

Being Reasonable About Reasonable Accommodation of Minority Religious Practices and Symbols; A Global Challenge in an Era of Diversity

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Since the defeat of European fascism at the end of the Second World War, there is a global consensus that those in societies around the world who find themselves in a minority within their society because of their disabilities should expect to be treated differently. They rightly expect to be accommodated so that they can have equal access to housing, transportation and earning a livelihood. There is little argument that to treat the minority of the population who are disabled in an identical fashion to the rest of the population would be to treat them unequally. As our own Supreme Court has reminded Canadians in the landmark *Andrews v. Law Society of English Columbia*,¹ identical treatment can result in unconstitutional inequality. Human rights laws and practices in Canada and across liberal democratic societies have extended the need to treat certain other disadvantaged minorities differently to reasonably accommodate them in a similar fashion. However, it must then be noted that women who can form the majority in some of these societies, including Canada, may still need to be accommodated due to societal disadvantages placed upon them due to their gender and societal prejudices and barriers placed before them.

What must be examined further is the driving force behind this global acceptance of the fundamental rights of disadvantaged minorities or in the case of women, possibly a disadvantaged majority, to be accommodated. I suggest the driving force behind such acceptance of reasonable accommodation is the concept of human dignity. This concept has also become the essential value of the equality guarantee in Section 15 of the *Canadian Charter of Rights and Freedoms* as laid down in the *Law v. Canada (Minister of Employment and Immigration)*² decision of the Supreme Court. A more recent Supreme Court ruling in *R. v. Kapp*³ has noted that several difficulties have arisen from the use of human

¹ [1989] 1 S.C.R. 143.

² [1999] 1 S.C.R. 497.

³ [2008] SCC 41.

dignity as an abstract and subjective notion. However, the Court did not overrule its decision in *Law* or the fact that human dignity is an essential value underlying the guarantee of equality under Section 15 and indeed all other rights in the *Charter*, including that of freedom of religion. Rather, the Court seems to be in favour of returning to the emphasis on substantive equality in its landmark decision and first ruling on Section 15 in *Andrews v. Law Society of British Columbia*.⁴

In *Law* the Supreme Court wrestled with the definition of what was the content of essential human dignity in the following words:

51. ... It may be said that the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration ...

53. What is human dignity? There can be different conceptions of what human dignity means. For the purpose of analysis under s. 15(1) of the Charter, however, the jurisprudence of this Court reflects a specific, albeit non-exhaustive, definition. As noted by Lamer C.J. in *Rodriguez v. English Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at p. 554, the equality guarantee in s. 15(1) is concerned with the realization of personal autonomy and self-determination. Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society per se, but rather concerns the manner in which a person legitimately

⁴ [1989] 1 S.C.R. 143.

feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law?

The Court rights pointed out that there can be different conceptions of what human dignity means. In some respects even within societies that have accepted the necessity for reasonable accommodation, law and practice has determined there are limits that societies can legitimately impose on such accommodation where, as in the case of Canadian human rights law, the point of undue hardship is reached or in many European countries where critical aspects of public safety or order is compromised. It is in this context that I suggest the comparative differences between what is reasonable accommodation of religious minorities' practices and symbols must be analyzed.

However, the link between reasonable accommodation and the comparative aspects of human dignity has become enormously complicated due to the fact that due to mass migration, transportation and globalization there are few societies on earth that have remained homogeneous in terms of race, language, religion and ethnicity. Established and dominant cultural, religious and social traditions will inevitably clash with the demands by more recently arrived minorities to have their culture and religious practices and symbols accommodated in order for their essential human dignity and freedom of religion to be recognized and accommodated. In Canada, human dignity as an essential value underlying the equality guarantee in the *Charter* is linked up the guarantee of freedom of religion in the same document. However, it must also not be forgotten that the Supreme Court of Canada recognized there will be different conceptions of what human dignity would mean in terms of this type of demands for accommodation.

As we shall see, where there is greater difference between the newly established religious and cultural traditions of immigrant communities from the religious and cultural traditions of the established society, the more likely the clash over what is reasonable to accommodate and what is not. Often, the religious and cultural clashes are due more to misconceptions of what is at stake although there is also the potential factor of demands for accommodation that is beyond reasonable limits. This was one of the key findings of the recent Bouchard-Taylor

Commission that looked into the issue of reasonable accommodation within the context of Quebec law and society.⁵

I shall examine how in France and perhaps growing in other European countries, there is an elite consensus to limit the demands of accommodation through the state ideology of enforced neutrality in the public sector, a practice, in France, termed “laïcité.” Such a practice in other liberal democracies could be regarded as violating the guarantees of equality and freedom of religion. In contrast, in Canada, the United States and Great Britain the liberal interpretation of freedom of religion and non-discrimination has reinforced the practice by the state of neutral accommodation in the public sector. In part, these differences have occurred due to the presence or absence of social, political, cultural and religious upheavals that has greatly influenced the view about the limits of reasonable accommodation of religious minorities’ practices and symbols.

France exhibits the paradigm example of the impact of history on the view of what constitutes reasonable accommodation. Due to the political and social upheavals in that society, the ideology of *laïcité* prevails over that of what constitutes reasonable accommodation in North America. The term is very abstract but can be understood as reinforcing the neutrality principle of separation between church and state by enforced practices of “secularity” in the public sector which can include the recourse to the asserted need for “public order” to justly interfere with the exercise of freedom of religion.⁶ Under this state ideology, France has insisted on the right to ban the wearing of headscarves in public schools which continues to be the subject of much controversy among the Muslim population in that country as will be described below.

Turkey also practices an even more rigorous form of *laïcité* by some of that country’s elites. This was demonstrated by the controversial battle over the banning of headscarves in the country’s universities. The National Assembly led by the moderate Islamic-oriented AK Party amended the Turkish Constitution to permit the headscarves in universities, but that move was recently overturned by the Turkish

⁵ The Consultation Commission on Accommodation Practices Related to Cultural Differences (CCAPRC), also known as the “Bouchard–Taylor Commission,” online: <<http://www.accommodements.qc.ca/index-en.html>>.

⁶ Michel Troper, “French Secularism, or Laïcité” (2000) 21 *Cardozo Law Review* 1267; T. Jeremy Gunn, “Under God but Not the Scarf: The Founding Myths of Religious Freedom in the United States and *Laïcité* in France” (2004) 7 *Journal of Church and State* 8 at 8–9.

