



CHAPTER VII
THE QUÉBEC SYSTEM OF SECULARISM



INTRODUCTION

Secularism emerged as one of the key themes of the public debate that we organized in the fall of 2007. Quebecers overall have clearly, broadly adopted this concept, used not so long ago mainly by specialists. While, as we will see later, Québec's secularism model has historically defined itself in a largely implicit manner, the Commission's public consultations contributed significantly to democratizing debate on secularism and explaining the model implemented in Québec. In the following chapters, we want to pursue these clarifications and explanations.

Since the main fears and dissatisfaction voiced by Quebecers concerned accommodation for religious reasons, it is normal that the question of the secularism model best suited to contemporary Québec emerged so forcefully. Public discussion revealed that some people regard secularism as a straightforward, unequivocal principle that prescribes the separation of Church and State, State neutrality* and, by extension, the confinement of religious practice to the private sphere. In this perspective, accommodation for religious reasons is perceived as being incompatible with secularism. The response to debate on reasonable accommodation thus appears to be fairly simple: we must strictly or fully apply the principles underlying secularism.

This position assumes that secularism can be readily defined by formulas such as "the separation of Church and State," "State neutrality," or the distinction between the public sphere and the private sphere and the relegation to the latter of religion. However, the meaning and implications of secularism are only simple in appearance. None of these definitions, however relevant it may be, fully encompasses the meaning of secularism. Each definition can have a specific meaning in a given national context and include grey areas and tensions and, occasionally even contradictions that we must clarify before we can determine what the requirement of the secularism of the State means.

As we will see, secularism is complex since it encompasses an array of values or principles. A society that is seeking to define its secularism model must thus decide, in light of its own situation, the values, outcomes and balance that it wishes to attain, which is why secularism models vary to different degrees from one context to the next. There is no pure secularism model that it would suffice to apply properly. Québec, like other secular States, has elaborated and continues to elaborate a model, which, while it conforms to international law from the standpoint of freedom of conscience and religion, is adapted to its specific conditions.

We will first present the main facets that enable us to understand, broadly speaking, the method of political governance that is secularism. In section A, we will place secularism in the broader context of the neutrality that the State must display in societies such as Québec where the population adopts a wide array of values and lifestyles. We will then propose a definition of secularism and describe the different models possible. The introduction of this analytical framework will enable us to reconstruct the secularism model that has established itself over time in Québec (section B) and to review Quebecers' main objections to religious accommodation (section C). In section B, we will indicate our preference for a system of open secularism and will endeavour, throughout our reasoning, in particular in section D, to justify why we believe that Québec must stay the course and further develop the secularism model that has, in practice, already established itself. In section D, we will also examine two questions raised by Quebecers that pertain specifically to our secularism model, i.e. the wearing by government employees of religious signs and the relationship between secularism and Québec's historic religious heritage. We will conclude by suggesting that it would be desirable for the government to take over from the population and pursue the effort of defining the Québec secularism model.

WHAT IS SECULARISM?

SECULARISM AND NEUTRALITY

The relationships between political power and religions are complex and varied in modern liberal democracies. These democracies, even those that continue, often symbolically, to recognize an official church, nonetheless live under what we can call a system of secularism. In a society that is both egalitarian and diversified, the State and the churches must be separated and political power must remain neutral towards religions. To follow the tradition of Christianity and establish today an organic link between the State and a specific religion would make the followers of other religions and those who have no religion second-class citizens. A modern democracy thus demands that the State be neutral or impartial in its relations with different religions. It must also treat on an equal footing citizens who embrace religious beliefs and those who do not. In other words, it must be neutral as regards different worldviews and the notions of secular, spiritual and religious good with which citizens identify. We know that contemporary societies are marked by a multiplicity of values and outcomes of existence. The question of secularism must thus be broached in the broader framework of necessary State neutrality in respect of the values, beliefs and life plans chosen by citizens in modern societies.

However, we must further clarify this requirement of neutrality. A democratic, liberal State cannot be indifferent to certain core values, especially basic human rights, the equality of all citizens before the law, and popular sovereignty. These are the constituent values of our political system and they provide its foundation. A democratic, liberal State cannot remain neutral toward them and has no choice but to assert and defend them.

These values are legitimate even if they are not neutral since they enable citizens who have highly varied conceptions of the world and what constitutes a successful life to live peacefully together. They allow individuals to be sovereign in matters of conscience and to thus define their own life plan in a spirit of respect for the right of others to do the same. That is why people with very diverse religious, spiritual and secular convictions can adhere to these values and affirm them. They come to adopt these values by often very different routes, but they agree nonetheless on defending them. The presence of an overlapping consensus rather than a complete consensus on basic public values is the condition for the existence of pluralist societies such as ours.¹ For example, a

believer may defend human rights and freedoms by putting forward the idea that God created human beings in His image, a humanist atheist or agnostic will say that we must acknowledge and protect the equal dignity of rational beings, while an aboriginal person who embraces a holistic conception of the world will maintain that living beings and natural forces are in a complementary, interdependent relationship and that we must, consequently, grant equal respect to each one, including human beings. These three individuals agree on the principle without agreeing on the reasons that justify it.

Consequently, the State that identifies with these common political principles cannot embrace any of the numerous and sometimes hard to reconcile **fundamental reasons*** that citizens embrace. By fundamental reasons we mean the reasons or grounds stemming from conceptions of the world and good that enable individuals to understand the world around them and give meaning and a direction to their lives. It is by adopting values, prioritizing them and specifying their outcomes that human beings structure their existence, exercise their judgment and guide their conduct. We make important decisions in our lives by referring to these reasons.

It is in this sphere of fundamental reasons that individuals draw their **convictions of conscience**, to which we will return later, which are protected by the freedom of conscience and religion enshrined in our charters of rights and freedoms. As we will see, convictions of conscience include, on an equal footing, deep-seated religious and secular beliefs and they distinguish themselves from the legitimate but less fundamental preferences that we display as individuals.

Thus, in a society devoid of a consensus on fundamental reasons, the State must seek to avoid organizing along hierarchical lines the different conceptions of the world and of good that motivate citizens to adhere to the basic principles of their political association. In the realm of fundamental reasons, the State, in order to truly be the State of all citizens, must remain neutral. This implies that it adopt not only an attitude of neutrality towards religions but also towards the different philosophical conceptions that present themselves as the secular equivalents of religions.

Indeed, a system that replaces religion as the foundation of its action by a comprehensive moral and political philosophy makes

1. The American philosopher John Rawls elaborated the concept of overlapping consensus in his book *Political Liberalism* (J. Rawls, 2001).

those who embrace any sort of religion second-class citizens since their fundamental reasons are not enshrined in the officially recognized philosophy. In other words, this system replaces the established religion and the fundamental reasons that accompany it by a secularist, indeed antireligious, moral philosophy, which in turn establishes an order of fundamental reasons. Such a moral and political philosophy becomes a civil religion.

Thus, cohabitation cannot be supported by a secular equivalent of a religious doctrine but by means of the array of values and principles subject to an overlapping consensus. Reliance on common public values is intended to ensure the equal dignity of citizens in such a way that they can all adhere to the State's key orientations according to their own conception of the world and of good.

Consequently, we must avoid confusing the **laicization** of a political system and the **secularization*** of a society. While this distinction requires clarification, laicization is the process through which the State asserts its independence in relation to religion, while secularization refers to the erosion of religion's influence in social mores and the conduct of individual life. While laicization is a political process that lies within the framework of law, secularization is instead a sociological phenomenon that is embodied in individual conceptions of the world and lifestyles. In light of our discussions of necessary State neutrality in relation to fundamental reasons, it may be said that State must seek to laicize itself without for all that promoting secularization.

That being the case, such State neutrality will clearly not impose an equal burden on all citizens. For example, the liberal State defends the principle whereby individuals are deemed to be autonomous moral agents who are free to adopt their own conception of what a successful life is, which logically demands that the State be wary of imposing on them such a conception. The State will thus foster the development of students' critical autonomy in the schools. By exposing students to a multiplicity of worldviews and lifestyles, the democratic, liberal State makes it harder for groups seeking to evade the influence of the majority society in order to perpetuate a lifestyle more closely centred on respect for tradition than on individual autonomy and the exercising of critical judgment. State neutrality is thus not complete.

This bias in favour of certain basic values is constitutive of liberal democracies. It is not so much a question of calling it into question as of becoming aware that the neutrality of the democratic, liberal State cannot, by definition, be absolute. By being neutral on the fundamental reasons over which citizens may reasonably disagree, the State defends the equality of citizens and their autonomy concerning the pursuit of their own outcomes, within the limits of the law. The State thus takes a stand in favour of the equality and autonomy of citizens by allowing them to choose their way of life. In so doing, the believer or the atheist can, for example, live according to his convictions but he cannot impose on others his way of life.

To summarize, the ideal proposed here is that of a pluralistic society that achieves an overlapping consensus on basic political principles, i.e. solid agreement between citizens on these principles, even if they adhere to a wide range of fundamental reasons.

