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Recommended Citation

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The “Quebec Values” Debate of 2013: Minority vs. Collective Rights

Rhoda E. Howard-Hassmann*

Abstract

This article investigates the debate in the province of Quebec, Canada in 2013 over the Charter of Quebec Values introduced by the separatist ruling party, the Parti Québécois. It relies in particular on government documents, debates in Quebec’s National Assembly, and editorials in the French-language press. It relates the Charter to the preceding Bouchard-Taylor Commission Report in 2008 on accommodation by public bodies of particular religious requests. The debates concerned the right to manifest one’s religion, the rights of (particularly Muslim) women, and the rights of the collectivity as opposed to the minority. Part of the debate was about Quebec’s particular policy of interculturalism, as opposed to Canada’s policy of multiculturalism. The article concludes by advocating multiculturalism grounded in liberal human rights over coercive integration of minority groups into the pre-existent collectivity.

I. Introduction

This article enters the debate about whether comprehensive liberal-democratic polities that protect human rights may sometimes limit the religious rights of some of their members in order to protect fundamental principles, such as secularism and gender equality, or to enhance the society’s collective identity. In so doing, it points out that sometimes minority rights are incompatible with so-called “collective” rights. My particular example is the Charter of Values proposed in 2013 by the then government of Quebec, a French-speaking province of Canada. The Parti Québécois (PQ), which advocated separation from Canada and establishment of an independent Quebec state, was the governing party. The most contentious aspect of the Charter was a provision prohibiting public employees from wearing “conspicuous” (or in French *ostentatoire*) religious symbols while at work.¹

The article is based on examination of the debate that took place in Quebec in late 2013, relying on official documents, parliamentary debates in the provincial National Assembly (NA), and a survey of editorials in several French-language newspapers. It focuses on the debate among French-speakers within Quebec, as public opinion among English-speakers in Quebec and in the rest of Canada was almost uniformly opposed to the Charter. Among the French-speaking intellectuals and journalists who wrote editorials, opinion was also mostly opposed to the Charter, although some editorialists offered limited support for it.

This analysis does not deal with political questions such as the relationship between the Charter and the PQ’s desire to separate from Canada, or whether the reason it proposed the Charter was actually to increase its vote among certain sectors of the population. Rather, the

analysis focuses on apparent incompatibilities among different types of rights, how the PQ interpreted those incompatibilities, and how the (predominantly French-speaking) elite opinion responded to its interpretations. This debate occurred in a democratic, rights-protective province within a democratic, rights-protective country. It was not the first such debate; many others occurred in Quebec and the rest of Canada over issues such as prayer space for Muslim university students, Muslim parents' rights to withdraw their children from family and sex education classes, family arbitration based on shari'a law, and publication of cartoons deemed offensive to Muslims.² Both elite policymakers and private citizens take these debates very seriously, trying to reconcile as best they can what they see as conflicts between religious and other human rights.³

The theoretical question addressed in this article is whether, in order to preserve its own collective identity, a dominant secular culture may both privilege some of its own customs and limit the customs of members of religious minorities, even if doing so violates the international human rights of some individuals. The rights in question are protected by Article 18 of the 1948 Universal Declaration of Human Rights (UDHR): "Everyone has the right to freedom of thought, conscience, and religion: this right includes . . . freedom, either alone or in community with others and in public or private, *to manifest his religion or belief* in teaching, practice, worship and observance."⁴ This debate also addresses the question of whether the equality of women and men takes precedence over the right to manifest one's religion. Finally, it addresses the question of contradictions between (presumed) collective rights and minority rights.

In the Quebec debate over whether servants of the state should be permitted to manifest their religious beliefs via their dress, some argued that freedom of religion was paramount. Others argued that freedom of religion ought to be subordinate to the equality rights of women to men that Quebec's collective values took precedence over the right to manifest one's religious beliefs when in the service of the state, or both. Nor was this debate merely a local matter; it went to the core of the debate regarding whether Western countries, with predominantly Christian-ancestry populations, were to not only welcome but also integrate new types of immigrants, or whether, by even such minor means as regulating dress, they might make immigrants feel unwelcome and unaccepted.

II. Two Quebec Charters of Values

On 10 September 2013, the PQ released Bill 60, its controversial proposed "Charter of Quebec Values." Pauline Marois was Premier of Quebec and leader of the PQ, while Bertrand Drainville was the Minister responsible for democratic institutions and citizen participation and formal introducer of the Charter. The Charter was a statement of certain values the PQ considered key to preserving Quebec's character: these values were laicization (or *laïcité* in French), the secular neutrality of the state, and equality of women and men. As Premier Marois stated, "[i]n Quebec, equality of all citizens, equality between women and men, [and] separation of church and state, are fundamental values."⁵ These principles also underpinned judgments of requests for religious accommodation within Quebec.⁶ One exception was made for symbols and place names that reflected Quebec's cultural patrimony.⁷ In practice, this applied to the Catholic heritage of Quebec and permitted retention of crosses in public buildings and Christian saints' names of

cities or streets.

The Charter stated that anyone either providing or seeking government services was prohibited from covering her or his face, except when working conditions required it;⁸ this provision was uncontroversial within Quebec. Another provision proved extremely controversial; namely, that no one providing a public service could wear any conspicuous religious clothing or jewelry while at work,⁹ such as *hijabs* (headscarves for female Muslims), turbans (headdresses for male Sikhs), and *kippas* (skullcaps for male Jews). Christians would also be prohibited from wearing large, conspicuous crosses. One minor exception was that public servants could wear inconspicuous religious symbols, such as small, discreet crosses for Christians and Stars of David for Jews.¹⁰ Government departments could require that any private contractors hired also follow these rules.¹¹

The prohibitions on the wearing of conspicuous religious clothing extended as far as workers in the provincial network of state-subsidized daycare centers.¹² The government was particularly concerned that children's religions not affect in any way their eligibility to enter nursery schools, that teachers not proselytize in any way, and that nurseries not provide any religious training to children. It was important that children be educated to respect the religious neutrality of the state and the equality of women and men. Thus, even religiously-based diets, such as kosher (Jewish) or halal (Muslim) food, were forbidden. A major purpose of these rules was to facilitate social cohesion and integration of children into Quebec society regardless of their religious, social, or ethnic origins.¹³ Social cohesion and the necessity to "live together" (or *vivre ensemble* in French) were underlying principles of the PQ's approach to collective life in Quebec.¹⁴

