and of religious and non-religious beliefs, two principles that, along with the de facto separation of Church and State, have constituted the Dutch regime since 1983. Many kinds of arrangements have subsequently been adopted in the name of religious freedom and equality.[11]

Laic regimes

Another conception rejects a positive definition of religious freedom and considers religious belief and religious conduct as entirely personal. It dictates an absolute separation of the State from religious institutions: the State must keep out of the religious sphere, not take any hostile or positive position regarding a particular philosophical belief, and not fund any religion or adopt any religious emblem, and its agents must not exhibit any religious belief. The State does have one obligation: to ensure the freedom of expression of beliefs and religious equality, and, in this capacity, its agents must respect the religious beliefs of public service users (Weil 2009).

Termed "laïcité" in French and "laicism" or "secularism" in English, this regime is linked to the founding of States that never wanted to see a single religion or Church gain control over civil society and political power. It is based on the idea that all human beings are free and have the right to make decisions about their lives based on their own values and the right to oppose any opinion, belief or custom prescribed by a majority. It involves a clear distinction between the private sphere, where religious differences can be expressed, and the public and political sphere, where conflicts and consensus come into play. It has historically been characteristic of States with a republican philosophy, which puts emphasis on an individual's primary allegiance to the State and not to a community (The United States, 1776; Mexico, 1857, 1873; Turkey, 1924; France, 1946, 1958; Uruguay, 1964).

Laicism regimes vary as their establishment has been a political response to the power of the Catholic Church (Europe, Latin America), of Islam (Turkey), or to a conflict between Churches (United States). Because of their original religious plurality, State institutions in the United States, including the Supreme Court, have been and are able to more strictly embody the laic/secular principle than the State often seen as a model of laicism: France (Froidevaux-Metterie 2007, 2009; Greenawalt 2009). In France, an ordinary law of December 1905 prohibited any relationship between the State and religious

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[11] Special dietary prescriptions for Muslims, Hindus and Jews in the armed forces (1981) and prisons; recognition of religious holidays and of Fridays as holy days for Muslim members of the armed forces (1981) and the civil service (1988) but not in the private sector in the name of the very different social meaning of Christian holidays customarily followed in society as a whole; setting up of a course for training imams (1983); inclusion of Muslims in discussion forums between the government and representatives of the various faiths (1983); the right to wear a headscarf at school reaffirmed by the Ministry of the Interior (1985); the creation of the Islamic Broadcasting Foundation and the launching of Muslim programs on public radio and television stations (1986); the authorization, applicable at the municipalities' discretion, of calls to prayer from minarets (1987); the presence of imams in hospitals, prisons and the army and the creation of the first Muslim school (1988); the criminalization of blasphemy toward Islam (as toward other religions), Muslim religion courses in schools (1989) in collaboration with the Islamic Cultural Federation; the right to swear on the Koran for members of the armed forces (1994); the codification of circumcision in hospitals (1995).

institutions but did not mention *laïcité*, a term only introduced in the 1946 and 1958 Constitutions.[12] But the specific meaning of *laïcité* is unclear, as the French Constitutional Council avoids defining it precisely, and the French State has often "contravened" the *laïcité* principle of a strict separation of State and Church (Woehrling 1998: 40–43; Troper 2009), particularly with tax exemptions for religious buildings and organizations, the maintenance of religious buildings by local communities, the preservation of the regime of the four religions recognized in the current region of Alsace-Moselle and of religious customs in the Overseas Territories (polygamy in Mayotte) and with, since 1959, public funding of the Catholic school sector and again, since 1989, the open actions by all governments to encourage the creation of a national Muslim body (set up in 2003).

