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How to Get to Hérouxville: Some of the Reasons for Reasonable Accommodation Blowback

This paper is a consideration of Charles Taylor's description of the "social imaginary" [1] in the context of his reflections on liberalism, multiculturalism and reasonable accommodation. What is revealed is a deep-seated tension between the two competing imaginaries of the modern liberal state. The first "equal rights" imaginary maintains a sustained power at the foundation of liberalism. This widely- shared belief competes with the second imaginary of "identity rights", which develops as a response to the sometimes destructive and violent homogenizing effects of the first. In turn, the modern state is given the difficult task to at once provide all citizens the same treatment under the law while also recognizing their fundamental differences. In Canada, multiculturalism and the policy of reasonable accommodation are the blunt instruments used to

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[1] Taylor's description of the social imaginary is found in a number of his published works, including his 2002 article "Modern Social Imaginaries" in the journal *Public Culture*, where he first cites "the pioneering work" of Benedict Anderson in *Imagined Communities*, as well as on work by Jürgen Habermas, Michael Warner, Pierre Rosanvallon" (92). His ideas are further expanded in his 2004 book *Modern Social Imaginaries* and again in his 2007 piece "Cultures of Democracy and Citizen Efficacy" again in *Public Culture* which becomes Chapter 4, "Modern Social Imaginaries," in his 2007 book *A Secular Age*.

deliver this task and also nullify the antagonism between the competing imaginaries, trying to synthesize a third imaginary to replace the other two. However, as will be argued below, this marriage of "sameness" and "difference" is in danger of failing, resulting in a still marginal, but growing and troubling, reactionary push against multiculturalism and reasonable accommodation. This "blowback" is a particular problem in Quebec because of the tension created by the way these policies have worked themselves out in the province; at once recognizing and legitimizing the identity rights of the prevailing culture and the equality rights of those who do not share in the goals of that culture. This tension was clear in the "Hérouxville Standards" document written against reasonable accommodation in Hérouxville, Quebec, Canada in 2007 and the work of the *Consultation Commission on Accommodation Practices Related to Cultural Differences* that followed. While all of this has, for the most part, entered into the political and media discourse on multiculturalism, the deeper concern is that, if this "blowback" is not understood and addressed, it could develop in to stark political division and violence, as has been seen in Europe and many other parts of the world. Undoubtedly, Canada has had less experience with this kind of violence but is by no means immune to its broader development.

Taylor's description of the "social imaginary" is important here because it describes "the way ordinary people 'imagine' their social surroundings" rather than serving as a mere theory of society purported by "a small minority" of elite scholars. In turn, we see the articulation of the social imaginary in "common understanding", "common practices" and "a widely shared sense of legitimacy" across large groups of people (2007: 171-2). So, while empirical evidence might be used to show the success of multiculturalism in places like English-Canada, there is a growing

perception among the public, in Europe and Quebec for example, that it is in retreat. [2] That is to say, regardless of academic theories or social analyses of multiculturalism, there is growing perception that it has failed or is failing, that the synthesized third imaginary has not been taken up in the collective beliefs of the citizenry. Not surprisingly, this common understanding is now starting to more clearly infiltrate the realms of politics and law, with governments around the world revisiting immigration policies and earlier ideas about assimilation. [3] From here, we see the two imaginaries of the modern state beginning to devolve back to their distinct and antagonistic realms.

I   Nonprocedural Liberalism and Culture

And yet, Taylor himself does not think that there is such an antagonism. In his essay "The Politics of Recognition," he writes:

> …there are forms of this liberalism of equal rights that in the minds of their own proponents can give only a very restricted acknowledgment of distinct cultural identities...The issue, then, is whether this restrictive view of equality rights is the only possible interpretation. If it is, then it would seem that the accusation of homogenization is well founded...I think it is not... (52).

For Taylor, provision for a universal schedule of rights need not also require the obliteration of the distinctiveness or even autonomy of culture groups. Likewise, the collective ends of

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[2] See Nasar Meer's and Tariq Modood's 2012 article "How does Interculturalism Contrast with Multiculturalism?", especially pg. 176 for an assessment of this view. See also Will Kymlicka's recent paper "The Evolving Canadian Experiment with Multiculturalism" ; Katharyne Mitchell's "Geographies of identity: multiculturalism unplugged"; Hazel V. Carby's "The Multicultural Wars"; and Pnina Werbner's 2012 article "Multiculturalism from Above and Below: Analysing a Political Discourse for different analyses and explanations for this perception.

[3] See the introduction to Jocelyn Maclure's and Charles Taylor's 2011 *Secularism and Freedom of Conscience* for a good list of global examples.

recognized cultural groups need not be realized at the expense of individual rights. In turn, the homogenizing character of earlier forms of liberalism, practiced well into the second half of the twentieth century and supporting destructive efforts to assimilate indigenous peoples, has been replaced with a new form that attempts to find a balance between the "sameness" of individual rights and the "difference" of cultural goals. Canada's Charter of Rights and Freedoms, for example, is designed to do just this: provide equality rights while at the same time recognizing the distinctiveness and autonomy of Quebeckers and aboriginals. Despite the seeming incompatibility of universal rights and distinct societies, Taylor claims:

> A society with *strong collective goals* [italics mine] can be liberal… provided it is also capable of respecting diversity, especially when dealing with those who don't share its common goals; and provided it can offer adequate safeguards for fundamental rights. There will undoubtedly be tensions and difficulties in pursuing these objectives together, but such a pursuit is not impossible, and the problems are not in principle greater than those encountered by any liberal society that has to combine, for example, liberty and equality, or prosperity and justice (1994: 59-60).