Bill 60 also offered rules for religious accommodation, such as granting days off for holy days or religious festivities. Decision-makers were to take into account several principles, including that the accommodation must respect the equality of men and women and that it must not compromise the separation of religion and state and the overall secular nature of the state.¹⁵ The government was particularly concerned that recent accommodations had undermined the principle of equality between women and men.¹⁶ Its view was that these accommodations had caused much acrimonious debate—indeed, there had been a social crisis over reasonable accommodation—and had sometimes undermined these two fundamental principles of Quebec society. It also argued that past religious accommodations had emphasized differences among citizens instead of uniting them.¹⁷

On 7 April 2014 the PQ was defeated in a provincial election by the Liberal Party. The proposed Charter, thus, was no longer under debate. However, in 2015 the Liberals proposed their own substitute: Bill 62, the final version of which was passed on October 18, 2017.. Bill 62 had two stated purposes: to preserve the state's religious neutrality and to establish procedures for religious accommodation.¹⁸ Like Bill 60, it exempted some place names and symbolic features of Quebec from religious neutrality on the grounds that they reflected Quebec's cultural heritage.¹⁹ Like Bill 60, it also focused on equality of men and women.

Bill 62 removed some of the more controversial aspects of Bill 60. Public servants were no longer prohibited from wearing religious clothing and symbols. The requirement that people providing and seeking public services not cover their faces was retained.²⁰ Like Bill 60, Bill 62 also stressed the necessity of education to facilitate integration of all children into Quebec society and to foster social cohesion. Unlike Bill 60, however, Bill 62 specifically protected halal and kosher kitchens.²¹ There was still some public discussion about the requirement that people seeking public services should not cover their faces, but in general there was much less

opposition than to Bill 60.²²

III. The Bouchard-Taylor Commission

Bills 60 and 62 were both, in part, a reaction to an earlier debate within Quebec on the limits to religious accommodation, which culminated in the 2008 Bouchard-Taylor Commission (BTC) report, *Building the Future: A Time for Reconciliation*.²³ The commissioners were the French-speaking historian and sociologist, Gérard Bouchard, and the eminent English-speaking philosopher and resident of Montreal, Charles Taylor.

The BTC was set up by the then Liberal government of Quebec after a series of public debates about various judicial and other decisions whose function was to adjudicate requests for accommodation by members of religious minorities; these requests emanated not only from Muslims, but also from Jews, Sikhs, and others. Much public opposition to these demands was stoked by media reports. One case garnering attention concerned a male Sikh student who wished to wear a *kirpan*, a ceremonial dagger, in school. The Supreme Court of Canada ruled that he could wear the *kirpan* if it were carefully and fully encased in a protective cloth covering, which would make it difficult for him to use it as a weapon.²⁴ There was much protest in Quebec against the Court's judgment, which many nationalists saw as interference in Quebec affairs by the "foreign" Canadian judiciary. Two other cases concerned Muslims who were inaccurately alleged to have demanded that everyone at a festival celebrating maple syrup season be required to abstain from alcohol, and officials at a *yeshiva*, a school for religious Jewish boys, who allegedly asked that a gym across the street frost its windows so that the boys could not see women in gym clothes.²⁵ The facts in most of these cases were misreported.

After listening to the concerns that many Quebeckers had about requests for religious accommodation, Bouchard and Taylor recommended that Quebec adopt a policy of "open secularism."²⁶ Under this policy, the state and its servants would be neutral, but the latter would not be required to demonstrate their neutrality by discarding their religiously-prescribed clothing. Bouchard and Taylor contrasted this with "rigid secularism," which they argued was imposed by France's ban on the wearing of the *hijab* in schools. Bouchard and Taylor argued that religious accommodation would facilitate integration and social cohesion, rather than excluding those who chose to wear religious symbols from public schools and the public service. They asked, "[d]oes not a more rigid secularism risk . . . fostering community withdrawal rather than integration?"²⁷

Bouchard and Taylor did, however, recommend that certain officials of the Quebec government, holding coercive power, not be permitted to wear any religious symbols that might suggest to those under their control that they hold religious biases; these officials included among others judges, Crown prosecutors, and the police. They argued that religious symbols such as the Crucifix hanging in the NA and the prayers that opened meetings of municipal officials should be abolished, as these symbols implied that Catholicism was Quebec's state religion. They also recommended certain principles to which religious accommodation practices should conform. Accommodations should not violate gender equality; for example, requests for separate swimming classes for girls and boys in Quebec schools, or boys' refusal to have women teachers were not granted. Bouchard and Taylor noted that, in general, accommodations should not cause undue hardship, infringe on other people's human rights, or undermine safety and

public order.²⁸

Public reaction to the BTC Report suggested that many people were still somewhat uncomfortable with immigrants and the adjustments that Quebec society might have to make to their presence. Forty percent of Quebeckers polled between 28 May and 1 June 2008 (41 percent of francophones and 37 percent of others) believed that Quebec society was endangered by the arrival of non-Christian immigrants, while 51 percent thought that immigrants should abandon their traditions and customs to become more like the majority of Quebeckers. Sixty-seven percent (72 percent of francophones and 71 percent of others) opposed moving the crucifix in the NA. The same percentage opposed permitting female Muslim teachers to wear the *hijab* in public schools, although on this question there was quite a difference between francophones, with 77 percent opposing, and others, with only 39 percent opposing. Fifty-nine percent thought that crucifixes should be permitted in public school classrooms (separate statistics on francophones and others were not reported for this opinion), while 92 percent (94 percent of francophones and 83 percent of others) thought that Jews and Muslims should better understand the majority's culture.²⁹ This negative reaction to the BTC Report's general recommendations for changes to accommodate minority groups may have contributed to the PQ's decision to introduce Bill 60. The PQ considered the BTC Report to be a document proposing political correctness, instead of a response to the concerns of the general population about reasonable accommodation.³⁰

IV. The Rights Debates

A. Religious Rights

The prohibition of wearing of religious symbols or religiously-required clothing while in the service of the state was the subject of much heated debate in the NA in the autumn of 2013. The Liberal Party was the chief opposition party to the PQ, with the Coalition Avenir Quebec (CAQ: Coalition for the Future of Quebec) the second opposition group.

