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For A minimal Vocabulary of Interculturality: a Legal Comparative Perspective

INTERCULTURALISM: FOSTERING OR HINDERING CULTURAL DIVERSITY? THE EXPERIENCE OF QUÉBEC*

Carla Maria Reale

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This paper aims to explore the notion of interculturalism in the legal field for its concrete outcomes. After providing a theoretical framework, the author analyses the experience of Québec, one of the first regions to adopt intercultural policy. Québec's approach could in fact be useful in understanding the current use of interculturalism in Europe, and as a warning about some risks inherent to it, with a negative impact on cultural pluralism.

I. INTRODUCTION

The aim of this paper is to explore the notion of interculturalism in "action" in the legal arena and to warn about possible distortions of its premises. In this historical moment, when societies are characterized by increasing diversity and complexity, the debate in civil society as well as inside academia on how to better face this phenomenon remains open. Interculturalism has gained credibility as a possible model, alternative to both assimilationism and multiculturalism, to foster both diversity and cohesion in society. This model, however, finds explicit application in few contexts, with different implications and impacts on the cultural pluralism of the context. In this framework, the experience of Québec, one of the first regions to adopt intercultural policy, will be analysed and discussed. Québec is in fact a useful case study for understanding and assessing what kind of interculturalism could be applied in Europe, given the inherent risk of turning interculturalism into an empty shell, rather than an approach to fostering cultural diversity in society.

II. MULTICULTURALISM AND INTERCULTURALISM: TWO MODELS, TWO CO-DEPENDENT NOTIONS

The bond between multiculturalism and interculturalism is tight. Whether the focus is on political theory, legal theory, or legislation and policy, these two terms are interrelated and, arguably, might overlap. For this reason, no discussion on interculturalism is possible without disentangling its relationship with multiculturalism.

Scholars have widely discussed the crucial role of these definitions[1]; the relationship between these two terms was eminently described as a "word of war"[2]. Even if words and definitions appear to be the principal source of conflict amongst scholars in this field, it does not mean that this debate is sterile and lacks concrete consequences on the political and legal sides. Interculturalism, in fact, is a model for managing cultural pluralism born in reaction to a backlash against multiculturalism which has been occurring since the 1990s; it came about during a period of financial crisis and in the era of "superdiversity[3]" where multiple post-racial identities flourish and the level of diversity is such as to erode a homogeneous notion of majority.

Recently interculturalism has provided a legal and theoretical framework for overcoming the supposed limits and side effects of multiculturalism. This view is endorsed in Europe by the White Paper on Intercultural Dialogue published by the Council of Europe (2008)[4]. This achievement is the result of a debate within civil society and academia among different critical voices, turning "into a growing chorus of concern and a popular refrain about the failure, decline and even death of multiculturalism as a political philosophy as

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[1] C. Piciocchi, *L'interculturalismo nel diritto costituzionale: una storia di parole. Words are important: the constitutional role of interculturalism*, in DPCE online, 39(2), 1285-1303 (2019).

[2] C. Jopkke, *War of words: interculturalism v. multiculturalism*, in Comparative Migration Studies, 6, 11, (2018).

[3] This term refers to the contemporary status of western society, where global flows are increasing and are radically diversifying. This diversification refers to the variety of migrant-sending and migrant-receiving countries, to socioeconomic, cultural, linguistic, and religious factors but also to the personal background of migrants such as education and training, civil status, migration trajectories, etc. See S. Vertovec, *Super-diversity, and its implications*, in Ethnic and Racial Studies, 30(6), 1024-1054 (2007).

[4] Council of Europe, *White Paper on Intercultural Dialogue "Living Together As Equals in Dignity"*, Strasbourg, 2008. Available in English at https://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf.

well as a particular type of policy[5]". It should be noted, however, that most of these critiques are rooted in contexts where cultural diversity is linked to migration, and in particular to people of a Muslim background, while multiculturalism was unchallenged in relation to national minorities and indigenous peoples[6].

For the purpose of this paper, multiculturalism in its prescriptive and political terms[7] is understood as a political and legal model for a pluralist society that respects, recognizes, and protects the diversity of its groups and where minority entities can maintain their practices and identity[8]. As the Canadian Constitution suggests[9], it is possible to use the metaphor of the mosaic to describe multiculturalism, where each homogeneous piece of the pattern represents a cultural group/identity. In this image, however, each piece has a pre-defined shape, which is rigid and immutable, and its edges might be sharp as well. All these pieces contribute to the mosaic's picture, however there is no room for contamination and evolution. This metaphor suggests that multiculturalism might put excessive emphasis on cultural difference, by essentializing it. One of the main criticisms, in fact, is that multiculturalism exasperates cultural relativism and supports the idea of culture as something immutable and the main drive for human behaviour to the point of encouraging segregation and social fragmentation. This would also undermine the search for common values, as Putnam highlights: "diversity, at least in the short run, seems to bring out the turtle in all of us[10]". Scholars, indeed, have argued for a negative correlation between cultural diversity and social cohesion indicators, such as mutual trust and solidarity[11]. Further authoritative and influential critiques have classified multiculturalism as an anti-universalistic and anti-liberal approach[12]. Some scholars argue that this model

[5] F. Levrau, P. Loobuyck, *Introduction: mapping the multiculturalism-interculturalism debate*, in Comparative Migration Studies, 6, 13, 201 (2018).
[6] W. Kymlicka, *Multiculturalism: Success, failure, and the future* (2012).
[7] Multiculturalism can be understood in a descriptive way as a sociological fact referred to the presence of people from different backgrounds, in a prescriptive way with the ideological aim to celebrate diversity and on a political way with impact on policies. See: L. Brosseau, M. Dewing, *Canadian Multiculturalism Background Paper,* 1 (2018).
[8] The legal and constitutional literature on the topic is wide. For an overview of the Italian production see E. Ceccherini, *Multiculturalismo (diritto comparato)*, in Digesto delle Discipline Pubblicistiche, Aggiornamento 486 ff (IV, 2008); on the relationship between multiculturalism and pluralism in the Italian constitutional literature, see T. Groppi, *Multiculturalismo 4.0*, in AIC (2018).
[9] Canada is where multiculturalism was born and first theorized, as will be further discussed in paragraphs 4 and 5. For a theoretical analysis of multiculturalism in Canada, see W. Kymlicka, *Multicultural Citizenship A Liberal Theory of Minority Rights* (1995).
[10] R. Putnam, *Diversity and Community in the Twenty-first Century*, in The Scandinavian Political Studies, 30(2) 142 (2007).
[11] Ibid. 137-174.
[12] B. Barry, *Culture and equality. An egalitarian critique of multiculturalism* (2001).