This model of "nonprocedural liberalism"[4] is able to "weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometime in favor of the latter" (1994: 61). In other words, unlike the procedural liberalism described by thinkers such as Ronald Dworkin, John Rawls, and Robert Nozick that demands the absence of a community-wide discussion of the good life,[5] Taylor's nonprocedural liberalism allows for such a

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[4] Sometime referred to as substantive liberalism. See for example William Galston's *Justice and the Human Good* and Joseph Raz's *The Morality of Freedom*.

[5] This is why procedural liberalism is sometime called "neutral" liberalism. Patrick Morag nicely summarizes the this distinction between the two views of liberalism:

> For procedural liberals, democratic institutions must reflect the priority of politics (or the right) over ethics (or the good). This means, for example, that universal human rights always have priority over any collective rights asserted and the principle of equal or uniform treatment cannot be compromised in order to secure a *collective* goal – such as cultural survival (30).

discussion, even though it may seem to marginalize those that are not part of the principal group

nor share in its ends.

Still, the very fact that only when a society's "strong collective goals" are balanced with

or mitigated by "respecting diversity…of those who don't share" them is that society then

considered liberal, suggests that the whole notion of an exclusive conception of the good life is

not liberal at all but illiberal. This confusion leads to two main criticisms of Taylor's formulation

of nonprocedural liberalism. Appropriately, the first criticism comes from the advocates of

procedural liberalism, such as the thinkers listed just above as well as Will Kymlicka. Their

disagreement with Taylor might be more broadly situated within the "individualism-

communitarianism" debate, with Taylor being on the communitarian side.[6] According to

Kymlicka,

> …in a liberal [individualist] society the common good is adjusted to fit the pattern of
> preferences and conceptions of the good held by individuals. In a communitarian society,
> on the other hand, the common good is conceived of as a substantive conception of the
> good which defines the community's 'way of life'…The community's way of life forms
> the basis for a public ranking of conceptions of the good, and the weight given to an
> individual's preferences depends on how much she conforms or contributes to that
> common good (1991: 77).

So, where the communitarians assert that certain ways of life and related practices are better than

others, the individualists are "neutral" on the value or worth of individual conceptions of the

good. That is why in "The Politics of Recognition" Taylor is able to determine that "cultural

survival" is at least sometimes more important than providing equal rights for everyone all the

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Taylor himself describes procedural liberalism as seeing "society as an association of individuals, each of whom has a conception of a good or worthwhile life and, correspondingly, a life plan. The function of society ought to be to facilitate these life plans, as much as possible and following some principle of equality. That is, the facilitation ought not to be discriminatory, although there is obviously some room for serious questions as to exactly what this means: whether the facilitation ought to aim at equality of results, resources, opportunities, capacities, or whatever (1985b: 186).

[6] This debate is also often dubbed the "Liberalism-Communitarian" debate but it is better named individual-communitarianism here as Taylor introduces communitarianism as a distinct form of liberalism.

time. For Taylor, the problem with the "extreme-individualist"[7] position is that it denies the relevance of communal goals (such as cultural survival), leaving us without either a sense of purpose or belonging. In *The Malaise of Modernity*, he observes that "the dark side of individualism is a centring on the self, which both flattens and narrows our lives, makes them poorer in meaning, and less concerned with others or society" (4). To counter this, Taylor puts forward a "social thesis" that contends that "the free individual or autonomous moral agent can only achieve and maintain his identity in a certain type of culture…" (1992: 44). That is to say, the individual's sense of self can only come about within the framework of a particular kind of social collective and, in turn, must be subsumed by the higher ranked concerns of the community.[8] The problem, as will be shown below, is that the "certain type of culture" Taylor is describing is in good part a liberal democratic culture which, at least according to the individualists, is designed in opposition to the whole notion of communal goals. If this is true, the elements of the nonprocedural amalgam (i.e. the free individual and the common good) can never really mix.

Still, it may be that places such as contemporary Quebec have actually practiced something like the kind of liberalism that Taylor describes. Yes, measures to ensure the survival of the Québécois have engendered considerable tension in the province, but for the most part there remains a broad respect for diversity as well as safeguards for individual and minority rights. However, this leads to a second criticism of Taylor's formulation, which has been given less consideration than the first. Rather than the relationship between individual and community,

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[7] "Atomism" *Communitarianism and Individualism*. Edited by Shlomo Avineri and Avner de-Shalit. (London, Oxford University Press: 1992) 29.

