Trevor Tchir - Religious Pluralism and the Secular Canadian State

The current Conservative Government announced in its 2011 Throne Speech that it plans to create an Office of Religious Freedom within the Department of Foreign Affairs to help defend religious minorities abroad. In the speech, the government identifies the promotion of religious pluralism as essential to free and democratic societies. Canada's commitment to religious freedom and pluralism has been put into practice within its own borders through the *Charter of Rights and Freedoms* (1982), its official *Multiculturalism Policy* (1971) and *Multiculturalism Act* (1988), its immigration policy, which, under the point system of 1967, removed one's religion as a factor in considering a candidate's application for permanent residency, and through provincial education policies.

This paper examines some recent and historical Canadian policies meant to protect religious freedom in different ways, as well as policies and practices that disclose the limits of Canadian accommodation of religious pluralism. These limits often reflect a thick liberal conception of the good, principles of individual rights, freedoms, and notions of equality that risk being violated by illiberal religious practices. Kymlicka has outlined the limits of Canadian tolerance of religious practices in defending his idea of multiculturalism as a liberal conception of justice (1998, 60). These limits are consistent with the prominent image of the Canadian state as a secular one. A secular, liberal state favours no particular religion in public matters, while defending the freedom of religious practice in the private realm. Given the continually changing religious composition of the Canadian citizenry, it remains important to question both the normative underpinnings and specific practical manifestations of the state's commitment to respecting religious pluralism.

I suggest that there remains a strong residue of particularly Christian language and outlook in some acts, institutions, and symbolic appearances of the Canadian state, while it continues to present itself as universalist and secular. The question "Is the Canadian state, in fact, secular?" is a fair question to pose when one compares the Canadian constitution to that of the United States, which includes a non-establishment clause that prohibits state adoption of an official religion, and state sanction of religious institutions. In Canada there is no such clause. Christiano finds that Canada tends to approach the question of the proper relationship between church and state in a pragmatic, *ad hoc*, and sometimes jumbled way, with no constitutional, absolute principle determining this relationship. The state still shows ambivalence regarding its relationship to religion and the notion of God (76-77).

The "Twin Shadow Establishment" and the Christian Symbolic Order

Martin calls the Protestant and Roman Catholic churches the "twin shadow establishment" of the Canadian state (2000: 23). Historically, the Canadian state spoke for a community nearly coextensive with a more or less active Christian identity (29). Lyon writes:

> In Anglophone Canada nationality itself was interpreted using evangelical referents, and political life was shot through with religious colouring. An alliance between Protestantism and British civilization was expressed in the hope of some that Canada would be God's Dominion, and was manifested in the Anglo-Protestant hegemony that lasted until the Second World War. (8)

The English-Protestant version of the national myth centered on extending "His Dominion" from sea to sea and was promoted by the Baptist and Methodist Social Gospel of international good works (Martin 29). The Social Gospel's educational and social welfare institutions eventually became secularized, their functions replicated by state provision (31). Cook argues that by abandoning the transcendent for the immanent world of politics and social reform, the Social Gospel "set off down the path to the secular city" (quoted in Lyon, 10). The Protestant shadow establishment was twinned by the Catholic tradition, and lived in "awkward lock step" with its alternate national-mythical projections (Martin, 29). The French Catholic establishment was deprived of its original anchor within the pre-Revolutionary French state, while the Irish Catholic tradition, freed in Canada of direct English political hegemony, nonetheless encountered the cultural hegemony of Scottish and English Protestantism (25). Martin posits that the Canadian state currently retains residues of Scottish and English established Protestant religions, but free from the anchors of social or numerical dominance. He holds that there remains an identifiable, albeit modest, social and political hegemonic class with links to these churches (26).

According to Bramadat, while Christianity is still the dominant religion in Canada, its monopoly on religious identity no longer obtains; we are witnessing the differentiation and de-Christianization of society (2009b: 3). Significant migration to Canada after World War Two, from many non-European corners of the world, gave thrust to the privatization of Christianity and the relative neutrality of the state vis-à-vis the increasing plurality of religions practiced within its borders. Bramadat identities six major minority religious communities in Canada: Sikhs, Jews, Buddhists, Hindus, Muslims, and a complex of faiths under the umbrella of Chinese religion (2009a: 1). All of these are growing significantly, due, in part, to stable immigration levels and relatively high birth rates. Bramadat argues that Canada has reframed the relationship between religion and the state in answer to both the ethno-religious pluralism that has emerged through post-World War Two migration and decolonization, as well as liberal human rights norms, which immigrants today are more likely to appeal to (2009b: 5). He holds that in most liberal democracies, religion is now disentangled from public education schemes, health care systems, social services, and law (2009b: 11). The church has lost much of its political clout in Canada, as the main Christian denominations, the United Church, the Presbyterian Church, the Anglican Church, and the Roman Catholic Church, are no longer as involved in secular power as they once were (2009a: 3-4).