Nevertheless, the idea of an insurmountable constitutional barrier between Church and State represents a manipulation by some cultural elites and politicians seeking to protect their status. The call for primary allegiance to the State can be used to pervert laicism (Laborde 2008). As the guarantor of religious freedom and religious equality, the *laïc* State must in fact intervene. The principle of the separation between State and Church means that the State cannot favour a particular religion but not that it has no responsibility or is indifferent when religious freedom and religious equality are being denied. Jurists have underscored this obligation: "a complete separation between the State and Churches would not correspond to the State of law" (Woehrling 1998: 43) [*our translation*]. In the name of freedom of religion, the French State set up religious chaplaincies in public colleges, hospitals, the army and prisons in order to respect the rights of members who are believers. It organized ritual slaughter and encouraged use of the emphyteotic lease[13] to facilitate the building of mosques in view of Muslims' limited financial resources.

But laicism, as any ideological notion and constitutional principle, has been an historical object of political struggles. The present debate in France and Canada on the 'definition' of laicism is one more example of these struggles between politicians, cultural elites, and currents of opinion (Koussens 2009; Laborde 2008; Altglas 2010).

Canada and Québec: Laïc States?

The Canadian regime is not constitutionally *laïc* and is more similar to a secularity regime where States grant privileges to Christian Churches. Because Canada's provinces joined Confederation at different times, the Canadian regime encompasses a wide range of school systems: Protestant, Catholic, or neutral in their religious orientation, and public or private. The 1998 de-confessionalization of Québec public denominational schools has given a distinctive character to the Québec State, which however falls under the Canadian regime. The Canadian regime has the following characteristics:

- Protection of the freedoms of conscience and religion, renewed in 1982 in the Canadian Charter of Rights and Freedoms (Section 2).
- The Supreme Court's definition of religious freedom as the freedom to believe or not believe, which has led to the courts prohibiting certain practices connected with Christian religions: for example, prayer in public schools (Ontario, Manitoba, Saskatchewan), abolition of the prohibition against working on Sunday (Supreme Court's decision: Big M Drug Mart 1985).
- No definition of religion, as the Canadian State does not deem itself competent to determine what is a recognized and acceptable dogma,

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[12] The origin of the word *laïcité* is a focus of debate, Lalouette 2007.

[13] A long-term contract (99 years) which allows users the use of a building or land for an annual fee (in this case, quite low).

which compels the courts to rule on whether or not any law deals with religion.

- No mention of the separation of Church and State in the 1982 Constitution, the proclamation of which begins with the words "In the year of our Lord…" and the preamble of which states: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." Until 2010 the Supreme Court had however never invoked this supremacy of God in its rulings, and a distance has been maintained between legislatures, governments and the religious sphere, as has been shown in the case of the de-confessionalization of Québec schools, which did not generate any debate in the House of Commons or any polemical declarations by the federal government.

- No specification of legislative areas of responsibility or on the sharing of federal and provincial powers in the area of religion, although in criminal matters the courts have ruled that any laws dealing with religion are under the responsibility of the federal Parliament (Cotler 1982: 239, 249, 254).

- In the 1867 Constitution, public education was intended to be universal, mandatory, religious and moral, i.e. Christian. The public system was established as a Protestant system, and special status was granted to Protestants and Catholics in order to protect their collective religious activity, including the right to have religious schools (Article 93). The Charter enshrines this privilege (Section 29).

- Partial public funding of private religious schools in Alberta, British Columbia, Québec, Ontario and Alberta, and, in Newfoundland, schools must meet the standards of public education programs. Public funding of the private sector, whether faith-based or not, is not permitted in the Maritime Provinces (Menendez 1996: 65–68).

- Religious education permitted in public schools, although this is rarely applied, given the secularization of the public school sectors. In Alberta, the 1988 School Act stipulates that "if a board determines that there is sufficient demand for a particular alternative program, the board may offer that program...[.] '[A]lternative program' means a program that emphasizes a particular language, culture, religion or subject-matter." This has allowed for the creation of faith-based programs that are funded and administered by the public school sector.

- Exemptions from municipal and school taxes and from taxes on the sale of religious buildings; religious leaders' stipends minimally taxed.