All three political parties agreed on the principle of gender equality and on the necessity for state neutrality, in the provision of public services to Quebeckers. All also agreed that neither public servants (while at work) nor those seeking public services should cover their faces. The debate focused on whether state neutrality required that public servants not exhibit their own religious beliefs through their dress or accessories. The PQ considered this to be a violation of state neutrality; neutrality, it argued, should be visible to citizens, not merely invisible or abstract.³¹ It considered the wearing of conspicuous religious symbols to be, in and of itself, evidence of a passive or silent proselytism.³² The Liberals and CAQ argued that the wearing of religious symbols did not imply proselytism, which they agreed was unacceptable.³³

In effect, the PQ advocated what the BTC called rigid secularism, while the Liberals and the CAQ advocated open secularism. The Liberals referred specifically to the Quebec Charter of Human Rights and Freedoms³⁴ as well as to a 1985 decision by the Supreme Court of Canada that freedom of religion included the right to openly profess one's religious beliefs without fear of reprisals.³⁵ Thus, those who objected to the Charter argued that it did not advance separation

of church and state; rather, it discriminated against minority religious groups. However, the CAQ did agree with the BTC recommendation that people in positions of authority should not wear religious symbols.³⁶

The problem was further complicated by the government's proclamation that the Crucifix would remain hanging in the NA while thousands of other crucifixes already hanging in public buildings would also remain there. The government argued that these were important symbols of Quebec's "patrimony" (*patrimoine* in French) or heritage, without defining clearly of what this heritage consisted.³⁷ This raised the question of whether Muslims, Sikhs, and Jews—or indeed English-speaking Protestants—who lived in Quebec contributed to its heritage. As one commentator put it, it seemed that secularism was for "the others."³⁸

Critics also noted that the "heritage" nature of the NA Crucifix actually was symbolic of the premiership of Maurice Duplessis from 1936 to 1939 and again from 1944 to 1959.³⁹ Duplessis was a dictatorial and corrupt premier famous for his persecution of communists and Jehovah's Witnesses.⁴⁰ His long period of rule was known in Quebec as "The Great Darkness."⁴¹ Critics argued that retention of the Crucifix in the NA and other public buildings was hypocritical, given that all other religious symbols were to be banned, suggesting that this was pure opportunism on the part of the government, if not a sign of Islamophobia.⁴²

The Quebec Commission on Human Rights and the Rights of the Young (QCHR) strongly criticized Bill 60. Relying not only on the UDHR but also on the province's own 1975 Charter of Human Rights and Freedoms, it argued that everyone had the right to manifest her religion, including via dress, and that such manifestation did not constitute proselytism. While the state had to demonstrate its religious neutrality, its individual employees did not have the same obligation. Moreover, the QCHR argued, there was no evidence that anyone wearing religious dress had ever undermined state religious neutrality; the PQ was relying solely on hypothetical situations. On the other hand, the QCHR noted, prayers in municipal meetings—which the PQ was willing to tolerate—did violate the principle of state neutrality. The QCHR concluded that Bill 60 would constitute the most radical modification of Quebec's own provincial charter of human rights since its adoption.⁴³

B. Women's Rights

Perhaps one could argue that denial to some Muslim women and girls of the right to wear the *hijab* as public officials, or while seeking or enjoying government services, including in schools or hospitals, was justifiable in order to retain Quebec's collective secular, post-Catholic culture. According to the PQ, the equality of women with men was a paramount collective value in Quebec, superior to religious customs that might imply discrimination against women or their relegation to a secondary status. This raised the question of whether Muslim women freely adopted the *hijab* or were compelled to do so by male family members. The Liberal Party's Bill 62 side-stepped this debate: it did not prevent public servants or those seeking or enjoying public services from wearing religious symbols, it merely stated that public servants should not discriminate in favor of or against anyone on the basis of her or his religion.

In the NA debate on Bill 60, both opposition parties argued that if the equality of men and women was a fundamental principle of Quebec society, then it was discriminatory to refuse

the opportunity of employment by the state to women who chose to wear religious symbols.⁴⁴ In a province of eight million people, 600,000 jobs, 20 percent of all those in the province⁴⁵ were covered by the PQ's Charter.⁴⁶ The QCHR agreed that in so far as it would apply mainly to (some) Muslim women, the prohibition of wearing religious symbols would undermine women's equal right to work; women, it argued, should not have to choose between their employment and their religion.⁴⁷

Aside from the different views of the political parties, an intra-feminist debate also occurred within Quebec, some feminists arguing for complete secularism as a means to protect women's equality and others arguing that women who enjoyed equality should be permitted to make autonomous individual decisions about whether to wear the *hijab*. Janette Bertrand, a writer, published an editorial co-signed by twenty other women, among whom (according to their names and biographical descriptions) five seemed to have Muslim backgrounds or come from Muslim-majority countries. Bertrand argued:

Right now, it seems to me that the principle of equality between the sexes is being compromised in the name of freedom of religion. I would like you to remember that men have always, and even now, used religion for the purpose of dominating women, putting them in their place, that is, beneath [men].⁴⁸

A group of women calling themselves the "Janettes" agreed with Bertrand. Nadia Alexan, a retired professor of Egyptian origin, argued that the spread of politicized Salafist Islam from Saudi Arabia was undermining the gains that had been made by Muslim women. Calling the veil (or *hijab*) a "symbol of submission to the patriarchy," she argued that to wear the veil was indeed to proselytize, to promote "the barbarism of excision . . . of forced marriage of nine-year-old girls, of stoning, of polygamy, of fatwas, [and] interdiction of freedom of expression."⁴⁹ Another Janette argued that while some women wore the *hijab* voluntarily, they had nevertheless been inculcated since birth to believe that the sexes were unequal; it was important for the state, therefore, to send a message to these women that it was legitimate to remove religious signs that symbolized unequal relations between males and females.⁵⁰

On the other side of this debate, the Quebec branch of Amnesty International argued that if women were being coerced into wearing religious garb, then the persons coercing them should be punished, not the women themselves. Furthermore, the ban on religious garb would undermine some minority women's right to employment, risking further social stigmatization and isolation.⁵¹ Three female religious leaders, one Christian, one Muslim, and one Jewish, used the 1960s slogan of women's right to control their own body, arguing that this gave Muslim women the right to decide whether to wear the *hijab* just as it gave non-Muslim women the right to decide to wear mini-skirts.⁵² The state, such critics argued, should not take a paternalist position, trying to emancipate women by prohibiting conspicuous religious head-coverings.⁵³ Others argued that if the government were really interested in promoting the status of women, it would invest more in daycare centers and other pro-family social services.⁵⁴