Constitutional Court in order to enforce the strict nature of secularism in the public institutions of the country. The AK Party had argued that the ban violated the personal and religious freedoms of Turkish women. In this primarily Muslim nation of 70 million, many urban citizens and elites see the head scarf as a symbol of political Islam and an attack on the secular nature of the country and a form of pressure on all female students to conform to Islamic codes on dress.⁷ However, the AK Party is strongly supported by rural populations and formerly poor rural villagers who migrated to the cities after the Second World War and tend to be more religious than the established urbanized elites and other elites in the military and the courts. These sectors of Turkish society see no dangers to the secular state in religious practices and symbols that allow a public display of moderate Islamic piety. The urbanized elites, the courts and the military tend to see these practices and symbols as the thin end of the wedge leading to a more radical form of political Islam that threatens the secular state. Some would argue that the clash over how to safeguard the hallowed secular nature of the public institutions in Turkey bears more of the hallmarks of a socio-economic battle between different sectors of Turkish society than one purely based on keeping the secular state intact.

The battle over the secular nature of the public sector had reached crisis proportions when the Constitutional Court was considering a ban on the AK Party that had been re-elected with an increased majority. The ban would have included the Turkish Prime Minister Recep Tayyip Erdogan and President preventing them and their party from governing the country if the prosecution had been successful in convincing the court that the AK Party is the focal point of anti-secular activities. However, on July 30, 2008, the Court was just one vote short of outlawing the AK Party. While the Court did not declare the Party ineligible to govern, it reduced the party's funding by half sending a message that the Party is still in danger of being regarded as a danger to the secular state.⁸ Following the narrow escape from been banned, the AK Party has declared it has no plans to reintroduce the law permitting wearing of headscarves in universities.⁹

⁷ See Selcan Hacaoglu, "Turkish government scolds top court on head-scarf ban" *The Globe and Mail* (6 June, 2008), online: *The Globe and Mail* <http://www.theglobeandmail.com/servlet/story/RTGAM.20080606.wturkey0606/BNStory/International/home?cid=al_gam_mostemail>.

⁸ See "Turkey's governing party narrowly avoids ban" *The Globe and Mail* (31 July, 2008) A12.

⁹ See Editorial, *The Globe and Mail* (1 August, 2008) A16.

Despite the complications of the socio-economic and class tensions in present day Turkey, there is convincing evidence that the Turkish *laïcité* is driven by the fear of religious extremists undermining the secular state and the separation of state and religion laid down by the founder of the nation, Kemal Atatürk and Mustafa Kemal, the 20th Century leader of Turkey's secular revolution in 1923. Their legacies are jealously guarded today by key state institutions including the judiciary and the military.

I. THE CANADIAN PARADIGM

The equality guarantee in section 15 of the *Canadian Charter* works together with the guarantee of freedom of religion in section 2 of the *Charter* to provide a positive and a negative aspect of the duty to accommodate minority religious symbols and practices. Provisions in the *Quebec Charter of Human Rights and Freedoms* also work in a similar fashion.

First, the relevant rulings of the Supreme Court has established there is a positive right to practice one's chosen religion in the manner that an individual genuinely believes he must follow. Secondly, Supreme Court jurisprudence mandates that there is a negative duty that prevents the state or its organs from forcing directly or indirectly to follow a religious practice not of his own or to be forced to act in a manner that is contrary to their genuinely held religious beliefs.¹⁰

A 2006 decision of the Quebec Human Rights Tribunal is an example of the potential extent of the Canadian approach. In *Commission des droits de la personne et des droits de la jeunesse v. Laval (Ville de)*, Justice Michele Rivet ruled that a recitation of a prayer at the start of the open public meetings of the Laval City Council imposes a religious atmosphere and tone that produces a form of coercion contrary to the spirit of the *Quebec Charter of Human Rights and Freedoms* and the dignity of non-believers or people who do not adhere to that religious ideal. Such an objective was ruled incompatible with the objective of the *Quebec Charter of Human Rights and Freedoms* in terms of the full and

¹⁰ See the landmark case of *R v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295.

equal exercise and recognition of the right to freedom of religion and conscience, as protected by sections 10 and 3 of that document.¹¹

It logically flows from both the positive and negative aspects of the guarantee of freedom of religion as interpreted by the Supreme Court of Canada that to prevent indirect discrimination against minorities in the practice of their religion, in situations that do not involve undue hardship there is a duty to accommodate such practices. This Canadian paradigm stands in marked contrast to the French version of *laïcité*. What the Canadian law on accommodation of religious minorities also does, is to deny that there is a hierarchy of religious and cultural norms in Canadian society with those of minority immigrant communities less worthy of equal concern and respect and essential human dignity.

It must be noted however, that there are limits to such reasonable accommodation of religious minorities under the concept of undue hardship in human rights law. The Canadian Human Rights Commission defines undue hardship, in part, based on the decisions of the Supreme Court in the following way:¹²

Undue hardship describes the limit, beyond which employers and service providers are not expected to accommodate. Undue hardship usually occurs when an employer or service provider cannot sustain the economic or efficiency costs of the accommodation. There is no formula for deciding what costs represent undue hardship and there is no precise judicial definition of “undue hardship.” However, remember that “undue hardship” implies that some hardship may be involved in the duty to accommodate. Employers and service providers are expected to exhaust all reasonable possibilities for accommodation before they can claim undue hardship.

Similarly under the *Canadian Charter of Rights and Freedoms* where other rights and compelling societal interests are threatened, the

¹¹ *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Laval (Ville)*, 2006 QCTDP 17, Michele Rivet J., with the assistance of assessors William Hartzog & Jean Decoster.