But Bramadat argues that a hard separation of church and state does not really describe the current formal relationship in Canada. Canada still gives preference to Christianity in many forms, although this privilege is increasingly symbolic (2009b: 11). Biles and Ibrahim argue that Christianity's position as the "quasi-official state religion" is evidenced in much of Canada's public symbolism (2009: 167). For example, the preamble to the *Constitution Act*, 1982, recognizes the 'Supremacy of God', while the 1960 *Bill of Rights* and the House of Commons' opening prayer both refer to 'God.' Nova Scotia, New Brunswick, P.E.I., and Ontario have kept the Lord's Prayer in their legislatures, with Ontario alternating prayers from other religions, a commendable form of recognition of religious pluralism. The Queen is referred to as the 'Defender of the Faith' on election writ documentation, while Canadian currency is marked by 'DG Regina,' meaning that the Queen reigns by *dei Gratia*, the 'Grace of God'. The national motto, *Ad Mari usque ad Mare*, speaks to the self-understanding of the early nation-building project as being a Christian one. It is from Psalm 72:8 and translates: "He shall have dominion also from sea to sea, and from the river unto the ends of the earth" (172n). *Oh Canada* prays that "God keep our land glorious and free", while the Throne Speech has concluded with "May divine providence guide you in your deliberations" (172n). Kymlicka also points to the Christian foundation of the Canadian symbolic order, and rightly suggests that public declarations and documents ought to instead recognize religious diversity (1998, 48). It is noteworthy that many of the documents cited above do not specify the God of any particular religion, so that the recognition of religious pluralism can be read into these references to God up to a point. This verbiage does, however, exclude secular humanists or other atheists.

What is Secularism?

This paper focuses on the relationship between the Canadian state, Christianity as the traditionally hegemonic religion in Canada, and the plurality of other religions practiced within its borders, as well as the position of religion in relation to the public sphere. We may understand secularism institutionally, as the division of state and church. A secular state is one that offers no official sanction or promotion of a particular church or religion. In this sense, the United States, with its constitutional non-establishment clause, falls into this category. A secular state also generally offers constitutional protection of fundamental rights and freedoms of conscience, expression, and religious practice, as we see in section 2(a) of Canada's *Charter of Rights and Freedoms*.

The role of religion in the public sphere is but one of the three aspects of Western secularism that Taylor mentions in the opening pages of *A Secular Age*, but not the one on which his book focuses. Instead, Taylor focuses on the changing underlying historical, practical, scientific, artistic, and philosophical conditions of especially Christian religious belief or disbelief in Western early and late modernity, especially among intellectual elites. Neither Taylor's work nor this paper focus on a third measure of secularism, the overall decline in religious belief and practice among the population.

Lyon explains secularization as the general decline of religion in modern societies, the evacuation of churches, and the loss of religious referents in cultural and political life (10). Bramadat sees a relative conformity among the educated elite in their opinion that religion is en route to distinction, that it has, at least, been relegated to the

private sphere, where they think it belongs (2009b: 9). He points here to the hegemony of a post-Kantian, post-Enlightenment view of reality (10). But Bramadat and Lyon maintain that religious organizations and beliefs still influence public debate and policy. Religion is not strictly a private affair, but influences social, cultural, economic, and political affairs. It is significant in both the creation and resolution of political controversies, such as those centered on discrimination, health-care crises, terrorism, globalization, women's rights, and public education (2009a: 7). We should recognize that the interests of some individuals and groups in the public sphere may be chiefly motivated by religious belief, not economic, political, or cultural concerns for which religion is often perceived as merely a surface expression (2009b: 14). Bramadat argues that religion remains an important mode of identification for the majority of Canadians. Many minority groups in Canada express their concerns in religious contexts, while places of worship are often centres for economic and social life of immigrants, their children, and grandchildren (2009a: 7). Biles and Ibrahim also stress that religion still matters to Canadians. With the disruption of local cultures from increased globalization, religious practice is important for many in establishing one's identity, as well as a feeling of rootedness, belonging, and attachment to one's community. It also remains a significant source of solace and order for believers. Further, religion remains important to struggles for global peace and security, with communities of faith often supporting global networks struggling for peace and social justice (165).

According to Bramadat, we have seen the breakdown of simplistic secularization hypotheses since the 1970s (2009b: 4). He explains that the 'secularization hypothesis' of the 19th century, espoused by Comte, Durkheim, Weber, Marx, and Freud, held that religion ought to and would shrink in the face of the development of complex, rationalized, and functionally differentiated democracies (11). But both Bramadat and Taylor (2007) argue that religion has survived modern technological rationality, emerging in new and different forms, and both point to the existence of multiple modernities, various patterns of secularism in the contemporary Western world. Lyon similarly finds that the religious impulse is currently being relocated and restructured (10).