THE PRINCIPLES OF SECULARISM

Secularism must thus be understood in the context of the broader ideal of neutrality to which the State must aspire if it wishes to treat citizens fairly. But what, exactly, is secularism? As we have already noted, we cannot grasp secularism through simple, unequivocal formulas such as "the separation of Church and State," "State neutrality towards religions" or "the removal of religion from public space," even though all of these formulas contain part of the truth.

In our view, secularism comprises four key principles. Two of the principles define the final purposes that we are seeking, i.e. **the moral equality of persons** or the recognition of the equivalent moral value of each individual, and **freedom of conscience and religion**. The other two principles express themselves in the institutional structures that are essential to achieve these purposes, i.e. **State neutrality towards religions** and **the separation of Church and State**. While they are indispensable, the institutional structures of secularism can, however, be defined, as we will see, in different ways and prove to be more or less permissive or restrictive from the standpoint of religious practice.

- The moral equality of persons

A democratic, liberal system recognizes, in principle, the equivalent moral value of all citizens. The realization of this aim demands the separation of Church and State and State neutrality towards religions and secular thinking. On the one hand, the State must not identify itself with a religion or specific worldview since it is the State of all citizens, who may embrace a multiplicity of conceptions of the world and of good. It is in this sense that the State and religion must be separate. The State is sovereign in its fields of jurisdiction. On the other hand, the State must also be neutral from the standpoint of religions and other deep-seated convictions. It must neither favour nor put at a disadvantage any of them. In 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.

- Freedom of conscience and religion

The institution of a secular State is also aimed at the protection of citizens' freedom of conscience and religion. Through the establishment of neutral ground, secularism seeks to ensure that each individual can live his life in light of his convictions of conscience. Moreover, the secular State will seek to defend this freedom of conscience and religion when it is unjustifiably hampered, just as it will defend gender equality or freedom of expression.

- State neutrality towards religions

This third principle has been largely examined in this section.

- The separation of Church and State

We might better describe this separation as **a reciprocal autonomy**. The State is free of all religious tutelage while religious associations are autonomous in their fields of jurisdiction, although they remain subject to the obligation to respect basic human rights and the legislation in force. On the one hand, religions do not enjoy a privileged link with the State. On the other hand, the churches must not be under State control, as is now the case in Turkey, for example, where the government exercises rigid control over the Sunni Islam clergy.

- The relationships between the four principles

If we take into account secularism's historic development in the West, it becomes even more apparent that it seeks the equal treatment of citizens and the protection of freedom of conscience. As is true of the principle of reciprocal autonomy, the requirement of State neutrality in the realm of religion stems from the Wars of Religion. It was necessary to redefine the State no longer as an instrument in the hands of Catholics or Protestants but as a common public power in the service of citizens of both denominations. These first steps towards neutrality, as halting and partial as they may have been, also went hand in hand with the establishment of a system of religious tolerance that allowed greater freedom in the practice of previously prohibited faiths. The first amendment of the US Constitution derives from the same intention and stipulates that Congress may not adopt any law that either establishes a religion or prohibits the practising of a religion. Similarly, the French law of 1905 on secularism separates the Church and the State while enshrining for all citizens freedom of religion. In all of these cases, separation and neutrality are intended to ensure the equality of citizens and go together with the recognition and protection of individual freedom of conscience and religion.

Thus, we could echo Micheline Milot's observation that secularism is "a gradual organization of the political under which freedom of religion and freedom of conscience are, in keeping with a desire to achieve equal justice for all, guaranteed by a neutral State in respect of different conceptions of the good life that coexist in society."²

We can better ascertain the inherent complexity of secularism when we observe that it encompasses an array of principles (purposes and institutional structures) that can in practice come into conflict. Tensions can arise, for example between State neutrality and respect for freedom of conscience and religion. The wearing in class by a Muslim teacher of a headscarf may be perceived as compromising the neutrality of the school, a public institution, but preventing her from wearing it is an infringement of her freedom of religion. How can we reconcile the appearance of

2. M. Milot (2002, page 34).

neutrality that public institutions must display and respect for freedom of religion? We will return to this question in section D, but given that two European countries, Germany and England, where the case arose resolved the question differently reveals that it is a difficult case.³

Consequently, we must recognize that the four key constituent principles of secularism cannot, in certain situations, be perfectly harmonized and that we must seek compromises that are as much in keeping as possible with the maximum compatibility between these ideals. It is normal for enlightened, well-intentioned interveners to fail to reach agreement when a borderline case arises. Given that secularism is not based on a simple, unique principle, this gives rise to dilemmas that public institutions must resolve. To return to the case discussed earlier, to prohibit the teacher from wearing the headscarf highlights the school's appearance of neutrality but this restricts the teacher's freedom of conscience and religion or prevents her from engaging in a worthwhile career through which she could have contributed to society. Whatever the accuracy of the definitions and the fairness and coherence of the principles adopted, there will always be borderline cases that are hard to settle.

How can we conceive of a relationship between the two purposes and two structures in a system of secularism? We can essentially envisage it as a relationship between aims and means, while recognizing that the means here are indispensable, or we can consider these four facets, both neutrality and separation and the two purposes, as values in themselves. This is a philosophical difference that we do not have to settle here. The fact remains that, considered in either manner, the four principles can come into conflict and engender dilemmas that must be resolved.

RIGID AND OPEN SECULARISM

Systems of secularism in the world are usually classified according to their relationship to religious practice. We can say that secularism is more or less integral and rigid or flexible and open, depending on the way in which the dilemmas that arise when the principles of secularism come into conflict are resolved. A more

rigid form of secularism allows for greater restriction of the free exercise of religion in the name of a certain interpretation of State neutrality and the separation of political and religious powers, while open secularism defends a model centred on the protection of freedom of conscience and religion and a more flexible conception of State neutrality. In point of fact, secular systems range on a continuum from the most rigid, severe positions to the most flexible, accommodating ones towards religious practice. Moreover, a State can adopt positions that are sometimes more restrictive concerning one question and sometimes more open concerning another question. France, for example, prohibits the wearing of religious signs in public schools but continues to maintain Catholic and Protestant churches and synagogues built prior to the adoption of the *Loi concernant la séparation des Églises et de l'État* of 1905 and covers over 75% of the cost of private denominational schools.

Two other values aside from the ones mentioned here are often invoked in favour of a more restrictive system. Some people also attribute to secularism the mission of achieving in addition to the moral equality of persons and freedom of conscience and religion two other purposes: a) the emancipation of individuals and b) civic integration.

1. A secularism model can either seek to foster **the emancipation of individuals** in relation to religion and thus secularization or the erosion of religious belief, or, at the very least, the strict relegation of religious practice to the fringes of private life and associative life. This conception of secularism defends to varying degrees an opinion or negative point of view of religion itself, which is perceived to be incompatible with the rational autonomy of individuals. Here, secularism becomes an instrument that must serve the emancipation of individuals through criticism or the distancing of religion.

This conception is highly problematical in pluralistic societies such as Québec. First, the underlying idea that reason can fulfil its emancipating function solely if it is free of any religious faith is very debatable. There is every reason to think that a person can use his reason in the conduct of his life while maintaining a place for faith.

3. A number of German *Länder* prohibit teachers from wearing the headscarf while in the United Kingdom the decision is left to the discretion of the schools. See the *Rapport de recherche n°2* produced by the Commission.

Next, the risks of this value of emancipation coming into conflict with the principles of equal respect for citizens and freedom of conscience are very high. The secular State, by seeking to distance religion, adheres to atheists' and agnostics' conception of the world and of good and consequently does not treat with equal consideration citizens who make a place for religion in their system of beliefs and values. This form of secularism is not neutral in relation to the fundamental reasons that motivate individuals. The State's commitment to individual autonomy implies that individuals are recognized as sovereign towards their conscience and that they have the means to make their own existential choices, whether the latter are secular, religious or spiritual.⁴

2. We might also think that a more rigid secularism model is necessary to serve, in addition to respect for the equal value of persons and freedom of conscience, another purpose, i.e. **civic integration**. Integration here is understood as an allegiance to a common civic identity and the joint pursuit of the common good. Some people think that the interaction and cooperation between citizens required by integration demands the removal or neutralization of the identity markers (including religion and ethnicity) that differentiate citizens. This republican position assumes that the removal of the difference is a prerequisite to integration.

We can, however, concur with the idea that secularism must serve civic integration while challenging the premise that removal of difference is a condition for integration. From this point of view, dialogue, mutual understanding and cooperation between the citizens of a diversified society demand, to the contrary, that their resemblances and their differences be recognized and respected. The development in a society such as Québec of a feeling of belonging and identification relies more on reasonable recognition of differences than on their strict relegation to the private sphere. This is the interculturalism model that we broached in Chapter VI. The first function of this open conception of secularism is the protection of the moral equality of citizens and freedom of conscience and religion but it also contributes, subsidiarily, to civic integration.

Now that we have established the analytical framework that allows us to understand secularism and its various incarnations, we can now present the secularism model that Québec has elaborated over time and that must now meet new challenges.