[8] Isaiah Berlin provides an interesting summary of Taylor's "social thesis", explain that for Taylor "to belong to society is an intrinsic human need, like the need for food or security or shelter or freedom, and indeed, that self-realisation cannot be obtain in isolation from social life, but only in the framework of…the organic structure of culture or society into which they are born and to which therefore they cannot help belonging" (2).

this second criticism involves the ways different cultures relate to each other. If we must decide which "strong collective goals" to pursue, then in a multicultural society such as Canada's there has to be a way to rank which cultural goals are more important and more valuable than others. According to Taylor, along with respecting diversity and safeguarding fundamental rights, this higher ranked culture must also practice the rule of law and even support "bearers of culture", such as "museums, symphony orchestras, universities, laboratories, political parties, law courts, representative assemblies, newspapers, publishing houses, television stations, and so on…" For him, it is these things that are part of the "requirement[s] of a living and varied culture" (1992: 45) and are valuable or worthwhile to pursue even though they may not be shared by everybody.

So, on the one hand, Taylor's conception of nonprocedural liberalism asserts that a society can pursue particular cultural goals as long as it respects the rights of others "who don't share" them. Yet, on the other hand, this pursuit must necessitate that the achievement of what might be understood as the "weaker collective goals" of these marginal groups be restricted or limited anytime they infringe on the "strong collective goals" goals of the mainstream, placing them once again in an inferior or weakened pose. As Thomas L. Dumm points out in his essay "Strangers and Liberals" not only does it require placing one culture in a hierarchically superior position to all others, it also privileges "quasi-permanent cultures" over new or impermanent ones (1994: 169).[9] Similarly, Patrick Morag points out that "Taylor draws normative conclusions in favour of shared allegiance to a particular historical community and reaffirms the republican thesis that it is a precondition of a free regime that citizens have a deeper patriotic identification"

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[9] Taylor writes, "As a presumption, the claim is that all human cultures that have animated whole societies over some considerable stretch of time have something important to say to all human beings" (1994: 66).

(2000: 37). And indeed, in his critique of procedural liberalism, Taylor presents patriotism as the

foundation of a common good shared by all citizens of a free society. He writes that,

> patriotism is based on an identification with others in a particular common enterprise. I'm not dedicate to defending the liberty of just anyone, but I feel a bond of solidarity with my compatriots in our common enterprise…Functioning republics are like families in this crucial respect, that part of what binds people together is their common history. Family ties or old friendships are deep because of what we have lived through together, and republics are bonded by time and climactic transitions (1995: 188).

As he soon makes clear in the same essay, this "republican thesis," composed of deep ties and

bonds of common history and old friendships, does not simply provide a common good for

ancient Republics but also for modern communities such as his own Quebec and Canada. As he

says, "I want to claim that the republican thesis is as relevant and true today as it was in ancient

or early modern times" (1995: 197). But, in such multicultural societies, it is difficult to see how

the "republican thesis" can play such a role. In a way, it seems to disqualify peoples outside of or

even new to the prevailing historical community from participating in the common good at all.

So, while Taylor may want to deal with the "sense of marginalization" of those outside of the

dominant culture "without compromising *our* [italics mine] basic political principles" (1994: 63),

it simply remains to be seen how this "our" is fully accounted for while still holding onto the

notion that patriotism to and the survival of Québécois culture, for instance, is always more

valuable than or good when compared to all of the other cultural groups that happen to reside

within that society.

Critically, this is not just a "value judgment" as such, ranking certain cultural groups as

more patriotic than others, but also an "ethical judgment." In "Diversity of Goods," Taylor

explains that we can apply a "qualitative contrast" between different ways of life in "the sense

that one way of acting or living is higher than others, or in other cases that a certain way of living

is debased" (1985: 236). When applied to the individual differences between let's say a respected

community leader and a criminal, this may be easy to accept. But, what if this "way of living"

ranking is applied to different cultural goals? Are we then in a position to deem certain cultures

and cultural practice "higher" and others "debased"? Perhaps.

Taylor does not seem willing to go this far. Instead, he addresses this very criticism and is

quick and forceful in his claim that he is not engaging in anything like ethnocentricity. Yet, at the

same time, he also wants to avoid falling into what he deems a "neo-Nietzschean" cultural

relativism, leaving us with no sense of either individual or cultural value. So, actually, Taylor

does think we have the ability and even an obligation to make such judgments but he also

attempts to find middle ground between ethnocentricity and relativism by calling for the

application of Gadamer's "fusion of horizons" (1994: 66-7), which he hopes will serve as a less

contentious and more complex tool for evaluating culture. In this context, it describes the way

interaction between individuals broadens and enriches their own sense of self, including their

ideas, opinions and beliefs about themselves and each other; and which taken up *en masse* may

eventually develop cultures toward a less debased or higher form.[10] In *Truth and Method*, Hans

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[10] James Tully, in his preface to *Philosophy in an Age of Pluralism* explains that Taylor's overall aim is "to see if the seemingly incommensurable values, conceptual frameworks and other characteristics of modernity can be articulated in a more comprehensive account, and...*reconciled*, not once and for all but in the course of the conversation, by various means (such as the better account, fusion of horizons, aberration, narrative, re-articulation, moral sources, hyper-goods, and other conceptual tools he has developed)" (xiv).