¹² See Canadian Human Rights Commission, “Preventing Discrimination,” online: CHRC <http://www.chrc-ccdp.ca/preventing_discrimination/default-en.asp>.

courts have held that limits on accommodation by governments can be justified under section 1 of the *Charter*.¹³

Another ruling by the Quebec Human Rights Tribunal demonstrates the principle that in seeking reasonable accommodation, the claimant must themselves act reasonably and not demand so much that it makes the institution that has to accommodate the virtual practitioner of the claimant's religion. In *Commission des droits de la personne et des droits de la jeunesse c. Centre à la petite enfance Gros Bec*,¹⁴ the father, a practicing Muslim insisted with individual educators at a kindergarten facility open to the public that his young son, aged three, be supervised at all meal times to avoid ingesting non-halal foods, to the extent of requiring her to pick out non-halal meats from individual plates that was served to the child. The teacher agreed to personally accommodate this religious request even though the kindergarten had adopted a strict policy of neutrality with clients of all religions regarding the services they had provided. Exceptions were made for medical reasons such as allergies. This policy included meals provided to the children, especially children that young, as they could not understand why they were being treated differently and other vulnerabilities that such extreme forms of accommodation demanded by adults for religious reasons would pose for children so young.

When the educator did not prevent the child from eating non-halal meat on an outing to a sugar shack, the father berated the educator within earshot of the other children and her colleagues. The father had also attempted to get a similar form of supervision by the educator at the kindergarten with a second son and was informed that it would not be possible. He then claimed his and his child's equality and freedom of religion rights under the *Quebec Charter of Human Rights and Freedoms* had been violated. The Quebec Human Rights Tribunal dismissed the claim. It asserted that the kindergarten could rightly claim the rules of neutrality regarding religious practices in the face of the excessive demands of accommodation. The tribunal went further and ruled that though the generous accommodation given to the child was in the spirit of compromise and reciprocal tolerance, it was not required by law as a form

¹³ See *R.B. v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315. See also David M. Brown "Freedom from or Freedom for? Religion as a Case Study in Defining the Content of Charter Rights" (2000) 33 U.Brit. Colum. L. Rev. 551.

¹⁴ *Commission des droits de la personne et des droits de la jeunesse c. Centre à la petite enfance Gros Bec*, 2008 QCTDP 14, Michèle Rivet J., with the assistance of assessors Stéphane Bernatchez & Manon Montpetit.

of reasonable accommodation. In its ruling one could detect that the sentiment that the complainant was being far from reasonable in seeking reasonable accommodation for his very young children. The father had attempted to get individual educators to sign accommodation agreements rather than the institutions itself and this lent itself to misconceptions as to what was possible in terms of reasonable accommodation.

The issue of reasonable accommodation in Quebec is perhaps more controversial than the rest of Canada given the particular history of Quebec society. The most important aspects of that history as it relates to reasonable accommodation are as follows: 1) the impact of the Quiet Revolution that rejected the overwhelming power of the Catholic Church and its allies in the establishment for a more secular society, 2) the emergence of Quebec nationalism with the focus on francophone culture and language as the dominant societal imperative, 3) the less than enthusiastic embrace of multiculturalism in comparison to the rest of Canada 4) the desire for greater cultural and social development jurisdictional autonomy than the rest of Canada in areas such as immigration, communications, education and social assistance and finally 5) the portrayal of excessive demands of reasonable accommodation by minorities which, as the Bouchard Taylor Commission demonstrated, has often been the result of misconceptions and media sensationalizing of facts. However, as the *Centre à la petite enfance Gros Bec* decision of the Quebec Human Rights Tribunal demonstrates, sometimes excessive demands of accommodation by minorities do occur.

Despite the particular history of Quebec, the French model of a strong version of *laïcité* has not been adopted by the key human rights institutions in the province. The Quebec Human Rights Commission (Commission des droits de la personne et des droits de la jeunesse du Québec) as early as 1995 issued a non-binding report that public schools had to accept the headscarf worn by Muslim girls as long as there was no real risk to personal safety or security of property. To do otherwise would be a violation of freedom of religion and the right to education under the *Quebec Charter of Human Rights and Freedoms*. This would apply even to schools that had dress codes as a form of reasonable accommodation. The necessity to accommodate the headscarf was based on the role that institutions such as schools played in social integration and the fact that a ban on such religious head coverings would marginalize individuals by excluding those who chose to wear the headscarf of their own volition

from public education.¹⁵ In 2005, the Quebec Human Rights Commission, in another non-binding report, even extended this thinking to private schools unless the school could prove that its particular characteristic, for example its function as a private religious establishment required it to exclude or give preference to certain students.¹⁶ The controversy over the Muslim head covering has moved to the sports field in Quebec where a girl wearing the head covering was denied the right to play soccer on a girls' team by a referee. The decision which was based on safety concerns was upheld by the Quebec Soccer Association in contrast to the Ontario Soccer Association which allowed the head covering.¹⁷

What the Canadian paradigm of reasonable accommodation does not do is to prevent exposure to other religions or beliefs in the public sector where such religions or beliefs are not officially imposed in any manner. As in Quebec, the case law and practices of human rights commissions across Canada seems to indicate that it is the duty to accommodate minority religious practices and symbols that seem to have become the most contentious in the area of reasonable accommodation. Most provincial human rights commissions have promoted a position of neutral accommodation of such practices and symbols. For example, the Ontario Human Rights Commission promotes a duty to accommodate on the part of schools and organizations as regards the use of religious head coverings like turbans and the Sikh kirpan. Health, safety or public order arguments against head coverings symbols such as turbans and kirpans raised across Canada by schools, companies and the RCMP have not proved successful against a duty to accommodate to the point of undue hardship.¹⁸

¹⁵ Pierre Marois, "Religion, Private Schools and the Duty of Reasonable Accommodation: Looking Beyond the Trees to the Forest" *Le Devoir [of Montreal]* (15 June 2005), online: Commission des droits de la personne et des droits de la jeunesse du Québec <http://www.cdpcj.qc.ca/en/publications/docs/article_religion_accommodation.pdf>.

¹⁶ Pierre Bosset, *Reflections on the Scope and Limits of the Duty of Reasonable Accommodation in the Field of Religion* (February 2005), online: Commission des droits de la personne et des droits de la jeunesse du Québec <http://www.cdpcj.qc.ca/en/publications/docs/religion_accommodation_opinion.pdf>.

¹⁷ *CBC.ca* (26 February 2007).