4. We will return in section C to the thesis that claims that the State must encourage individuals to emancipate themselves from religion.

B SECULARISM IN QUÉBEC

As we have noted, the discussion of secularism models and their underlying principles must not make us lose sight that concrete experience in the realm of secularism is always inevitably tinged by history and context and the specific traits of different societies. In this matter, there is no pure secularism model. Attempts to reconcile the moral equality and freedom of conscience of citizens always vary according to the uniqueness of the contexts in which such attempts occur. This is why we do not find two systems of secularism that resolve all of the dilemmas posed by the organization of religious diversity in the same way. What path has Québec followed with regard to secularism? We will first briefly retrace this historic path and then endeavour to reconstruct the fairly broad consensus that has emerged in Québec concerning the system of secularism that is best adapted to conditions in our society.

SECULARISM IN QUÉBEC

We cannot recapitulate here the entire history of relations between the State, religion and Québec society. Let us simply say that one of the key traits of Québec secularism is that it has defined itself implicitly. As a result of a series of historic events and political decisions, the political power of the Church has waned, the Québec State has moved towards religious neutrality, the reciprocal autonomy of the Church and the State has been asserted and the freedom of conscience and religion of citizens has been respected. Contrary to a fairly widespread belief, the secularization process in Québec did not begin with the Quiet Revolution in the 1960s. In actual fact, while an organic link existed between the Church and the State under the French Regime, the fall of the regime in 1759 marked the beginning of the separation of the two powers. For essentially practical reasons, the British Crown quickly relinquished its determination to make the Anglican Church the official Church of the new colony.

Religious tolerance measures were instituted in the 18th century to ensure social peace and political stability against a backdrop of forced cohabitation between French Canadians and English Canadians.⁵ The *Treaty of Paris* of 1763 and the *Quebec Act* of 1774 recognized Catholics' freedom of religion. This system of

recognition of religious pluralism and tolerance unquestionably admitted exceptions, but the experience of religious tolerance nonetheless took root long ago in Canada's experience.

Despite its silence on the question, the *British North America Act* of 1867 clarified the relation between the Church and the State in Canada. Unlike the US Constitution, the new Canadian federal Constitution did not formally erect a wall of separation, in Jefferson's celebrated words, between Church and State, but it did not for all that establish one or more official churches. Neither the federal nor the provincial Crown would be under Church tutelage. No reference to God was inserted in the preamble. The Constitution of 1867 thus implicitly introduced a separation between Church and State and a partial⁶ but fairly advanced system of religious neutrality. The independence of the State in relation to the churches was silently affirmed.⁷ The Church's claims concerning the exercising of temporal power were often thwarted in the late 19th century and the first half of the 20th century by State powers, which took several initiatives to which the clergy were opposed.⁸ Consider the judgment affirming that cemeteries fall under civil jurisdiction, the reform of the electoral law of 1875 that established the secret ballot and made illegal any undue influence exercised on voters, the decision of the Superior Court of Québec decreeing that marriage is first a civil bond (the Delpit-Côté case of 1901), and decisions recognizing the rights of Jews and Jehovah's Witnesses. The widespread idea that the secularization of Québec was slow in coming is based largely on confusion between, on the one hand, the clergy's social influence (its ascendancy over moral standards, social norms and institutions) and, on the other hand, its more limited and circumscribed genuine political power and its hold over law.

The Quiet Revolution nonetheless marked an acceleration of the process of secularization of the Québec State. Sectors for which the Church had for a long time been responsible, such as education, health and social services, were gradually taken over by the nascent welfare state. Phenomena such as the change in French-Canadian Quebecers' relationship to Catholicism and growing cultural diversity meant that the Catholic Church was no longer the locus of social regulation that it had once been.

5. See M. Milot (2002), pages 69-70.

6. The Catholic and Protestant minorities in the four provinces that made up the Confederation enjoyed special protection in respect of school administration.

7. On the relation between politics and religion in the BNA Act, see M. Milot (2002, pages 80 *et seq.*)

8. *Ibid.*, pages 74-76.

One of the most decisive factors in the broadening of Québec secularism is found in the culture of human rights that gradually asserted itself in Québec and in Canada in the second half of the 20th century, as attested by the *Canadian Bill of Rights* adopted by the Diefenbaker government, the Québec *Charter of human rights and freedoms* adopted in 1975, and the *Canadian Charter of Rights and Freedoms* adopted in 1982. As we saw in Chapter V, the charters protect basic individual rights and freedoms, including equality of treatment before the law and freedom of conscience and religion, and prohibit several forms of discrimination, including discrimination based on religion. Since the charters were adopted, the courts have been likely to overturn statutes that favour one religion or unduly obstruct a citizen's freedom of conscience. The secularism of the Québec State and its institutions has thus been broadened and consolidated under the influence of the institutionalization of this culture of rights and freedoms.⁹

Québec secularism did not stem from a constitutional declaration or a statute that was explicitly devoted to it. While, at the outset, religious tolerance and partial separation of Church and State were dictated more by the need for the English Regime to ensure some degree of collaboration by its Catholic subjects than by a political philosophy, secularism gradually became a mode of governance in the recognition of the equality of religions, in the context of a society marked at once by the diversity of relations to the religious and religious diversity itself.¹⁰

This secularism is now facing new challenges stemming from the diversification of Québec society, challenges that are demanding new thinking on the implementation of its basic principles. Before we get to this point, it is important to reconstruct the secularism model favoured by most of the groups and organizations that reflected on the question of the system of secularism best adapted to Québec society.

RALLYING TO OPEN SECULARISM

Reflection in Québec on secularism has been varied and dynamic, at least since the 1990s.¹¹ The first debate on the wearing of the Islamic headscarf in the schools in 1994, the establishment in 1997 of a non-confessional education system* and the *Proulx Task Force Report on the Place of Religion in the Schools of Québec* in 1999 were high points in this debate. In addition to the task force chaired by Jean-Pierre Proulx, several organizations contributed significantly to this collective reflection, including the Commission des droits de la personne et des droits de la jeunesse du Québec, the Conseil du statut de la femme, the Centre justice et foi, the Conseil des relations interculturelles, the Conseil supérieur de l'éducation and the Comité sur les affaires religieuses. Just as the secularization of Québec schools occurred fairly late (school organization become non-denominational only in 1998 and Catholic and Protestant denominational teaching will be replaced by the Ethics and Religious Culture Program in September 2008), the schools have been the focal point of our debate on secularism. That being the case, the diversification of immigration and the current international context, in which relations between religions are pivotal, have given rise to this reflection that has expanded to overlap reflection on the organization of collective life in a society made up of citizens whose beliefs and lifestyles are varied.¹²

In our view, it is possible to draw a fairly broad consensus among the organizations that have reflected on Québec secularism over the past decade. There is agreement on what the Proulx report called open secularism,¹³ which recognizes the need for the State to be neutral (statutes and public institutions must not favour any religion or secular conception) but it also acknowledges the importance for some people of the spiritual dimension of existence and, consequently, the protection of freedom of conscience and religion.¹⁴ It is in light of this conception of

9. Several Quebecers reminded us that the preamble to the *Constitution Act, 1982* contains a reference to the supremacy of God: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." While this reference may reasonably seem inopportune to atheists, agnostics and believers who wish to maintain State neutrality in the realm of religion, its legal import to date has proven to be non-existent. By guaranteeing freedom of conscience and religion and the right to equality, the Charter guarantees the primacy of basic rights over the terms of the preamble, which is why the reference to God did not push the courts to favour belief at the expense of religious non-belief.

10. This is what Louis Balthazar has called "Québec's quiet secularism" in *La Laïcité en Amérique du Nord* (L. Balthazar [1990, pages 31-42]).

11. See S. Lefebvre (1998) for an overview of debate in Québec on secularism in the 1990s.

12. Conseil des relations interculturelles (2004 b).

13. Ministère de l'Éducation (1999), foreword.

14. The Task Force on the Place of Religion in the Schools of Québec acknowledged that religion offers believers significant spiritual resources and suggested that a joint religious and spiritual animation service be offered to students who wish to take advantage of it.

secularism that the organizations in question opposed the renewal of the notwithstanding clause authorizing the schools to offer Catholic and Protestant denominational teaching. In return, rather than maintain that religion must be completely ousted from the schools, they suggested that denominational teaching be replaced by a program that allows students to acquire the knowledge necessary to understand the religious phenomenon and its expressions in Québec and elsewhere and to develop the skills necessary for cohabitation in the context of a diversified society, objectives that are found in the Ethics and Religious Culture Program.¹⁵

The liberal, inclusive approach that Québec adopted in the mid-1990s during debate on the wearing of the hidjab in public schools also proved to be a decisive factor in the construction of this open secularism model. While there was no unanimity, fairly broad agreement was reached then to allow students wearing headscarves to attend public schools rather than excluding them and thus steering them to private denominational schools. It was thought that the prohibition on the headscarf would infringe the students' right to equality, freedom of conscience and right to public education and deprive them of an ideal opportunity to engage in socialization with young people and teachers of all origins from all social environments.¹⁶ As the Conseil du statut de la femme wrote, "exclusion from the schools of girls wearing headscarves has harmful consequences for their current and future integration into society."¹⁷

This stance reflects, to some extent, the secularism that is much more liberal than republican that has gradually established itself in Québec. In Québec, secularism allows citizens to express their religious convictions inasmuch as this expression does not infringe other people's rights and freedoms. It is an institutional arrangement that is aimed at protecting rights and freedoms and not, as in France, a constitutional principle and an identity marker to be defended.¹⁸ The neutrality and separation of the State and the Church are not perceived as ends in themselves but as means to

attain the fundamental twofold objective of respect for moral equality and freedom of conscience.

