

Secularism

Expression

Equality

Religion

Neutrality

Freedom

Accommodation

Secularization

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Understanding Secularism...

Secularism gradually developed as a characteristic of modern States, even before the term entered the vocabulary at the end of the 19th century. Secularism corresponds to a transformation in which the State derives its legitimacy from the people and not from God. By freeing the State from any link with religion, it guarantees that citizens will be treated equally, regardless of their beliefs or lack of belief.

The neutrality of the State in the face of religion is a necessary condition for the respect of the freedom of conscience, and the freedom of expression and association, which are essential to democracy. It also helps to alleviate religious tensions within multi-faith societies, an important consideration for increasingly pluralistic societies.

The pillars of secularism

- The separation of religion and State implies that the State does not interfere in religious matters and that religious institutions do not dictate to States the policies they should follow. The State adopts policies in accordance with the general interest, as defined by the action of the various social actors.
- The **neutrality of the State** implies that the State is neutral towards different beliefs or non-belief. The State shall not promote or disadvantage, directly or indirectly, any belief or non-belief.

The aims of secularism

- Freedom of conscience and religion implies that all individuals and citizens have the same rights regardless of their belief or non-belief.
- The **equality of all** implies that all individuals are protected against all forms of discrimination.

Nota Bene

By way of example, the reference to God in the Canadian Charter of Rights and Freedoms, the crucifix in the National Assembly, the recitation of prayers by elected officials in the performance of their official duties, as well as the funding of religious schools and the exemption from property taxes granted to churches and religious communities are incompatible with secularism.

Criticize religion or believers?

Religious institutions often convey conservative values, including the issue of equality between men and women and respect for sexual orientation. The LDL denounces religious fundamentalisms.

It would be wrong, however, to associate each believer with the ideas put forward by conservative religious currents. Believers do not form a monolithic block. Thus, gays and lesbians may denounce the position of religious institutions on homosexuality, while declaring themselves believers. In our individualistic societies, the faithful increasingly adhere to a personalized version of faith and modulate their religious practice and belief in accordance

with their personal convictions. Just think of the protest in the very Catholic Brazil over the excommunication by the Brazilian bishops, with the support of Rome, of both the medical team and the mother of a nine-year-old girl who had had an abortion after being raped by her stepfather.

It is evident that there are people of all faiths who uphold equality between men and women, and demand its institutional recognition, such as is the case regarding female priesthood. In Canada, the Canadian Council of Muslim Women has opposed private sharia-based arbitration tribunals.

Laicization and secularization – two concepts to be distinguished

These two concepts are indeed to be distinguished. However, interestingly, the English language does not really have the equivalent terms. In French, laicisation refers to the separation of religion and State, whereas secularization is a process through which religion gradually loses its authority over all aspects of social life and governance. In English, laicization is a neologism rarely used and, in this publication, we have chosen to use secularism to refer to the French concept of “laïcité” as the separation of religion and State.



Freedom of religion, freedom of expression and women’s equality

Freedom of belief cannot be separated from freedom of conscience, without which a human being cannot claim autonomy and freedom. The right to equality includes the right for both women and men to adhere to the beliefs of their choice, and to express that choice.

To restrict women’s ability to express their beliefs, regardless of whether one agrees with that belief, is to judge women unfit to decide for themselves.

Focusing the debate on religious symbols - and almost exclusively on the headscarf - stigmatizes Muslim women and infringes upon their right to equality. It is not by accentuating the discrimination suffered by these women that their right to equality will be achieved, but rather, among other things, by promoting their participation in economic and social life.

Indeed, the right to equality is realized through the exercise of all the rights recognized in the Universal Declaration of Human Rights, including the right to work, to a decent income, to housing, to education, to health and so on.

The indivisibility of rights

The indivisibility and interdependence of rights stems from the fact that the realization of all rights is necessary for human dignity. These concepts are the basis for the search for substantive equality, which is generally opposed to formal equality. The search for substantive equality takes into account all protected rights. The search for equality must be done with respect for the rights of all.

As proclaimed in the Vienna Declaration:
“All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally, in a fair and balanced manner, on an equal footing and with equal importance.” (Article 5)

Vienna Declaration and Program of Action,
adopted on 25 June 1993 by the United Nations World Conference on Human Rights

Reasonable Accommodation

Reasonable accommodation is the legal obligation to make a “reasonable” effort to accommodate a standard or practice of universal application, where that standard or practice has a discriminatory effect on a person. It should be remembered that all employers in the State, private and community sectors, as well as trade unions, have legal obligations to make reasonable accommodations.

Reasonable accommodation is not intended to enshrine difference but, on the contrary, to allow participation and promote integration, despite difference.

For example, an employer may be required to modify a work environment to make it accessible to a person with a disability, where the modification does not represent

an excessive burden on the employer. Reasonable accommodation must also take into account other protected rights, including women’s right to equality. The decision on what is “reasonable” is made on a case-by-case basis, ultimately by a court of law in the event the parties do not agree.