¹⁸ See Ontario Human Rights Commission, *Policy on Creed and the Accommodation of Religious Observances*, 20 October 1996 at 8–9, online: OHRC <<http://www.ohrc.on.ca/en/resources/Policies/PolicyCreedAccomodEN/pdf>>; *Sehdev v. Bayview Glen Junior Schools Ltd* (1988), 9 C.H.R.R. D/4881; *Khalsa v. Co-op*

The courts and human rights tribunal seem to be edging towards using a risk analysis as to whether to mandate reasonable accommodation for religious head coverings and symbols. The British Columbia Human Rights Tribunal ruled that mandating a turbaned Sikh to ride a motorcycle with a helmet would result in religious discrimination as there was only marginal increase in risk to turbaned rider, which the rider bore or the increase in medical costs.¹⁹ But in *Bhinder v. Canadian National Railway Co.* the Supreme Court of Canada upheld the CN workplace hard hat policy as a *bona fide* occupational requirement under the *Canadian Human Rights Act* because of safety concerns and that there was no intention to discriminate on the grounds of religion.²⁰

In a controversial decision regarding the extent to which minority religions should be accommodated under the *Canadian Charter of Rights and Freedoms*, a majority of the Supreme Court in *Syndicat Northcrest v. Amselem*²¹ held that a religious practice of a minority can be protected under the *Charter* even if that practice was not necessarily an obligatory part of an established belief system or shared by others if it was a voluntary expression of faith and the claimant sincerely believed the practice was of religious significance.²² On the facts of this case expert evidence indicated that Orthodox Jews were under no obligation to build personal “succahs” (hut like temporary dwellings) on their condominium balconies where they would live for a nine day period during an annual Jewish festival. Nevertheless, the Court held that a subjective desire to carry out this religious duty overrode the contractual duty of the condominium owners not to act in violation of the building’s by-laws.

More recently, the Supreme Court of Canada has sent a strong signal that those who administer, control access to or teach in Canada’s public education institutions have a duty to accommodate a culture in

Cabs (1988), 1 C.H.R.R. D/167 (Ont. Bd. Inq.); *Grewal v. Checker Cabs Ltd.* (1988), 9 C.H.R.R. D/4855 (Alta. Bd. Inq.); *Grant v. Canada (Attorney General)* (1995), 120 D.L.R. (4th) 556 (F.C.A.).

¹⁹ *Dhillon v. English Columbia (Ministry of Transportation & Highways)* (1999), 35 C.H.R.R. D/293 (B.C. Human Rights Tribunal).

²⁰ [1985] 2 S.C.R. 561.

²¹ [2004] 2 S.C.R. 551 [*Amselem*]. There were too strong dissents by Bastarache and Binnie JJ. in the case which indicated that the Court may have gone too far in attempting to accommodate this subjective religious practice despite the evidence that the practice was not obligatory and the practitioners had voluntarily agreed to the by-laws.

²² *Ibid.*

public education institutions that respect the freedom of religion of Canada's multicultural society. In its decision in *Multani v. Commission scolaire Marguerite-Bourgeoys*,²³ the Court concluded that the *Charter* protected the right of an orthodox Sikh student to wear his ceremonial dagger called a "kirpan" at school. A majority of the Court²⁴ also ruled that the *Charter* establishes a minimum constitutional protection for freedom of religion that applies both to all legislatures and administrative tribunals. In this context safety concerns must pass the constitutional standards laid down by the *Charter* and jurisprudence emanating from it, if an infringement of the freedom of religion is to be justified. The Court followed its earlier decision in the *Amselem* case and ruled that the freedom of religion guarantee in the *Charter* protected this practice even though it was not obligatory for orthodox Sikhs to wear a metal kirpan at all times. The student's desire to do so was based on a reasonable religiously motivated interpretation and a sincere belief that he adhere to this practice to comply with the requirements of his religion. Because this sincerely held belief would force the student to choose between adhering to the practice or not being allowed into the public school system, the Court held that the refusal by the Quebec School Board to prohibit the wearing of the metal kirpan on the premises of the school was an infringement of the freedom of religion guarantee in section 2 of the *Charter* which was not trivial or insignificant and could only be justified under section 1 of the same document.

Applying the section 1 test, the Court held that a total prohibition of the kirpan "undermines this religious symbol and sends students the message that some religious practices do not merit the same protection as others."²⁵

While acknowledging the sufficiently important objective of safety in the schools and the rationality of the ban on kirpans, the Court concluded that the total prohibition of the kirpan was not a minimal

²³ [2006] 1 S.C.R. 256 [*Multani*].

²⁴ *Ibid.* Two of the Supreme Court Justices, Deschamps and Abella JJ. disagreed on this point. They concluded that recourse to a constitutional law justification is not appropriate where, as in this case, what must be assessed is the propriety of an administrative body's decision relating to human rights. Whereas a constitutional justification analysis must be carried out when reviewing the validity or enforceability of a norm such as a law, regulation or other similar rule of general application, the administrative law approach must be retained for reviewing decisions and orders made by administrative bodies.

²⁵ *Ibid.* at para. 79.

impairment of the freedom of religion guarantee. Madam Justice Charron writing for the majority of the Court stated:

The respondents submit that the presence of kirpans in schools will contribute to a poisoning of the school environment. They maintain that the kirpan is a symbol of violence and that it sends the message that using force is the way to assert rights and resolve conflict, compromises the perception of safety in schools and establishes a double standard.

The argument that the wearing of kirpans should be prohibited because the kirpan is a symbol of violence and because it sends the message that using force is necessary to assert rights and resolve conflict must fail. Not only is this assertion contradicted by the evidence regarding the symbolic nature of the kirpan, it is also disrespectful to believers in the Sikh religion and does not take into account Canadian values based on multiculturalism.²⁶

The Court completed its analysis that the total ban on the wearing of the kirpan could not be justified under section 1 by ruling that the deleterious effects of a total ban outweighed the salutary effects. The Supreme Court supported the Quebec Superior Court's decision to allow the student to wear the kirpan under certain conditions (it had to be carried in a wooden case, wrapped in fabric, and sewn into his clothes). The Supreme Court concluded that applying such a less restrictive approach "demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities."²⁷

Taking the jurisprudence emanating from provincial and federal human rights tribunals with that of the Supreme Court of Canada in the above two cases, one could argue that Canada demonstrates the most far reaching form of neutral and reasonable accommodation of minority religious practices and symbols. Some seem to imply, especially after the two recent Supreme Court of Canada decision above, that this position is so far reaching and accommodating that it has made possible the enforcement of demands of unreasonable accommodation by religious and other minorities.