That being the case, it is true that the existence of fairly broad agreement among the public organizations and groups from civil society that expressed an opinion on the secularism model that Québec should adopt does not mean that a social consensus prevails among Quebecers on this question. Quite the reverse, the debate that preceded the establishment of our Commission and our public hearings revealed that there is profound disagreement on the policy directions that the Québec State should now adopt in respect of secularism. Some people believe that the current context demands a radical modification of the secularism model centred on the protection of rights and freedoms that we have known until now. What is the situation? Must we change course or pursue the same path?

It is our desire in this report to align ourselves with this open secularism and the search for balance that has marked it until now. We believe that this secularism model is the one that best allows us to respect both the equality of persons and their freedom of conscience and religion and thus to achieve the first two purposes of secularism. In the following sections, we will examine the arguments (section C) and anxieties (section D) most often invoked to justify the need to alter the existing secularism model and will explain why we do not believe that these reasons are decisive. In section D, we will reassert the reasons that explain our choice of open secularism and will propose new avenues for implementing this model.

15. Conseil supérieur de l'éducation (2005) and Comité sur les affaires religieuses (2006).

16. See Commission des droits de la personne et des droits de la jeunesse (1995).

17. Conseil du statut de la femme (1995, page 39). Even though the Conseil du statut de la femme has hardened its stance on secularism in a recent advisory opinion, it has not gone back on its 1995 position concerning the wearing by public school students of the headscarf. See also Conseil du statut de la femme (2007).

18. As Micheline Milot has emphasized, in Québec and Canada, the "separation of political and religious powers, the absence of a State religion, neutrality and secularism (all of these expressions are found in the jurisprudence) appear as requirements that impose themselves on the State and on public institutions, but they are neither defined as constitutional principles nor as overhanging values as is the case in France in respect of secularism, which is not only a constitutional principle but also a value that defines the Republic. To some extent, they appear as subordinate to the rights recognized as fundamental." M. Milot (2005, page 19). Open secularism resembles what Milot calls the secularism of recognition. According to her, secularism of recognition "is undoubtedly, among the different ways of instituting secularism, the most socially, ethically and politically demanding." M. Milot (2008, page 65).

OBJECTIONS TO OPEN SECULARISM

As we have just said, we believe that Québec must broaden and clarify the open secularism model that it has elaborated over the years. Is this choice the right one? A number of Quebecers expressed their reservations about this model. In fact, the accommodation cases that have aroused the greatest discontent were based on religious reasons and implicitly related to this open secularism. What explains this malaise? We will review here five general arguments that were most frequently invoked to oppose accommodation for religious reasons and will indicate why these objections do not, in our view, warrant a break with the secularism model that Québec has chosen.

THE PUBLIC SPHERE, THE PRIVATE SPHERE AND THE DEMANDS OF SECULARISM

A number of citizens defended the position that religious practice must be confined to the private sphere. While we must recognize that all individuals are free to live according to their consciences in the private sphere, the public sphere must be free of any sign of faith. This requirement is deemed to stem logically and necessarily from the separation of Church and State that we examined in section A. This distinction between the public and private spheres, which is often presented as a clear response to questions that arise concerning the organization of religious diversity, is simple in appearance only.

The public/private distinction has at least two major meanings, not to mention minor variants. The first meaning of public, a legacy of Roman antiquity, concerns society overall in contrast with what affects private citizens. We speak to this effect of the public interest or the commonweal, from the Latin *res publica*, meaning the State or the government that attends to public affairs. We also speak of public corporations such as Hydro-Québec as public organizations. To this effect, public institutions serve in principle the common good.

The other meaning of public originated in the 18th century: it refers to as public what is open, transparent and accessible, as opposed to what is secret or of limited access. We publish a book, we make public information and the library is open to the public. It is to this effect that we refer to a public sphere made up of places of discussion and exchange between private citizens, according to the original meaning of the term. This means that we do not need a public responsibility, according to the original meaning, to participate in the public sphere, according to the second meaning.

The assertion that we often heard during the Commission's forums that we must "remove religion from public space" can thus have two markedly different meanings. It can mean that public institutions, according to the original meaning of the word, must be neutral: the State and the institutions that it embodies should neither identify themselves with a specific religion nor with religion in general. The non-confessional education system might deem itself to have resulted from this requirement. However, the same requirement for neutrality could also be understood in a much broader sense: we would then demand that public spaces, according to the second meaning, be free of all religious references. It is in light of this concept that we might prohibit individuals from wearing religious signs when they enter public spaces such as streets, businesses, parks, and associations in civil society.

This confusion of the two meanings tends to make us lose sight of the important difference between, on the one hand, allowing a student to display a religious sign in a public school and, on the other hand, fostering a specific religion through public authorities. We must, in fact, distinguish between, for example, the wearing by a student of a headscarf and denominational (rather than cultural) teaching of religions or the reciting of a prayer before classes begin. If we are to accord students equal respect and ensure the institution's neutrality, the main thing is not to completely remove religion from the school but ensure that the school does not embrace or favour any religion.

There is no doubt that a separate school system that favours Catholicism and Protestantism, as was the case prior to the adoption in 2005 of Bill 95,¹⁹ departs from the rule of the neutrality of public institutions. However, does the school's being a public institution according to the original meaning also imply that it must be a space for meetings and exchanges that is free of any religious presence? Two conceptions of secularism clash here. According to the first conception, the requirement of neutrality is aimed at institutions and not individuals. Under the second conception, individuals must also impose on themselves a duty of neutrality by avoiding displays of their faith when they use public institutions or, in the minds of more radical individuals, when they enter public space.

This second position is especially restrictive for believers whose faith must be expressed in ritual or symbolic practices and behaviour. It also appears to assume the complete isolation of

19. Bill 95, the *Act to amend various legislative provisions of a confessional nature in the education field* (2005, chapter 20).

private life and public life and, therefore, between public spaces and private spaces. However, can this isolation always actually be maintained? Let us take the example of hospitals. In light of the decline of the extended family and the development of the welfare state, some people spend important times in their private lives in public spaces such as hospitals, residential and long-term care centres and hospices, most of them marked by suffering and vulnerability, including the period at the end of their lives. Most of these people wish to be surrounded by their loved ones and for some of them, religious rites are indispensable.²⁰ That is why the presence of chaplains and places of meditation in hospitals, prisons or the armed forces, is so important.²¹ Consequently, the idea that we might simply banish religion from such spaces is unthinkable. The questions raised by this intertwining of the private sphere and public life demand wise, sensitive solutions that staff in establishments in the health care network often find with remarkable skill and subtlety.

In a number of instances, the public/private distinction proves to be too general to allow us to determine whether or not a given accommodation or adjustment request is compatible with the secularism of institutions. Moreover, there is a vast space between the State and private life, which we often call civil society, in which a host of social movements and associations sustain debate on questions of public interest. Certain of these institutions are motivated by a spiritual or religious spirit, not only churches but also occasionally interdenominational movements devoted to charitable and humanitarian causes or that fight for certain social changes. In a free society such as ours, religion can simply not be confined within the strict limits of the home and places of worship.²²

THE DISTINCTION BETWEEN CHOICE AND CONSTRAINT

During our consultations, a number of participants called into question the legitimacy of accommodation requests for religious reasons. The rightfulness of an adjustment that allows, for example, a female or a male student to wear a headscarf or a kirpan, respectively, is not obvious to everyone. Similar

exemptions may be granted for health reasons: a young girl must cover her head on her physician's orders or a diabetic child must bring a syringe and a needle to school. No one would dream of objecting to such exceptions. We also know that accommodation aimed at ensuring the equality of pregnant women or the physically disabled is readily accepted. Québec (and Western) public opinion thus reacts much more harshly to requests motivated by religious belief.

One of the most frequent arguments put forward to explain why requests justified by religious reasons and those motivated by health reasons cannot be put on an equal footing is that individuals who are disabled or sick have not chosen their condition while believers appear to have a choice between renouncing their religion or reinterpreting it in a manner that makes accommodation requests superfluous. In other words, we should make a distinction between situations that imply a choice and those that stem from circumstances that impose themselves on individuals. The diabetic is not voluntarily ill; the disease has imposed itself on him in the form of a constraint. However, a Muslim or a Sikh can always choose to no longer practice his religion or to practice it differently.