Bramadat (2009a: 4) identifies four shifts towards secularization in Canada in the twentieth century. The first is the Quiet Revolution, which saw a dramatic decrease in the power and influence of the Roman Catholic Church in Quebec, with the state taking over delivery of healthcare, education, and social services. Indeed, Lyon emphasizes that two different processes of secularization have occurred in this country: one in Quebec and one in the rest of Canada (Lyon, 5). Second, in the 1980s, mistrust in the Church rose as Canadians learned about the sexual, physical, and spiritual abuses of the residential school system and other cases of sexual abuse in contexts in which the clergy held authority. Third, the spiritual needs of many came to be met increasingly outside of religion, in unfettered individual choice. Taylor (2007) closely traces this phenomenon in his analysis of the ethic of authenticity. Finally, the liberal and multicultural state, developed in Canada in part through post-World War Two immigration reform, state multiculturalism policy, and the introduction of the Charter, could no longer favour any particular religion, so it distanced itself from simple endorsement of Christian values.

Legal Protection of Religious Freedom and its Limits

Groups in Canada have fought for religious accommodation and recognition largely through the court system, appealing to a set of clauses in the Charter. Section 2(a) establishes the fundamental freedoms of conscience and religion, while section 15 protects equality under the law and prohibits discrimination based on religion. One of the purposes of these clauses is to protect members of minority communities from state imposition of religious beliefs. The *Canadian Human Rights Act* (1977) and provincial human rights codes also include anti-discrimination measures based on faith. Some provincial codes allow discrimination based on religion in hiring practices among non-profit institutions like schools, but these must demonstrate how the candidate's faith is important for the hire (Sweet 138)

There is an important difference between the liberal, legal protection of an individual's right to religious belief and practice in the private realm, and the public recognition of one's religion, through state sanctioned institutional or corporate pluralism, such as state funding for religious schools. Christiano argues that the Charter legally sanctified the private place of religion, but effectively deprived it of its public import. It became something intellectualized, individualized, another lifestyle choice protected by constitutional law upholding the state's principle of neutrality (86).

Kymlicka argues that minority rights in Canada should be understood within the context of Canadian nation-building, as protecting minorities against the burdens of integration into a shared societal culture. He holds that the common public institutions into which immigrants integrate should provide for the equal respect, recognition, and accommodation of difference. Kymlicka posits that liberal states are, in fact, not neutral as to their conception of the good, but rather favour a set of interests and identities held by the majority. The Canadian Criminal Code and the Charter aim to give legal guarantees to the liberal ideals of individual rights and freedoms, as well as gender equality. They help to promote Canada's predominantly liberal political culture, which values individualism, majority rule, legally sanctioned human rights, and secularization. This liberal universality was largely the impetus behind Ontario's elimination of all religious arbitration tribunals in 1995. But the burden of proof has shifted to supposedly difference blind, or neutral liberal institutions to demonstrate that they do not create undue injustices or burdens for a minorities (2001, 163-65). The vast majority of demands for religious accommodation ask only for the same consideration Christians have long enjoyed in Canada. But despite efforts by Canadian public institutions to neutralize their practices, legitimating discourses, and symbolic appearances of any particular religious preferences or references, many of these still retain more or less explicit elements of Christian influence.

It is worth mentioning that Kymlicka makes a distinction between two kinds of group rights: external protections against economic, social, and political decisions of mainstream society and the state, and internal restrictions set by minority groups for their own members (1998, 62). External protections are generally consistent with the values of liberal democracy. They put groups on more equal footing with the majority, through measures such as guaranteed representation in legislative bodies, financial subsidies, or flexible dress codes and work schedules. Internal restrictions, on the other hand, may be contrary to the liberal democratic values enshrined in the Charter, such as individual

freedom and gender equality, and restrict the freedoms of group members in the name of group solidarity and cultural or religious purity. Internal restrictions may serve to reproduce patriarchal social relations prescribed by religious orthodoxy. While internal restrictions are permitted in Canada in voluntary associations, it is questionable weather they should be permitted among institutions that are recipients of public financial benefits, such as religious schools seeking state funding, given the state's commitment to the liberal principles of the Charter. Canadian multiculturalism policy, with its primacy of liberal democratic values, supports the rights of groups to impose internal restrictions in private settings, and only if group members retain the choice to exit the group.