would obstruct the effective integration of minorities by supporting the politicization of cultural group identities. This would further lead to social fragmentation and would deny conditions for socio-economic redistribution [13]. As an answer to these critiques interculturalism, as an alternative model for enhancing cultural diversity in society, is based on contacts and dialogue amongst people with different backgrounds and is aimed at fostering social interaction and strengthening the sense of shared membership.

Interculturalism aspires to be an alternative model based on contacts and dialogue amongst people with different backgrounds; it is aimed at fostering social interaction and strengthening the sense of shared membership while enhancing cultural diversity. If multiculturalism has traditionally adopted a macro perspective, with a focus on citizenship and "special" rights for certain groups, interculturalism - on the contrary - promotes a micro-social perspective with an emphasis on everyday interpersonal relations (it might not be a coincidence that one of the most flourishing fields of interculturality is education). According to some scholars the main features that distinguish interculturalism from multiculturalism are:

- Attention to communication and dialogue between cultures;
- Attention to the local level for the elaboration of policy;
- A more practical approach in decision-making, aimed at pragmatic compromise (e.g. reasonable accommodation)[14].

The distinction between interculturalism and multiculturalism is not, however, uncontested amongst scholars. For some, interculturality is not characterized by innovation and autonomy, as many of its focal points are already part of multiculturalism[15]. On the opposite side, some scholars argue for a substantial difference and an added value of interculturalism[16], while others support a middle position. Amongst these, for example, Parekh talks about "a multicultural sensitive interculturalism" or "interculturally attuned

[13] Ibid. 8. Arguing against this view: K. Banting, W. Kymlicka, *Multiculturalism and the welfare state. Recognition and redistribution in contemporary democracies* (2006).
[14] All these elements are mentioned by R. Zapata-Barrero, *Interculturalism in the post-multiculturalism debate: A defence*, in Comparative Migration Studies, 5, 6 (2017).
[15] For example, amongst these thinkers, Meer and Modood argue that multiculturalism is being accused unfairly and misunderstood by interculturalists. See N. Meer, T. Modood, *Interculturalism, multiculturalism and citizenship*, in N. Meer, T. Modood, R. Zapata- Barrero (eds.), *Multiculturalism and interculturalism. Debating the dividing lines*, 27-52 (2016).
[16] See for example: G. Bouchard, *What is interculturalism?,* in McGill Law Journal, 56(2), 435–468 (2011); T. Cantle, *Interculturalism: 'Learning to live in diversity'*, in Ethnicities, 16(3), 471-479 (2016).

multiculturalism"[17]. This position, shared by other thinkers[18], sees multiculturalism and interculturalism as complementary. This quickly sketched debate is far from being a mere definitory dispute in the academic field and might have concrete repercussions on social diversity and politics. Kymlicka warned that polarizing the debate around "good interculturalism versus the bad multiculturalism" level might "eventually play into the hands of assimilationists and xenophobes who reject both multiculturalism and interculturalism[19]".

III. INTERCULTURALISM IN ACTION: THE APPLIED MODELS IN THE LEGAL FIELD

Apart from the ongoing debate, what emerges is that both these models are far from being mere theoretical frameworks for diversity management in societies. On the contrary, they cease to be neutral as soon as they enter the political and the institutional realm and are translated into institutional policy and legislation. It is important to examine the already existing experience of interculturality in the legal dimension, to understand how it is applied in different contexts. From this perspective, it is possible to identify two different experiences of interculturalism. The first can be ascribed to the notion of horizontal or post-majoritarian interculturalism, the second can be called vertical or majoritarian interculturalism. Both represent a counter-model to multiculturalism, which is deemed inadequate, but their views diverge on the reasons behind it.

The first group of intercultural experiences is called post-majoritarian or horizontal. The main assumption of this model is that multiculturalism has failed because diversity has mainly been seen as a minority issue[20]. In fact, usually minority groups already need to practice some form of pluriculturalism, and do so with language, time management at

[17] B. Parekh, *Afterword: Multiculturalism and interculturalism. A critical dialogue*, in N. Meer, T. Modood, R. Zapata-Barrero (eds.), *Multiculturalism and interculturalism. Debating the dividing lines* 266-279 (2016).

[18] F. Levrau, P. Loobuyck, *Should interculturalism replace multiculturalism? A plea for complementariness*, in Ethical Perspectives, 20(4), 605–630 (2013); P. Loobuyck, *Towards an intercultural sense of belonging together: Reflections on the theoretical and political level*, in N. Meer, T. Modood, R. Zapata- Barrero (eds.), *Multiculturalism and interculturalism. Debating the dividing lines*, 225–245 (2016).

[19] F. Levrau, P. Loobuyck, *Introduction: mapping the multiculturalism-interculturalism debate*, in Comparative Migration Studies, 6, 13, 201(2018); W. Kymlicka, *Defending diversity in an era of populism: Multiculturalism and interculturalism compared*, in N. Meer, T. Modood, R. Zapata-Barrero (eds*.), Multiculturalism and interculturalism. Debating the dividing lines* 158-177 (2016).