²⁶ *Ibid.* at paras. 70–71.

²⁷ *Ibid.* at para. 79.

This author would beg to differ. The Canadian position is based on what is necessary to preserve the essential human dignity of individuals within religious minorities in a society that values multiculturalism and diversity as a constitutional principle which promotes not only the equal concern and respect (the essence of the equality guarantee in section 15 of the *Charter*) of religious minorities as a group, but also individuals within that group that hold sincere and genuine beliefs as to what practices and symbols their religions and beliefs dictate.

II. THE AMERICAN PARADIGM

The Constitution of the U.S. could have resulted in a form of *laïcité* in that country given the clear mandate that church and state must remain separate in the First Amendment. That provision states that “Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof ...” However, given the equal protection of the law under the Fourteenth Amendment and the enactment of the *Civil Right Act* in 1964, the Canadian and American paradigms on religion and reasonable accommodation are not substantially different. There has not been any move to introduce the French form of *laïcité* but rather the law and policy of all forms of governments is to accommodate religious expression and practices in the absence of overriding concerns of public safety or order. Indeed federal legislation, the *Religious Freedom Restoration Act*²⁸ permits students to wear religious symbols or head coverings.²⁹ While the Supreme Court of Canada’s decision in *Multani* regarding the kirpan in Quebec schools caused much controversy in that province, California and Ohio have long permitted kirpans on school premises.³⁰

Where there has been controversy has been in the demand for accommodation by religious minorities where the workplace requires uniforms. In New York, the police force was found to have violated the

²⁸ 42 U.S.C. § 2000bb (1993).

²⁹ For the overview of the Canadian, U.S. and European laws on reasonable accommodation of religious symbols, see Canada, Parliamentary Information and Research Service, Law and Government Division, *Freedom of Religion and Religious Symbols in the Public Sphere* by Laura Barnett (Ottawa: Library of Parliament, 2008), online: Parliament of Canada <<http://www.parl.gc.ca/information/library/PRBpubs/prb0441-e.pdf>>.

³⁰ *Ibid.* at 10.

civil rights of a Sikh traffic officer for threatening to dismiss him for wearing a turban, since it did not compromise public safety. However, the Equal Employment Opportunities Commission and labour arbitrators have permitted the New York transit authority to accommodate religious attire in uniformed jobs by reassign them to different positions where the uniform was not necessary. The U.S. Justice Department regards such accommodation as a form of religious discrimination.³¹ Finally, the U.S. Supreme Court has ruled that military discipline may legitimately require in the removal of religious head coverings, including the Jewish kippa and the Sikh turban.³²

The congruency of the Canadian and American paradigms on religious accommodation is a result of the heterogeneity of its immigrant societies where dominant or established cultures and religions have had to give way in laws, policies and in the courts to an expansive definition of freedom of religion. That process combined with the expanding definitions of the equality guarantees and equal protection provisions of both countries' constitutions have resulted in an entrenched form of reasonable accommodation.

Equal human dignity and diversity in immigrant societies will often demand being comfortable with the uncomfortable and uncomfortable with the comfortable.

³¹ *Ibid.* at 11.

³² *Ibid.*

III. THE ENGLISH PARADIGM

In contrast to Canada and the U.S., there is no separation of Church and State in England, yet the accommodation of religious minority practices and symbols are in line with the Canadian and American paradigms. It has also become a country of immigration, although there is unquestionably a dominant culture and society in English society. In the absence of an entrenched rights document, the focus is on anti-discrimination laws, policies and practices. The laws include the *Race Relations Act*,³³ the *Employment Equality (Religion or Belief) Regulations*³⁴ and the *Human Rights Act*³⁵ which implements the English obligations under the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. The Convention guarantees freedom of thought, conscience and religion.

The English accommodation paradigm has its limits where religious minorities have the ability to be accommodated by more than one method. The House of Lords has ruled that a school had the right to prohibit the jibab, the full length Islamic dress, even though it permitted the shalwar kameeze, which took the form of pants and tunic traditionally worn by both Muslims, Hindus and Sikhs. The Court found that the school had devised a proportionate response to the need for an inclusive environment for religious minorities and the school staff were the most appropriate individuals to make such decisions on reasonable accommodation. The Court was also influenced by the fact that other schools had accepted the jibab in the vicinity and the student therefore had other reasonable options.³⁶

Government guidelines have indicated that veils will not be banned in British schools, but school principals may be justified in outlawing religious dress that covers pupils' faces. Therefore while there is no outright ban in Britain on the burqa or niqab, discretion is left up to the schools to determine the uniform policies in this regard.³⁷

³³ *Race Relations Act 1976 (U.K.)*, 1976, c. 74.

³⁴ *The Employment Equality (Religion or Belief) Regulations 2003*, S.I. 2003/1660. The Regulations prohibit religious discrimination in the workplace.

³⁵ *The Human Rights Act 1998 (U.K.)*, 1998, c. 42.

³⁶ *R. (on the application of Begum by her litigation friend Rahman) v. Head Teacher and Governors of Denbigh High School*, [2006] UKHL 15.

³⁷ See, on the government guidelines, Laura Clark, "Muslim pupils won't face outright ban on wearing the veil" *The Daily Mail [of London]* (4 October 2007), online: Mail

Despite the House of Lords decision on head coverings in schools, that seems to ask minorities to be reasonable about reasonable accommodation, the English paradigm has deemed that there is no overriding public safety or order issue to prevent police officers, soldiers, motorcyclists and construction workers wearing religious head coverings such as turbans.³⁸

One of the rare controversies over religious head coverings in England occurred when the Leader of the House of Commons of the ruling Labour Party, Jack Straw stated that in constituency meetings he felt uncomfortable with women wearing the niqab. While most removed the head covering on request, other Muslims in Britain felt discriminated and betrayed.