Liberal democracies such as Québec are normally willing to help or compensate individuals who are disadvantaged by circumstances. On the other hand, citizens are usually held responsible for their choices and personal decisions. The State will assume the cost of treating a cancer patient, for example, but a person with expensive personal tastes must assume the cost of them. A number of people thus ask themselves why society should adapt its norms to accommodate personal religious choices and occasionally assume the cost of such choices. Does this not come down to according religious choice unacceptable preferential treatment in relation to other personal choices?

However, is this not a rather precipitous or cursory manner in which to deal with the questions of identity and deep-seated convictions* that dwell in the human heart? The freedom that we must mutually secure in a democratic society is not solely the freedom of inestimable value of relinquishing or altering our

20. As the Fédération interprofessionnelle de la santé has noted, public institutions such as health care establishments can be "places where moments in the 'private' lives of individuals express themselves." The Fédération went on to say that "in the private realm, the patient's beliefs are part of his identity and well-being and account must be taken of them in a care and recovery approach, not only by virtue of a right to health or an empathetic conception of the self, but also because this consideration maintains the quality of the relationship between the healthcare professional and the patient." (page 11) See the brief presented to the Commission by the Fédération interprofessionnelle de la santé du Québec (pages 11-16).

21. It should be noted that in France provision is made expressly for chaplain services in such establishments by the *Loi concernant la séparation des Églises et de l'État* of 1905.

22. See the brief presented to the Commission by the United Church of Canada (page 13).

deep-seated convictions, but also that of being able to live with these convictions without undue hindrance provided that we do not encroach upon other people's freedom and that we do not thwart the smooth functioning of common institutions.

More fundamentally, it is important to emphasize that it is not religious convictions in themselves that enjoy special status in liberal democracies but instead all deep-seated convictions or convictions of conscience that allow individuals to shape their moral identity. The exemption from military service or from bearing arms by virtue of conscientious objection comes to mind. During a period of conscription, a pacifist for whom the refusal to resort to violence is intimately linked to his moral integrity may benefit from conscientious objector status and thus be exempted from bearing arms, in exchange for the duty to render other services to society. Let us remember here that **freedom of religion is an aspect of freedom of conscience**, one of the basic freedoms that liberal regimes seek to protect.²³

For this reason, the decision of a Muslim girl to wear the headscarf in school cannot be put on the same footing as her male classmate's decision to wear a cap. In the first case, the girl feels subject to an obligation and to depart from this practice would mean going against what defines her (she would be betraying herself and her feeling of integrity would be affected). This is what we are attempting to convey by the notion of moral integrity.

Religious beliefs are not the only beliefs likely to play this role in an individual's life. As we saw for the pacifist, secular convictions of conscience can just as readily provide responses to the great questions of human existence or, more prosaically, allow the individual to give direction to his life. What links up these beliefs is that they engage the conscience of an individual, who cannot disregard or contravene them without affecting his moral integrity. This is precisely the type of belief that the freedom of conscience enshrined in our charters seeks to protect.

As we said, freedom of religion should thus be understood as an aspect of freedom of conscience. A person who has decided on principle to be a vegetarian thus has the right to demand in a closed environment such as a prison that he be offered meat-free meals. There is no valid reason to make a distinction from the standpoint of rights between a person whose vegetarianism stems from a secular moral philosophy (animals also have rights) or a religion (Hinduism). In both instances, to ask someone to

relinquish his beliefs is equivalent to inflicting on him an excessive wrong, which would be tantamount to interpreting his requests as a simple whim.

There emerges here a perspective that reveals similarities between requests made for reasons of health and those made for reasons of conscience: if giving meat to a patient whose condition demands a vegetarian menu is equivalent to inflicting on him a physical wrong, forcing the vegetarian on principle to eat meat amounts to inflicting on him a moral wrong. We might also say that, in one case, the person is subject to a physical restriction and in the other, to a moral restriction or a restriction of conscience.

That being the case, even if we believe that we must make a provisional distinction between physical restrictions and restrictions of conscience, it nonetheless remains that convictions of conscience can allow individuals leeway in the interpretation of obligations stemming from their beliefs. Such leeway can enable them to adapt or adjust their practices. Moreover, religious traditions often make provision for exceptions to the rule when the life or well-being of individuals is threatened. In some instances, an individual guided by convictions of conscience can put himself in a state that allows for negotiation, compromise and the adjustment of his practices and, in so doing, reciprocity in the handling of accommodation requests (as we will see in the next chapter). However, this person remains sovereign as regards his choices of conscience.

RELIGION, OPPRESSION AND FREEDOM

One argument in favour of a more restrictive system of secularism starts from the undeniable principle that religion can be a source of oppression. A religion can demand of someone that he abandon most of his freedom of choice, for example by making the apostate liable to death. It can also prescribe inegalitarian rules or practices, as is the case when less value is attached to the testimony of a woman in relation to that of a man or when the rule of a church prohibits women from gaining access to certain functions.

Based on this observation, some people believe that it is legitimate to prohibit or limit not only religious practices that clearly interfere with human rights and freedoms but also those that appear, according to certain interpretations, to contradict the fundamental principles of our society.

23. The idea here is not to assert that freedom of religion has a moral and legal status inferior to freedom of conscience but that freedom of religion belongs to a broader class or category of freedom of conscience, which includes all deep-seated convictions.

The case of the wearing of the Islamic headscarf immediately comes to mind. In actual fact, many citizens told us that they believed that the wearing of the headscarf attests to the inferior status that women appear to be granted in Islam and their submission to the men in their family circle. There can thus be no question of allowing the wearing of headscarves in public establishments, one of whose missions is to promote common values.

However, this position assumes that we grasp the deep, unquestionable meaning of the wearing of the headscarf. In this perspective, the headscarf symbolizes the inequality between men and women and a Muslim woman who decides to wear it can only do so because she is consciously or unconsciously obedient to her husband, father, brother and community.

Is it reasonable to evoke these conjectures which, when all is said and done, are rather uncertain, on the profound, unique meaning of practices such as the wearing of the headscarf to restrict the freedom demanded by a female citizen?²⁴ What should be done if the woman in question objects to this interpretation and ascribes an entirely different meaning to her decision? Numerous Québec Muslim women told us that their decision to wear a headscarf was both voluntary and deliberate and that it was a matter of personal judgment to decide how they wish to live their lives and their faith.

The crucial question here is to ascertain who has the right to decide on the meaning of an individual's expressive acts. Is it the State or the individual himself? In certain cases such as hate propaganda, the State reserves the right to decide on the matter since the impact on the victims is too devastating to leave it up to the rationalizations of those who disseminate such propaganda. However, in the highly complex realm of religious symbolism that can eventually undergo changes of meaning, it is much less obvious that the State must judge instead of its citizens. It is essential that the State ensure that religious practice neither jeopardizes other people's rights nor the pursuit of legitimate legislative objectives that serve the common good, but it is incumbent on the individual to define his own position in relation to religion. As the Conseil du statut de la femme has quite rightly reminded us, we cannot assume "that girls wear the hidjab because they are forced to do so."²⁵

Let us be clear: no Muslim woman must be forced against her will to wear a headscarf. We must protect the autonomy of women who find themselves in such a situation. However, we must also protect the autonomy of women who decide to wear it. As we will discuss in section E, we believe that the wearing by both users and government employees of the headscarf must be allowed in public institutions.

Moreover, fair treatment of religion and its place in public space cannot be confined to its harmful impact even if the latter has been devastating and, in certain cases, continues to be so. Religion and certain philosophies that do not incorporate a form of transcendence, such as rationalism and other modern humanisms, are a source of profound moral ideas that it would be difficult to relinquish. That is why secular religions and philosophies often borrow from other lines of thought certain of their basic ideas. The Hinduism of Gandhi, who drew on certain Christian currents, was reflected later, among other things, in the non-violent resistance movements of Martin Luther King and Nelson Mandela, which leads lay philosopher and rationalist Jürgen Habermas to say that certain moral ideas stemming from the Christian tradition have been translated into secular terms.²⁶ As a group of people of different denominations in the Estrie region wrote, "religions are institutions for the transmission of social and moral values."²⁷

RELIGIOUS ORTHODOXY IN LIBERAL DEMOCRACIES

Another source of questioning and malaise in Québec as elsewhere concerns the place of religious orthodoxy in societies experiencing laicization and secularization movements. In light of the preceding section, some people, attached to the figure of the rational, free sovereign individual from the standpoint of his choices of conscience, appear to find it hard to accept that certain of their fellow citizens adhere to a series of religious precepts, e.g. prayers, dietary and dress code and religious holidays, as they would to as many rules of conduct that demand unconditional compliance. While religious feeling or the relationship to transcendence has far from disappeared in Western societies, as sociological studies on faith and spirituality attest,²⁸ the socially

24. See the brief submitted by the Faculté de théologie et de sciences des religions at the Université de Montréal. The authors refer to "words that tend to interpret the other person in light of oneself, as though the other person's semantics necessarily reflected the semantics that informs the dominant culture here." (page 17)

25. Conseil du statut de la femme (1997, page 42).

26. J. Habermas (2002).

27. See the brief submitted by André Castonguay and that of the Assemblée des évêques catholiques du Québec (page 9).

28. See J. Casanova (1994).

acceptable relationship to the religious is that which fairly readily harmonizes with individual freedom and autonomy. The many people who claim to have faith without being overly concerned about the exhortations and rules of the Church or whose spirituality stems from a combination of facets specific to different religions and spiritualities come to mind. This is an individualization of belief and religious practice.