[20] R. Zapata-Barrero, *Interculturalism in the post-multiculturalism debate: A defence*, in Comparative Migration Studies, 5, 6 (2017).

work or school, when they need to find a balance between their cultural/religious rules and those of the majority, which are embedded in the law[21]. In this situation, diversity is seen as "the other". This has fuelled segregation and mutual incomprehension. For this reason, horizontal interculturalism claims the need to "live in diversity"[22], dismantling the dichotomy of majority-minority culture and establishing a horizontal dialogue. Even though some universalistic values cannot be neglected, this process will create the common grounds for cultures to live together, so that the points of convergence are not given or pre-established.

This is what happens in Latin America, for example, under the strong influence of the decolonization process. In some of these countries, legislations and sometimes even national Constitutions now mention interculturality. This recognition aims to break with the dominant culture-subordinate cultures scheme[23], which has characterized for a long time the existence and the experience of indigenous peoples in these lands. This is expressed both in Constitutions and on a jurisdictional level[24]. For example, in Ecuador's Constitution the State itself is defined as plurinational and intercultural (art. 1, 2009); similarly in the Bolivian Constitution, where this term is frequently used[25]. Many fundamental rights, indeed, are explicitly characterized by an intercultural sensitivity: for example, the right to health[26] (art. 18(3) Constitution of Bolivia, art. 32 and 343 Constitution of Ecuador), right to social assistance (art. 45 Constitution of Bolivia), rights in the field of information and communication (art. 16 Constitution of Ecuador), rights related to science, which includes ancestral knowledge (art. 25 and 385 Constitution of Ecuador) and right to education (art. 17 and 78, c. 2 Constitution of Bolivia; art. 27 and 343 Constitution of Ecuador).

The latter has a crucial role in the Latin American context. In fact, according to some scholars the origin of this paradigm lies in the need for indigenous people to be granted a

[21] C. Piciocchi, *La libertà terapeutica come diritto culturale. Uno studio sul pluralismo nel diritto costituzionale comparato* (2006).
[22] T. Cantle, *Interculturalism: 'Learning to live in diversity'*, in Ethnicities, 16(3), 471-479 (2016).
[23] See C. Walsh, *Interculturalidad, Estado, sociedad: luchas (de)coloniales de nuestra época* 41 ff. (2009).
[24] S. Baldini, *Lo statuto costituzionale dei popoli autoctoni in Bolivia con particolare riguardo alla giustizia indigena*, in Federalismi.it, 24 (2015).
[25] See: S. Baldin, *La tradizione giuridica contro-egemonica in Ecuador e Bolivia*, in Boletín Mexicano de Derecho Comparado, XLVIII, 143, 483-530(2015); S. Bagni (eds.), *Lo stato interculturale: una nuova eutopia? The Intercultural State: A New Eutopia? El estado intercultural: una nueva eutopia?* (2017).
[26] A. Ruiz-Llanos, *La interculturalidad y el derecho a la protección de la salud: una propuesta transdisciplinaria*, in Bol. Mex. His. Fil. Med. 10(2) (2007).

formal education capable of including their cultural values[27]. It is also interesting to notice how the principle of interculturality needs to be applied in the field of justice[28], in particular at a constitutional level, specifically to solve conflicts in contact zones[29]. This implies the recognition of the need to overcome the majoritarian paradigm even in the application of law. The Constitutional Court of Bolivia has in fact affirmed that interculturality assumes "la construcción de una institucionalidad plurinacional descolonizadora, despojada de las lógicas de la colonialidad y bajo un proceso de reconstitución y re-encuentro de los propios saberes y conocimientos[30]". In 2020 Bolivia established a governmental organism, the *Ministerio de Culturas, Descolonización y Despatriarcalización* (Ministry of Cultures, Decolonization and Depatriarchalization), led by Sabina Orellana Cruz, a Quechua politician. This Ministry has the goal of subverting inequalities between nationalities and ethnicities as well as between men and women - these inequalities are considered both expressions of the same hegemonic vision - and accepting diversity to establish new inter-relations based on mutual acceptance and equal importance[31].

Majoritarian or vertical interculturalism[32] does not challenge the majoritarian paradigm; on the contrary, its main goal is to strengthen the position of the majority in society, while granting co-existence of other cultures. This dualistic (majority/minority) model comes to life in the experience of Canadian Francophone Québec and is connected to the province's nationalist-secessionist aspiration in relation to Anglophone Canada. It will be further explained (Paragraphs 4 and 5) how this experience is strongly characterized by the position recognized to the majority culture: "While seeking an equitable interaction between continuity and diversity, interculturalism allows for the recognition of certain elements of ad hoc (or contextual) precedence for majority culture[33]". This precedence of the majority culture does not imply any legal predominance, but the need for immigrants and other cultures to accept French as a public language and the presence of Québec's

[27] P. Brunet Ordoñez Rosales, *El derecho a la educación intercultural bilingüe (EIB) de las comunidades nativas del Perú*, in Pensamiento Constitucional, 18 (2013); C. Walsh, *La Interculturalidad en la educación,* (2005); N. López (eds.), *Equidad educativa y diversidad cultural en América Latina* (2012).
[28] See D. Montalván Zambrano, *El pluralismo Jurídico y la interpretación intercultural en la jurisprudencia constitucional de Ecuador y Bolivia*, in Ratio Juris, 14, 29, 147-185 (2019).
[29] Contact zones are those social fields where different cultural worlds meet, collide, discuss and negotiate. This definition is used by B. De Sousa, *Derecho y emancipación* (2012).
[30] Tribunal Constitucional Plurinacional de Bolivia, Sentencia SCP 698/2013 del 3 de junio de 2013.
[31] See the press release by the Bolivian government at https://comunicacion.gob.bo/?q=20201120/31286.
[32] The indications "majoritarian interculturalism" and "post-majoritarian" are developed in C. Jopkke, *War of words: interculturalism v. multiculturalism*, in Comparative Migration Studies, 6, 11 (2018).
[33] G. Bouchard, *What is interculturalism?*, in McGill Law Journal, 56(2), 45 (2011).

historical culture in the school curriculum, institutions, symbols, etc. If any form of interculturalism stresses the importance of dialogue, here the core values of this dialectic are already given and create a set of principles that cannot be compromised by immigrants' or others' diversity.