Kymlicka finds that the Canadian state not always make the limits of religious tolerance explicit enough, but that Canadians can better embrace accommodation if we are clear about these limits. Some religious practices are restricted by Canadian law. For instance, Canada has no legal recognition of arranged marriages,or Muslim *talaq* divorces that are oral and unilateral. Canada outlaws clitoridectomy, and does not recognize religious or cultural justifications for violence against women. Kymlicka rightly insists that debating these limits is painful but necessary, as it helps to clarify the proper balance between religious freedom and reasonable limits in secular society. It also helps to sift ideas that risk being conflated in popular discourse, to avoid crude generalizations about the meanings of particular religious practices, identities, or rights claims (1998, 69).

A Policy Blind Spot

Bramadat suggests that Canadian society will continue to become increasingly religiously diverse, so we need to recognize religion as a crucial dimension of diversity in forming public policy (2009a: 6). He argues that religiously illiterate public policy makers are unprepared to factor religion into their deliberations over how to accommodate and countenance plurality (2009b: 9). This illiteracy leads to a misrepresentation of the six major religious minorities, and a failure to understand the religious dimensions of public crises and policy challenges (2009a: 5). He writes convincingly that the Canadian state has a nascent interest in religion in its diversity and that religion is worthy of government's active interest, though not promotion of any particular faith (6).

Biles and Ibrahim also argue that religion is a blind spot for Canadian public policy (155). For example, the *Multiculturalism Act* (1988) recognizes the diversity of religion as a fundamental characteristic of Canadian society. However, they argue that it fails, in large part, to recognize religion as an important aspect of diversity. Since the early 1980s, when multiculturalism policy shifted its focus on easing race relations in urban centres, the recognition of religion as an aspect of diversity was marginalized. Further, the government has relied heavily on religious groups to help the settlement and integration of immigrants, but has largely excluded them from the consultation processes regarding immigration targets (161).

The blind spot, they contend, is due to four main reasons. One is that religious minorities often subsume religion within their ethnic identity, as recognized by the state, in order to participate more fully within the secular public arena. Another reason is what they see as a misplaced belief in the strict division of church and state at all costs. A third

reason for the blind spot is an undue fear that religion is inherently intolerant and a threat to the Canadian model of diversity accommodation. There is fear that religious political leaders would impose their socially conservative positions on the community, given the chance, and that these positions are opposed to gender equality, intolerant of homosexuality and same sex marriage, and anathema to the recognition of diversity. Finally, there is a refusal to acknowledge the Christian heritage of Canada. They suggest that Canadians should recognize Christianity as the *de facto* national religion, but still encourage a heteronomy of voices in the public sphere. They argue that this would not threaten the autonomy of our democratic institutions, or the integrity of our pluralistic culture. They also assert that the Charter can be adequately respected, while more fully including religion within Canadian public debate and as a category of identity for public recognition (166). I contend that while religious identities and issues should be countenanced in Canadian policy, and while citizens should feel free to voice their opinions in public deliberative spaces in languages couched in their religious convictions, the state should in no way encourage citizens to recognize Christianity or any other religion as an official or quasi-official state religion. The threat to freedom of conscience and to the good of public recognition of religious pluralism is too great.

Religious Accommodation

Canada has a history of state accommodations to churches and religious communities, such as the privileged privacy of communication between laymen and ministers, and the removal of liability on some taxes (Christiano, 76). Sweet writes that in the late eighteenth century, Mennonites from Pennsylvania settled in Upper Canada on the condition of exemption from the militia, for religious reasons. The state provided large tracts of land to Hutterites, Doukhabors, and Mennonites, with the right to run their own schools. Later, the Canadian state demanded these communities attend public school in English, as well as engage in other practices counter to their religious beliefs, such as participate in World War One as non-combative military servants (as of 1918) and in World War Two as civilian servants. After the introduction of the *Multiculturalism Act*, 1988, the teaching of Russian and German in public schools has appeased these groups in some provinces, while in others the state offers some funding for their independent religious schools (134-35). Kymlicka points out that Canadians have generally accepted policies that have exempted such white minority Christian sects from combative military service and he bemoans what he sees as the racist motive of many Canadians that do not accept the extension of this form of exceptionalism to non-white non-Christians (1998, 53).

Religious Dress

One contemporary form of religious accommodation has been the legal sanction of flexible dress codes for public servants and for private citizens in public or quasi-public spaces. The wearing of non-Christian traditional religious clothing while performing public duties has been seen by some as disrespectful of national symbols, or a violation of the principle of neutrality in the secular state. Kymlicka notes, however, that much of Canada's public dress, such as that of the military and police, already

accommodates the Christian tradition, and there is nothing in these dress codes seriously conflicting with Christian faith; soldiers and officers can still wear small crosses or wedding rings, for example. He argues rightly that the state could and should make such accommodations for other faiths (1998, 47). From the perspective of the individual who wears the religious dress, this accommodation has an integrative effect. In what is now a famous case, Baltic Singh Dhillon was the first RCMP officer to wear a turban on duty in 1988, and six years later, the Federal Court ruled the legalization of the wearing of turbans and other religious headwear within the RCMP to operate as a symbol of multiculturalism in Canada.

