



# EUI Working Papers

LAW 2009/18

**DEPARTMENT OF LAW**

THE BOUCHARD-TAYLOR REPORT  
ON CULTURAL AND RELIGIOUS ACCOMMODATION:  
MULTICULTURALISM BY ANY OTHER NAME?

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ISSN 1725-6739

© 2009 Luc B. Tremblay  
Printed in Italy  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu](http://www.eui.eu)  
[cadmus.eui.eu](http://cadmus.eui.eu)

## **Abstract**

In 2008, Gerard Bouchard and Charles Taylor released an important report as Co-Chairs of the Consultation Commission on Accommodation Practices Related to Cultural Differences. The Commission was set up by the Quebec government in response to public discontent concerning «reasonable accommodation» of religious and cultural practices. In the report, four delicate issues, among others, are examined: cultural integration, collective identity, church-state relations and the most appropriate procedures for handling cultural and religious harmonization requests. Altogether, the Co-Chairs' positions propound a normative conception of sociocultural integration in a pluralist society. This conception, that may be called «interculturalism», is conceived by the commissioners as an alternative to «multiculturalism». The text examines whether interculturalism, as conceived in the report, is anything but a version of multiculturalism. The contention is that it is a rose by any other name.

## **Keywords**

Multiculturalism, interculturalism, integration, collective identity, secularism, *laïcité*, reasonable accommodation, equality, nation-state, diversity, identity, pluralism, citizenship, Quebec, Canada.



## Introduction

On May 22, 2008, the sociologist and historian Gérard Bouchard and the philosopher Charles Taylor released their final report as Co-Chairs of the Consultation Commission on Accommodation Practices Related to Cultural Differences.<sup>1</sup> The Bouchard-Taylor Commission, as it came to be called, was created in February 2007 by the Quebec government in response to public discontent concerning «reasonable accommodation» of religious and cultural practices. Although their mandate was relatively specific, the Co-Chairs examined some of the most fundamental and difficult issues all contemporary liberal democracies must face with respect to cultural integration, collective identity, church-state relations and procedures for handling cultural and religious harmonization requests.<sup>2</sup>

The result is impressive. On each issue, the Bouchard-Taylor report seems to move beyond the dominant positions that tend to frame the terms of the debates. Although it claims to pursue the path Quebec has followed in matter of sociocultural integration in recent decades, its positions possess a normative and conceptual dimension that gives them universal scope. Altogether they arguably propound an original normative conception of integration in a pluralist and culturally diverse society. I will call it «interculturalism».<sup>3</sup>

In the report, interculturalism is conceived as an alternative to multiculturalism (118-19).<sup>4</sup> The Co-Chairs acknowledge that multiculturalism is often simplified, distorted or caricatured. However, they explicitly state that “Canadian multiculturalism, inasmuch as it emphasizes diversity at the expense of continuity, is not properly adapted to Québec’s situation” (121). More generally, they reject the abstract view of the social bonds uniting a multicultural society, namely, a respect for universal values codified by law, such as human rights (122-23). In the Canadian context, these assertions are tremendously important. Multiculturalism is an official policy of the Canadian government, a

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<sup>1</sup> See Consultation Commission on Accommodation Practices Related to Cultural Differences, *Building the Future: A Time for reconciliation*, 2008. The full Report is available both in French and in English at <http://www.accommodements.qc.ca/> [it will be referred to as the «report»]. Gerard Bouchard is one of the leading Quebec sociologists. Charles Taylor is one of the most influential political philosophers in the world today. Taylor’s essay *Multiculturalism and the Politics of Recognition*, 1992, has become central within the debates on multiculturalism and the politics of recognition. The quality and integrity of the Co-Chairs should constitute a sufficient reason to examine their report.

<sup>2</sup> The Commission had the mandate to: take stock of accommodation practices in Quebec; analyse the attendant issues bearing in mind the experience of other societies; conduct an extensive consultation on the topic; and formulate recommendations to ensure that accommodation practices conform to Quebec’s fundamental values. See the Québec Government Order in Council 95-2007 concerning the establishment of the Consultation Commission on Accommodation Practices Related to Cultural Differences, February 8, 2007.

<sup>3</sup> Interculturalism may be understood in a narrow or in a broad sense. In a narrow sense, it describes a policy that emphasizes intercultural exchanges and relations. In a broad sense, it included the four issues referred to in the previous paragraph: cultural integration, collective identity, church-state relations and the manner in which cultural and religious requests must be handled in a pluralist and culturally diverse society. It constitutes a general conception of sociocultural integration. In the report, interculturalism is used in both senses, according to context. For the purposes of this paper, I will use the word in its broad sense, except where specified otherwise. This broad sense is consistent with the report’s general definition of interculturalism as “a way of promoting ethnocultural relations characterized by interaction in a spirit of respect for differences” (118).