Interculturality, as we mentioned already, was proposed as a model in Europe by the Council of Europe, with the White Paper on Intercultural Dialogue "Living Together as Equals in Dignity". This document advocates for an intercultural dialogue based on equality and dignity in order to find shared values and contrast both multicultural politics and assimilationist tendencies. Here, intercultural dialogue is defined as "a process that comprises an open and respectful exchange of views between individuals and groups with different ethnic, cultural, religious and linguistic backgrounds and heritage, based on mutual understanding and respect. It requires the freedom and ability to express oneself, as well as the willingness and capacity to listen to the views of others. Intercultural dialogue contributes to political, social, cultural, and economic integration and the cohesion of culturally diverse societies. (…) Intercultural (…) is an essential feature of inclusive societies, which leave no one marginalized or defined as outsiders[34]." The application of the intercultural model in Europe and its more "vertical" tendencies will be the subject of Sabrina Ragone's paper in this same volume.

Understanding what we really mean when talking about interculturality is a key factor in investigating its impact on cultural diversity in society and on the social fabric. Even the model of interculturalism, indeed, is characterized by some potential distortions that might betray its initial premises. The major emphasis on shared views and common points might trivialize differences while neglecting power relations amongst groups in society, tending to a more assimilationist view.

The experience of Québec in this view is crucial and can help uncover issues that might be relevant for the European context as well.

[34] Council of Europe, *White Paper on Intercultural Dialogue "Living Together as Equals in Dignity*", p. 17.

IV. QUÉBEC, A MAJORITARIAN TALE OF VERTICAL INTERCULTURALISM

In the experience of Québec, despite its peculiarities, the development of interculturalism is again strictly connected to multiculturalism. Even in this context interculturalism does not exist *per se*, but it represents a reaction to federal multicultural policies enacted in Canada since 1971. Québec is a stateless nation within multicultural Canada[35] where citizenship has a deep symbolic meaning, and the phenomenon of migration has been used as a tool of political and cultural construction to contrast the perceived hegemony of the federal State[36]. Despite the absence of an explicit formulation, interculturalism can be deduced from the different legislation and policy on the issue of migration enacted by Québec's Government since the 1970s. At the core of Québec's interculturalism, three values can be found: I. The use of French as the common public language; II. The institutional separation between State and religion, III. The protection of equality between men and women[37].

Canadian multiculturalism has represented, since the beginning, a threat to Québec's minority identity[38]: interculturalism provided an answer to this danger. It can be argued that the birth of the Canadian idea of multiculturalism, is somehow tied to the resurgent Québécois nationalism of the 1960s[39]. After the institution of the Royal Commission on Biculturalism and Bilingualism 1963, in 1971 Trudeau declared Canada a country with no official culture but two official languages, establishing multiculturalism as an official policy. Unsurprisingly this strategy was understood by Québec as a tool to integrate the francophone Québécois into the Canadian mono-nation, treating their concerns as cultural issues, amongst others, rather than as a nation's concerns in a multinational State[40]. In this sense, Canadian multiculturalism, unlike the European one, has a broader scope

[35] J. F. Dupré, *Intercultural Citizenship, Civic Nationalism And Nation Building In Québec: From Common Public Language To Laïcité*, in Studies In Ethnicity And Nationalism, 12(2), 229 (2012).
[36] C. Blad, P. Couton, *The Rise of an Intercultural Nation: Immigration, Diversity and Nationhood in Québec*, in Journal of Ethnic and Migration Studies, 34(4), 6574 (2009).
[37] G. Bouchard, C. Taylor, *Building the future: A time for reconciliation* (2008).
[38] H. Meadwell, *The politics of Nationalism in Quebec*, in World Politics, 45(2), 203-241 (1993).
[39] The process that gave rise to Québécois nationalism began in the early 20th century but accelerated in the '60s during the so-called Quiet Revolution. During this process, French-Canadian Québécois started perceiving themselves not as a minority force in Canada but as a majority force inside Québec. Their major claim was the creation of a Québécois nation-state, either as a province in Canada or an independent State. To know more about this process, see R. Breton, *From Ethnic to Civic Nationalism: English Canada and the Québec*, in Ethnic and Racial Studies, 11, 85-102 (1988)..
[40] K. McRoberts, *Canada and the Multinational State*, *in Canadian Journal of Political Science*, 34(4), 698 (2001); N. Meer, T. Moodod, *How does Interculturalism Contrast with Multiculturalism?*, in Journal of Intercultural Studies, 33, 180 (2012).

and encompasses both new minorities (coming from migrations) and already existing ones such as autochthonous peoples and Francophones. In 1982 with the Constitution Act and the Canadian Charter of Rights and Freedoms, multiculturalism became structural in the Canadian legal system, as the whole charter "shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians" (art. 27). This approach was further enhanced with the 1988 Canadian Multiculturalism Act, which recognizes multiculturalism as "a fundamental characteristic of the Canadian heritage and identity".

In the same years, Québec started to develop its own citizenship system, which would then be described as "intercultural", where an important role is given to the French language. In 1974 with Bill 22 French was declared the only official language of Québec. Bill 101 (the Charter of French Languages) in 1977 further enacted the predominance of French in the public sphere (e.g. in education and public signage) in order to create a monolingual society. With the creation of the Ministry of Immigration in 1968, Québec started negotiating with its federal counterpart to gain control over immigration policies[41]. The signing of the Cullen-Couture Agreement was a fundamental step in this process, together with a further agreement that determined the substantial delegation of all migration issues and services to the Provence of Québec, including establishing admissibility requirements[42].

