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QUEBEC'S BILL 21: THE COLLISION OF SECULARISM, RELIGIOUS FREEDOMS, AND REASONABILITY

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Few other proposals were as controversial in the Canadian province of Quebec as Bill 21, 'An Act respecting the laicity of the State'. In fact, religious and minority rights, nationalism, federalism and gender equality are all at stake in the debate around the law, drafted during 2019 spring by Simon Jolin-Barrette, Immigration, Diversity and Inclusiveness Minister of the centre-right *Coalition Avenir Québec* (CAQ) and to be voted by the National Assembly (NA) at the end of June. I shall here outline some significant features of the law and make few comments, for showing how its understanding of secularism is misleading and discriminating.

As shown in the [text](#), the purpose of the 'secularism bill' is to reaffirm the state laicity (*laïcité*) through the application of four principles: separation between state and religion, state neutrality in religion, equality of all citizens (especially between women and men), and freedom of conscience and religion (art.1). The outcome is the inhibition of public officers from wearing religious symbols at work, especially for people hired in parliamentary, government and judicial institutions, those with 'coercive powers', and others employed at schools, hospitals or any state-remunerated contracts and services (Chapter II and Schedule II; Chapter

III).

In practice, “personnel members of a body must exercise their functions with their face uncovered, and persons who (...) receive a service from such a personnel member must have their face uncovered when (...) necessary to allow their identity to be verified or for security reasons. Persons who fail to comply with that obligation may not receive the service. However, those obligations do not apply to persons whose face is covered for reasons of health or a handicap, or because of the requirements tied to their functions or to the performance of certain tasks” (Explanatory notes). Moreover, Bill 21 amends the [1975 Quebec’s Charter of Human Rights and Freedoms](#): firstly, in the preamble, by inserting “whereas the Québec nation considers State laicity to be of fundamental importance” within the Charter preliminary conditions (art.17); secondly, in Section 9.1 by mentioning state laicity among democratic values, public orders and well-being as principles balancing fundamental freedoms and rights (art.18).

From a federal perspective, the law indicates the ‘notwithstanding clause’ of Section 33 of the [1982 Canadian Charter of Rights and Freedoms](#). This disposition allows provincial legislatures and governments to override some sections of the Charter for up to five years (with no-limited re-enhancement). The explicit mention of this clause is crucial, since it adds the territorial dimension of conflict, makes it difficult to challenge the law, and wards off the outcome of a similar law I will describe later.

The reactions to Bill 21 fuelled the debate. Firstly, ambiguously enough, a general observation is that the law lacks any definition of religious symbol. Anyhow, it is deemed to target mainly Muslim, Sikh and Jewish communities, as the most ‘visible’ minorities, and only partially Christians. Accordingly, veils, hijabs, turbans, kippahs, but also crucifixes, will be forbidden for public workers, though other physical attributes (hair, tattoos) will be not involved. The measures are prescribed for all new workers, whilst current ones may keep wearing their symbols until the first job promotion or change.

Foremost, it should be specified that the outlawing of religious symbols is the end of a [decade of animus](#) against religious minorities, consolidated

by the 2018 electoral victory of the current Premier François Legault and the political divide among multiculturalist and assimilationist political forces. In fact, the CAQ galvanized hate speeches and Islamophobia attitudes, through the tightening of immigration quota and plans of 'Quebec's values test' for migrants. [Other critiques](#) came from minority and antiracism advocates, claiming that [minority representatives have been excluded](#) from decision-making and public hearings. The main critical observation, however, is that Bill 21 will affect in particular [Muslim women](#). In a nutshell, it would 'unveil' the rhetorical surface of the '[state neutrality](#)', by targeting specific individuals. The protests were also invigorated by [a declaration released by Legault](#), affirming that targeted people could find other jobs rather than public ones. Among the dissenting voices, Charles Taylor, previously proponent of a religious symbol ban for public officers in the Commission Taylor-Bouchard report (2008), [expressed his preoccupation](#) about the dangerous effects on integration. More radically, a Quebec's mayor called the law an attempt of "[ethnic cleansing](#)", and other authorities (e.g. school boards) state they will not implement the law. As a timid response, Legault acted [to remove the crucifix](#) in the NA, there since 1936.