Quebec has a fairly recent history of extricating itself from social domination by the Catholic Church. Following the Great Darkness, the 1960s were the period of the "Quiet Revolution," when many institutions, such as schools and hospitals, that the Church had previously controlled were secularized. The 1960s was also the decade that saw the rise of feminism among Quebec women. In 2013, many older Quebec women still remembered the Catholic norms that had stifled their and their elders' lives. Prohibitions on birth control and abortion had condemned millions of women to multiple pregnancies, often endangering their

health as well as undermining personal autonomy. Some of these older women viewed the Charter of Values as a means to defend women from the stifling effects of other religions, especially Islam.⁵⁵

Opponents of the Charter argued that there were already laws in Canada to protect Muslim and other women from coercive pressures to wear religiously-mandated garb. The BTC had earlier warned Quebeckers not to extrapolate from the Catholic Church's treatment of women to the treatment of women under Islam or Orthodox Judaism. It was for those women to emancipate themselves, should they so wish, rather than for the state to liberate them. Muslim girls wearing the *hijab*, Bouchard and Taylor argued, should not be prevented from attending secular public schools, the very purpose of which was to integrate everyone into the wider society. Nor should Muslim women teachers be required to demonstrate support of educational neutrality by discarding their *hijabs*. However, Bouchard and Taylor did think it reasonable that Muslim women teachers not wear full-body *burkas* or face-covering *niqabs*, which would impede communication between teacher and students.⁵⁶ As noted above, there was little or no controversy in Quebec over this provision.

The debate in Quebec was part of a wider international debate among both Muslim and non-Muslim feminists about whether Muslim women wearing the *hijab* were acquiescing to patriarchal religious norms or whether they were adopting religious dress of their own free will.⁵⁷ Many Muslim women living in Western liberal states, such as Canada and France, freely adopted religious dress as an affirmation of identity against the wider secular society.⁵⁸ Another aspect of the debate was whether, if Muslim women were acquiescing to patriarchal religious norms, it was the obligation of the wider secular society to liberate them from those norms, assuming that the law already protected them from physical coercion. In general, the debate was about "what, if anything, was appropriate public policy for women who seemed to voluntarily subordinate themselves to men."⁵⁹

C. Minority v. Collective Rights

The debate on the Charter of Values also raised the question of minority versus collective rights. Premier Marois and Minister Drainville both argued that the collectivity—the Quebec people—had rights that could override minority rights in some instances. This explained why the PQ did not take the BTC's advice to remove the Crucifix from the NA or to prohibit Christian prayers at municipal meetings. The PQ argued that Quebeckers had the right to preserve their collective national heritage. Catholicism was a significant part of that heritage, despite Quebec's rejection of the formal power of the Catholic Church after the Quiet Revolution, and despite the historic and contemporary existence of non-Catholic religious minorities who, the PQ agreed, also constituted part of the Quebec collectivity. In the PQ's view, the values it sought to protect were integral to Quebec's identity, and it was the state's duty to reflect and protect the values of the society as a whole. It was necessary to prohibit civil servants from wearing religious symbols to preserve the secular, post-Catholic collective character of Quebec society. This was a relatively minor violation of freedom of religion, if indeed it constituted such a violation at all.

The PQ also invoked the right of the community to a certain level of social integration or cohesion which, it argued, would be furthered by the prohibition on civil servants' manifesting

their religious affiliations in the workplace. This suggested that in the PQ's view, civil servants who wore religious clothing or symbols in the workplace were refusing to integrate into the wider society, thus undermining social cohesion. "The Charter of Values," asserted Minister Drainville, "will be a source of harmony and cohesion for Quebec."⁶⁰ Results of a poll conducted in Quebec in September 2013 showed that 72 percent of those who spoke French at home strongly agreed that Quebec culture needed protection, as opposed to only 13 percent of non-French-speakers. Among French-speakers, 55 percent strongly agreed that minorities should do more to fit in, while only 25 percent of others strongly agreed.⁶¹

There was some evidence of a difference in opinion between the still relatively-homogeneous regions where "old-stock" Quebecers of French Catholic heritage predominated with few immigrants, and the more cosmopolitan cities of Montreal and Quebec City where many minorities and immigrants lived. The difference was not severe, however. Seventy-three percent of those respondents to the September 2013 poll who lived outside Montreal and Quebec City supported the prohibitions on public servants' wearing religious symbols at work, while 69 percent of respondents living in Quebec City, and 63 percent of respondents living in Montreal, also supported it. More obvious was the split between those whose language at home was French and others: 75 percent of French speakers supported the ban, while only 31 percent of others did. Age and level of education also influenced the level of support: older and less educated people were more likely to support the ban.⁶²

Many critics of the Charter assumed that anyone who defended it was afraid of "the other;" that is, of residents of Quebec who were not decedents of the original French Catholic settlers. In this interpretation, the PQ's insistence on protecting Quebec "values" would spur ethnic nationalism among those Quebecers who were already disturbed by the presence within their society of identifiable minorities never before seen in such large numbers. The Charter appeared to be directed primarily against Montreal⁶³ and to reflect a fear of cosmopolitanism in Quebec's more homogeneous regions.⁶⁴ This fear was all the more intense because such a high proportion of recent immigrants to Quebec—around 40 percent—were Muslim.⁶⁵

The Quebec Community Groups Network, representing forty-one community groups and one million English-speaking Quebecers, was completely opposed to Bill 60, claiming that it was "yet another attempt by the Parti Québécois government to limit individual rights and freedoms . . . in the interests of a state-defined collective identity." The Network noted particularly that Muslims comprised six percent of English-speakers in Quebec as opposed to only 2.6 percent of French-speakers.⁶⁶ It accused the government of instituting a "we-them mentality," and especially of pitting "Catholics against non-Christians."⁶⁷

The Charter's opponents believed that the government was claiming that there was a social problem in Quebec when there was none.⁶⁸ They asked whether a government should proclaim the "values" of its entire population, as opposed to merely enforcing and legislating laws, including human rights laws.⁶⁹ The QCHR questioned the PQ's assertion of values over human rights, arguing that the latter ought to have precedence and that a right could not be limited solely because its exercise might offend someone, or even the majority of the population.⁷⁰ The eminent human rights lawyer, Julius Grey, argued, "legislative definition of some values as more fundamental than others is a very dangerous exercise. . . . In what way are these two values [secularism and equality between men and women] more important than freedom of expression, freedom of conscience, or even racial equality?"⁷¹