In developing an intercultural approach, the 1990 statement on immigration and integration policy plays a crucial role. The document *Au Québec pour batir ensemble. Enoncé de politique en matière d'immigration et integration* (Let's build Québec Together: Vision. A Policy Statement on Immigration and Integration, Ministry of Cultural Communities and Immigration) established the instrument of "moral contract" for the integration of immigrants in the province of Québec. The document recognizes the value of cultural diversity and acknowledges cultural pluralism in Québec, alongside the importance of reciprocity and mutual accommodation and participation in common institutions. This "contract" between the host society and newcomers, defined as neo-Québécois, stresses the importance of the French language and the need to live according to the common

[41] C. Kostov, *Canada-Québec Immigration Agreements (1971–1991) and Their Impact on Federalism*, in Canadian Journal of Political Science, 38(1), 91-103 (2008); D. Strazzari, *Immigration and Federalism in Canada: beyond Québec Exceptionalism?*, in Perspective on Federalism, 9(3), E.56-E.84 (2017).

[42] On this see D. Strazzari*, Federalismo e immigrazione. Un'indagine comparata*, 340 ff. (2020).

public culture (c*ulture publique commune*) while requiring full participation of immigrants in socio-cultural-economic and institutional life.

In 2005 with the Guide for a Successful Integration, a pragmatic and didactic document for the integration of immigrants, the government stressed a set of common values without neglecting the importance of accommodation and compromise.

Until the early 2000s Québec's evolving intercultural strategy was based on the need to frame migration as a positive phenomenon for the Province, while preserving the francophone cultural and linguistic heritage in the acknowledgement of cultural pluralism. However, this model can be described as civic nationalism[43], also called by some scholars intercultural nationalism[44].

However, this model can be described as majoritarian interculturalism[45], because - despite a certain emphasis on dialogue amongst cultures - integration is conceived as minorities' onus; there is no attempt to challenge or question the dominant position of the majority culture.

On the contrary, its ultimate aim is to strengthen the conditions of the majority. If dialogue and exchange amongst cultures are desirable, limits and boundaries for the recognition of cultural pluralism are set (e.g. democratic values and gender equality)[46] in order to reaffirm the needs of the majority. The ultimate aim of Québec's interculturalism is to strengthen the position of the majority: the French language, with its related culture, is the main tool used in this phase. This specific model finds its origins in Québec's identity and linguistic anxiety in the broader context of Canada, and responds well to the need to find "a form of pluralism that acknowledges that the francophone majority is itself a precarious minority that needs protection in order to ensure its survival and development in the North American environment and the context of globalization[47]".

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[43] D. Lamoreaux, *Citoyenneté, nationalité, culture*, in M. Elbaz, D. Helly (eds.), *Mondialisation, citoyenneté et multiculturalisme*, 14-15 (2000).

[44] C. Blad, P. Couton, *The Rise of an Intercultural Nation: Immigration, Diversity and Nationhood in Québec*, in Journal of Ethnic and Migration Studies, 34(4) 645-667 (2009).

[45] Moodod and Meer noticed that this model suffers from a majoritarian bias. See N. Meer, T. Moodod, *How does Interculturalism Contrast with Multiculturalism*?, in Journal of Intercultural Studies, 33, 188 (2012).

[46] E. Laxer, *Integration Discourses and the Generational Trajectories of Civic Engagement: A Comparison of the Canadian Provinces of Québec and Ontario*, in Journal of Ethnic & Migration Studies, 39, 10, 1581 (2013).

[47] G. Bouchard, *What is interculturalism?*, in McGill Law Journal, 56(2), 441 (2011).

V. QUÉBEC'S INTERCULTURALITY AND SECULARISM: TOWARDS A MORE "ASSIMILATIONIST" SHIFT?

This majoritarian yet pluralistic model of diversity management started to change at the end of the 2000s with an emphasis, within the public debate, on a new factor: religion. If the main cornerstone of the French-Canadian culture was language, alongside this secularism is becoming increasingly relevant for the reassertion of majoritarian stances.

In the meantime, Canada has developed its own model of dealing with cultural pluralism, where great importance is given to freedom of religion. Inside this framework, the legal doctrine of reasonable accommodation has been developed by the Supreme Court of Canada since 1985[48]. According to this doctrine all those who are governed by human rights legislation, including the State, have the legal obligation to adjust their decisions, practices, norms, and policy to specific religious beliefs[49], needs or practices of the interested person unless the accommodation imposes an "undue hardship". The latter notion is to be understood as something more than a minor inconvenience: it must be shown that the actual interference of the hypothetical accommodation is substantial[50].

Growing rates of dissatisfaction and distrust towards the measure of reasonable accommodation were recorded in Québec as a result of a lively debate on the well-known Multani case and its implications. This case reached the Canadian Supreme Court[51], after the decision from The Court of Appeal of Québec which rejected the request by a Sikh

[48] The doctrine was elaborated in a case dealing with religious discrimination in employment, where an employee asked to be exempted from work on Saturday to observe sabbat. After a few attempts, the employer refused the exemption and the Supreme Court ruled that indirect discrimination had taken place unless he could show that no reasonable accommodation was available. The first decision on reasonable accommodation is: Ontario Human Rights Comm. V. Simpsons- Sears (1985) 2 S.C.R. 536. After that, however, decisions on this issue flourished. To give a concrete idea of the application of the doctrine on reasonable accommodation, some decisions will be mentioned. For example in Markovicv.AutocomManufactuingLtd,2008HRTO64,[2008]2008CarswellOnt5936(WL 1. Can) it was stated that employers have to provide their employees unpaid leave to celebrate religious holidays and opportunities to make up for the related loss of income. In a different case reasonable accommodation meant modifying tasks and duties assigned to an employee. This was the case of a Jehovah's Witness who was exempted from administering blood transfusions (given that there was always someone else available for the transfusions), decided in Peterborough Civic Hospital v. ONA (1981), 3 LAC (3d) 21, 1981 Carswell Ont 1955 (WL Can) [Peterborough]. In another case a dietary aide in a hospital whose task it was to audit patients' food was exempted from tasting food on the base of religious reasons: see Victoria Hospital Corp v. London & District Service Workers' Union, Local 220 (1996), 45 CLAS (1st SEP) 90, 57 LAC (4th) 221 (Ont Arb).