<sup>4</sup> As for interculturalism, *ibid*, multiculturalism may be understood in a narrow or in a broad sense. In a narrow sense, it describes a policy that emphasizes cultural and religious diversity. In a broad sense, it deals with the four issues referred to in the previous note. It constitutes a general conception of sociocultural integration that seeks public recognition and political accommodation of group cultural and religious difference. See *infra*, Part III. In the report, multiculturalism is used in both senses according to context. For the purposes of this paper, I will use it in its broad sense, except where specified otherwise. The broad sense is consistent with the Co-Chairs own understanding of multiculturalism as taking into account both “recognition and affirmation of difference” and certain “integrating elements such as teaching national languages and intercultural exchange programs” (192).

constitutional principle and a marker of the Canadian national identity. However, all Quebec governments since 1981, as well as the Quebec population in general, have rejected it (121). To the extent to which the Co-Chairs intended to construct their views on the path Quebec has followed in matter of sociocultural integration, leaving aside the issue of social acceptability, multiculturalism could hardly be seen as an option.

In this text, I examine whether interculturalism, as propounded in the report, is anything but a version of multiculturalism. My contention is that it is a rose by any other name.<sup>5</sup> Part I describes what may be seen as the report's main contribution to the normative and conceptual debates on sociocultural integration. To put it shortly, the report invites us to move beyond the dominant positions that tend to frame the terms of the debates and to adopt what may be conceived as «middle terms» between them. Insofar as the dominant positions have reached a deadlock, the report might propose a way out. Part II, briefly describes the sociopolitical context in which the Commission was created. This discussion will recall why multiculturalism has been an irritant for the Quebec governments and population and why this factor makes the report's analysis highly relevant to most democratic, pluralist and culturally diverse society. In Part III, I will substantiate the general contention that interculturalism constitutes a form of multiculturalism.

I keep for another occasion the development of the fundamental thesis that, given the report's basic normative egalitarian commitment, the Co-Chairs were bound to uphold a version of multiculturalism. In my view, the principle of equality, namely the moral equality of persons, requires the state, not only to be neutral between the citizens' conflicting claims, interests, values and worldviews, but to optimize each of them in context in accordance with the principle of proportionality. For this purpose, the citizens' conflicting claims, interests, values and worldviews must be understood from their own subjective points of view. So, where the citizens are deeply attached to their cultural and religious identity, practices, traditions or ways of life, the process of deliberation cannot help but result in some form of multiculturalism.<sup>6</sup> Although the Co-Chairs' positions are presented as coming within the framework of a democratic, liberal state, and as morally justified by the idea of an "overlapping consensus",<sup>7</sup> they seem to fundamentally derive from the thesis that all conflicting claims, interests, values and worldviews, as subjectively understood by the citizens, must be optimized in context in accordance with the principle of proportionality. In any event, these positions appear more coherent when read in accordance with the proportionality-based thesis than read in accordance with the idea of an overlapping consensus.

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<sup>5</sup> Of course, this phrase comes from Shakespeare's *Romeo and Juliet*, 1594, II, ii: "JULIET: 'Tis but thy name that is my enemy; / ... / What's in a name? that which we call a rose / By any other name would smell as sweet; / So Romeo would, were he not Romeo call'd, / Retain that dear perfection which he owes / Without that title. Romeo, doff thy name; / And for that name, which is no part of thee, / Take all myself."

<sup>6</sup> I discussed the nature of a proportionality-based practical reasoning in "Le fondement normatif du principe de proportionnalité en théorie constitutionnelle", in Luc B. Tremblay and Grégoire Webber, eds., *The Limitation of Charter Rights: Critical Essays on R. v. Oakes*, Montreal, Les Editions Themis, 2009. A version may be found as a Law working paper, Database of EUI publications, <http://hdl.handle.net/1814/11153>.

<sup>7</sup> In a footnote, the Co-Chairs explicitly refer to John Rawls' interpretation of the idea of an overlapping consensus in his *Political Liberalism* (2001) (134n.1). The extent to which they intend to follow Rawls' understanding is not altogether clear. There are reasons to believe that they depart from his interpretation in significant respect. I leave this issue for another text.