IV. THE EUROPEAN PARADIGM THAT MAY SLOWLY BE MOVING TOWARDS THE FRENCH LAÏCITÉ MODEL

A. DENMARK

Like England, Denmark has a state religion, the Lutheran faith. Like England, the laws and policies of the state also accommodate religious minorities, up to the point of what is considered reasonable. While this position has allowed religious head coverings in schools by teachers and students, at least one decision of a Danish High Court has allowed the firing of an employee who wore a headscarf on the grounds that the private company also prohibited other displays of religious symbols by employees such as prominent Christian crosses. The Court regarded the prohibition as the company fulfilling the obligation of equal treatment of all employees and maintaining the company's religious and political neutrality.³⁹ Another decision of the High Court allowed the head of a vocational school to dismiss a student who insisted on praying in the corridor of the school. Because other students reacted in an unruly fashion, the Court held the dismissal was justified to keep order and was not an act of discrimination. However, other parts of the decision seem to

Online <<http://www.dailymail.co.uk/news/article-485768/Muslim-pupils-wont-face-outright-ban-wearing-veil.html>>.

³⁸ Barnett, *supra* note 29 at 19.

³⁹ Barnett, *supra* note 29 at 12–13.

indicate a contradictory upholding of the right to practice one's religion at the workplace.⁴⁰

Finally, the Danish Act on the Prohibition of Differential Treatment in the Labour Market passed in 1996 prohibits direct and indirect discrimination in the labour market due to race, colour, religion, political conviction, sexual orientation or national, social or ethnic origin.

Given its global reputation as a champion of human rights, it is not surprising that Denmark has adopted, in general and at present, a liberal approach to reasonable accommodation of religious minorities' practices and symbols. However, given the recent societal controversy over the Danish publication of the cartoons of the Prophet, it is uncertain whether traditional Danish liberal attitudes to its religious minorities will prevail. The danger emanates from both right wing politicians and some of the media that seem determined to portray the Danish Muslim population as undermining of social cohesion in the country.⁴¹

B. ITALY

Despite its long and close ties with the Catholic Church, Italy's constitution maintains a separation of Church and State and guarantees freedom of religion. The one exception seems to be jurisprudence by the courts that crucifixes are permitted to be on display in schools, the courts and even at voting sites as it is a symbol of the foundations values of Italian society.⁴²

Like Canada, the U.S. and Denmark, the country also strives to accommodate religious minorities in a neutral fashion as long as religious symbols and practices do not undermine public safety and order. There are recent signs of popular resentment against the wearing of the burqa in the public sphere to the extent of some towns using fascist era security laws from the 1930s prohibiting citizens from masking themselves in public.⁴³

⁴⁰ Tim Jensen, "Religious Pluralism in Denmark" (2007) 2:4 *Res Cogitans* – Journal of Philosophy, online: University of South Denmark <http://www.sdu.dk/Om_SDU/Institutter_centre/Ifpr/rescogitans/Issues/No41.aspx>.

⁴¹ *Ibid.* at 24.

⁴² Barnett, *supra* note 29 at 13.

⁴³ *Ibid.*

The right wing Northern League Party is at the forefront of attempts to not only limit minority religious practices and symbols, but even is attempt to prohibit ethnic restaurants!⁴⁴ Other liberal minded politicians are attempting to uphold the freedom of religion guarantee in the Italian Constitution. In January of 2008, a senior Senator in the Italian Senate, Silvana Amati, introduced a law to protect the right to wear the hijab in the public sector as a pre-emptive strike against right-wing politicians opposed to the hijab and backing calls to ban the hijab in public and in schools. The Senator, however, insisted the law would not cover the niqab (the face-covering veil).⁴⁵

C. THE NETHERLANDS

The Netherlands is a study in contradictory positions on reasonable accommodation of religious minorities' practices and symbols. At one level the country professes a strict separation of church and state and where the constitutionally guaranteed freedom of religion is not relegated only to the private sphere. The Dutch Parliament has overruled local authorities which prohibited Muslim head coverings in schools, but private schools may be exempt from such duties to accommodate religious practices or symbols. Teachers have also been allowed to wear head coverings in schools.

However, in 2003, the Equal Treatment Commission in the Netherlands signaled a limit on such traditional Dutch tolerance of religious minority practices when it declared that an Amsterdam school had the right to ban the burqa to uphold the ability of teachers to interact with their students.⁴⁶ Prompted by the right wing Freedom Party, the Dutch Parliament in 2006 began considering going further even than France in terms of rigorous secularism in the public sphere by prohibiting all coverings of the face because they cause an unacceptable level of insecurity amongst the public.⁴⁷ The obvious object was to ban the burqa worn by some Muslim women. The Dutch Cabinet decided on January 22, 2008, against a general ban on burqas. However, under the Cabinet

⁴⁴ *The Ottawa Citizen* (19 July 2008) A9.

⁴⁵ M. Reda, "Hijab Bill in Italy Senate" *Islamonline* (25 January 2008), online: Islamonline <http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-News/NWELayout&cid=1199279714226>.

⁴⁶ Barnett, *supra* note 29 at 14.

⁴⁷ *Ibid.*

decision, burqas will be banned at schools and for government workers and discuss the possibility of extending the ban to public transport. The Cabinet considered a general ban would violate the freedom of religion guarantee.⁴⁸

The rise of social controversy over Muslim practices and head coverings is partly due to the reaction to the 2004 murder of Dutch Filmmaker Theo Van Gogh. Van Gogh's murder resulted in anti-Muslim violence including the firebombing of mosques. The traditional Dutch tolerance of minorities was particularly challenged by the fact that the murderer was born in the country and led to much concern as to integration of the one million Muslims in the country.⁴⁹

D. BELGIUM

Belgium also has a constitutional guarantee of freedom of religion. However, as in other European countries, in recent years there has been a controversial public debate which some may call a backlash, in part orchestrated by right wing elements, against minority religious practices and symbols. This has led to the government and the courts seeming to resist a formal practice of reasonable accommodation in a neutral fashion, but rather leaving it to a specific determination in specific situations. The Belgian Government seems to be sending contradictory signals. The Minister of Education has argued that it should be left to individual schools how to determine the constitutional principle of religious neutrality. Another government statement would only espouse the principle of neutrality for headscarves in schools if they were not used for religious or political provocation, thus implicating public order.

The courts have been acting in a similar contradictory fashion. One Belgian Court of Appeal in 1990 ruled against the prohibition of Muslim headscarves in several Brussels schools. However in 1994 a Civil Tribunal upheld a ban on the hijab, because it was not a mandatory obligation for Muslim women. This ruling stands in stark contrast to the

⁴⁸ See "Dutch government backs burqa ban" *BBC News* (17 November 2006), online: BBC News <<http://news.bbc.co.uk/2/hi/europe/6159046.stm>>.