[49] This doctrine now applies to all discriminatory grounds such as gender, race, colour, age, disability and to all forms of legally prohibited discrimination, be it direct or indirect. See the decision: British Columbia (Public Service Employee Relations Commission) *v.* BCGSEU, [1999] 3 S.C.R. 3

[50] See Central Okanagan School District No 23 v Renaud, [1992] 2 SCR 970.

[51] Multani v Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6.

student who claimed his right to wear a religious symbol (the *kirpan*, a religious knife/sword) in school in contrast with the general ban against cold weapons in schools. The Supreme Court stated that the school ban against the student's *kirpan* was a breach of religious freedom (Section 2(a) of the Canadian Charter of Rights). Moreover, according to the judges, under the Canadian Charter of Rights and Freedoms, the State has a burden to accommodate religious practice and beliefs unless adopting this measure might create "undue hardship".

This case had a huge impact on Québécois public opinion, raising many concerns on the concrete consequences of such a decision. The duty of reasonable accommodation was believed to be inconsistent with Québec's interculturalism. The main fear was that it would endanger Québec's French-language culture and common values by promoting a lack of reciprocity and a refusal of integration and compromise[52]. In response to this public discontent in 2007 Québec's government created a Commission (Consultation Commission on Accommodation Practices Related to Cultural Differences), composed of two prominent scholars - Gerard Bouchard, a sociologist, and Charles Taylor, a political philosopher - with the mandate of investigating the practice of reasonable accommodation of religious and cultural practices and its compatibility with Québec's legal principles and tradition. Their work was summed up in the Report "Building the Future: A Time for Reconciliation", which deals with issues such as cultural integration and common collective identity, church-state relations, and cultural/religious accommodation requests. The report, which has the advantage of summarizing more than 20 years of intercultural politics, focuses on the religious phenomenon suggesting the adoption of a "laïcité ouverte" model. In this model, considered an important aspect of Québec interculturalism[53], "state neutrality towards religion and the separation of church and state are not seen as ends in themselves, but rather as the means to achieving the fundamental objectives of respect for religion and moral equality and freedom of conscience and religion[54]". Open secularism suggests that the State must be neutral on religious matters, but people should be allowed to express their convictions both in private and public insofar as this does not interfere with other people's rights and freedom.

[52] G. Bouchard, C. Taylor, *Building the future: A time for reconciliation* 67-68 (2008).
[53] J. Bauberot, *Une laïcité interculturelle- Le Québec, avenir de la France?* (2009).
[54] R. Jukier, J. Woehrling, *Religion and the secular state in Canada*, in D. Thayer (eds.), *Religion and the secular state*, 158 (2010).

This also implies the right to reasonable accommodation. This model does not justify a general prohibition of public expression of religious beliefs from State agents, nevertheless, there might be some legitimate restriction to it. For example, the report suggests that State agents should be banned from wearing religious symbols when the appearance of impartiality is required by their duties. Under this category fall all those roles that exemplify State neutrality, such as judges, police officers, Crown prosecutors, prison guards, and the president and vice-president of the National Assembly[55].

The endorsement of open secularism was one of the most controversial aspects of the report, as many people and social actors openly rejected this model, pointing to a strict religion-state separation model, which might find its roots in the 1960's emancipation from the Catholic church. It was also argued that the model of interculturality described in Bouchard and Taylor's report was somehow distant from the concrete implementation of it carried out by the Québec government[56]. After the document was issued, many Bills were presented in the direction of affirming State neutrality[57] and constraining freedom of religion for public employees (i.e. Bill 94[58] in 2001; Bill 60[59] in 2013; Bill 62[60] in 2017; Bill 21[61] in 2019). One of the first attempts, Bill 60, also known as *Charte de Valeurs Québécois*, established the ban on wearing religious symbols for all public servants[62]. In 2017, Bill 62, Loi favorisant le respect de la neutralité religieuse de l'état et visant notamment à encadrer les demandes d'accommodements pour un motif religieux dans certains organismes, was

[55]G. Bouchard, C. Taylor, *Building the future: A time for reconciliation* 272 (2008).

[56] L. B. Tremblay, *The Bouchard-Taylor Report on cultural and religious accommodation: multiculturalism by ay other name?*, 18, 15 (2009).

[57] Influence from France and other French-speaking countries such as Belgium or Switzerland is, in this scenario, undeniable. See for example: A. Barras, *Formalizing Secularism as a Regime of Restrictions and Protections: The Case of Québec (Canada) and Geneva (Switzerland)*, in Canadian Journal of Law and Society / Revue Canadienne Droit Et Société, 36(2), 283-302 (2021); V. Amiraux, D. Koussens, *Laïcité (France) vs accommodements raisonnables (Québec): Circulation transnationale des discours publics sur la définition des rapports au religieu*x, in D. Koussens, C. Mercier, V. Amiraux (eds.), *Nouveaux vocabulaires de la laïcité*, 49–66 (2019).

[58] Bill 94. An Act to Establish Guidelines Governing Accommodation Requests within the Administration and Certain Institutions, 2nd Sess, 39th Leg, Québec, 2011.

[59] Bill 60. Charter Affirming the Values of State Secularism and Religious Neutrality and of Equality between Women and Men, and Providing a Framework for Accommodation Requests, 1st Sess, 40th Leg, Québec, 2013

[60] Bill 62. *An Act to Foster Adherence to State Religious Neutrality and, in Particular, to Provide a Framework for Requests for Accommodations on Religious Grounds in Certain Bodies*, C-19, SQ, 2017.

[61] Bill 21. *An Act Respecting the Laicity of the State*, C-12, SQ, 2019.