Nothing in this text should be read as a criticism of multiculturalism *per se* or as interpreted by the Co-Chairs or of its appropriateness in Quebec society or elsewhere in the world. There is much to be said in favour of the Co-Chairs' recommendations. More importantly, I am in total agreement with the general outlook: the report constitutes one of the most powerful plea ever written in Quebec in favour of toleration, openness, reciprocity and dialogue in a context of growing cultural and religious diversity. The chapter on the reception of immigrants, notably the section concerning the Muslim community and islamophobia, deserves to be widely read, especially by those who favour the status quo.<sup>8</sup> Whatever the fate is reserved to the report's specific recommendations, I hope that this plea will be heard for generations to come.

## **I. The Main Contribution**

The main contribution of the Bouchard-Taylor report to the normative and conceptual debates concerning integration lies in the original positions it takes with respect to four issues: cultural integration, collective identity, church and state relationship, and the most appropriate framework to handle cultural harmonisation requests. These positions may be conceived as «middle terms» or «just measures» between opposing alternatives. For this reason, one might wish to reduce them to mere «compromises» between conflicting claims, interests and views on sociocultural integration (39). However, this would be a mistake. The Co-Chairs' positions are actually grounded on principles, notably the constitutive principles of a democratic, liberal State, and ultimately justified by a basic commitment to the moral equality of persons, that is, the equivalent moral value of each individual (135-36).<sup>9</sup>

The basic egalitarian commitment entails that each person must be treated with equal concern and respect. For the purposes of political deliberation and decision, this means that each individual has the same moral value as citizen. In order to honor this egalitarian principle, the State “must be able, in principle, to justify to each citizen each of the decisions that it makes” (136). It follows that the State of a pluralist and culturally diverse society must remain neutral or impartial between the competing religious and secular conceptions of the world and of good and between the «fundamental reasons» or «grounds» that stem from them (134).<sup>10</sup> If it operated on the basis of specific religious or secular worldviews, or otherwise favoured or burdened any of them, it would not be able to justify to each citizen each of the decisions that it makes. All citizens would not be treated with equal concern and respect: certain citizens would be made «second-class citizens» (134-35). This being said, a democratic, liberal State «cannot remain neutral» toward the political principles that constitute it and provide its foundation, such as human rights and equality before the law: it has «no choice but to assert and defend them» (134). Nevertheless, it can legitimately identify itself with and promote them because they can form the core of an «overlapping consensus»: citizens adhering to very diverse religious, spiritual and secular worldviews can agree on and affirm them, even if they disagree on the fundamental reasons that justify them (134).<sup>11</sup> A State operating on the basis of an overlapping consensus is therefore able, in principle, to justify to each citizen each of the decisions that it makes.

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<sup>8</sup> See chapter XI of the report.

<sup>9</sup> The positions are also grounded upon various policies, such as a policy of fighting against socioeconomic inequality and discrimination (chap. XI).

<sup>10</sup> The fundamental reasons or grounds enable the individuals “to understand the world around them and give meaning and a direction to their lives». The Co-Chairs say: «In the realm of fundamental reasons, the State, in order to be the State of all citizens, must remain neutral.» (134).

<sup>11</sup> See supra note 7. In the Co-Chairs' view, these principles can be the core of an overlapping consensus because they enable citizens to live peacefully together and to be equally sovereign in matters of conscience and life plan (134).

The purpose of this Part is to contrast the Co-Chairs' positions with their main alternatives. The positions are formulated as idealtypes: few political regimes, if any, correspond to these types. I will return to the Co-Chairs' positions in Part III.

### ***The Model of Cultural Integration***

In the Co-Chairs' view, the integration process concerns all members of a society, including children, marginalized and underprivileged groups, immigrants, and so on. It comprises various interdependent dimensions, such as economic, social, political cultural and other dimensions. Given their specific mandate, the Co-Chairs are particularly concerned with the cultural dimension of the process.

All models of cultural integration must find a balance between two conflicting demands: the need to perpetuate the social bond and the symbolic references underlying it (unity and continuity) and respect of ethnocultural diversity (118, 119). There are two main models: the «assimilationist» and the «multiculturalist» models. The assimilationist model includes the republican and the melting pots models. It gives precedence to unity and continuity, fostering assimilation of all citizens to one common culture, the culture of the dominant or the largest group (118). Since the citizens must be united and homogenous, cultural differences are relegated to the background, in the private sphere. The multiculturalist models of integration give precedence to the preservation and promotion of ethnocultural diversity (118, 123). It fosters recognition and accommodation of the cultural and religious differences that are constitutive of the citizens' identities.