In the federal arena, Prime Minister Justin Trudeau condemned the law, by speaking of an "[unthinkable discrimination](#)" of religious minorities in a free society, albeit it is not clear how the federal government would act against it. From an international point of view, three [experts from the UN Human Rights Council wrote a letter](#) to the Canadian permanent mission in Geneva, expressing severe concerns about the Bill and outlining how it might lead to [violations of the International Convention on the Elimination of All Forms of Racial Discrimination](#). Despite these points, Bill 21 seems to have the support of most of Quebec's population, though with a generational divide among age cohorts. Why do *laïcité* and freedom of religion clash in Quebec? Are they a unique feature of the province or a manifestation of profound unevenness between secularism and freedom of religion?

More in general, secularism is a significant part of Quebec's distinct political and legal traditions, which encompass a narrow conception of

secularism and religion. Secularism is deemed by Sajó an institutional arrangement which provides protection to a *reason-based polity* against a social 'disorder' centred on dictates of religious doctrine and heated *passions*. Under this view, the state should play the role of the impartial, rational umpire among confessions. At the same time, religion is regarded as expression of the irrational part of humans, that needs to be limited.

Even though a similar conceptualization of secularism (though more respectful of differences) is embraced by the [European Court of Human Rights](#), legal systems often adapt to background conditions and minority needs. In the Canadian multicultural society and multi-confessional legal order, as named by Francesco Palermo and Jens Woelk, the position of Quebec constitutes a unique case, only partly relying on the French experience, which approved a similar (and flexibly implemented) law in 2004 and where the state-church division dates to 1905. In the rest of Canada, in fact, the doctrine of reasonable accommodation is adopted. According to [Choudhry](#), the Supreme Court addressed the freedom of religion extensively (art.2.a of the Charter), and then the limits to that of a free and democratic society intensively (art.1). This reasoning then consolidated through many decisions (see [Syndicat Northcrest v. Amselem](#), [Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine](#), [Multani v. Commission scolaire Marguerite-Bourgeoys](#), when the Court overruled a Quebec decision barring a Sikh student from wearing a kirpan; cf. [Bruker v. Marcovitz](#)).

However, this was a dividing process, with the Quebecois judges submitting dissenting opinions. This is understandable by reporting the consideration of the 1982 Charter and the Court as federalizing and nation-building forces, and the secularizing tendencies of Quebec's society, passed under the Quiet Revolution and the emancipation from the influence of the Catholic church as constitutive parts of the nationalizing process. After the *Parti Québécois* (PQ) electoral dominance in the 1990s and 2000s, in 2013 the PQ failed to approve a 'Charter of Secularism', and the Quebec Liberal Party (QLP) returned to power the following year. However, even the QLP was in favour of some of these measures and in 2017 approved the 'neutrality law' Bill 62, a comparable

ban on religious symbols, then suspended by a judge of the Superior Court of Quebec. The question arose again in 2019, pushed by the newly formed CAQ, aiming of grasping electoral success by outbidding the QLP and the PQ and obtaining political hegemony.

As it could be observed by this analysis, the Bill reveals a conundrum of historical and theoretical issues, directly connected to the local political and legal systems. Religious and laicity affairs, not salient *per se*, emerge periodically as containers of other political questions, e.g. the ethnonational cleavage. Anyhow, amidst acrimonious discussions and polarizing protests, and the [visibility of the far-right](#) supporting the law, the government has been successfully exploiting the ethnocentric nationalism (hidden by a civic nationalism guise) embedded in Bill 21 for discriminating 'new' migrant minorities. The proposed law is therefore sexist, since it targets women, and nativist, against 'non-indigenous' minorities. Despite pretending to be the rational defence of the legal order, Bill 21's understanding of secularism is partial, irrational and dogmatic. It is a solution to a non-problem, in the words of one famous (and controversial) [Canadian commentator](#), and it fosters governmental radicalization and populism. It dismisses that religion, and its cultural facets, are part of public life. In conclusion, the solution for granting democratic standards and interethnic coexistence is accommodation, recognition and compromise, not the imposition of putative universal values.