Living together was one of the PQ's themes in arguing for the ban on wearing religious symbols.⁷² As Minister Drainville said:

We should never lose sight of the collective dimension . . . We must find our common values, identify that which brings us together, that which unites us so that we are a community, so that we are a society, so that we are a nation. . . . And that, the cement that unites us, that makes us a people, goes beyond our individual differences, especially religious.⁷³

It was important for citizens to recognize themselves as members of the Quebec community; as Andre Villeneuve, a member of the PQ, argued:

It's always a question of equilibrium. . . . There's an equilibrium to be made between individual rights and there's an equilibrium to be made with collective rights. And in creating this place where people can recognize themselves, and all Quebecers can recognize themselves . . . [we will] reinforce people's individual rights.⁷⁴

Opposing this position, Jean-Marc Fournier of the Liberal Party accused the PQ of actually removing some human rights in the name of living together:

The clothing code removes fundamental rights from Quebecers. With this code the government wants to impose a new model of society that directly forms a rupture with what we've known until now. Under the pretext of living together better, certain people are advised not to come and live with others. The Liberal Party of Quebec has never thought that to protect rights, one must remove rights.⁷⁵

Moreover, as one commentator argued, it would be impossible to “live well together” under a charter that closed the doors to employment in many public agencies to those wearing religious symbols.⁷⁶ It was estimated that 30 percent of Quebecers of North African origin (presumably mostly Muslim) were unemployed; among this group, the rate of unemployment was higher for women than men.⁷⁷ In general, Muslims in Quebec were less likely to be employed and had lower incomes than Muslims elsewhere in Canada, who in turn were less likely to be employed and had lower incomes than other minority religious groups.⁷⁸

From the point of view of the Charter's opponents, to live well together was to acknowledge the importance of fundamental human rights documents such as the English Magna Carta of 1215, the French Declaration of the Rights of Man and the Citizen, and the many international documents that protected human rights in both Canada and Quebec.⁷⁹ These universal values included equality between men and women,⁸⁰ part of a universal, not merely a Quebec, heritage. To call these “Quebec” values, one commentator argued, was “an abusive appropriation of a universal heritage which we share with our Canadian compatriots and the vast majority of citizens of liberal democracies.”⁸¹ But many Quebecers objected to any references to Canadian policies as guides to the policies that their provincial government should adopt, as the next section shows.

V. Multiculturalism and Interculturalism

Some Quebeckers supported the Charter of Values as a reflection of a republican, rather than a liberal, model of government. The latter, they thought, characterized the rest of Canada with its philosophy of multiculturalism.

Guillaume Rousseau, a law professor from the Université de Sherbrooke in Quebec, defended the PQ's policy of *laïcité*, arguing that it reflected the French republican tradition in which the state gives citizens the opportunity to free themselves from their various ethnic or religious communities. The Charter would help individual Quebeckers free themselves from religious and ethnic practices, which they believed were oppressive or with which they disagreed. The liberal tradition as found in English Canada, Rousseau maintained, was based on freedom from the state, rather than freedom through the state, the republican way. In this, he agreed with the PQ's view that it was important for Quebec society to free itself from the last vestiges of religious control of its institutions. Overall, Rousseau maintained, cultural convergence was the best option for Quebec, promoting "a French culture that evolves constantly, notably with inputs from immigrants' cultures of origin that are compatible with the fundamentals of French Quebec culture."⁸²

By contrast, as noted above, Bouchard and Taylor argued that the republican tradition represented "rigid secularism." They supported laicization, which they defined as "the process by which the State asserts its independence in relation to religion," but viewed secularization as "the erosion of religion's influence in social mores and the conduct of individual life."⁸³ They saw no need for the state to emancipate its citizens from religion. To do so, they argued, privileged agnostic and atheist citizens over religious citizens, or presumed that non-religious rationalism was a higher value than those rooted in religious tradition.⁸⁴ The liberal tradition, Bouchard and Taylor argued, permitted citizens to endorse fundamental principles of morality stemming just as much from religious as from non-religious principles. Thus, it was not the duty of a liberal state to emancipate women from the constraints of their religions. Women should not be forced, against their will, to adopt the values of equality and autonomy consistent with the national framework of human rights, if they preferred to accept all or some of the strictures of their religion.

For many who favored the republican tradition, the Quebec policy of "interculturalism" was superior to the Canadian policy of multiculturalism. Multiculturalism appeared to imply a kind of silo effect, or even ghettoization, in which different cultures existed side-by-side without interaction or integration.⁸⁵ Thus, it appeared, especially to privilege minorities' freedom of religion over the collective rights of the majority, that "far from rendering citizens equal, [it] has given some [citizens] permission to be more equal than others."⁸⁶ As a former PQ premier of Quebec, Bernard Landry, argued "when you change your country, you change your country. . . . Quebec . . . is not and should not be multicultural. Multiculturalism is a perverse doctrine that Ottawa has rudely imposed on us."⁸⁷

By contrast to multiculturalism, Quebec's model was one of cultural convergence.⁸⁸ According to the PQ, Quebec was multiethnic, but it was not and should not become multicultural. It was imperative to integrate Quebec's various ethnic and religious minorities into a cohesive, French-speaking culture, respecting both individual rights and the collective values of Quebec.⁸⁹ Quebec was defined as "a nation with a French character, where French culture represents a focus of convergence for minority cultures, but where the legitimacy of these cultures is confirmed."⁹⁰ Immigrants were expected to respect common principles including equality between women and men, a secular state, pluralism, and democratic values.⁹¹ "In a pluralist society," argued one professor of philosophy, "the affirmation of common values is

essential to affirm collective identity, assure cohesion and solidarity among its members, and provide benchmarks to guide the collectivity's choice, now and in the future. . . . Our common values can be at the same time universal and Québécois.”⁹²

This concern with creation of a collectivity reflected the fragility of French-speaking Quebecers' identity in an English-speaking continent. Until the Quiet Revolution, English-speakers dominated Quebec's economy and French-speakers were often obliged to speak English at work. Only with the introduction of Bill 101 in 1977, mandating that the children of immigrants to the province from outside Canada attend French schools, did it appear that the language would be saved from extinction. Thus, invocation of only universal values—reflecting a liberal, and predominantly English-speaking, Western tradition—was seen as insufficient to ensure the coherence of the Quebec community. Many Quebecers also thought that multiculturalism was meant to subsume French-speakers as just another minority within Canada, rather than recognizing Quebec's distinct historical status.⁹³