⁴⁹ See for example the BBC report of the backlash over the murder and the previous murder of right wing politician Pim Fortuyn: Geraldine Coughlan, "Fortuyn ghost stalks Dutch politics" *BBC News* (21 January 2003), online: <<http://news.bbc.co.uk/2/hi/europe/2680881.stm>>.

Supreme Court of Canada ruling in *Anselem*⁵⁰ and *Multani*.⁵¹ In both cases, the Supreme Court ruled that as long as the minority religious practice or the wearing of the religious symbol was part of a genuinely held belief, the fact that it was not a mandatory obligation did not undermine the fact that the practice or the wearing of the religious symbol was protected by the freedom of religion guarantee in the *Charter of Rights and Freedoms*. As a result of these contradictory Belgian government policies and court rulings there seems to be a general practice of prohibiting religious headscarves for both students and teachers.

The Belgian courts are moving towards a position that equality principles and secularism trumps any freedom of religion principles as regards religious practices and symbols in the public sector. In addition, 20 Belgian communes have issued bans against the burqa reflecting a desire on the part of Belgian government, courts and society to give priority to deeply held values of secularism over some religious practices and symbols.⁵² However, the law in Belgium is clear as regards the courts, police and some public officials who are prohibited from wearing religious symbols.⁵³

E. THE GERMAN TWO TIERED PARADIGM

While there is no entrenched separation of church and state in Germany, the Basic Law which is the 1949 German Constitution guarantees the freedom of religion. In 2003 the German Constitutional Court, the highest court in the country gave a contradictory ruling that permitted teachers to wear religious head coverings as long as the practice did not impede the values of the Constitution. But the Court also ruled that individual German states could prohibit such head coverings. This opportunity was taken by several German states that passed laws prohibiting religious symbols that could impede German constitutional values or be a symbol of oppression.⁵⁴ Such legislation was also a product of the public debate that emanated from the fact that Germany has one of the largest Muslim populations in Europe which has been the cause of political and social controversy and exploited by right wing groups for

⁵⁰ *Supra* note 21.

⁵¹ *Supra* note 23.

⁵² Barnett, *supra* note 29 at 16.

⁵³ *Ibid.* at 15.

⁵⁴ *Ibid.* at 14.

political gain. It is therefore not surprising that in some German states, Christian and Jewish continue to be permitted in state schools while Muslim headscarves are not. However, on at least one occasion a German court has also held that the display of crucifixes in a public school classroom was not in accordance with the freedom of religion guarantee.⁵⁵ There is growing evidence that German law and policy is moving towards a form of secularism based on a proportionate response to growing concerns about the integration of large Muslim population and the potential for religious practices and symbols to be controversial social and political factors in German society.⁵⁶ A former Minister of Education in Bade-Württemberg, Annette Schaven, justified the ban on the headscarves in her state with the statement: “The Veil, which is a political symbol as much as a religious one, has no place in schools.”⁵⁷

V. THE FRENCH STANDARD BEARER OF LAÏCITÉ

The 1958 French Constitution mandates the unique secular nature or *laïcité* of the Republic when it states “France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs” This constitutional doctrine has its roots in the unique nature of rights in the Republic based on the general will of the state as defined by Rousseau as opposed to the inalienable rights of the individual in Anglo-American political philosophy as espoused by John Locke. The unique French approach to rights is reinforced by the historic foundation as a secular Republic. Moreover, as in Germany, the large Muslim population in France has added to the political pressure to promote a homogenous French culture as opposed to the notion of multiculturalism adopted in Canada, England and to a lesser extent in the U.S. As opposed to the expanded reasonable accommodation of religious minorities in Canada, the U.S. and England, the French *laïcité* is ready to confine freedom of minority religious practices and symbols to the private sphere and place restrictions on them in the public sphere, especially in the public education sector.

⁵⁵ *Ibid.* at 14–15.

⁵⁶ For other examples of States in Germany limiting minority religious symbols, see Ruben Steh Fogel, “Headscarves in German Public Schools: Religious Minorities are Welcome in Germany, Unless – God Forbid – They are Religious” (2007) 51 N.Y.L. Sch. L. Rev. 618.

⁵⁷ Barnett, *supra* note 29 at 15.

The focus on the public education sector is viewed as critical to the French form of *laïcité* as it is regarded as the primary form of integration for its immigrant communities and also where principles of equality can trump minority religious beliefs that could be viewed as oppressive, especially to the girl child.” It was inevitable that there would be a clash between the desire of the French state to uphold its secular identity and the increasing number of French citizens who desired to demonstrate their Muslim identity in the public sector.

Beginning in 1989, three Muslim girls who insisted on wearing the hijab to school and were suspended generated many more to follow suit. Ultimately the Conseil d’État like other European courts issued a somewhat contradictory ruling that while the Muslim head covering was not inconsistent with the principle of *laïcité*, the freedom to wear religious symbols did not extend to where it was being used as “an act of pressure, provocation or propaganda or detract from the dignity or freedom of the student or other members of the educational community, or compromise their health or security, or interfere with the teachers’ activities and their role as educators, or disrupt the establishment or normal operations of the public service.”⁵⁸

This ruling gave ample room for both the French government and local schools to apply their own interpretations of when the Islamic head covering could be legitimately prohibited and the majority of schools used the Conseil d’État ruling reference to propaganda, proselytism and protest to ban the Muslim head covering from schools.

A later Conseil d’État ruling in 1992 did invalidate one school’s prohibition of the Islamic head covering on the grounds that it was absolute prohibition,⁵⁹ while another ruling held that restrictions that were not general in its purpose or effect was upheld. Another ruling by the same court held that the proper functioning of school programs especially gym and technology classes justified the prohibition of the Muslim headscarf.⁶⁰ Inevitably such incidents caused a backlash against such minority religious practices and symbols in schools.

⁵⁸ Conseil d’État, avis du 27 novembre 1989, “Le principe de la laïcité et les signes d’appartenance à une communauté religieuse dans les écoles” (1991) 3 R.U.D.H. 152, cited in Barnett, *supra* note 29 at 29, n. 107.