By contrast, the Co-Chairs propose an «interculturalist» model of integration. This model fosters ethnocultural interactions in a spirit of respect for differences (118). It places a «variable» emphasis on unity and continuity, notably through ethnocultural «rapprochement», such as exchanges, communication, interaction, cooperation, establishment of a common culture, intercommunity action, and mutual enrichment (119). However, it does not promote assimilation to one particular culture. Interculturalism seeks a balance between the demands of unity and continuity and the demands of diversity that fosters both the formation of a common collective identity and respect for ethnocultural diversity. In this way it affords security both to the dominant cultural group and to ethnocultural minorities and respects the rights of all (119). Interculturalism, thus, may appear as a just measure between the assimilationist and the multiculturalist models.

Interculturalism and multiculturalism constitute two genuinely pluralistic models of integration. Both models broach the economic, social, political cultural and other dimensions of the integration process in a comprehensive perspective. Both may be described in terms of «integrative pluralism»: «pluralism» indicates respect for diversity and «integrative» emphasizes the interdependence of all dimensions (115).<sup>12</sup> They both bear a tension between the pole of unity and continuity and the pole of diversity. What distinguishes them is the emphasis interculturalism places on the need to perpetuate the social bond and the symbolic references underlying it, as compared with multiculturalism that gives priority to the preservation and promotion of ethnocultural diversity (118-19, 123).

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<sup>12</sup> The integration model now present in Quebec is said to be supported by three key notions: an ideal of equality, which underpins the whole process of integration, a general rule of reciprocity, which demands interaction, and an imperative of mobility, whereby the fate of the individual is not confined to the individual's original group or milieu (114). As actually applied, it comprises three components : 1/ participation by citizens to public life and institutions, 2/ interaction and exchanges that make possible deliberation and democratic life, the search for common values and reference points, the establishment of consensus and participation, and 3/ the protection of rights that guarantees fair treatment to all citizens (114).

### *The Type of Collective Identity*

The discussion about collective identity relates to the bonds that unite a pluralist and culturally diverse political community.<sup>13</sup> This issue is generally conceived as a reflection on national identity and the form of citizenship that defines it. Two conceptions of collective identity, corresponding to the two opposing types of nation, tend to dominate the debates: «ethnic» and «civic» collective identity.<sup>14</sup> An ethnic collective identity is constituted by the particular culture of the dominant or the largest national group, such as its history, its language, its traditions, its values, its literature, its myths and its religion. A civic collective identity is united by respect for universal values codified by law, such as respect for democratic procedures and human rights (123). While ethnic collective identity has something to do with the assimilationist models of integration, civic collective identity may be associated with various political models, including certain version of multiculturalism (123).

In the Co-Chairs' view, in a democracy, the people living on a same territory and submitted to a same State are equal members of the political community and, accordingly, equal citizens. Membership is not determined by ethnocultural criteria. Thus, all inhabitants of Quebec are Quebecers: there is no hierarchy, no Quebec citizen is more Quebecer than another (121).<sup>15</sup> However, this raises a difficulty: if all citizens are equal members of the political community and if the citizens have different ethnocultural identities, what features are constitutive of their collective identity? Plainly, these cannot be the substantive culture of the dominant national group. Since the political community has no ethnocultural unity, it cannot be an «ethnic nation» (124). They cannot be either a mere respect for universal values codified by law. The «civic» conception of collective identity has a too abstract view of the social bond: «all communities need a few strong symbols [meanings, dreams, ideals, achievements, edifying narratives, heroes, and so on] that serve as a bonding agent and a rallying point, sustain solidarity beyond cold reason and underpin its integration» (123).

So the Co-Chairs reject the polarity between ethnic and civic national identity: all Western nations «offer an alloy of these two types» (124 n30). In their view, the collective identity of a culturally diverse political community must be “inclusive”. It «opens itself fully to ethnocultural diversity through exchanges and interaction such that all citizens can at once be sustained by and contribute to it» (128). The symbols, values or ideals that serve as cement are less an array of customary or ethnic traits «than an alliance of worldviews, some deep-seated values, hopes and projects to be pursued together» (124). They have taken shape in the past and have continued to change from one generation to the next. Since everyone can adopt it at any time and has a right to codetermine its future, no one can predict the course of the movement that may result from ethnocultural interactions (125). Inclusive collective identities are thus «shifting» and «constructed», as any other identity (123).