Meer and Modood note that Taylor's description here is akin to later discussions of interculturalism (183-4). They explain that the emphasis on communication or dialogue between cultures found in "interculturalism" is also found in multiculturalism:

> According to Taylor, therefore, people can no longer be recognised on the basis of identities determined from their positions in social hierarchies alone but rather, through taking account of the real manner in which people form their identities. That is to say that Taylor emphasises the importance of 'dialogical' relationships to argue that it is a mistake to suggest that people form their identities 'monologically' or without an intrinsic dependence upon dialogue with others (see Meer 2010: 31_56). As such he maintains that we are ''always in dialogue with, sometimes in struggle against, the things our significant others want to see in us'' (Taylor, 1992: 33).

Georg Gadamer explains fusion of horizons as "transposing ourselves [which] consists neither in the empathy of one individual for another nor in subordinating another person to our own standards; rather, it always involves rising to a higher universality that overcomes not only our own particularity but also that of the other" (1975: 304). Similarly, in "Understanding and Ethnocentricity," Taylor describes "a language of perspicuous contrast," which he aligns with fusion of horizons, as "a language in which we could formulate both [someone from another culture's] way of life and ours as alternative possibilities in relation to some human constants at work in both" (1985: 125). First, while this may be an important addition to the "individualism-communitarianism" debate about liberal conceptions of the "authentic" self, it does not really address the second critique of nonprocedural liberalism introduced above. The fusion of horizons may allow members of different cultural groups to better understand and accept each other but it neither dissipates the distinctions between cultures nor helps us assign cultural value or worth, at least not explicitly. Second, if we can make qualitative contrasts between cultures, it seems that Taylor must think that a certain type of liberal, democratic, "living and varied culture" is more aligned with "human universality" and "human constants" than others. In the end, while Taylor claims he is avoiding an ethnocentric course, there seems a clear implication that one culture can be more humane and thus more advanced than another if not all others.

Strangely, Taylor even argues that "the last thing one wants at this stage from Eurocentered intellectuals is positive judgments of the worth of cultures that they have not intensively studied" (1994: 70) or "a favourable judgment [about a culture] made prematurely", as though a Eurocentered intellectual that *did* intensively study a particular culture could then pronounce a mature judgment on its worth or lack of worth. Yet, this does seem to be what Taylor means when he finally decides that:

one could argue that it is reasonable to suppose that cultures that have provided the horizon of meaning for large numbers of human beings, of diverse characters and temperaments, over a long period of time—that have, in other words, articulated their sense of the good, the holy, the admirable—are almost certain to have something that deserves our admiration and respect, even if it is accompanied by much that we have to abhor and reject (1994: 72).

If this is as much Taylor is going to offer here, the question becomes whether it is suitable to use influence on a "large number of people" sustained "a long period of time" as a legitimate criteria to judge cultural value. Homi K. Bhabha notes that this passage highlights the way Taylor "always presents the multicultural or minority position as an imposition coming from the 'outside' and making its demand from there...In fact the challenge is to deal not with them/us but with the historically and temporally disjunct positions that minorities occupy ambivalently within the nation's space" (1996: 57).

Nevertheless, Taylor again offers Quebec to his critics as an example of how nonprocedural liberalism can work successfully. For decades, this multicultural province has been able to assert laws and policies toward the strong collective goal of cultural survival, which sometimes limits individual rights as well as the achievement of weaker collective goals, but has overall respected equality and cultural diversity. That said, the "tensions and difficulties" that have developed in the province as a result of these laws and policies have often been subjected to contentious public debate as well as legal and constitutional challenges. For example, in 1977 the National Assembly passed the Charter of the French Language, more widely known as Bill 101. Because the Bill gave French such a place of priority in areas of work, bureaucracy, politics, law, business and education, many citizens argued that it restricted their individual rights including the freedom of expression. Two Charter cases (*Ford v. Quebec*; *Devine v. Quebec*) led the Supreme Court of Canada to deem the language law unconstitutional. Eventually, the National

Assembly introduced a new law that passed constitutional muster.[11] Now, instead of banning English commercial signs, as was one of the repercussions of the earlier legislation, this law allowed signs to be "both in French and in another language provided that French is markedly predominant."[12]

This example does indeed illustrate the way Taylor's nonprocedural liberalism works: in certain instances the majority culture manifestly "predominates" over all others in the name of strong collective goals. Notably, the new law (Bill 86) was deemed constitutional under Section 1 of the Canadian Charter, which includes a critical provisional that rights and freedoms can by subject to "reasonable limits."[13] Even though this new bill still restricted some constitutional rights of individuals, "the pressing and substantial concern" to maintain a *visage linguistique* or French face to Quebec was thought to be important enough by the Justices to view these restrictions as a reasonable. So, even though they diluted the strength of the original law, the court still ultimately recognized the higher rank of Québécois cultural goals over the weaker culture goals of minorities living in the province, effectively accepting the criteria of a "large number of people" sustained over "a long period of time" and embracing the main feature of the communitarian and nonprocedural liberalism positions.

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[11] This ruling prompted the National Assembly to introduce Bill 178, passed under Section 33 (the notwithstanding clause), which then allow the unconstitutional law to remain on the books for 5 years. After the 5 years, Bill 86 was introduced, as a further amendment to Bill 101, to make the law constitutionally acceptable.