This subjective relationship to faith is very different from the religious experience of the pious, orthodox or traditionalist believer and is often poorly understood. While it is wrong to assert that the latter has no leeway with regard to his religious practice and that his religious beliefs encapsulate his entire identity, faith nonetheless implies for him a considerable degree of obedience and respect for a number of rules of conduct. The orthodox believer seeks to achieve a high degree of conformity to the dogma underlying the religious doctrine to which he adheres. For the person of orthodox beliefs, religious belief is indissociable from its expression, thus from religious practice.²⁹ For this reason, the wearing of religious signs, compliance with a dietary code and the practising of certain rites are not precepts that he can abandon without consequences. Non-compliance with these rules causes, to different degrees, what we called earlier a moral wrong to the person concerned, which explains why orthodox believers of all denominations are more likely to request accommodation for religious reasons.

It is plausible to think that this different relationship to the religious, experienced as an obligation, shocks the conscience of certain citizens, who believe, in fact, that we must either emancipate ourselves from religion or experience it in the individual

conscience, the most intimate of forums. The practices of orthodox believers diverge from what has become the new normative relationship to the religious in our society. This probably helps to explain why citizens believe that a person who requests an exemption or accommodation in order to practice his religions appears to display, in so doing, as we often heard, his refusal to integrate.

How can we explain this perception? At first sight, the young Sikh or the young Muslim girl who wishes to obtain an exemption to be able to study in a public French-language school while wearing a kirpan and a headscarf, respectively, obviously displays a desire to integrate into society. They will mix with young people from all milieus, learn French if they do not already speak the language, and so on. The person of orthodox beliefs contravenes, in a manner of speaking, the widely accepted social norm according to which the believer must experience his faith in his private life and remain master of his conscience. Do we want a society in which only one relationship to the religious is tolerated?

THE DISTINCTION BETWEEN RIGHTS AND FREEDOMS

Another reason that some people invoke to challenge the duty of reasonable accommodation in cases where religious practices come into play is based on the distinction that must be made between rights and freedoms.³⁰ Rights, from this point of view, appear to engender positive duties for the State, while freedoms seem to engender only negative ones. The duty that imposes itself on the State is negative when it prohibits the State from hindering through its intervention the enjoyment of individuals'

29. Some people regard religious practices, up to a point, to be more important than doctrines, i.e. orthopraxy rather than orthodoxy.

30. See the brief presented to the Commission by the Mouvement laïque québécois, page 11.

acknowledged rights and freedoms. The State can thus respect its negative duty by refraining from interfering with the exercising of rights and freedoms. The duty becomes positive when the State must not only refrain from interfering in the exercising of rights and freedoms but must also intervene to make available to all citizens the means necessary to enjoy a right or freedom or remove obstacles to the exercising of such a right or freedom. For example, the right to education demands that the State allocate public funds to the establishment and maintenance of educational institutions that make possible the exercising of this right. Similarly, legislation that limits a press monopoly may prove necessary to foster freedom of expression and freedom of the press.

As the last two examples show, the distinction between rights and freedoms does not play a decisive role here. In both instances, non-intervention by the State is not sufficient to guarantee the exercising of an acknowledged individual right or freedom. The State must intervene to ensure that the rights and freedoms stipulated are fulfilled in concrete terms. Thus, the relevant question is, instead, to ascertain whether or not the State must intervene to allow the exercising of a right or freedom. According to José Woehrling, “whether we are speaking of rights or freedoms, they have in common the State’s duty to guarantee their effective enjoyment.”³¹ As we have seen, the duty of reasonable accommodation seeks precisely to remove the obstacles that prevent an individual from enjoying his recognized freedom of religion. This freedom does not require the State to fund the construction of churches or mosques but that it protect the enjoyment of this freedom when it is compromised by its own actions or those of other persons.

There are thus two ways for the State to intervene in a positive manner by *a)* giving citizens the means and resources that allow them to enjoy their rights and freedoms (the right to education) or *b)* intervening to remove obstacles to the exercising of rights and freedoms, e.g. freedom of expression and the press, freedom of conscience and religion, and so on. Thus, the semantic distinction between rights and freedoms does not call into question the legitimacy of accommodation practices in cases where requests are made for religious reasons.

We think that the five objections presented in this chapter should thus not encourage us to change course and to opt for a secularism model that would further limit freedom of religion and its expression.

31. Note submitted to the Commission by José Woehrling.

WHY OPEN SECULARISM?

Secularism is now an essential dimension of the modes of governance of democratic, liberal States, but it is always embodied in specific contexts. States interpret and apply the structuring principles of secularism in light of their specific situations. Different systems of secularism are thus part of a continuum ranging from the most restrictive to the most liberal, considering the place of religion and religious practice in the society.

In section B, we examined how an open secularism model implicitly imposed itself in Québec and reviewed the consensus that prevails among the majority of organizations and committees that expressed an opinion on the system of secularism best suited to Québec society. From the Parent report to the Proulx report and including the inclusive approach emphasized during debate in the 1990s on the wearing of the hidjab in the schools and reasonable accommodation practices in public and private establishments, Québec has moved towards a secularism model that aspires to treat everyone by not favouring any religion and guaranteeing individuals ample but reasonable protection of their freedom of conscience. We believe that Québec's choice of open secularism has proven to be the right one and wish, as we have stressed, to pursue this path initiated by our predecessors.

The basic reason for which we are opting for open secularism is that this model best fulfils, in our view, the four principles of secularism, i.e. respect for the moral equality of persons, freedom of conscience and religion, the reciprocal autonomy of Church and State, and State neutrality.

No one disputes that open secularism is the form that offers the broadest protection to freedom of conscience and religion. However, critics of open secularism believe that it attaches too much importance to freedom of religion, which seems to compromise the State's religious neutrality and, consequently, the equality of citizens. We believe, to the contrary, that from this standpoint, properly designed open secularism achieves the most appropriate balance and better serves the equality of persons. A statute linked to more restrictive secularism prohibiting, for example, the wearing of religious signs in public establishments can, of course, be deemed to be uniform, since it applies without

exception to everyone. However, it could not be considered neutral since it favours individuals whose philosophical, religious or spiritual convictions do not demand the wearing of such signs. As for a system of open secularism, it favours equal access to public institutions both by users and employees by refocusing the analysis of State neutrality on the State's acts rather than on employees' and users' appearance. Open secularism thus better fulfils the principle whereby equal value must be granted to everyone independently of his philosophical or religious convictions. We believe that this characteristic of secularism is of fundamental importance in the context of societies that are constantly diversifying from a cultural and religious standpoint. Participation in public schools and the labour market (especially the public service), which are decisive institutions, is one of the factors most likely to reduce the risk of conflict and social fragmentation.³²

Thus, open secularism does not sacrifice the separation of State and Church and State neutrality towards religions for the benefit of believers' freedom of religion. Instead, it offers an interpretation that achieves greater compatibility between the two purposes.

THE CHALLENGES POSED BY OPEN SECULARISM

The open secularism model is, however, being tested at present and must resolve new dilemmas and seek a new equilibrium. Québec is diversifying and will continue to do so. How, in such a context, can we allow citizens to live according to their conscience and ensure respect for the common public values that underpin collective life? How can we respect cultural and religious diversity while preserving historic continuity and the representation of the past in the present? The fears and criticisms that citizens voiced during the public hearings, while they do not in our view warrant a radical break, reveal grey areas in our current system and raise a number of questions that we must answer. These responses, in return, will enable us to flesh out our secularism model and broaden its definition and application in concrete cases.

At least two key questions constantly cropped up during public debate in the fall of 2007: may government employees wear religious signs in the exercising of their duties and how can we

32. Moreover, it would seem that the adaptation necessary for cultural diversity is, in point of fact, shifting France towards a more multicultural integration model* and more open secularism. Sociologist Jean Baubérot maintains that the French statute prohibiting the wearing of religious signs in public schools does not appear to be representative of the process in which France is involved. See J. Baubérot (publication pending).

distinguish between what relates to our historic heritage and what breaches the rule of State neutrality towards religions? In other words, must we wipe the slate clean as regards Québec's religious past to conform to the demands of secularism? Obviously, there is more than one acceptable answer to these questions. Here, nonetheless, are the responses that strike us as being best adapted to contemporary Québec.

- **The wearing by government employees of religious signs**

As we have seen, secularism demands that there be no organic link between the State and religion. The secular State must take its orders from the people through its elected representatives and not the churches. The religious neutrality of the State demands that public institutions not favour any religion, not that the individuals who frequent the institutions relegate to the private sphere displays of their religious affiliation. What are the implications of the religious neutrality of the State as regards agents of the State, who represent it and enable it to accomplish its duties?