An inclusive collective identity is united by what is called a «citizen culture» (125). The constitutive features of a «citizen culture» include certain aspects of the dominant national culture and certain common universal values that «all citizens can share within or beyond their specific identities» (124). The aspects of the dominant national culture include, for example, its language, its symbols and mechanisms of collective life, and a memory that makes the past of the dominant group significant and accessible to citizens of all origins (125, 127). The common universal values may include, for

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<sup>13</sup> For my purposes, all inhabitants of Quebec form a distinct political community, although the Quebec State is one Canadian province.

<sup>14</sup> See for example, Hans Kohn, *The Idea of Nationalism: A Study in Its Origins and Background*, N.Y., N.Y., 1944, esp. 329 ff. See also, for example, Dominique Schnapper, *La communauté des citoyens*, 1994, ch. 5.

<sup>15</sup> There is no «Québec Us». These terms are ambiguous, as they do not determine who are included and who are excluded, and may harden ethnocultural differences, contrary to the spirit of interculturalism (121).

example, pluralism, equality, solidarity, secularism, non-discrimination, and non-violence, provided that they have been «historicized» by the various ethnocultural traditions found in the society (126). Historicization is a process by virtue of which an abstract universal value acquires a specific meaning or connotation for a particular ethnocultural group. It operates because the value is linked “with a past and a striking collective experiences” that have struck the memory and imagination of a particular group (126). When historicized, a universal value is adopted by the group and become a founding value. Accordingly, convergence on historicized values is not a form of «gentle assimilation» into the culture of the dominant group: it appears «at the outset and not at the outcome» (126).

It follows that an inclusive collective identity entails a certain degree of substantive cultural homogeneity. However, this homogeneity is neither comprehensive nor a copy of the culture of the dominant group. It seems to be situated somewhere between the thick identity of ethnic nations and the thin identity of civic nations. An inclusive collective identity is both respectful of cultural diversity and built upon it. It grows out of cultural interaction and exchange.

### ***The Model of Church-State Relation***

The church and state relations are generally conceived in the light of two opposing models: the «strict church-state separation» model and the «established church» or «theocratic» models.<sup>16</sup> The strict church-state separation model favours a rigid separation between religion and politics and between the religious and the secular. Religion is entirely left to the realm of personal life and private conscience, choice and action: it is «privatized» and of no concern to the state. For this purpose, religion is strictly excluded from the public sphere and public institutions: there is no public support for religion, no religious symbols in public displays, no exemption from general public laws, no religious teaching, and religious considerations is not used as reasons in the process of political justification. In this sense, the state is neutral on matters of religion, for it neither help or favour nor hinder or burden any particular religion. This form of state neutrality on matters of religion entails a strict separation between religion and politics. Religious organisations and institutions are organically separated from the state and the public realm is «free» from religion. Both domains are autonomous and independent in their own field of jurisdiction. In the report, this model is called «integral» or «rigid secularism» (137).

The «established church» or «theocratic» models are characterized by an organic link between the state and one particular religion. Accordingly, the preferred religion may invest the public sphere and institutions: it is recognized by the state, it receives public support, its symbols are upheld by the state, its main tenets are taught in schools and reflected in the general public laws, and it may be used as a reason for governmental action (134). In turn, the dominant church and religious institutions provide the state with some legitimacy. This model may be more or less tolerant of other religions and more or less committed to the principle of equal treatment of religions.

By contrast, the Co-Chairs propose a «flexible» or «open» model of secularism. Open secularism favours both the separation between religion and state and greater access of religious beliefs, practices and convictions to the public sphere and institutions. The state must be neutral on matters of religion, but this neutrality is not a matter of freeing the public realm from religion. It is a matter of treating on an equal footing all citizens. So the state must not favour any particular religion nor identify itself with a given religion (134, 136). However, this does not entail a strict church-state separation. Open secularism acknowledges the «importance for some people of the spiritual dimension of existence» (140). For this reason, it allows them to express in private and in public their religious convictions «inasmuch as this expression does not infringe other people’s rights and freedoms» (141). Therefore,

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<sup>16</sup> See, for example, Sophie van Bijsterveld, “Church and State in Western Europe and in the United State: Principles and Perspectives,” 2000 *BYU L*” Rev. 989 (2000). This being said, many scholars in the field have propounded complex typologies or taxonomies purporting to reflect the various church-state relation regimes that exist in the world.

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while the teaching of one religion in public schools and the religious justification of laws, policies and judicial decisions must not be allowed, public support for religion, religious symbols in public displays, the use of religious language in citizen and legislature deliberation, exemptions from general public laws and reasonable accommodations on religious grounds are legitimate.