[12] "Regulation respecting the signs and posters of the civil administration." *Charter of the French Language* (R.S.Q., c. C-11, s. 22), 1.

[13] Section 1 states that rights and freedoms can be "subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

II   Reasonable Accommodation

Yet, around the same time, the Supreme Court seemed to go in the opposite direction when it ruled on a series of Charter challenges based on Section 15 of the Charter of Rights and Freedoms, which specifies that "every individual is equal before and under the law…without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."[14] The Justices decided that these protected groups have the right to "reasonable accommodation" when subject to discrimination by the predominant class. This has allowed individual members of marginalized groups to assert or reassert their "weaker collective goals," which have most often been related to freedom of religion, in light of the discriminatory influence of the strong collective goals of the majority, effectively embracing the main feature of individualism and procedural liberalism. That is to say, having given credence to the "identity rights" imaginary of the Québécois in their ruling on the French language law, the Court then goes about reaffirming the "equality rights" imaginary for minorities in the province and the rest of the country.

Whether it was the intention of the court to strike a balance between identity and equality is hard to say but, the upshot of these decisions seems to be an effort to mitigate the possible excesses of the unrestricted application of strong collective goals on minority groups. Regardless, it has created a strange but understandable reaction or "blowback" against reasonable accommodation in the province. This strangeness was on clear display in perhaps the most well-known example of blowback: the so-called "Hérouxville Affair," which refers to the controversy over the "life standards", "code of conduct", "rules of behaviour" charter or

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[14] This principle is reinforced in sections 2(a) on freedom of religion, 27, on multiculturalism and 28, on the equality of the sexes.

Hérouxville Standards issued in early 2007 by the municipal council of the rural farming town of

Hérouxville. As widely reported in the media, this document, which originally included a

prohibition against "killing women in public beatings, or burning them alive,"[15] was not the

product of brewing racial conflict or any event specific to the municipality. Hérouxville, with a

population of 1300, is ethnically, religiously, and linguistically homogeneous. It has almost no

immigrant population and, by default, no local racial or anti-immigrant tensions. Instead, the

"charter" was created as a direct response to the wider discourse on multiculturalism and the

application of reasonable accommodation in Quebec and, more specifically, the island of

Montreal, where the vast proportion of immigrants to Quebec settle.

André Drouin, Hérouxville town councilor and the main author of the code, explained his

motivation during his testimony at the *Consultation Commission on Accommodation Practices*

Related to Cultural Differences, better known as the "Bouchard-Taylor Commission" hearings,

led by Gérard Bouchard and, significant to the arguments above, Charles Taylor. The

commission was charged with investigating the practice of accommodating cultural minorities in

the province in direct response to a series of events that seemed to culminate in the Hérouxville

Affair. Referencing specific controversies over accommodation in the province, Drouin

exclaimed that "we demand that the practice of Canadian courts of accommodating religion in

Canada and Quebec cease immediately" and that "The Charter of Rights and Freedoms is a tool

to destroy our country." In their Final Report, Bouchard and Taylor recognized the common

acceptance of Drouin's view:

> Many Quebecers have expressed the fear that freedom of religion, which is protected by
> the charters, may be cited to justify practices that run counter to the principle of gender
> equality. This fear was often reinforced by mistrust of the courts, which were suspected

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[15] The amended French language document can be accessed at http://municipalite.herouxville.qc.ca/normes.pdf

of promoting an overly lax or permissive interpretation of freedom of conscience, thus supporting practices that should not be tolerated in a liberal democracy (2008: 56).[16]

Here, we see how the protection of freedom of religion and freedom of conscience are perceived to have run counter to the values of liberal democracy. While this represents a significant problem or confusion for the practice of multiculturalism under the banner of "neutral" liberalism, it actually makes sense in the context of nonprocedural liberalism as practiced in Quebec. As Bouchard and Taylor explain at the end of their report, Quebec never really adopted the policy of multiculturalism as it was implemented in the rest of Canada. Rather than the multicultural goal of pluralism, the province instead embraced "interculturalism" where "respect for diversity was made subordinate to the need to perpetuate the French-language culture" (2008: 117). The same sentiment is found in the Hérouxville Standards charter which is introduced with a 'liberal democratic' invitation to "all peoples…without regard to race or to the color of skin, mother tongue spoken, sexual orientation, religion, or any other form of beliefs" to "move to this territory." The document is framed as a guide "to help [immigrants] make a clear decision to integrate into our area." In other words, Drouin and others of the same mindset somehow view Canada's Charter of Rights and Freedoms, Quebec's Charter of Human Rights and Freedoms and the court imposed policy of reasonable accommodation as intolerant to liberal democracy and use the language of liberalism and democracy to defend their position.[17] How did we get

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[16] The "charters" is a reference to both the Quebec's Charter of Human Rights and Freedoms and Canada's Charter of Rights and Freedoms. The Abridge Report of the Commission can be accessed at http://postmediaottawacitizen.files.wordpress.com/2011/03/rapport-final-abrege-en.pdf

[17] As Tim Nieguth and Aurélie Lacassagne point out in their article "Contesting the Nation: Reasonable Accommodation in Rural Quebec":

"Democracy" and its derivatives are used liberally in the description of communal norms in Hérouxville. Thus, the English version of the standards mentions democracy no fewer than ten times in the space of five pages. The preamble to that version references democracy on three occasions, claiming that the Standards

here? How did the "leading edge" of contemporary liberalism, including the Charters,

multiculturalism and reasonable accommodation come to be understood as threats to cultural

survival and facilitators of illiberalism?