- State non-intervention in religious minorities' institutional organization.

- One feature that is considered very distinctive of the Canadian regime, namely, respect for the individual expression of religious affiliation and religious belief, which led to the taking into account of the indirect discrimination experienced by believers. In a 1985 ruling (Ontario Human Rights Commission v. Simpson Sears Ltd [1985]2 S.C.R. 536), the Supreme Court created the obligation of reasonable accommodation. The case opposed a Seventh Day Adventist employee asking to keep her full-time job while not working on the Sabbath, and her employer who was refusing this request. The Court felt that an accommodation should reduce the discrimination experienced by the employee because of her faith and specified that

the solution should be reasonable, i.e. that no "undue hardship" could be imposed on the employer (exaggerated financial cost, significant inconveniences, reduced safety norms, effects on other employees' rights or on collective agreements). The Court felt that the work schedule could be arranged. The spirit of this ruling applies to other aspects of work and to other areas such as the tendering of private or public goods and services. A great many reasonable accommodations have been adopted in Canada since 1985,[14] with an important one being the accommodation allowing an agent of the State to wear a religious marker (Sikh turban authorized in the Royal Canadian Mounted Police, Grant v. Canada (A.G.), [1995] 1 F.C. 158). In other countries, the adapting of majority practices that are discriminatory for religious minorities is called "arrangements," and is not legally prescribed.

"Ultra-laïcité" versus "Islam," religious freedom and judicial power

Many Canadians seem to be confused about the definition of relations between the State and religion in Canada. According to an April 2007 poll (Jedwab 2007): "Many Canadians believe that the best way to avoid meeting the particular needs of religious minorities is to separate Church and State." Some Canadians seem to think that the religious neutrality of the State allows it to ignore religious minorities' rights to religious equality and religious freedom, and that reasonable accommodations derive from a relationship between the Canadian State and religion that could be abolished. As for Quebecers, according to a 2007 Léger poll (Giroux 2007), 37% of francophones and 17% of anglophones felt that the Supreme Court was going too far in protecting religious minorities. Young people (aged 18–24) agreed with the protections granted by the Canadian Charter of Rights more often than their elders did. And, according to a CROP poll (*L'Actualité* December 1, 2009: 29), most Quebecers think that Québec is a *laic* State. In an issue of *L'Actualité* ("Vive le Québec laïque" December 1, 2009: 28), Germany, emblematic of a secularity regime associated with an official religion, is described as "*laic.*" This assimilation of the *laic* principle with the principle of the primacy of the political over the religious sphere ignores the fact that all Western States control religious institutions on their territory, and that laicism is only one of the forms of this control: a form that rejects State cooperation with Churches. However, one current of opinion described by M. Milot (2009) and often heard during the CCAPRCD public hearings, would like to purify Québec laicism and make it stricter by codifying, if not abolishing, religious expression in public places. It is distorting the *laic* principle and turning it into State atheism.

The *laic* State must, by definition, remain neutral in religious matters; it cannot prohibit religious expression and in no way does it imply that schools are places where one learns to reject religion or that individuals cannot manifest their religious beliefs in public. The 2004 French legislation prohibiting the wearing of conspicuous religious markers by students in public schools could only contravene the *laic* norm in the name of public order

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[14] Some Québec examples include: at the Montreal Children's Hospital, the installation of a manually activated entrance door to allow Hassidic Jews to visit patients on the Sabbath; in public schools, the creation of a mobile pedagogical day so that children of Orthodox, Coptic and Catholic faiths can celebrate Easter on their respective dates; no interruption of public services in Chinatown during the Chinese New Year; at a Laval Hospital, no blood transfusions for Jehovah's Witnesses, elimination of pork from the diet of Jews, and the right for the husband to be present during medical examinations of his Muslim wife.