In the Co-Chairs' view, the separation between religion and state and the neutrality of the state on matters of religion are not ends in themselves: they are two principles expressing the institutional structures that are «essential to achieve» the «final purposes» of secularism (135). There are two final purposes: the «moral equality of persons» and «freedom of conscience and religion» (135). These purposes come within the broader framework of a democratic, liberal political system. The moral equality of persons requires the state to treat equally all citizens. Freedom of conscience and religion requires the state to ensure that «each individual can live his life in light of his convictions of conscience» (136). It follows that the state and the religious organisations must be separate, each one being autonomous, independent and sovereign within its own fields of jurisdiction. Moreover, the state must be neutral in its relations with the different religions: it must treat equally all of them. Finally, it must be neutral towards religious and secular thinking: it must not give special recognition to certain religious, nonreligious or secular worldviews. In particular, it must not identify itself with religion as a whole or with a secular system of belief as a whole (134, 136). It must also be neutral in respect of the competing deepseated beliefs, values and life plans chosen by the citizens, be they religious or secular (134).

Open secularism is defended as the institutional structure that best allows us to achieve the two final purposes of secularism: it «better serves the equality of persons» and «offers the broadest protection to freedom of conscience and religion» (148). The «basic reason» why the Co-Chairs opt for this model is that it «best fulfils ... the four principles of secularism, i.e. respect for the moral equality of persons, freedom of conscience and religion, the reciprocal autonomy of Church and State, and State neutrality» (148). It achieves the most appropriate balance between these principles.

### ***The Framework for Handling Harmonization Requests***

There are two dominant frameworks to handle cultural and religious harmonization requests: a «legal route» and a «laissez-faire» (19, 167). The legal route is based upon strict government regulation and codification. It promotes what might be called «regulation from above» (167). Legislation and public norms impose a general frame of reference and the courts interpret the general norms in the light of the requirements and imperatives of a specific context. This framework fosters the «judicialization» of questions related to harmonization requests and, consequently, of interpersonal relations (167, 173). For example, the state fixes a general standard, say “the duty of reasonable accommodation”, and the courts decide what accommodation is reasonable and unreasonable, declaring a winner and a loser in an authoritarian fashion. The laissez-faire position is based upon the responsibility and autonomy of interveners and actors that are directly concerned by the harmonization requests. The determination of the frame of reference and the interpretation of the relevant norms in the light of the requirements and imperatives of a specific context are left to those who are the most familiar with the context (167, 173). The framework does not foster judicialization, but may allow the most powerful group to impose its own cultural norms, values and views to others, risking marginalizing, indeed eliminating, them through assimilation.

By contrast, the Co-Chairs propose a «citizen route» leading to solutions corresponding to what they call «concerted adjustment» (19). A citizen route for handling harmonization requests is less formal than the legal route, but more formal than the laissez-faire position. The framework is a case-by-case approach structured by a contextual, deliberative and reflexive procedure. It relies on negotiation and the search for a compromise that satisfies both parties through a specific procedure fostering dialogue and self-criticism. This framework allows for a «smoother» transition from abstract and general

principles, such as the abstract and general duty to reasonable accommodation, to a specific solution in an often unique situation than any authoritarian and controversial judicial decision (19, 40, 64, 167, 168, 172). It empowers those who know best the conditions in the relevant context, but imposes on all actors and interveners certain procedural constraints (171, 172, 173). Therefore, the citizen route favours both the likelihood of sensible, enlightened and reasoned decision based upon abstract and general principles and the accountability, responsibility and autonomy of the interveners and actors (168).

### ***The General Model: Interculturalism***

The main contribution of the Bouchard-Taylor report to the normative and conceptual debate on integration, thus, lies in the positions it propounds with respect to cultural integration, collective identity, church-state relations, and the framework for handling cultural and religious requests. These positions are: interculturalism (in a narrow sense), inclusive collective identity, open secularism and the citizen route. Altogether, they constitute an original model of integration in a pluralist and culturally diverse society that may be called, for the sake of simplicity, «interculturalism».

## **II. Quebec Nationalism and Canadian Multiculturalism**

The Bouchard-Taylor Commission was created by the Quebec Government to respond to the public discontent generated by the legal duty to reasonably accommodate particular religious and cultural beliefs and practices and the effects this duty has on Quebec social and political values and practices.<sup>17</sup> The legal duty of reasonable accommodation was introduced in Canadian law by the Supreme Court of Canada in 1985 in a case dealing with religious discrimination in employment.<sup>18</sup> In this case, it meant that the employers had the legal obligation to adjust their decisions, practices, norms and policies, even if honestly made for sound economic or business reasons, to the specific religious beliefs, practices or needs of the employee, unless the accommodation imposed to the employers an «undue hardship». The purpose of this duty was to eliminate discrimination resulting from decisions, practices, norms and policies that have an adverse impact on religiously-minded individuals. Although it involved treating individuals differently, sometimes different treatments are needed to ensure equality and equal opportunity.