This question does not pose a specific challenge to the most rigid conceptions of secularism. Since agents of the State prohibit in some instances the wearing by users of religious signs, it goes without saying that they may, generally speaking, display their religious convictions while performing their duties. In France, the principle of secularism is deemed to justify prohibiting agents of the State from wearing religious signs.³³ This question is a difficult one as regards open secularism models that seek to strike a balance between the demands of the strict protection of freedom of conscience and religion and the demands of the necessary neutrality of public institutions.

The reason most frequently invoked for prohibiting agents of the State from wearing religious signs is that the agents represent the State and must, consequently, embody the values that the State promotes. Since the State is neutral with respect to the religious affiliations of its citizens, its representatives must embody this neutrality.

At first sight, this stance seems reasonable and legitimate. Citizens, as individuals, are free to display their religious affiliation both in the private sphere and in the public sphere, in its broadest sense. However, as agents of the State, they must agree to embody or

personify State neutrality towards religions. A State employee wearing a visible religious sign might give the impression that he serves his Church before serving the State or that there is an organic link between the State and his religious community, while a uniform rule prohibiting the wearing of religious signs avoids the appearance of a conflict of interest.

It is important to note at this juncture, before we examine this argument more closely, that prohibiting agents of the State from wearing religious signs has a twofold cost, i.e. the restriction of *a*) the freedom of conscience and religion of the individuals concerned and, possibly, of *b*) equality of access to jobs in the public and parapublic service. If, as we saw in Chapter V, no right is absolute, a liberal democracy must always have compelling reasons for infringing the basic rights and freedoms of part of the population. Is the appearance of neutrality aimed at by the rule prohibiting agents of the State from wearing religious signs a compelling reason?

The appearance of neutrality is important but we do not believe that it warrants a general rule that would prohibit agents of the State from wearing religious signs. If such a prohibition is better justified, as we will see later, in the case of certain specific functions, what is important, above all, generally speaking, is that agents of the State display impartiality in the performance of their duties. A State employee must seek to accomplish the mission attributed by legislators to the institution that he serves. His acts must neither be dictated by his faith nor his philosophical beliefs but by the desire to achieve the purposes inherent in the position that he occupies. Why should we think that the person who wears a religious sign would be less likely to display impartiality, professionalism and loyalty to the institution than the person who does not wear such a sign? Why, therefore, dwell on external displays of faith? Should we not also demand of State employees that they relinquish any conviction of conscience?³⁴ It would obviously be absurd to do so. Why think *a priori* that people who display their religious affiliation are less likely to take things into consideration than those who do not externalize their convictions of conscience or who externalize them in a much less visible manner (the wearing of the Catholic cross comes to mind)? Why refuse one person the presumption of impartiality and grant it to the other one?

33. Here and in the sections that follow, we are speaking of religious signs that are, if not ostentatious, at least visible to other people.

34. M. Milot (2008, page 99).

In our view, we must evaluate agents of the State in light of their acts. Do they display impartiality in the performance of their duties? Do their religious beliefs interfere in point of fact with the exercising of their professional judgment? The restriction of the freedom of conscience and religion of certain citizens is a solution of last resort. In the case at hand, it is possible to evaluate the neutrality of the acts of agents of the State without restricting their freedom of conscience and religion. For example, in the case of an employee wearing a religious sign and engaging in proselytism in the workplace, it is proselytism that should be prohibited and not the wearing of a religious sign, which in itself is not an act of proselytism. It goes without saying that we can associate a specific duty of circumspection in respect of the words and acts associated with certain positions. Consider, for example, the staff who will teach the new Ethics and Religious Culture Program.

It may well be, it is true, that some people are shocked by the vision of an agent of the State displaying his religious affiliation, regardless of his skills. How can we explain this reaction? Might it be, in many instances, that it stems from a suspicion or indeed an intolerance of religion in general or of minority religions in particular? Should we restrict on this basis certain citizens' free exercise of religion? In a diversified society such as ours in which numerous religions and relationships with religion mix, we must instead rely on learning to live together that fosters mutual understanding and respect.³⁵ How might we become accustomed to religious signs with which the majority is not familiar if a number of key occupations are closed to individuals for whom faith must express itself in the wearing of such signs? Does not a more rigid secularism risk, once again, fostering community withdrawal rather than integration?

However, let us point out that our position does not mean that we must accept the wearing of religious signs by all agents of the State. Instead, it assumes that we must not prohibit the wearing of a religious sign simply because of its religious nature. Other reasons may, however, justify the prohibition on wearing certain religious signs. This brings us into the realm of undue hardship that we examined in Chapter III. The wearing of a religious sign must not hamper the performance of the employee's duties. For example, a female teacher cannot wear a burka or a niqab in class

and properly perform her teaching duties. On the one hand, teaching relies by definition on communication and covering the face and body excludes non-verbal communication. On the other hand, one of the teacher's missions is to contribute to the development of the student's sociability. It seems reasonable to think that the wearing of a full-body veil establishes too great a distance between the teacher and her students. In short, pedagogical reasons can, among others, be invoked to justify the prohibition on female teachers' wearing the burka or the niqab.³⁶ Analogous considerations obtain for the vast majority of duties in our public institutions, where full, open communication between colleagues and with the public is essential.

The headscarf, on the other hand, compromises neither communication nor socialization. However, some people maintain that a student in the first cycle of elementary school has not yet developed the autonomy necessary to understand that he does not have to adopt the religion of his female teacher, who is in a position of authority. This is a serious argument and while we are unable to do so here it warrants investigation in light of research in educational psychology. On the other hand, we would also have to bear in mind that young people who are exposed at a very early age to the diversity that they will encounter outside the school can more readily demystify the differences and will consequently be less likely to perceive them as a threat. Successful cohabitation in a diversified society demands that we learn to perceive as normal an array of identity-related differences.

In our view, a general rule that applies to all agents of the State, from the employee who performs simple technical tasks and has no contact with the public to the Chief Justice of the Superior Court of Quebec would be excessive. The prohibition of the wearing of religious signs in respect of a restricted range of duties is nonetheless more justifiable. In the brief that it presented to the Commission, the Bloc Québécois maintained, for example, that the wearing of religious signs should be prohibited in the performance of duties that "embody the State and its necessary neutrality."³⁷ Some examples are judges, Crown prosecutors, the president of the National Assembly of Québec, police officers, and so on. In support of this nuanced proposal we can maintain that the separation of Church and State must be marked symbolically

35. We believe that the new Ethics and Religious Culture Program will facilitate such learning. See G. Leroux (2007).

36. We are not excluding that there might be other reasons for prohibiting female teachers from wearing these signs, but we believe that the reasons mentioned here are largely sufficient to justify such a prohibition.

37. We have drawn this expression from the Bloc Québécois brief, page 36, which mentions "functions, which, by their very nature, embody the State and its necessary neutrality to ensure respect for the basic freedoms of conscience and religion of all citizens."

and that this is a principle that we must highlight and promote. We can also suggest that the requirement of the appearance of impartiality imposes itself at the highest level in the case of judges, police officers and prison guards, all of whom possess a power of punishment and even of coercion in respect of individuals such as defendants, accused persons and inmates, who are in a position of dependence and vulnerability.

Everyone will agree that this type of situation must be broached with the utmost caution. The case of judges is probably the most complex and the hardest to decide upon. It is essential that the parties involved in a trial, especially the respondent, who may be punished, can assume the judge's impartiality. Could a Muslim respondent assume the impartiality of a Jewish judge wearing a kippah or a Hindu judge displaying a tilak?*

The right to a fair trial is one of the acknowledged basic legal rights of all citizens. We can argue that it is not necessary to prohibit signs to make this right effective. In fact, a judge must first ascertain whether he is fit to hear a case. If he doubts his ability to preside impartially over a trial, he must disqualify himself.

Similarly, it is also difficult to decide on the case of police officers, who also exercise a power of punishment. On the one hand, we can claim that the prohibition on religious signs is, in certain contexts, a functional necessity in respect of the performance of the police officer's duties. On the other hand, we should also take into consideration the hypothesis that a police force is likely to more readily gain the trust of a diversified population if it is diversified and inclusive.

What stance should we adopt in light of these contradictory considerations? We believe that a majority of Quebecers accept that a uniform prohibition applying to all government employees regardless of the nature of their position is excessive, but want those employees who occupy positions that embody at the highest level the necessary neutrality of the State, such as judges or the president of the National Assembly, for example, to impose on themselves a form of circumspection concerning the expression of their religious convictions. Some people maintain that the separation of Church and State must be embodied in certain symbols, in this case the appearance of agents who occupy positions that tangibly represent the different powers of the State. This expectation appears reasonable to us.

Having weighed up these considerations, we believe that the imposition of a duty of circumspection to this limited range of positions³⁸ achieves the best balance for contemporary Québec society. These are positions that strikingly exemplify State neutrality and whose incumbents exercise a power of coercion.