As for dress codes in work places, the Supreme Court ruled in *Bhinder vs. CNR*, that businesses must make realistic accommodation of employees' religious faith, but referred to the *Human Rights Act* in ruling that denying religious accommodation is not tantamount to discrimination if the company practice is based on a bona fide occupational requirement, such as safety (Sweet 141). Safety has also been a concern that has set a limit to dress code accommodation for state-regulated mass transit, especially since 9/11. Until then, the Air Transportation Association of Canada allowed small kirpans as carry-ons, but they now must be checked in (142).

Much controversy has arisen from a series of contestations of the rights of Muslim women to wear traditional religious dress such as hijabs, burkas, or niqabs in public schools, courts, and, most recently, while swearing the citizenship oath. In 1995, two Montreal highschoolers were suspended for wearing hijabs. As Kymlicka notes, the resulting public debate helped change public perceptions about Islam and to clarify where schools, the public, and government stood on the issue of appearances of religious symbols and dress in public schools, an important secular institution. In this case, the Quebec Human Rights Commission found forbidding the hijab tantamount to discrimination, compromising religious freedom and the equal right to public instruction.

Since December, 2011, the Court has been deliberating over a case in which a Muslim woman, "N.S.", asked to keep her niqab on while testifying against two male relatives in a sexual assault case before an Ontario preliminary trial court.   The Supreme Court is now charged with weighing the competing goods of N.S.'s religious freedom, the right of the defendants to a fair trial, which would arguably include reading witness facial expressions during cross examination, and the sanction of religious dress which, to some, is a symbol of female oppression and gender inequality.   The symbolic question would appear to be an important one to the current Minister of Citizenship and Immigration Canada, Jason Kenney. The same month, his department banned the wearing of niqabs or burqas during the swearing of citizenship oaths, raising the ire of proponents of religious freedoms, such as Julia Williams, the human rights and civil liberties officer for the Canadian Council on American-Islamic Relations. Williams finds the regulation "absurd" in its violation of the Charter right of religious freedom (Payton, 2011). Indeed, the issue seems to be greater than the practical question of whether citizenship court judges are able to see Muslim women actually perform the oath. For Kenney, this regulation signifies the state's promotion of the liberal principle of gender equality. In a CBC News Network interview, Kenney said:

> [Wearing the niqab or burqa is] a cultural tradition, which I think
> reflects a certain view about women that we don't accept in Canada.
> We want women to be full and equal members of Canadian society and

certainly when they're taking the citizenship oath, that's the right place
to start. (Payton, 2011)

Religious Holidays

A prominent sign of the residual Christian hegemony in the Canadian state is the fact that three of Canada's primary state holidays, though officially secular, are celebrated on Christmas, Good Friday, and Easter Monday. This issue extends to Canadian public school boards. In *Islamic Schools Federation of Ontario v. Ottawa Board of Education* (1994), the Federation argued that the school board's failure to accommodate the religious holidays of Islam, while observing Christian and some Jewish holidays, violated their religious freedom and equality rights (Magniso, Long, and Theberge, 364). The case was presented in response to the Ottawa and Metro Toronto school boards' delay of the opening of the school year in 1994-95 by two days to accommodate the Jewish holiday Rosh Hashanah. The Federation argued that being forced to choose between missing school and observing an important holy day is a state-imposed disincentive to free practice of one's religion, and that granting official recognition of holidays of certain religions and not others is tantamount to the state establishing an order of importance of religious groups (375). In 1997, the Divisional Court of Ontario ruled that the Ottawa board had not discriminated by denying a request for the similar recognition of one or more Islamic holidays. Magniso, Long, and Theberge are rightly skeptical that religious neutrality can be satisfied in a system that grants school holidays for some religions and not others. Presumably, the government's position is that the public holiday regime has a secular purpose, though not a secular origin. The schedule has become traditional and consistent with a general social calendar, while the government does not celebrate the religion whose holy days happen to fall on holidays (375-76). Chief Justice Dickson asserts this distinction between the current secular purpose and religious origin of holidays: "Our society is collectively powerless to repudiate its history, including the Christian heritage of the majority" (cited in Magniso, Long, and Theberge, 376).