(combating Islamists in schools) and the protection of minors,[15] and after a prudent consultation of the European Court. As for the wearing of the *burqa* (*niqab*[16]), it cannot be prohibited according to the Canadian Charter and the Québec Charter.[17]

The demand for the religious "purity" of the Québec State conceals a desire to deny religious freedom to minorities. This situation is also being seen in France, where cultural elites and politicians are demanding a "strict," anti-religious laicism, in the name of the republican principle. Constitutional realities and respect for rights, including religious freedom, do not seem to lie within the ideological frame of this transatlantic current of francophone opinion. A current nurtured by a dogmatic heritage of anti-clericalism and secularist fundamentalism, and present in societies where the conservatism and power of the Catholic Church have long thwarted democracy and individualism. In these societies, the historic struggles of democrats and women against a reactionary clergy are currently being projected on Islam.

The supporters of "ultra-laïcité"[18] argue that the State must police religion in order to thwart the "return" of religious superstition, as well as to protect women's rights, national culture, and social peace. But is *laic* France more secularized than other European societies? Great Britain, Sweden and Germany have a large proportion of unbelievers, and the United States is the most religious society in the West. Does France guarantee more equality for women than States associated with Churches? Norway, Denmark and Finland are the most advanced countries in the West with regard to the rights of women.

The ultra-laicists' aim is to contest the legitimacy of religious freedom and ultimately the legitimacy of judges. In debates on religion and Islam in Canada, one current of opinion directs its animosity toward judges, who were openly criticized by many participants during the CCAPRCD public hearings. This current of opinion contests judicial power and the charters of rights and freedoms in the name of popular sovereignty, and of cultural majority:

> Why should we make the majority of the population live in fear and confusion in the name of so-called fundamental liberties? Democracy means majority rule. Elected officials should ask Canadians what they think about headscarves and kirpans, and adopt laws in consequence. (A reader of *L'Actualité*, October 1, 2006) [*Our translation*]

What exactly do Canada's human rights laws do? Well, when it comes to free speech, they do exactly the opposite of what we expect human rights laws to accomplish in foreign countries: they restrict speech, instead of enabling it. They tell Canadians what we cannot say – namely, anything that might, just possibly, offend someone belonging to a minority group... Examined closely, these laws don't outlaw racism, sexism, homophobia, etc. They ban such prejudices only when held by a few categories of individuals – people that our legislators presume to be economically powerful. They're about transferring rights and power from the categories of people the legislators deemed over-endowed to those the legislators deemed under-endowed. They're really a form of wealth redistribution – a form

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[15] This logic also applies to adult women. In 2010, a man whose wife wears a *burqa* was refused citizenship (http://www.earthtimes.org/articles/show/307138,france-to-refuse-citizenship-to-men-who-make-wives-wear-burqas.html).

[16] Both are pieces of clothing that completely cover the body, except around the eyes, where there is an embroidered screen (*burqa*) or an opening (*niqab*).

[17] For security reasons, measures may be taken requiring any individual to identify themselves when entering a public (post office, school) or private (business) place.

[18] Which J. Baubérot (2006) describes as republican "fundamentalism."

of back-door socialism that doesn't make people as angry as taxes because it masquerades under a mantle of righteousness (Selick 2007).

Conclusion: How do we start thinking about the plurality of values?

Muslims are provoking the hostility of followers of the modernist paradigm and the social invisibility of religion, since there is no imminent prospect of the total secularization of civil societies (Berger 1999; Casanova 1994). Using amalgamations and oversimplifying historical facts, the proponents of modernism and laicism, mostly media, elites, politicians, and currents of thought the influence of which is declining, ignore any debate on the partial character of secularity as well as laicism regimes (Asad 2003; Mancini 2009), on the inevitability of differences of opinion and conflicts in democracy, and on democratic ways of regulating religious pluralism.