While reasonable accommodation does not appear to be controversial when requested by a person with a disability or a pregnant woman, this is not the case when a person claims it for religious reasons - as if a person’s belief is less worthy of respect because it evokes values that are not necessarily shared. However, accommodating on religious grounds does not mean endorsing the values - real or supposed - associated with an individual’s belief, but simply trying to facilitate the individual’s participation and integration in consideration of the rules or practices of his or her belief.

Nota Bene

By definition, accommodation is an adaptation of a general rule to take into account a personal constraint (disability, illness, religion...) and must be granted or refused taking into account each situation. The idea of defining in advance the categories of requests that would be acceptable and unacceptable goes against the very notion of accommodation.

However, it would be possible to identify examples of agreements that have been concluded to meet certain needs and that have functioned.

Religious Signs

Religious symbols are at the heart of the debate on secularism. Religious symbols have no place in public institutions when their symbolic charge calls into question the neutrality of the State, as is the case with the crucifix, which should not be displayed in the National Assembly.

A distinction must be made between the State and State employees. They must carry out their duties in complete neutrality, without discrimination or proselytism. This rule limits what they can do, but does not require hiding what they are. Does a person necessarily become less impartial because their dress code betrays their religion? In addition, the prohibition of the wearing of religious symbols (ostentatious or not) would affect the integrity of persons for whom religious symbols are of great importance. By affecting some believers more than others, the measure would have a discriminatory effect that goes against the very idea of the neutrality of the State that underlies secularism.

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In certain circumstances, it may be legitimate for the State to prohibit persons performing public functions from wearing religious symbols. However, before doing so, the State has the obligation to demonstrate how the wearing of the religious symbol affects the performance of these functions and this demonstration must take into account the guidelines developed by the courts for reasonable accommodation.

Would it be easier to prohibit?

One would think that simply banning the wearing of religious symbols by government employees would simplify matters. Should we only ban ostentatious signs? How do we determine what is a religious sign and what is a cultural sign, what is ostentatious and what is not? Is the Bindi, the dot on Indian women's forehead, religious or cultural? How do we determine if a man's beard is Muslim, rabbinical or simply a beard? Disputes resulting from such institutionalization of discrimination would also end up in court.

A charter of values?

Secularism is not a value but a way of governing the relationship between religions and the State in a democratic society based on the equality of all.

The principles on which secularism is based are already guaranteed by the charters of rights that oblige the State to respect freedom of belief without discrimination and therefore in complete neutrality - which makes the reference to God in the preamble to the Canadian Charter all the more inappropriate.

The charters guarantee that freedom of conscience and religion must be exercised in accordance with other recognized rights, particularly the equality between men and women. It should also be recalled that Canada and Quebec have made commitments that stipulate that customs and traditions must not be used to justify discrimination against

women, inter alia, by signing the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

The idea of a charter based on "Quebec values" has the effect of granting the majority group the power to grant privileges to other groups, whereas a secular State aims rather to guarantee the rights and freedoms of all. This logic, which makes the rights of one person, privileges for the "others", is cause for concern.

Finally, there is no magic recipe: neither a law on secularism or otherwise will automatically resolve all conflicts of rights and values that arise in a society.

Jewish General Hospital of Montreal

An example of the interdependence of rights

Sometimes rights seem to conflict: the right to work, women's right to equality, freedom of religion and human dignity. However, in the name of the principle of the interdependence of rights, rights are usually reconcilable. Take the case of the Jewish General Hospital in Montreal. In a judgment rendered on October 26, 2007, the Human Rights Tribunal convicted the Jewish General Hospital for reserving positions for male attendants in order to allow men to be cared for by persons of the same sex. The Tribunal recognized that the objective pursued was legitimate, but that respect for the right of beneficiaries to receive intimate care from a person of the same sex must be reconciled with respect for the right of employees not to be discriminated against on the basis of sex. The means implemented by the hospital to satisfy the beneficiaries were unacceptable because they did not take the rights of the attendants into sufficient account. The hospital had to review its policy in order to respect the rights of patients and staff.

By enshrining the separation of religion and State, secularism aims to protect both believers and non-believers from the domination of a group that would like to impose its belief or non-belief through the State.

Religious institutions enact rules and promote values that can be offensive to many citizens and that particularly offend women, and gays and lesbians who must fight the positions of different faiths. But in a democratic society, it is through public debate that prejudices and stereotypes are fought, not by limiting the right to free expression.

Women's access to equality would be undermined by the imposition of rules that restrict the participation of women belonging to visible religious minorities in social and economic life. Achieving substantive equality requires, among other things, full recognition of the importance of economic and social rights - decent income, housing, education... – as well as the implementation of measures that will allow everyone to enjoy these rights.

The State should rather focus on putting an end to practices that persist in compromising secularism. For example, the government's current policy of subsidizing certain religious schools and daycare centers should be questioned because it detracts from the State's obligation of neutrality. Similarly, the recitation of prayer at the beginning of some municipal council sessions should be abolished.

Finally, in a democratic society, there is no simple solution that will immediately resolve all situations of conflict with regard to rights and values. We will have to accept the challenge and duty to resolve disputes one by one, while respecting rights and freedoms.

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