Kymlicka argues that Canadians cannot reasonably say that requests from non-Christians for similar accommodation and recognition for other religions would be tantamount to a violation of the idea of separation of church and state, with Christian holidays already enjoying *de facto* recognition. But, he admits that it is difficult to identify what would be a fair compromise. One option would be to eliminate one of the Christian holidays and adopt Ramadan, or Yom Kippur, for example. This would distribute burdens more equitably, serve as a symbolic recognition of equality, and could afford the opportunity for inter-faith learning (1998, 48). We might ask at which point the state would draw the line on a proliferation of holidays, and how Sikhs, Hindus, or practitioners of Chinese religions would react to their non-recognition after the inclusion of an Islamic and Jewish holiday. While the origins of these now officially secular holidays was Christian, the state of liberal, secular neutrality is likely not prepared to engage in a practice of religious favouratism that this would entail.

Another option that Kymlicka mentions is the elimination of all public holidays on major religious sacred days, and, instead, the allowance of a certain number of holidays per year to each public employee, chosen independently (1998, 48). This would achieve a more equitable public stance toward the diversity of religions by further

diminishing the status of Christianity within the state, equality through universal non-recognition. However, this form of state neutrality would mean few shared national, public holidays for extended families or groups within civil society to plan gatherings around. Further, the elimination of secular holidays that fall on Christian sacred days would likely incite significant opposition among the nominal Christian majority, and risk losing already fluctuating public support for policies falling under the authority of the Multiculturalism Act.

A related form of religious accommodation in Canada is the revising of work schedules to suit one's religious holidays or weekly sacred day. The Supreme Court ruled in *O'Malley vs. Simpson Sears* that businesses must make realistic accommodation of employees' religious faith in the setting of work schedules (Sweet 140). Canadian businesses took an important related step in the direction of secular neutrality in 1985. This was the year that the 1906 *Lord's Day Act*, which forbade businesses to operate on Sundays, was struck down after a challenge by Calgary's Big M Drug Mart. This was the first case to incite an interpretation of the Charter's section 2, which the court argued protects individuals from the state placing burdens on religious practice. Interestingly, this was also one of the relatively few times that the court explicitly referred to the Charter's multiculturalism clause as operative in its reading of section 2. The multiculturalism clause, section 27, demands that the Charter be interpreted in a way that preserves and enhances Canada's multicultural heritage.

Religion and Education in Canada

The scope and meaning of religious freedom in Canada has been debated largely through questions over the extent to which provincial governments should include religious education as part of their public school curriculum, and the extent to which separate religious schools should be state funded. With the significant diversity of religions practiced in Canada since the Second World War, public school systems across the country have attempted to accommodate religious pluralism by gradually removing vestiges of Christian privilege. Magniso, Long, and Theberge provide a strong account of how Canadian courts have promoted a liberal-pluralist approach, one that defends individual freedom of conscience and religion through the secular neutrality of public institutions, rather than a corporate-pluralist approach, which defends the religious freedom of groups through the public recognition of a plurality of separate religious institutions (381). Liberal pluralists believe that the accommodation of religious freedom, as far as education policy goes, is best achieved exclusively through the secular, public system, which strives to treat all faiths neutrally and relegate religious practice to private homes and places of worship, even at the risk of contributing to students' illiteracy in traditional religions. Some boosters of this idea defend a thick liberal conception of the good, and argue that the rights, freedoms, and principles of equality defended in the Charter are best instilled in young Canadian citizens through a secular education system.

Magniso, Long, and Theberge point to the relative success of groups resisting public school practices anchored in a Judeo Christian majoritarian outlook through litigation. The authors show that the freedom to manifest religious belief in public, non-sectarian schools is constrained by the courts' interpretation of the Charter. A number of Ontario cases regarding religion and education have required the provincial high court to

interpret its enshrined rights and freedoms, and their readings have been influential on other provincial courts (367). In *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), appellants sought complete removal of religious education classes from public schools, arguing that they violated section 2 by coercing non-Christian children into participating in predominantly Christian classes. The Elgin Country School Board held that religion class was meant for moral education, and that beliefs other than Christian ones were part of the religious education curriculum. The Ontario Court of Appeal found the practice to be indoctrinating, and required that the Elgin County School Board cease religious classes. The Ontario Ministry of Education ordered public schools to cease all religion classes that promote a particular religion, but permit courses about world religions (370). Manitoba and British Columbia have also ruled religious practices in public schools to be unconstitutional.

In *Zylberger et al. v. Sudbury Board of Education* (1988), the Ontario Court of Appeal struck down religious opening exercises in public schools, as a denigration of the rights of minority students. Applicants were parents representing non-Christian and atheistic philosophies; they argued that requirements of a religious exercise were a violation of the freedom of conscience and religion. Subsequently, the Ontario Education Act was amended to permit opening or closing exercises which may include inspirational readings but which may not promote any particular faith (Magniso, Long, and Theberge, 369).