Before attempting to answer, it may be that these questions are the result of some sort of

misunderstanding. Actually, this is the thrust of Bouchard and Taylor in the Commission's Final

Report. They explain that "after a year of research and consultation, we have come to the

conclusion that the foundations of collective life in Québec are not in a critical situation. If we

can speak of an 'accommodation crisis,' it is essentially from the standpoint of perceptions"

(2008: 13). The anger, fear and mistrust expressed by many Quebecers are simply the result of

ignorance or, more charitably, a lack of communication. In turn, the "accommodation crisis"

reflected in the Hérouxville charter can be easily addressed through better public education and

consultation. On the other hand, it instead may be that these reactions are mere guises to hide

overt anti-immigrant sentiments or racism. So, the critics of accommodation simply use liberal

democratic language, such as a concern for gender equality, as cover for their true desire to

discriminate against people of different ethnic and religious backgrounds. [18]

Undeniably, ignorance and racism are partly to blame for the crisis. However, a closer

look at how reasonable accommodation was established and how it has been practiced in Canada

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themselves "come from our municipal laws being Federal or Provincial, and all voted democratically" [Municipalité Hérouxville, 2007a: 1] (3-4).

[18] These two interpretations are well represented in the broader literature on multiculturalism. For example, Phil Ryan, in his recent book *Multicultiphopia*, does a good job describing the development and difficulty of the first view in relation to multiculturalism. In the introduction, he writes that fear of multiculturalism or "multicultiphobia", while a product of a "diffuse anxiety" and a "suspension of clear cause-effect thing" backed up by "no evidence," is nonetheless not mere "foolishness", "irrational" or "something else in disguise: racism, nostalgia for a lost WASP world" (4-5). In turn, rather than just dismissing critics as misinformed and bigoted, and thus not worthy of an exchange of ideas, Ryan calls for productive dialogue toward a better understand and implementation of multicultural policy. Alana Lentin and Gavan Tiley do well to describe the second view. They note that the "death of multiculturalism" and the "failed experiment of multiculturalism" has been precipitated in part by "attacks on the illiberalism of minority and Muslim populations, and on the 'relativist' licence multiculturalism has accorded them" (6).

over the last three decades reveals something else. Because the idea of accommodation seems to provide an unnecessary "special treatment" for minorities, it is then perceived as not only unfair but also a threat to the achievement of strong collective goals such as cultural survival. If this correct, it explains why reasonable accommodation blowback is so much more prevalent in Quebec then the rest of Canada. As the Hérouxville Standards charter promotes, rather than protecting and accommodating the weaker collective goals of minorities, the objective should instead be to restrict these practices toward integration with the majority. It also helps explain how all of this can be framed as a defense of liberal democracy. At least according to Taylor, liberalism in Quebec should help articulate the highest of cultural goals of its people that are aligned with human universality and human constants, including an embrace of things like gender equality, the rule of law, the support of "bearers of culture" as well as the practice of democracy; things more "debased" cultures may not have yet ascended to.

But, this is not the goal of reasonable accommodation. Rather than the promotion of integration, the Supreme Court instead decided that the "accommodation of differences...is the true essence of equality" (Justice, McIntyre Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at 169). [19] In turn, the emphasis or priority shifted away from collective goals to a "respect for diversity." For many in Quebec, this inaccurately suggests that not only are minorities in the province unwilling to participate in the prevalent culture but they are simply unable. Bouchard and Taylor even note that:

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[19] Lori Beaman does well to summarize that "The use of the language of accommodation in the adjudication of religious freedom claims outside of employment law is a recent phenomenon. Reasonable accommodation arose in the context of employment law as a way to articulate the necessary standard to be used by employers in dealing with requests for exemption from particular work requirements. These requests for exemption usually arose in relation to religious beliefs, and the standard of reasonable accommodation, unless it caused undue hardship, was established by the Supreme Court of Canada in a trilogy of cases. Ontario (Human Rights Commission) v. Simpsons-Sears, [1985] 2 S.C.R. 536; Bhinder v. C.N., [1985] 2 S.C.R. 561; Central Alberta Dairy Pool v. Alberta (Human Rights Commission), [1990] 2 S.C.R. 489. (pg. 443).