[62] M. Olivetti, *Una "Carta dei valori" per il Québec?*, *in Quaderni costituzionali*, 4, 990 ff. (2013); on a critical note see D. Dabby, *Constitutional (mis)adventures: Revisiting Québec's proposed Charter of Values*. *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 71(14), 352–83 (2015).

approved[63]. This law provided specific criteria for requesting and granting religious accommodation and imposed on all public servants to exercise their functions with their face uncovered (symmetrically, the person requiring the public service must have their face uncovered). Bill 62 was soon declared to be against freedom of religion according to article 2a of the Charter and Article 3 of the Québec Charter by the Supreme Court of Québec[64]. The latest attempt is Bill 21, Loi sur la laïcité de l'état[65], approved in 2019, which provides in articles 34 and 33 a notwithstanding clause, to shield the law from judicial review[66]. This piece of legislation prohibits public servants in a position of authority from wearing religious symbols (art. 6). This includes a wide range of employees such as teachers (the purpose of this article is broader than what Bouchard and Taylor's report suggested, based on the presence of coercive powers). Chapter 3 (articles 7-10) stipulates the duty for public servants to deliver their services with uncovered faces and the ability to require service users to uncover their faces for security or identification purposes. Another relevant aspect pertains to Article 17, which establishes that the law on the neutrality of the State does not affect the toponomy or does not require public institutions to remove property adorning an immovable building, ensuring that the Christian heritage of these institutions is protected[67].

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[63] Text available in French at http://legisQuébec.gouv.qc.ca/fr/ShowDoc/cs/R-26.2.01. For a commentary from a cultural perspective see V. Narain, *Québec's Bill 62: Legislating Difference*, in Columbia Journal of Race and Law, 1, 53-94 (2019).

[64] Cour Supérieure du Québec, National Council of Canadian Muslims (NCCM) v. Procureur général du Québec, 2018 QCCS 2766, para. 11.

[65] For some critical remarks on this law see: D. Dabby, Le *western* de la laïcité: regards juridiques sur la *Loi sur la laïcité de l'État*, in L. Celis, D. Dabby, D. Leydet, R. Vincent (eds.), *Modération ou extrémisme? Regards critiques sur la loi 21* (2020); P. C. Noël, *Critical comment on the recent law on «laïcité» in Québec*, in Quaderni di diritto e politica ecclesiastica, 2, 481-494 (2020); G. Panzano, *Québec's Bill 21: the collision of secularism, religious freedoms, and reasonability*, in diritticomparati.it, 3 June 2019.

[66] This clause implies that the law cannot be contested on the grounds of section 2 and sections from 7 to 15 of the Canadian Charter and from 1 to 38 of the Québec Charter. This law operates, in fact, notwithstanding its infringement of certain rights stated in the abovementioned acts. These articles are formulated according to Section 33 of the Canadian Charter of Rights and Freedom, which allows Parliament or provincial legislature to temporarily override some Sections of the Charter. These are section 2 (fundamental freedoms), sections 7 to 14 (legal rights) and section 15 (equality rights). It does not apply to democratic rights, mobility rights or language rights. Once invoked, section 33 precludes judicial review of the relevant legislation under the listed Charter sections. This mechanism is valid for 5 years; however, the clause might be re-enacted. This clause is unique in the constitutional panorama, and it is justified as a form of compromise between parliamentary supremacy and judicial supremacy. On the functioning of the notwithstanding clause see D. Johansen, P. Rosen, *The Notwithstanding Clause of the Charter* (2008).

[67] Some scholars suggested that this law endorses a view of Christian heritage as something exempted from the "scrutiny of laïcité" as mentioned by A. Barras, *Formalizing Secularism as a Regime of Restriction and Protections: The case of Québec (Canada) and Geneva (Switzerland)*, in Canadian Journal of Law and Society/Revue Canadienne Droit et Société, 36(2), 283-302 (2021).

This law fuelled controversies and divisions inside Québécois society amongst different civil actors but also between the French-speaking majority and the English-speaking population. Despite the notwithstanding clause, after the failure of the legal challenge[68] in the Québec Superior Court to stay the application the Bill[69], several other court challenges were attempted[70]. It is not surprising that the most successful challenge to Bill 21 is based on Article 23 of the Québec Charter, which protects minority rights in education and schools. In this decision[71], the Supreme Court of Québec acknowledged the stigmatizing effect of this law against religious minorities. The fear, humiliation, stress, anxiety, and rejection many people face since the approval of Bill 21 is mentioned and explicitly recognized by the Court. Interestingly, the judge stressed the particular impact the Law has on Muslim women wearing the veil, as widely discussed by the Applicants[72], both affecting their freedom of religion and their freedom of expression. In the end, the Court held that this law would be in contrast with freedom of religion, but the law cannot be declared void due to the notwithstanding clause. However, the applicants' claims based on Section 23 are upheld by the Court: the provisions violate minority-language education rights, therefore the ban on religious symbols cannot be applied to English schools in Québec. These schools, which are the expression of a cultural minority, retain autonomy over their organization to preserve and maintain their linguistic and cultural diversity. Enhancing cultural and religious diversity can be considered part of this autonomy; for this reason, English schools are exempted from Bill 21.

[68] See https://www.nccm.ca/wp-content/uploads/2019/06/2IMK-Originating-application-FINAL-2-10-06-17.pdf.
[69] Ichrak Nourel Hak e National Council of Canadian Muslims e Association Canadienne des libertés civiles c. Québec, C.S.Q.
[70] D. Dabby, *Le Western De La Laïcité Regards juridiques sur la Loi sur la laïcité de l'État*, in L. Celis, D. Dabby, D. Leydet, V. Romani (eds.), *Modération ou extrémisme? Regards critiques sur la loi 21*, 239-254 (2020).
[71] Hak c. Procureur général du Québec, 2021 QCCS 1466 (CanLII).
[72] The impact of such policies and legislations on Muslim women is widely debated amongst scholars and feminist scholars. Similar critiques were already raised during the debate on Bill 64 in Québec: see C. Hong, *Feminists on the Freedom of Religion: Responses to Québec's Proposed Bill 64,* in Journal of Law and Equality, 2011. In this decision however the Court stated that Article 28 was a mere interpretative provision and could not be applied in this case. For arguments against this point see C. Strauss, *Section 28's Potential to Guarantee Substantive Gender Equality in Hak c Procureur général du Québec*, in Canadian Journal of Women and the Law, 33(1), 84-115 (2021).