The common perception in Quebec that Canadian-style multiculturalism produces various cultures living in silos separate from one another is far from reality. Although Canada's 1982 Charter of Rights and Freedoms Article 27 protects multiculturalism and Canada also has an official multiculturalism policy, Canadian “multi”-culturalism is underpinned by a unifying small-l liberal culture.⁹⁴ Under this liberal multicultural tradition, a multiplicity of religions is accepted, as is the wearing of religious symbols. Far from believing that governments ought to help citizens free themselves from their religious or ethnic affiliation, as in the republican tradition, the liberal tradition acknowledges that there can be advantages to membership in religious and ethnic groups; in that sense, it encourages religious and cultural diversity. Many individuals feel a need to belong to groups of people with similar beliefs, customs, or languages. Muslims in the rest of Canada, like those in Quebec, benefit from this small-l liberal culture.

Nevertheless, actual practice all over Canada, in Quebec and elsewhere, more closely resembles what the BTC called interculturalism than official multiculturalism. Interculturalism was an evolving policy in Quebec, not clearly defined. Bouchard and Taylor claimed “interculturalism seeks to reconcile ethnocultural diversity with the continuity of the French-speaking core and the preservation of the social link. It thus affords security to Quebecers of French-Canadian origin and to ethnocultural minorities and protects the rights of all in keeping with the liberal tradition.” Furthermore, “interculturalism proposes a way of promoting ethnocultural relations characterized by interaction in a spirit of respect for differences.”⁹⁵ Put simply, interculturalism means voluntary, un-coerced integration of immigrants into the dominant culture. Many, if not most, immigrants in Quebec and Canada integrate in this fashion. Such integration is a natural social process during which migrants and their children increasingly adopt the customs and social mores of the larger society in which they live. In contemporary society, individuals have many identities. Religious symbols are one means of showing one's belonging to particular groups or communities, thus “an affirmation . . . of the rapport they have established with others,” but they are certainly not the only means, and do not preclude identification on other grounds with other, non-religious groups.⁹⁶ Nevertheless, some in Quebec believed that there was a moral onus on immigrants to integrate into the larger society,⁹⁷ while in the rest of Canada such integration was officially viewed as merely a matter of choice.

VI. Liberalism, Minority Rights, and Collective Rights

It might seem that the debate over Quebec's Charter of Values was a straightforward one posing ethnic against civic nationalism; many supporters of the Charter were indeed ethnic nationalists.⁹⁸ Perhaps the PQ, or some of its supporters, could not accept that relative "strangers" in their society were actually members of the Quebec nation. Perhaps, indeed, the PQ was playing to a "nationalism of resentment" among some French-speaking Quebecers who were fearful of the new minorities in their midst.⁹⁹ Thus, the Charter of Values was an important part of the PQ's attempt to forge Quebec's distinct collective identity as opposed to its perceived status as an "unrecognized minority nation" within Canada.¹⁰⁰ On the other hand, possibly the PQ was genuinely interested in promoting civic, rather than ethnic, nationalism. If this was the case, perhaps the PQ wanted to strengthen minority groups' membership in Quebec society by providing them with the tools to enter the secular world of freedom of choice in matters of both religion and gendered behavior.

Whatever its motives, the PQ was willing to undermine the human right to manifest one's religion, as a concession to the dominant culture. By contrast, Bouchard and Taylor argued that "[i]n order to recognize the equal value of all citizens, the State must be able, in principle, to justify to each citizen each of the decisions that it makes, which it cannot do if it favours a specific conception of the world and of good."¹⁰¹ The PQ did favor a specific conception of the good, in which freedom of religious expression was to give way to the state's requirement for rigid secularism and equality of women with men.

Even so, Bouchard and Taylor themselves recommended some minor limitations on the manifestation of religious beliefs. They recommended that citizens providing or seeking government services do so with uncovered faces, thus constraining the freedom to manifest their religion of the very few Muslim women in Quebec who wore the *niqab* or *burqa*. This recommendation was supported by widespread public opinion, even among those who otherwise opposed the PQ's Charter of Values.

As noted above, Bouchard and Taylor also recommended that individuals who occupied positions in which they exercised coercive power over other citizens should not wear any religious symbols whatsoever, so as to provide an image of complete neutrality. These suggested constraints raise the question of why a judge or member of the police would be considered less likely to be impartial if he or she were wearing a religious symbol than if he or she were wearing no such symbol. A devout conservative Christian, for example, might wear no religious symbols, yet fail to be impartial in exercising authority over secular individuals or individuals from religious minorities. Moreover, if the requirement not to wear any religious symbols were also extended to jurists, as Bouchard later suggested,¹⁰² it might be considered a major prohibition on the right to manifest one's religion and one which might not withstand the scrutiny of the law.

Several years after writing the BTC Report, Bouchard modified his views on religious accommodation, arguing that the majority culture in Quebec ought to have collective rights: "a society," he argued, "does not have to repudiate its history in the name of pluralism."¹⁰³ One right that Bouchard advocated was to a common patrimony, which would contribute to the creation of a collective memory and a sense of belonging, incorporating not only French-speaking Canadians of European Catholic heritage but also other groups in Quebec.

Bouchard proposed that certain religious symbols such as non-religious Christmas decorations and the cross on the Quebec flag had, by 2015, entered "the broader sphere of civic life," and should remain as symbols of the wider Quebec culture.¹⁰⁴ He also favored "cultural interventionism," which would permit the state to devote resources to the protection of Quebec's founding French Catholic culture by, for example, devoting funds to maintain Catholic

churches.¹⁰⁵ Thus, Bouchard conceded that there was some value to collective cultural rights, as the PQ advocated. He did not agree with the PQ, however, that retention of the Crucifix in the NA or retention of Christian prayers in municipal meetings were appropriate manifestations of Quebec's cultural heritage, as they were too explicitly tied to Roman Catholicism.¹⁰⁶ Even if one accepts Bouchard's argument for a collective cultural patrimony, however, it should be possible to do so without discrimination against non-Catholics in Quebec. If state funds are put aside to help restore or maintain significant Catholic churches, for instance, they could also be devoted to restore or maintain significant Protestant churches, synagogues, or mosques.