During our consultations, a number of participants called into question the legitimacy of accommodation requests for religious reasons. The rightfulness of an adjustment that allows, for example, a female or a male student to wear a headscarf or a kirpan, respectively, is not obvious to everyone. Similar exemptions may be granted for health reasons: a young girl must cover her head on her physician's orders or a diabetic child must bring a syringe and a needle to school. No one would dream of objecting to such exceptions. We also know that accommodation aimed at ensuring the equality of pregnant women or the physically disabled is readily accepted. Québec (and Western) public opinion thus reacts much more harshly to requests motivated by religious belief (2008: 143).[20]

In other words, while reasonable accommodation is an acceptable policy for those that have a disability or medical condition, it is inappropriately applied to the free practice of religion. Surprisingly, this alignment of religion with disability is actually found at the very core of reasonable accommodation as it was introduced in Canada and is clearly embedded in the language of Section 15 on the Charter. [21] The Justices built their conception of "reasonable steps

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[20] The authors of the report rejoin that these criticism stems from the belief that religion is a choice whereas a medical condition or disability is imposed on individuals. We are sympathetic to the infirmed or disabled because they have no choice but to live with their circumstances whereas "Muslim or a Sikh can always choose to no longer practice his religion or to practice it differently." They continue, "A number of people thus ask themselves why society should adapt its norms to accommodate personal religious choices and occasionally assume the cost of such choices. Does this not come down to according religious choice unacceptable preferential treatment in relation to other personal choices?," and respond by asking, "However, is this not a rather precipitous or cursory manner in which to deal with the questions of identity and deep-seated convictions that dwell in the human heart?"; and finally claim that "In accordance with the law, the harmonization measures requested or granted for religious reasons proceed from the same logic" as those provided to people with a physical disability (161). This comparison between religious affiliation and disability continues in the final sections of the report where the authors recommend:

We recommend that studies be carried out to clarify the situation of various sub-groups and, in particular, to monitor the social development of young people from racialized minorities. For the reasons that we have indicated, immigrant women also appear to warrant special attention, along with the disabled and homosexuals. These categories of citizens are subject to what we called multiple discrimination. Here again, there is an obvious need to elaborate indicators to measure the impact of the existing programs (261).

[21] Most notably, in the landmark 1985 *R. v. Big M Drug Mart Ltd.* decision, the Court explained "The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses" and that "It is not for the state to dictate what are the religious obligations of the individual, it is for the individual to determine" (at para 94-95). Similarly, in the more recent *Multani* case, which was precipitated by the prohibition of a student wearing a kirpan in public schools, the Court agreed that, regardless of the traditional institutional practice of a religion, what matters is "reasonable religiously motivated interpretation"(*Multani, supra* note 1 at para. 36) or individual understanding of beliefs and faith. A similar definition of religious practice was used in the 2004 *Syndicat Northcrest v. Amselem* case where the court sided with the claimant's interpretation of his religious obligation to build a Succah (a temporary hut built outdoors as part of the Jewish holiday Succat) on his balcony instead of the communal Succah recommended by Jewish religious leaders and despite condominium by-laws banning structures

to accommodate" religious needs on American laws dealing with the "duty to accommodate" the

rights of the disabled as well as provisions of the 1972 amendment to the American *Civil Rights*

Act of 1964 (referencing *Reid v. Memphis Publishing Co*; *Riley v. Bendix Corp;* see *Simpsons-*

Sears, par. 20).[22] This suggests that accommodation for the practices of religious and ethnic groups

and those of the disabled, while different in their particular applications, are of the same kind. So,

just as Theresa O'Malley, a Seventh-day Adventist religiously prohibited from working from

sundown Friday to sundown on Saturday, was unintentionally discriminated against by her

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on balconies "irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials." As Lefebvre does well to summarize, "The Amselem judgment was a turning point in the Canadian judicial view of freedom of religion, bestowing it a purely subjective definition" (192). Arguably, this subjectivity means that the Charter requires accommodation for an incredibly broad array of religious practices or what Jean-François Gaudreault-Desbiens has called "religious supermarkets and do-it yourself religion" (2007 as quoted in Lefebvre). Of course, the same problem also exists for the definition of "mental and physical disability." As Justice Sopinka explained in *Eaton*, disability "means vastly different things depending upon the individual and the context."

[22] In the landmark 1985 case *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd*, the Supreme Court of Canada unanimously concluded that "where it is shown that a working rule has caused discrimination it is incumbent upon the employer to make a reasonable effort to accommodate the religious needs of the employee, short of undue hardship to the employer in the conduct of his business" (par. 20; see also Seidle, 85).

Unlike in cases dealing with the disabled, where "barrier-removal" accommodation is required, the other groups listed in Section 15 instead most often require changes that are better called anti-discriminatory. Leaving aside the finer points of the legal arguments, in the *Multani* case, the school-board had to allow the wearing of the kirpan. In *Amselem*, the condominium had to allow the Succah on the balcony. In *Simpsons-Sears* and *Big M Drug Mart*, employers had to allow their employees to work or not to work on particular days. At least in this list of examples, there really is no accommodation as such, only a requirement to overlook difference. On the face of it, laws and policies were changed not to provide any special treatment for these individuals, but the very opposite: the equal opportunity to practice their religion like everyone else. The laws and policies as they were originally written were flawed because they were discriminatory. It was this discrimination as expressed through the policies and laws that had to be changed.