Some public school systems have removed religious teaching entirely from their curriculum, including "religions of the world" classes that, if delivered with the proper sensitivity to the self-understandings and internal plurality of religions practiced in Canada, could increase students' knowledge and lead to more fruitful dialogue between believers and non-believers. Seljak charges that the removal of religious education from the public system has lead to a religiously illiterate generation, unable to properly understand and interact with students of other faiths, while not helping secular schools become any more hospitable to religious minorities (2009: 179).

Many members of religious communities find the curricula and atmosphere of public schools to be at odds with their values, which tend to place less import on individual rights and more on the development of a subjectivity anchored on faith that transcends individual and strictly human and immanent dimensions, but calls forth allegiance to the divinity. Canadian public school systems generally promote individual freedom, gender equality, the normalization of homosexuality, and relatively liberal norms of dress and sexuality, from the perspective of the conservative orthodoxy of many religions in Canada. Azmi (2001) writes that the proliferation of Muslim schools and madrassahs in the greater Toronto area grew out of the perception among Muslim parents of the inability of the liberal, secular, public school system to accommodate their religious particularity. Azmi argues convincingly that while it is impossible for major public institutions like provincial or local school systems to accommodate illiberal religious values and practices, it is possible to accommodate religious difference through institutional plurality.

A provincial government's funding and/or accreditation of religious schools is a cornerstone to the state's accommodation of religious pluralism. Provinces differ significantly in the extents to which they fund independent religious schools, with British Columbia, Alberta, Saskatchewan, Manitoba, and Quebec currently offering partial

funding. In 1988, Alberta sanctioned religious schools financed through its public system, and continues to do so. For example, the Edmonton public school board includes a Hebrew alternative school, the Talmud Torah (Sweet 145). Separate religious schools have a long history in Canada. The first were established in 1841 in the *Common School Act* and gained legal protection under the *Constitution Act, 1867*, which protected the minority education rights of Catholics in Ontario and Protestants in Quebec. This formed the basis of public funding for separate schools in these provinces. The Supreme Court decision in *Reference Re Bill 30* (1987) is a relatively recent reassertion of the constitutionality of the extension of public funding to Catholic secondary schools in Ontario. Today, separate Catholic schools are fully funded by the state in Alberta, Ontario, Saskatchewan, and the Northwest Territories, whereas Quebec has switched to school systems divided along linguistic lines.

Other religions, however, have not had as much success. Ontario refuses to extend the special minority education rights for denominations recognized in section 93 of the Constitution to other religions or denominations, despite appeals by such religious communities to section 2 and 15 (Small, 201). The funding of Catholic separate schools in Ontario results from a political compromise struck in order to create the Canadian confederation and this unique constitutional provision has not provided a legally useful precedent for other religious denominations (Magniso, Long, and Theberge, 379). In all provinces, most religious communities must pay out of pocket in order to establish their own schools, while paying taxes to fund the public school system. In *Adler v. Ontario (Minister of Education)* (1994), parents challenged the province's refusal to provide public funding for independent religious schools to be a violation of section 2 and 15, as it placed an unequal financial burden on parents who paid for religious schooling. The Ontario Court of Appeal found these parents were free to send their children to public secular schools, but were not required to do so; they could excuse their child from school provided that they received satisfactory instruction at home or elsewhere. Their choice to send their children to private schools was a matter of their conviction, not government action or inaction, so the state's failure to fund religious schools did not interfere with religious freedoms because it did not prevent parents from acting according to the dictates of their consciences (370-71). The court found the Ontario government not bound to support independent religious schools either through the public or private system.

In 1996, the Supreme Court decided that while provinces and local school boards are legally entitled to provide public funds for separate religious schools, they are not legally obliged to do so. Magniso, Long, and Theberge argue convincingly that this significant financial burden on parents is inconsistent with the notion that parents have the right to choose the kind of education their children receive, a principle of the Universal Declaration of Human Rights adopted by the United Nations and signed by Canada. In the *Adler v. Ontario*, Justice L'Heureux-Dubé's dissenting opinion similarly held that there is an important interest in recognizing 'insular' religious communities in a majority secular society, justified in particular by section 27 (Small, 202). Justice McLachlin, in her majority decision reflecting the Court's predominant liberal-pluralist outlook, argued that the denial of the appellants' full equal benefit of the law, in the form of lack of public funding, was a reasonable limitation of a fair and democratic society (section 1), for the purpose of fostering a strong public, secular school system attended by

students of many religions and capable of fostering understanding and respect between students of different faiths (203).