VI. Similarities between Europe and Québec: the cultural insecurity and the religious factor

The experience of vertical interculturalism in Québec suggests that it is challenging to enact such a model without triggering assimilationist outcomes. If this model has been successfully applied for decades, the growing concern and dissatisfaction around the issue of reasonable accommodation constitute a turning point in Québécois society. The shift from a linguistic emphasis towards the enforcement of a strict form of secularism is apparently hindering cultural pluralism in society and fostering divisions and conflicts.

The kind of law on religious neutrality is fuelling divisions amongst religious groups and immigrants but also between Anglophone Quebecers and Francophone Québécois, as the decision of the Supreme Court clearly shows. This dynamic is strengthening a polarized view of linguistic, religious and cultural differences, in a strict majority/minority dichotomy that deliberately ignores the power dynamics amongst groups in society. For the purpose of the alleged protection of a minoritarian identity in Canada, the francophone Québécois one, minority forces and identities in Québec are being relegated to a subaltern position. Majoritarian interculturalism in Québec has apparently reached a paradox at the current moment: in the name of dialogue amongst cultures and cohesion in society it is pushing minorities to assimilation or marginalization.

Such approach fails to acknowledge the multi-faceted nature of identity nowadays, which cannot be ignored when questioning the plurality of our society. The current Québec approach, despite openly promoting gender equality, for example, disproportionately burdens Muslim women, without acknowledging, in an intersectional perspective[73], both their gender and their religious background.

The current situation however is still evolving as many new judicial cases are pending and must be understood in the broader framework of the relationship between Canada and Québec and their jurisdiction[74]. Nevertheless, the experience of Québec resonates in Europe, and it is relevant not only because it is one of the few and one of the first regions

[73] The first formulation of this notion is to be found in K. Crenshaw, *Mapping the margins: Intersectionality, identity politics, and violence against women of color*, in Stanford Law Review, 43, 1241-1299 (1990).

[74] From a constitutional perspective see L.P. Lampron, *La Loi sur la laïcité de l'État et les conditions de la fondation juridique d'un modèle interculturel au Québec*, in Canadian Journal of Law and Society, 36(2), 323-337 (2021).

which openly adopted an intercultural framework, but also because it shows how the model of interculturality might be applied and sometimes distorted in its premises, coming closer to an assimilationist model. The same risk is crossing Europe at the moment, with specific regard to the aspect of religion as a factor of cultural diversity. In two decisions, one by the European Court of Human Rights, and the other by the Court of Justice of EU, the same view on religion and public spaces emerged. In these decisions, while judging on religions and religious symbols, both Courts implicitly endorsed a vertical conception of that intercultural dialogue which is often mentioned in their soft-law documents[75]. In S.A.S. vs. France[76], the Strasbourg Court stated that the French law[77] banning any form of face covering in public spaces did not violate the European Convention of Human Rights. What is interesting to note is that the Court bases its decision on the importance of community living on the notion of *vivre ensemble*, stating that the veil (in this specific case) could hinder interpersonal relationships. At paragraph 122 the Court affirms: "It can understand the view that individuals who are present in places open to all may not wish to see practices or attitudes developing there which would fundamentally call into question the possibility of open interpersonal relationships, which, by virtue of an established consensus, form an indispensable element of community life within the society in question. The Court is therefore able to accept that the barrier raised against others by a veil concealing the face is perceived by the respondent State as breaching the right of others to live in a space of socialization which makes living together easier". Similarly, the European Court of Justice in the joint cases WABE and MH Müller Handel[78] stated that a law banning employees from wearing religious symbols in the workplace could be justified by the need of employers to appear neutral towards costumers. Even in this decision, in fact, religious symbols are represented as potential sources of social conflict which need to be neutralized. Again, the decision is based on the need to sterilize the collective dimension from potential conflicts, without acknowledging the disproportionate

[75] See for example the already mentioned White Paper on Intercultural Dialogue from the Council of Europe, or the program on Intercultural cities of the Council of Europe. On the EU side see the initiative of the "European Year of Intercultural Dialogue" launched in 2008 by the European Parliament. Moreover, intercultural Dialogue is also mentioned in the document "Work Plan for Culture 2019-2022" ST/14984/2018/INIT adopted by Member States.
[76] Case of SAS v. France, Grande Chambre, Application no. 43835/11, 1 July 2014.
[77] Loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public.
[78] Judgment in Joined Cases C-804/18 and C-341/19. The Court also specified that these provisions could be justified on the basis of a genuine need of the employer only. Moreover, the national courts may take into account the specific context of their Member State and, in particular, more favourable national provisions on the protection of freedom of religion.

burden this legislation has on already marginalized people and questioning the position of the dominant culture.

In this view the experience of Québec, which is much more dated and extensive, could serve as a warning on the exact meaning and implications of certain forms of interculturalism. This could be a relevant case study for Europe to avoid reducing interculturality to an instrument for facing the "anxiety of the majority[79]" in the face of important demographic and cultural changes. If interculturality needs to be a sustainable alternative to multiculturalism towards the goal of social cohesion, it probably needs to depart from the majoritarian paradigm enacted in Québec. Examining the existing experience is, in fact, one of the key factors in developing a European intercultural model that, given some irrefutable premises such as the respect of fundamental rights and the valorisation of diverse and intersectional identities in society, can pave the way towards a sustainable pluralism[80] in our complex society.

[79] This identity-related anxiety voiced in Quebec concerns now all Westerns countries, in particular the ones traditionally homogeneous. For the concept of "anxiety of a majority group" see: G. Richard, *Rapport Bouchard-Taylor- Une majorité trop minoritarie?*, in Le Devoir, 12 June 2008, p. A7; L. B. Tremblay, *The Bouchard-Taylor Report on cultural and religious accommodation: multiculturalism by ay other name?*, EUI Working Papers 18, 10 (2009).

[80] On this concept see R. Toniatti, *Minoranze e minoranze protette: modelli costituzionali comparati*, in T. Bonazzi, M. Dunne (a cura di), *Cittadinanza e diritti nelle società multiculturali*, 279 ff. (1994).