Since 1985, the legal doctrine of reasonable accommodation has evolved. It now applies to all discriminatory grounds (race, colour, age, sex or disability, for example), everywhere in Canada, even if the relevant statute does not stipulate the duty explicitly,<sup>19</sup> and to all forms of legally prohibited discrimination, be it direct or indirect (63).<sup>20</sup> The Supreme Court now requires all those who are governed by human rights legislation to incorporate the reasonable accommodations into their own standards, practices or decisions in all cases. It rejects the view that a discriminatory standard can be

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<sup>17</sup> An accommodation for religious or cultural reason can be negotiated by the parties or imposed by law or by the courts. Negotiated accommodations are the most common. They have probably always existed. In the report, they are called «concerted adjustments». Imposed accommodation corresponds to the legal duty, and legal doctrine, of «reasonable accommodation», properly called.

<sup>18</sup> See *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536. An employee recently converted to a religion imposing a sabbat on Saturday asked her employers to be exempted from work this day. Although the employers tried to find a solution, they ultimately refused the exemption. In the Supreme Court's view, the employer was liable for indirect discrimination, unless it could show that no reasonable accommodation was available.

<sup>19</sup> The Supreme Court decision that introduced the legal duty of reasonable accommodation in Canadian law, in *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536, was taken without explicit legal mandate : it was reached according to a generous and purposive interpretation of the human rights statute.

<sup>20</sup> *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 par. 19-68. [*Meiorin Case*].

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maintained provided that it is mitigated or supplemented by particular reasonable accommodations. Moreover, the concept of undue hardship has been refined. The Court rejected the “*de minimis*” test defining the American legal concept of undue hardship.<sup>21</sup> In its view, the issue of accommodation must be seen in a purposive manner, attempting to provide equal access to the workforce to people who would otherwise encounter serious barriers to entry. Accordingly, more “than mere negligible effort is required to satisfy the duty to accommodate.” In particular, although the concern for the impact on other employees is a factor to be considered, “more than minor inconvenience must be shown before the complainant’s right to accommodation can be defeated.” The employer must establish that the actual interference with the rights of other employees that would result from the accommodating measures is not trivial but substantial. “Minor interference or inconvenience is the price to be paid for religious freedom in a multicultural society”.<sup>22</sup>

Finally, in 2006, in the «kirpan’s» or «Multani’s case», a case dealing with freedom of religion guaranteed in the *Canadian Charter of Rights and Freedoms*,<sup>23</sup> the majority of the Supreme Court ruled that the minimal impairment test used for the purposes of section one of the Charter (the limitation clause) must be understood as imposing to the State a burden similar in principle to that deriving from the duty of reasonable accommodation elaborated in anti-discrimination law.<sup>24</sup> Consequently, for all practical purposes, the State now has a constitutional duty to accommodate the religious practices and beliefs of each particular individual, unless it can be shown that the adoption of the accommodating measure would create an «undue hardship». This decision was very negatively received in Quebec: it amplified the public discontent and is generally seen as the source of the social crisis. According to some polls, up to 91% of Quebecers of all origins disagreed with the Supreme Court’s decision allowing the kirpan at school (66-67).<sup>25</sup> As the Co-Chairs write, «this decision tinged the entire debate on accommodation in addition to discrediting the courts» (179).

The Bouchard-Taylor report is historically and socially situated. It deals with a crisis that had no counterpart in the rest of Canada. Moreover, the report’s positions are meant to follow the path Quebec has followed in recent decades in matters of integration. Up to a certain extent, they constitute a form of social hermeneutics. Finally, the Co-Chairs claim that the «most important factor» underlying the crisis was the status of Quebecers of French-Canadian ancestry as a minority in Canada

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<sup>21</sup> See *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970. The leading American case on the “*de minimis*” test is *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).

<sup>22</sup> Ibid.

<sup>23</sup> Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982*, (U.K.) 1982, c. 11 (hereinafter “the Charter”).