Religion and Public Deliberation

By way of conclusion, we re-visit a 2009 conference on religion and the public spheres of pluralist democracies, in which both Taylor and Habermas propose that religious communities play an important role in civil society and the public sphere, and see deliberative politics as as much a product of the use of public reason on the part of religious citizens as non-religious ones. Habermas submits that civil society, in which the democratic will formation of citizens occurs, retains references to religion, and rightly argues that "vital and non-fundamentalist religious communities can become a transformative force in the center of a democratic civil society - all the more so when frictions between religious and secular voices provoke inspiring controversies on normative issues and thereby stimulate an awareness of their relevance" (Habermas, 25).

For a long time, Habermas insisted on an epistemic break between secular and religious reasoning in the public sphere, suggesting that all interlocutors can speak and agree on secular reason, while religions introduce extraneous premises that only believers could accept, and so operate outside a secular discourse which all could assent to (Taylor, 49). This, Taylor argues, stems from the myth of the Enlightenment, that humans have found the source of truth in reason alone, and that we have taken an unmitigated step forward in abandoning the realm in which religion or revelation count as a source of insight about human affairs (52). Taylor contests that this step is a self-evident epistemic gain, that purely immanent arguments do not suffice to establish certain moral-political conclusions, and that often Kantianism and Utilitarianism, the two most famous modern immanent moral philosophies, fail to convince many honest and unconfused religious people (54).

More recently, Habermas recognizes the right and benefit of religious citizens voicing their truth claims in their own religious discourse, but argues that they must be prepared to have the truth content of this language translated into the generally accessible language of formal deliberation when adopted by agendas for parliaments, courts, administrative or political bodies that yield to collectively binding decisions (Habermas, 25). Taylor agrees, submitting that there are zones in a secular state where language must be neutral, such as legislation, administrative decrees or court judgements, though not in spaces of citizen deliberation (Taylor, 50). According to Habermas, religious citizens who regard themselves as loyal members of a constitutional democracy must accept this translation proviso as the price of the state neutrality towards competing worldviews (Habermas, 26). The religious citizen would need to relate himself to competing religious and non-religious perspectives in a reasonable way, leave mundane knowledge decisions to the institutionalized sciences, and make the egalitarian premise of the morality of human rights compatible with their own articles of faith (27). On the flip side, the secular citizen is obliged not to dismiss religious contributions to political opinion and will formation, and to recognize the limits of their own secular, or post-metaphysical, kind of reasoning (27). On this score, Taylor encourages a genealogical awareness of the religious origins of the morality of equal respect; this is useful for the secular side to see

how religions bear truth content, moral intuitions, which may be tapped into through religion's semantic potentials.

Taylor calls for a rejection of the traditional understanding of secularism that fetishizes some institutional arrangement based on the separation of church and state, and the neutrality of the state in relation to religious perspectives. He instead proposes that we understand contemporary secularism in terms of the democratic state's response to the full diversity of perspectives articulated in the public sphere, including both religious and non-religious comprehensive doctrines (34). The secular state remains neutral with regards to the deeper reasons that ground its public ethic or civil philosophy, centered on liberty, equality, and democratic rule or fraternity. Drawing on Rawls' notion of an 'overlapping consensus', Taylor proposes that citizens may understand the deeper reasons legitimating the shared public ethic from a number of religious or non-religious comprehensive doctrines, be they Kantian, Utilitarian, Christian, or Muslim (37). There is no reason to single out religious or non-religious viewpoints in insisting that the secular state refrain from promoting any specific foundational philosophical perspective in its official speech acts. He adds that the democratic state's secular response to diversity pursues three fundamental norms or goods disclosed by the French Revolution, and which comprise the philosophy of civility upon which democratic societies rest. They are individual rights and liberties, including the liberty of conscience, the right to believe or not to believe; equality or non-discrimination, including the equality between people holding different faiths or philosophical outlooks, supported through the state's neutrality in relation to comprehensive doctrines; and democracy or rule based on consent. This last good rests on fraternity, the notion that all spiritual families must be heard, included in the deliberation over its fundamental political identity, its regime of rights and privileges (35, 46-47).

In a similar tone, Bramadat argues that we need to create contexts in which members of ethnoreligious minorities can negotiate their identities in relation to dominant national cultures (2009b: 6). We must abandon simple caricatures of existing religions, see their internal heterogeneity (2009b: 16) and recognize that religious ideas, texts, and institutions are redeployed by newer Canadians in uniquely Canadian ways (2009a: 13). He suggests that serious accommodation has to be rooted in an acknowledgement of the power of religion in ethnic minority groups and, at the same time, a strong expression of the commitment to the values and principles upon which Canadian society is based. Taylor writes that as contemporary democracies progressively diversity, they must undergo far reaching and, at times, painful redefinitions of their historical political identities (46). He rightly suggests that we must rethink our political identity when the range of religions and philosophical perspectives within civil society expands (36). As much as possible, religious groups must be included as interlocutors, not as a menace, in this process of public deliberation (36).

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