Despite the claim that Quebec's republicanism radically differed from Canadian liberalism, Quebec was a predominantly liberal society, with liberal, individualist values inscribed in its own provincial charter of rights. The debate within Quebec was about how far liberalism should go. Should agents of the state show by their apparel, and only in so far as they were representing that state, that they were adherents of particular religions? Would such apparel undermine others' perception of the state as religiously neutral? Would it, moreover, undermine the perception that the state supported absolute gender equality?

The PQ argued that religious apparel would indeed undermine both the neutrality of the state and gender equality. By contrast, the successor Liberal government did not worry that religious dress would undermine these two principles. It saw no need for the restrictions that the PQ wished to impose on some members of certain minority religious groups, except for the provision that people providing or seeking government services should not cover their faces. There was no incompatibility between the rights of members of minority religions and the rights of the collective; both could be accommodated. In the Liberal's view, the right to manifest one's religion through wearing religious signs was compatible with all other human rights, in particular the right to employment, especially for Muslim women.

At the same time, both the PQ and the Liberal governments agreed that the collective group, Quebecers, had the right to enjoy its own culture. Just as wearing religious symbols was not necessarily a sign of proselytism, so to retention of Catholic symbols as a form of cultural heritage did not mean that the government of Québec considered those of French Catholic heritage to be superior citizens. Nor did it imply discrimination against minority groups with different heritages. In this view, in societies in which the state respects the private cultural and religious identities of its citizens, secularism does not mean that all references to religion must be removed from the public sphere. Rather, it means that official proselytism—either by individual citizens in their capacity as employees of the state or by the state itself—is forbidden, as is official discrimination against any religion. The state is not permitted to constrain the freedom of religion of citizens who are members of a minority when those constraints serve no human rights purpose, merely serving to suggest to minority citizens that they are not as worthy of the state's concern and respect as members of the majority collective.

VII. Conclusion: Coercive Integration vs. Multicultural Tolerance

This is a matter of enormous international importance. Assuming that the wearing of the *hijab* does indeed reflect Muslim women's subordination to men, how far should a liberal regime go to protect non-liberal values and ideas? The competing answers to these questions can and do affect

the national security of liberal states, as seen in recent years, not only in France and Belgium, but also in Canada itself. In 2014, two young men who described themselves as converts to Islam committed two murders in two separate shootings. In one case, the attacker managed to enter the Parliament building in Ottawa and came dangerously close to shooting many members of Parliament, including the Prime Minister, before the attacker himself was killed. Moreover, there were several reports of young Quebecers having been radicalized and having travelled to the Middle East to fight for various Islamist groups.

In multicultural societies, religion and culture are supposed to be private choices, easily tolerated within a liberal framework. Yet, in some circumstances, it seems—or in some individuals' belief systems—religion and/or culture are all-encompassing worldviews that require the modification, if not destruction, of liberal social values and a liberal polity. If Quebec's underlying principles of secularism and gender equality are threatened by some citizens' adherence to anti-liberal worldviews, then the PQ's insistence on rigid state neutrality might be seen as a liberal counter-offensive against such views, not merely an assertion of (perhaps outmoded) collective values. But, if such rigid neutrality makes members of minority groups feel unwanted in their own society, then it might have an effect contrary to the one intended.

The better approach seems to be the gentler, open multiculturalism practiced in the rest of Canada, where fundamental liberal values and human rights are protected without infringing on the right to manifest one's religion. In this approach, it is assumed that citizens who wear religiously-based dress or jewelry do so as a matter of choice; laws already exist to protect people, particularly women, who are coerced into wearing such apparel. However distasteful it may seem to secular Western women who have fought over the decades for gender equality to see the occasional woman wearing a *niqab* or a *burka*, tolerance of this manner of dress is viewed as a better means to eventually integrate them into Canadian society than prohibition. But so far, unlike Quebec, the "rest of Canada" does not identify itself as an ethnic collectivity under threat from immigrant minorities. As long as the ideology holds that Canada is a collective culture grounded in liberal principles of human rights but comprised of many different immigrant/ethnic groups, multicultural tolerance will prevail, as it should, over coercive integration.

Endnotes

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For their comments on earlier drafts of this article, she is most grateful to Elaine Bander, Dominique Clément, Jane Freeman, Serge Genest, Corinne Lennox, Henry Srebrnik, and Brian Tanguay. She also thanks Marie-Hélène Ratel and Farah Omran for their research assistance.

¹ National Assembly, Bill 60, *Charter Affirming the Values of State Secularism and Religious Neutrality and of Equality Between Women and Men, and Providing a Framework for Accommodation Requests*. 40th Leg., 1st Sess., ch. II, div. II, art.5. (2013) [hereinafter National Assembly, Bill 60]. All translations from French documents and sources are my own. [I did not read or cite the English version of this document: I used the French version]

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³ RHODA E. HOWARD-HASSMANN, COMPASSIONATE CANADIANS: CIVIC LEADERS DISCUSS HUMAN RIGHTS 114-33 (2003).

⁴ G.A. Res. 217A (III), U.N. GAOR, 3d Sess, art. 18, U.N. Doc. A/RES/3/217A (1948) (emphasis added).

⁵ Assemblée Nationale, 43 J. DÉBATS ASSEMBLÉE NATIONALE No.89 (7 Nov. 2013), statement by Pauline Marois.

⁶ See National Assembly, Bill 60, *supra* note 1, at pmbl, ¶ 1.

⁷ *Id.* at ch.I, art. 1.

⁸ *Id.* at ch. III.

⁹ *Id.* at ch. II, div. 2, art. 5.

¹⁰ Québec (Province), *Parce Que Nos Valeurs, On Y Croit* [*Because we Believe in Our Values*] 16, (Sept. 2013) [hereinafter *Parce Que Nos Valeurs*]. [The printed copy of this document is dated September 2013, “16” refers to the page number]

¹¹ National Assembly, Bill 60, *supra* note 1, ch. IV, art. 10.

¹² *Parce Que Nos Valeurs, supra* note 10., p. 15. [Unless somehow to do so interferes with HRQ

style, please put page numbers in where I have indicated them. The purpose of footnotes is to provide information to readers so that they can look up sources; it is much more difficult for them to do so without page numbers]

¹³ National Assembly, Bill 60, *supra* note 1, at ch. VII, arts. 27-30, ch. XI art. 43. I have checked this: articles 27-30 are in Ch VII, not Ch VIII.

¹⁴ *Parce Que Nos Valeurs*, *supra* note 10, p. 5.