This is why *Simpsons-Sears*, a case of religious discrimination, was the first charter case in which Canadian groups representing persons with disabilities intervened. The interveners argued:

> Protection against practices creating discriminatory effects is crucial for disable people because the individuality of their impairments makes them vulnerable to a wide range of superficially neutral obstacles… As a practical matter a narrow interpretation of the word discrimination will expose disabled people and members of other protected classes to unreasonable and arbitrary barriers to equality, in causes where malicious motive cannot be proven (CAMR and COPOH, "Factum of the Interveners," Ont. Human Rights Comm. V. Simpsons-Sears, [1985] 2 S.C.R. 5636, as quoted in Vanhala, p. 114).

employers' insistence that she must work during that time, so too are persons with disabilities

when faced with "able bodied norms" which obstruct them from equal access and movement.[23]

Yet, on the face of it, the amelioration of discrimination against persons with disabilities

and members of "other protected classes" are clearly different things and require different

remedies. Adam Keating describes this critical distinction in his analysis of the *Americans with*

Disabilities Act (ADA):

> The ADA embodies a fundamental difference from other civil rights statutes which
> prohibit discrimination based upon race, gender, or national origin. Those statutes
> prohibit an employer from discriminating against job applicants and employees based
> upon racial, sexual, or ethnic prejudices. In essence those statutes require the employer to
> turn a blind eye and ignore the individual's protected characteristic. In contrast, the ADA
> requires more than just equal treatment; it requires employers to make reasonable
> accommodations or adjustments to the workplace for qualified disabled individuals that
> are not offered to non-disabled individuals (2010: 4-5).

Keating distinguishes reasonable accommodation of the disabled from the distinct goals of racial,

gender and ethnic equality. As he explains, where the former are accommodated by being treated

equally, demanding the employer to ignore or "turn a blind eye" to their differences, the latter are

accommodated by a full and complete recognition of different needs and abilities and an explicit

adaptation of the work environment. Karlan and Rutherglen put this distinction in even clearer

terms: "under the civil rights statutes that protect women, blacks, or older workers, plaintiffs can

complain of discrimination against them, but they cannot insist upon discrimination in their

favor; disabled individuals often can" (1996: 3).[24] They further explain that,

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[23] According to Vanhala, the development of the concept of reasonable accommodation of religious practices in Canada coincided with a similar development in the disability rights movement around the idea of "indirect discrimination based on the idea that an action that is seemingly neutral can be discriminatory if it results in inequality." Because the world is based on "able bodied norms," people with disabilities are more likely to encounter unintentional barriers to equality (113-4).

[24] As they put it in the introduction of their article:

> Should women or African-Americans claim they are victims of discrimination on the basis of disability-
> because they are regarded as being physically or mentally impaired in the performance of major life

> Put in the broader context of debates over equality, the ADA embraces both a 'sameness' and a 'difference' model of discrimination… In a sameness model, the decisionmaker must ignore the irrelevant characteristic. Treating every worker identically, regardless of the presence or absence of a particular disability, satisfies the sameness model of equality…. A difference model, by contrast, assumes that individuals who possess the quality or trait at issue are different in a relevant respect from individuals who don't… Reasonable accommodation clearly rests on a difference model of discrimination since it requires employers to treat some individuals—those disabled persons who would be qualified if the employer modified the job to enable them to perform it—differently than other individuals (1996: 10-11).

And conclude that "This emphasis illustrates the profound differences between reasonable accommodation and antidiscrimination as methods of regulation" (1996: 14). Notably, this same thinking is found in Canada, where the Court decided that, when it comes to ethnicity, race, and religion, discrimination means making "distinctions based on presumed rather than actual characteristics" whereas avoiding discrimination of the disabled requires "taking into account the actual personal characteristics of disabled persons" (Eaton *v*. Brant County Board of Education, [1997] 1 S.C.R. 241). So, where equality or antidiscrimination policies means overlooking difference for one group, it means fully and explicitly recognizing and accommodating difference for another.

This is problematic in general but especially so in Quebec, where the practice of interculturalism includes some sort of expectation that minority groups share in the achievement of strong collective goals. Much to the chagrin of people like Drouin, reasonable accommodation has provided minorities with a waiver or a way out of the nonprocedural project. His outrage stems from the idea that these protected groups are treated as though they are unable or

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activities-rather than on the basis of sex or race? At first, the question seems insulting, suggesting, as it does, that there is something aberrant or defective about not being male or white. Or perhaps the question is merely pointless: if federal civil rights laws broadly prohibit discrimination on the basis of race, sex, religion, national origin, age, and disability-as they do-then what difference does it make how we categorize forbidden conduct? But how the law defines discrimination makes a big difference in the kinds of remedies it provides (2).

"disabled" from participating, receiving undeserved special treatment, when in fact they are simply unwilling to participate. In a sense, the Court has misappropriate or misapplied the concept of accommodation from the disability jurisprudence to other protect classes, recasting or reconfiguring minorities as a distinct kind of citizen unable to fully participating in the prevalent culture.

Conclusion

Unfortunately, four years after the release of the Final Report of the Bouchard-Taylor Commission, Quebec seems no closer to coming to grips with the way in which the nonprocedural project, the achievement of strong collective goals and the practice of interculturalism can be amended to the procedural project, multiculturalism and the protection of weaker collective goals through the policy of reasonable accommodation. While much of the "accommodation crisis" rhetoric in the province has died down, it is likely out of exhaustion rather than any kind of acceptance of how a long-term equilibrium between these two-competing social imaginaries can be established.

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