⁵⁹ Barnett, *ibid.*

⁶⁰ *Ibid.*

The French government reacted first with a Ministry of Education circular that banned all conspicuous religious symbols and then in March 2004 the National Assembly enacted a law that banned all conspicuous religious symbols from the public school system. The new law interestingly did not prohibit discreet religious symbols including the cross or the Star of David or Sikh boys from wearing a hairnet.⁶¹ Most schools in France have followed the law's strictures and since its passage the number of Muslim students protesting the law has gone from a high of 1,500 in 2003 to a low of 44 Muslim girls and 3 Sikh boys in 2005.

The Conseil d'État added to the most rigorous form of *laïcité* in Europe in 2000 by ruling that a student supervisor could be dismissed for wearing the headscarf as it was a violation of her duties in the French public service.⁶² The Court argued that if minority employees benefit from freedom of discrimination in the hiring process, they must respect the principles of *laïcité* in the public service. However, this rather condescending principle does not apply in the private sector.⁶³

Adding to the strength of the French *laïcité*, a juror was removed for wearing a headscarf on the grounds that it could demonstrate her decision can be influenced by her religious conviction, the Conseil d'État has ruled that Sikhs can be asked to remove their turbans for their drivers license photographs on the grounds of public order and security to combat fraud and falsification of documents and veiled women have been excluded from French naturalization ceremonies as they are demonstrating values contrary to the Republic.⁶⁴

One could legitimately ask whether in the overwhelming imperative to maintain a mythical pure French secular identity, these decisions are demonstrating that the human dignity of religious minorities as defined in the Supreme Court of Canada's rulings on section 15 of the *Canadian Charter of Rights and Freedoms* are in the process of being undermined.

VI. CONCLUSION

⁶¹ *Ibid.* at 21.

⁶² *Ibid.* at 20.

⁶³ *Ibid.* at 21.

⁶⁴ *Ibid.* at 22.

It is clear that one of the main distinctions on what is reasonable in reasonable accommodation of religious minorities practices and symbols in the U.S., Canada and Europe depends on whether the countries either regard themselves as immigrant societies or have adopted both the benefits and challenges of a multicultural society, where no one cultural identity claims to be dominant and the official identity of the state.

The U.S. is the paradigm immigrant society, although tormented by its original sin of slavery and subsequent decades of racial conflict and equality struggles. The growing Hispanic population may present similar challenges in the coming decades.

Canada is clearly also a country founded on acceptances of differences as a condition of survival which has allowed the three founding aboriginal, English and French cultures to more readily accept the reality of an immigrant society which has been enriched by successive waves of immigration from Europe, Asia, the Middle East and many other parts of the world. The determination of the majority Francophone society in Quebec to maintain a unique culture and the French language has presented the most controversies regarding reasonable accommodation of religious minorities. England presents an interesting paradox in this regard. Although regarded as having both an official religion and due to its long historical and cultural traditions a dominant cultural identity, waves of immigration from its former colonies have created a rich multicultural society that mirrors those of Canada and England.

The similarities in the law, policies and jurisprudence on reasonable accommodation of religious minorities in this Anglo-American and Canadian spheres can also be explained on the common political, moral and philosophical foundation that rights can be regarded as trumps against the state except where public security and order may be at stake. The idea of a dominant cultural identity that is also the official identity of the state trumping all other identities would be regarded as an infringement of the essential value of human dignity underlying equality rights and fundamental freedoms of all minorities, including religious ones. The price that may be paid for taking such rights seriously may be problems with immigrant integration and possible conflicts between established communities and those who are more recent arrivals.

Several European nations seem to be moving towards the French *laïcité* model in the aftermath of public controversies involving the demands of some members of Muslim minorities the right to wear the

Muslim headscarf, the hijab and the burqa in the public sector. In particular the laws, policies and jurisprudence in Denmark, Italy, the Netherlands, Belgium and Germany seem to be reacting to the growing backlash against the demands of some members of the Muslim minority to wear religious apparel and symbols that seem alien to the dominant cultural identity of these nations. There is also the growing power of right wing parties in many European countries who are trying to gain political momentum by asserting that the Muslim practices and head coverings are part of a growing radicalism amongst their Muslim populations, is a rejection of the European cultures in which they live, a refusal to assimilate or integrate and a major threat to social cohesion.

The German example is the most complex in that at the federal level it mirrors the Anglo-American-Canadian model, but the dominant cultural identities at the State level is trumping those of religious minorities. These European nations may simply be stating that they wish to re-establish a dominant cultural identity in the face of an increasingly heterogeneous society that includes ones such as the Muslim population that have practices and symbols very foreign to the dominant culture. The increasingly diverse European societies are the result both of waves of immigration and from second and subsequent generations in immigrant communities wishing to establish a different cultural identity from that of the relevant European nation.

The danger of this European trend toward the *laïcité* model is that it may result in a hierarchical society where some religious minorities may rightly feel that they are treated as second class citizens and deprived of their essential human dignity. If this is accompanied by being economically disadvantaged due to systemic and sometimes overtly discriminatory social and economic barriers the potential for social unrest is significant.

The French *laïcité* model is of a different order. It is genuinely a product of the revolutionary history of the French Republic and nurtured by a political, moral and philosophical foundation that allows the general will of the state trump those of individual groups within the state. In that sense, the modern French nation is founded on a dominant cultural identity that is also the official one. In this context, the refusal to accept any real form of reasonable accommodation of religious minorities' practices and symbols in the public sector is part of the historical character of the nation. However, the French *laïcité* model has the

potential to become more excessive than is necessary to maintain its historical traditions.

While earlier Conseil d'État decisions had established reasoned parameters of the model, later governmental authorities may have exceeded those rulings. The refusal to accept drivers' license photos of turbaned Sikhs, the exclusion of a Muslim women wearing a headscarf as a juror are examples of taking the model to excessive lengths and potentially infringing on the essential human dignity of religious minorities.

However, while the French model may have different historic roots for its existence, the same dangers that face other European nations face is also present in this area for France. If the refusal to accept religious minorities' practices and symbols is accompanied by economic and social disadvantage, the historic reasons for the model may not prevent the types of unrest that Paris saw in its suburbs in October of 2005.⁶⁵

⁶⁵ See "Ghettos Shackle French Muslims" *BBC News* (31 October 2005), online: <<http://news.bbc.co.uk/2/hi/europe/4375910.stm>>.