There would appear to be three approaches that one may take when considering the status of the plurality of values in a democratic State: assimilation to the values of the cultural majority (a vision now rejected), tolerance, or the sharing of common principles. Tolerance is said to mean the affirmation of values deemed beneficial for all, beginning with personal autonomy and individual freedom; and the acceptance of other values even though one may think they are wrong. This approach has been criticized by Isaiah Berlin (1959, 1969; Gray 1996) in his reflection on the limits of universalistic liberalism in the face of the plurality of values. According to Berlin, cultural or moral conflict does not arise from the meeting of different cultural universes but is an integral part of the liberal order. Despite the same definition of the Good in political liberalism, there is a conflict between peace and democracy, as there was in the face of the Nazi conquest, or between equality and justice, when, through affirmative action programs, the intention is to restore justice for historically dominated social groups. The modern ideals of equality and freedom are also opposed when freedom of expression for some undermines the dignity of others (pornographic literature). This dilemma stems from the often contradictory nature of human needs (Gray 2000: 7, 9): for example, security versus submission to power. Moreover, differences of opinion concerning lifestyles and norms are unavoidable in democracy.

Another way of thinking about the plurality of values is the idea of sharing certain precepts about living in society. The question is then: are these precepts fundamental principles or the values of a cultural majority? John Gray (2006: 22) proposes a single common value, the prohibition of inhuman practices: slavery, genocide, persecution, torture, humiliation. He concludes that since there are diverse definitions of an ideal way of living in society, negotiation between values is inevitable in democracy if one is to avoid denials of freedom and dignity, and violent conflicts. Public institutions must therefore negotiate conflicts of values on a day-to-day basis in order to permit the peaceful coexistence of different cultural choices.

R. Boudon (2006) advances the idea of a universal principle leading societies' moral evolution: every human being has a sense of his or her dignity and vital interests and judges his or her social position by this measure. This dignity is not granted to all but the sense of oppression is universal and found in all social systems, even when they produce ideologies of fatalism, as in India's caste system; indeed, resignation is not acceptance. According to this hypothesis, the sense of one's individuality and the demand for it to be respected are not at all European inventions but rather universal human traits that take various forms depending on the context, and only political domination impede their recognition by institutions and create conflict. R. Boudon cites the refusal to abolish slavery in the 19th century under the pressure of economic interests as an example of this opposition between a value held at a particular time, by a particular class, and the universal and timeless value of human dignity. In such conditions, the only criterion for resolving value conflicts is the respect for the meaning that a person gives to his or her dignity.

Other authors propose dialogue between cultural groups rather than the imposition of abstract principles of justice (Benhabib 2002). Phillips (2007: 41) uses the following example. "Forced" marriage is an arranged marriage accepted by both spouses or imposed on them. It is not a matter of prohibiting all arranged marriages in the name of potential coercion but of determining whether pressure has been exerted and in this case of protecting the victims. To do this, dialogue, discussion and knowledge of the overall context are necessary.[19]

Charles Blattberg (2004, 2008) reprises the idea of dialogue in considering that it is impossible for the State to be completely neutral since it is a matter of defending a non-believing group against a believing group. In the name of the central value of republican inspiration of citizens belonging to the society where they live, Blattberg defends the conversation between the actors in conflict that is aimed at reconciling differing views and reaching mutual understanding. The State cannot intervene in theological discussions, but should help to organize such conversations.

The solution proposed by Blattberg seems to be the only possible one if violence is to be avoided. Legal arbitration cannot by itself ensure the equality, freedom and dignity of all when some of the actors are perverting the democratic principle by terming some social groups as irrational and archaic. The modernist thesis and secularist fundamentalism are doing this in their attempt to exclude the new religious minorities. The State and elected officials must therefore use their influence, public discourse, incentives, symbolic measures, pressure for dialogue and public education to de-legitimize discourses that deny dignity and a sense of belonging to Canada's new religious minorities.

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[19] Phillips (2007: 46) gives the example of suppressing excision in Senegal. This practice was not accepted by all but used by all to ensure young girls' marriageability. When all villages reached an agreement to end the obligation of excision, the practice was abandoned within two years and was officially prohibited by the State in 1999.

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