Such is our conclusion. We admit that we can achieve this end by following different lines of reasoning. For example, we can deem this proposal to be the most appropriate in the context of contemporary Québec society, although it is understood that this context can change over time. Or, we can also maintain that the proposal has a more permanent character that goes beyond the current context inasmuch as it embodies the principle of the separation of the State and the churches. We do not have to decide this debate since the two lines of reasoning lead to the same conclusion.

38. The president and vice-president of the National Assembly, judges and Crown prosecutors, police officers and prison guards.

• Religious heritage

A number of Quebecers do not understand why accommodation must be granted to individuals belonging to minority religious groups while the majority must accept in the name of secularism the modification of certain of its symbols and institutional practices. Generally speaking, the preceding discussions allow us to answer the questions stemming from this feeling of unfairness. On the one hand, the State or public institutions must not make of a precept or a practice specific to a given religion, even that of the majority, a norm that is restrictive for the population overall. Thus, the statute prohibiting stores from opening on Sunday had to be abolished, since it reflected a Christian norm in positive law. Atheists, agnostics and the members of other religious communities had to respect a statute stemming directly from the Christian religion. The latter were thus not treated by the State with equal respect. On the other hand, accommodation or adjustments that allow individuals to practice their religion at work or in public establishments do not, if they are warranted, call into question State neutrality. These practices are only binding on themselves.

Does secularism demand that Québec's historic religious heritage be sacrificed? In particular, must we purge public institutions and places of public use of all traces of religion and, first and foremost, the religion of the majority? Would that not be tantamount to adopting a clean slate approach?

An adequate conception of secularism must, in our view, seek to distinguish between what constitutes a form of establishment of religion and what is part of the society's historic heritage.³⁹ The old statute governing working on Sunday, the privileges granted Catholics and Protestants concerning the teaching of religion in public schools, the reciting of a prayer before municipal council meetings, and swearing an oath on the Bible in court are forms of affirmation of the religion of the majority. Practising Christians are

favoured in all of these cases while non-Christians are obliged to respect a law or norm that is at odds with their convictions of conscience.

However, certain practices or symbols may originate in the religion of the majority without necessarily genuinely restricting those who are not part of this majority. This is true of practices and symbols that have heritage value rather than playing a regulatory role. For example, the cross on Mount Royal does not signify that Montréal identifies with Catholicism and does not demand of non-Catholics that they act against their conscience. It is a symbol that reflects a chapter of our past. A religious symbol is thus compatible with secularism when it is a historic reminder rather than a sign of religious identification by a public institution.⁴⁰ As the Commission des droits de la personne et des droits de la jeunesse du Québec has emphasized, a symbol or ritual stemming from the religion of the majority "does not infringe basic freedoms if it is not accompanied by any restriction on individuals' behaviour."⁴¹

This criterion is widely accepted. Quebecers of immigrant origin and the members of religious minorities who participated in the Commission's public hearings did not, moreover, plead for the elimination of Québec's religious heritage. However, we must avoid maintaining practices that in point of fact identify the State with a religion, usually that of the majority, simply because they now seem to have only heritage value.⁴² The prayers recited at the beginning of municipal council meetings⁴³ or the crucifix hanging above the president's chair in the National Assembly of Québec come to mind. This crucifix, which Maurice Duplessis installed in 1936, suggests that a very special closeness exists between legislative power and the religion of the majority. It seems preferable for the very place where elected representatives deliberate and legislate not to be identified with a specific religion. The National Assembly is the assembly of all Quebecers.⁴⁴

39. The State establishes a religion when it maintains organic links with a religion or when the State's action originates in a specific religion. The establishment of a religion contradicts the rule of the separation of the State and religion.

40. This also applies to practices whose religious content is limited or non-existent. For example, the Christmas tree is a symbol of pagan origin without any real religious resonance adopted by a number of highly secularized societies. Some non-Christian consumer societies such as Japan celebrate Christmas.

41. P. Bosset (1999), page 20.

42. As M. Milot (2008) emphasizes, page 92.

43. Since 1976, the prayer in the National Assembly of Québec has been replaced by a moment of contemplation.

44. The same reasoning applies to the crucifixes on the walls of public schools. What should be done with the crosses engraved in the very walls of certain Québec schools? The idea here is obviously not to destroy the walls but to no longer build public schools that bear the mark of the religion of the majority.

CONCLUSION

Having said that, cases will remain in which the State cannot be perfectly neutral. For example, all societies need a common calendar that enables citizens and institutions to coordinate their actions. Such calendars are usually of religious origin, which explains why businesses had for a long time to close on Sunday⁴⁵ and that most statutory holidays coincide with Christian religious holidays. In this case, there cannot be any question of remaking a sanitized calendar cut off from history. As we saw in Chapter IV, the path to follow is instead that of reasonable accommodation practices that allow members of other religions to take leave on their most important religious holidays as Christians do. Here, accommodation measures allow both for the maintenance of historic continuity and the remedying of indirect discrimination.*

Open secularism thus allows us to fairly answer questions surrounding the wearing of religious signs and historic heritage, which arise in all diversified societies.

A WHITE PAPER ON SECULARISM

To summarize, Québec must, in our view, broaden its open secularism model instead of changing it. What is the Québec government's role in this undertaking? A number of individuals and organizations asserted that the time has come for Québec to adopt an instrument or mechanism that allows it to affirm loud and clear its secularism and to clarify the terms of this secularism. Several people supported the idea of adopting a charter of secularism whose status would be equivalent to that of the *Charter of the French language*, or to incorporate into the Québec *Charter of rights and freedoms* an interpretive clause affirming the secular nature of the Québec State. The idea underlying these proposals is that secularism should become, as in France, a (quasi-) constitutional principle.

Quebecers are right to want the key parameters of our society, especially those stemming from our system of secularism, to be more clearly defined and asserted. However, we do not believe that the adoption of a provision or a legal mechanism such as a section or interpretive clause in a charter is the best way to respond to this request for reference points. As we have shown in this chapter, the Québec State is secular. The equality of persons before the law and freedom of conscience and religion, which both demand that the State be autonomous in relation to religions and neutral towards them, are already enshrined in our charters of rights and freedoms. The courts already have the tools necessary to reject accommodation requests based on freedom of religion that would jeopardize the separation of Church and State or the State's neutrality in respect of religion.

That being the case, if the Québec State is *de facto* and, indirectly, *de jure* secular, it is true that successive governments have remained remarkably silent on the Québec secularism model. While they have often legislated to reaffirm Québec's secularism (take, for example, the introduction of non-denominational teaching of religion in public schools), an elected government has never adopted a text in which the key directions of the Québec secularism model are defined. We believe that it would be timely for the executive branch of government to take over from Quebecers, examine this question and discuss such a text, which could take the form of a white paper on secularism. A white paper is a document that the government can submit to the National Assembly focusing on a question of public interest in which it

45. Legislation still restricts the hours of operation of certain businesses on Sunday. The courts have established that the legislation could regulate this facet insofar as the objective pursued is the employees' well-being and not the imposition of a religious precept.

presents a problem, the objectives pursued, the means that can be implemented, and its preferred option.⁴⁶

It is important at this stage in Québec's history for the State to formalize and spell out the conception of secularism that already exists in practice and, in so doing, to confirm and clarify the guidelines that define it. Contrary to the situation that prevailed prior to the adoption of the *Charter of the French language*, the current situation does not require the adoption of a series of legislative measures aimed at promoting and ensuring respect for secularism. Instead, a white paper should:

1. define secularism by distinguishing its four principles, what we have called its two purposes and its two essential institutional structures;
2. review the major choices that Québec has made in respect of secularism;⁴⁷
3. defend the conception of open secularism adopted and implemented by Québec;
4. clarify and submit for public debate questions on which a consensus has yet to be achieved.⁴⁸

As we have shown in this chapter, the legislation in force in Québec and Canada, including the charters of rights and freedoms, and recognized by jurisprudence already assures the secularism of the Québec State. The State must seek to clarify the foundations and objectives of its secularism model and make available to its citizens a common frame of reference that helps to structure public debate on the question.

We therefore recommend that the government initiate a process that leads to the tabling in the National Assembly of a white paper on secularism that clarifies and formalizes the implicit secularism model patiently edified in Québec. This statement would specify the terms of the debate and partly satisfy the need voiced by Quebecers for clarification concerning the organization of religious diversity. The white paper would review the key choices that Québec has made and could clarify the questions that must be examined during future discussions. Without ending debate in Québec on secularism, the white paper would contribute significantly to structuring it.

46. See http://www.formulaire.gouv.qc.ca/cgi/affiche_doc.cgi?dossier=1532&table=0.

47. We are thinking here of the importance accorded the protection of the freedom of religion of all citizens and of reasonable accommodation practices in respect of religious differences, the establishment in Québec of a non-confessional school system, the inclusive approach adopted with regard to the wearing by users of public institutions of religious signs, and so on.

48. For example: the wearing by agents of the State of religious signs, the status of historic heritage, the place of religious orthodoxy in our society and the sometimes difficult reconciliation of, on the one hand, freedom of religion, and on the other hand, of other people's rights and common public values.