¹⁵ Assemblée Nationale, Bill 60, *supra* note 1, ch.5, art. 15.

¹⁶ *Parce Que Nos Valeurs*, *supra* note 10, p. 13..

¹⁷ *Parce Que Nos Valeurs*, *supra* note 10, pp. 3, 8..

¹⁸ National Assembly, Bill 62: An Act to Foster Adherence to State Religious Neutrality and, in Particular, to Provide a Framework for Religious Accommodation Requests in Certain Bodies, 41st Leg. 1st Sess., ch. I, art. 1 (2015).

¹⁹ *Id.* at ch. IV, art. 13.

²⁰ *Id.* at ch. III, div. II, art. 9.

²¹ *Id.* at ch. V, art. 16.

²² *Editorial: Ban on Face Coverings Could Undermine Deradicalization Efforts*, MONTREAL GAZETTE (10 June 2015) available at <http://montrealgazette.com/opinion/editorials/editorial-ban-on-face-coverings-could-undermine-deradicalization-efforts>.

²³ GÉRARD BOUCHARD & CHARLES TAYLOR, BUILDING THE FUTURE: A TIME FOR RECONCILIATION, GOUVERNEMENT DU QUÉBEC (2008).

²⁴ Raphaël Mathieu Legault-Laberge & Guillaume Rousseau, *Du Biconfessionnalisme au Multiculturalisme: Ruptures et Continuités dans la Diversité Religieuse au Canada* [From Biconfessionnalism to Multiculturalism: Ruptures and Continuities in Canada's Religious Diversity], in *RÉVEIL DU RELIGIEUX, ÉVEIL DE LA SOCIÉTÉ* 187, 206-07 (Dominique Koukou ed., 2012).[You are inconsistent in your use of French accents: if you are going to use them even for capitalized words, then you need to use them throughout]

²⁵ BOUCHARD & TAYLOR, *supra* note 23, at 70.

²⁶ *Id.* at 20.

²⁷ *Id.* at 150.

²⁸ *Id.* at 20, 63, 85, 150.[The order I originally had these pages in, i.e. 150, 20, 85, 63 reflects the order in which B and T mentioned their conditions]

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- ³⁰ Marie McAndrew, *La Controverse sur l'Accommodement Raisonnable au Québec: Atout ou Obstacle au Rapprochement Interculturel?* [*The Controversy about Reasonable Accommodation in Quebec: Opportunity or Obstacle to Intercultural Rapprochement?*], at 13 Conference on The Saint Louis Era: Looking Backward, Looking Forward. Toronto (2 June 2009).
- ³¹ Assemblée Nationale, 43 J. DÉBATS ASSEMBLÉE NATIONALE, no.89 (7 Nov. 2013), p. 5456.
- ³² *Parce Que Nos Valeurs*, *supra* note 10, p.16.
- ³³ Assemblée Nationale, 43 J. DÉBATS ASSEMBLÉE NATIONALE No.82 (23 Oct. 2013), statement by Marc Tanguay, p. 5108..
- ³⁴ Government of Quebec, Charter of Human Rights and Freedoms, Part 1, Chapter 1, #3, adopted 27 June 1975 (entered into force 28 June 1976).
- ³⁵ Assemblée Nationale, (23 Oct. 2013), *supra* note 33, statement by Marc Tanguay, P. 5109.
- ³⁶ Assemblée Nationale, 43 J. DÉBATS ASSEMBLÉE NATIONALE No.88. (6 Nov. 2013), statement by François Legault, p. 5395.
- ³⁷ Gérard Bouchard, *Charte des Valeurs Québécoises—Un Mauvais Projet Pour le Québec* [*Charter of Quebec Values—A Bad Project for Quebec*], LE DEVOIR (10 Sept. 2013), available at <http://www.ledevoir.com/politique/quebec/387097/charte-des-valeurs-quebecoises-un-mauvais-projet-pour-le-quebec>.
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- ³⁹ *Approuvez-vous le Projet de Charte des Valeurs Québécoises?* [*Do you Approve the Draft Charter of Quebec Values?*], LA PRESSE (11 Sept. 2013) (citing Jean Bottari) available at <http://www.lapresse.ca/debats/debat-du-jour/201309/11/01-4688396-approuvez-vous-le-projet-de-charte-des-valeurs-quebecoises-.php>.
- ⁴⁰ THOMAS R. BERGER, FRAGILE FREEDOMS: HUMAN RIGHTS AND DISSENT IN CANADA 127-89 (1982).
- ⁴¹ DOMINIQUE CLÉMENT, HUMAN RIGHTS IN CANADA: A HISTORY 49 (2016).
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Standardization!], LE DEVOIR (14 Sept. 2013), available at <http://www.ledevoir.com/politique/quebec/387448/oui-a-la-laicite-non-a-l-uniformisation> .

⁴³ Commission des Droits de la Personne et des Droits de la Jeunesse, Commentaires sur le Document Gouvernemental “Parce Que Nos Valeurs, On y Croit” [Comments on the Government Policy Paper, “Because We Believe in our Values”], 8, 10-11, 20 (16 Oct. 2013). [the original page order that I included, 10-11, 8, 20 refers to the order of the points I cited in my par.]

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⁴⁵ GÉRARD BOUCHARD, INTERCULTURALISM: A VIEW FROM QUEBEC 127 (2015).

⁴⁶ Assemblée Nationale, (23 Oct. 2013), *supra* note 33 statement by Marc Tanguay, p. 5109.

⁴⁷ Commission des Droits de la Personne et des Droits de la Jeunesse Quebec, *supra* note 43, at 10.

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⁵⁸ Jane Freedman, *Secularism as a Barrier to Integration? The French Dilemma*, 42 INT'L MIGRATION 5, 8-9 (2004); William Barbieri, *Group Rights and the Muslim Diaspora*, 21 HUM. RTS. Q. 907 (1999); Homa Hoodfar, *The Veil in their Minds and on our Heads: The Persistence of Colonial Images of Muslim Women*, 22 RESOURCES FEMINIST RES. 5, 15 (1992).

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⁶⁰ Assemblée Nationale, (7 Nov. 2013), *supra* note 5, statement by Bernard Drainville.

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⁶⁸ Bouchard, *Charte des Valeurs Québécoises*, *supra* note 37.

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⁷² Assemblée Nationale, 43 J. DÉBATS ASSEMBLÉE NATIONALE 88 (6 Nov. 2013), statement by Bernard Drainville.

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