<sup>24</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6. Multani, a twelve years-old child, believed that his religion required him to wear a kirpan at all times. In 2001, he accidentally dropped the kirpan he was wearing under his clothes in the yard of the school he was attending. Although the school board accepted to accommodate the child, the governing board of the school refused on the basis that wearing a kirpan at the school violated art. 5 of the school’s *Code de vie* (code of conduct), which prohibited the carrying of weapons. The school board’s council of commissioners upheld the latter decision. In the Supreme Court, the majority concluded that the council of commissioners’ decision prohibiting Multani from wearing his kirpan to school infringed his freedom of religion guaranteed under s. 2 of the Charter. Moreover, it concluded that this infringement could not be justified under s. 1 of the Charter (the limitation clause), as understood in the light of the “Oakes test”, originally expounded in *R. v. Oakes*, [1986] 1 S.C.R. 103. Section 1 provides that: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Although the council’s decision to prohibit the wearing of a kirpan was motivated by a pressing and substantial objective, safety, and although the decision had a rational connection with the objective, it had not been shown that such a prohibition minimally impaired Multani’s rights. In the majority’s view, the burden resulting from the minimal impairment test with respect to a particular individual is similar in principle to that resulting from the duty of reasonable accommodation elaborated in anti-discrimination law.

<sup>25</sup> See *La Presse*, Tuesday, octobre 9, 2007, p. A 2, the poll SOM-*La Presse*.

and North America. Many members of this minority group would experience a «keen sense of insecurity concerning the survival of their culture» and this insecurity would constitute «an invariant in the history of French-speaking Quebec» (185, 208). For these reasons, one might think that the report is not easily exportable. However, this would be a mistake. The Co-Chairs explicitly acknowledge that the «identity-related anxiety» voiced in Quebec during the crisis reflected the concerns «now apparent in all Western countries» (192), especially in countries traditionally homogeneous with strong national identities (42, 189). Up to a certain extent, thus, the deep causes of the crisis transcend the minority status of Quebecers of French-Canadian ancestry. Moreover, as the sociologist Guy Rocher argued, the identity-related anxiety of French-speaking Quebecers may well be understood as the anxiety of a majority group.<sup>26</sup> Finally, most of the Co-Chairs' analysis do not depend on the minority or majority status of French-speaking Quebecers. This collectivity is treated as a dominant cultural group in Quebec and this postulate is sufficient for their (and our) purposes.

In the last fifty years, the Quebec society has followed socio-political processes similar to those followed by most Western countries over the last two centuries.<sup>27</sup> These processes began early in the twentieth's century, but accelerated in the 1960's in what is known as the «Quiet Revolution». Traditionally, Quebecers of French-Canadian ancestry conceived themselves as a minority in Canada. They called themselves «French-Canadians» and this name expressed the ethnocultural differences (language, religion, traditions, history, memory, way of life, and so on) that distinguished them from the «English-Canadians» or Canadians of British ancestry. However, from the 1960's, they start conceiving themselves as a majority in Quebec, indeed as a distinct nation, calling themselves «Québécois» in order to express their distinct identity. The Quebec State was seen as the State of their nation. They aspired to build a nation-state in Quebec, either as one Canadian province or as an independent State. So, they modernized it for the purposes of controlling the main structures of power in Quebec, realizing their collective goals and preserving the cultural character of the community.

Yet, the «Québécois» had to deal with the presence of Anglophones and of post-war immigrants who used to integrate into the English collectivity. This fact generated deep debates over the boundary of Quebec collective identity (who is included and who is excluded) and a certain degree of cultural anxiety. This presence was perceived as a possible threat to the nationalist ambition, notably the predominance of the French language and the preservation of the national culture. These debates and anxiety contributed to the elaboration of many nation-building policies, such as imposing French as the official language of the Quebec State and public institutions, requiring immigrants to join and integrate into the French-speaking collectivity, notably through school's policies, controlling immigration and establishing certain national holidays (for example, the «fête nationale des Québécois») and symbols (for example, renaming of the «Legislative Assembly» into «Assemblée nationale»).

The nationalist ambition of the Quebecers of French-Canadian ancestry has been challenged since the beginning.<sup>28</sup> One important challenge came from the federal policy of multiculturalism.<sup>29</sup> In the 1960's, British- or English-Canadians nationalism was called into question by the French-Canadians

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<sup>26</sup> See Guy Rocher, «Rapport Bouchard-Taylor. Une majorité trop minoritaire?», *Le Devoir*, Thursday, June 12, 2008., p. A7. [http://classiques.uqac.ca/contemporains/rocher\\_guy/majorite\\_trop\\_minoritaire/majorite\\_texte.html](http://classiques.uqac.ca/contemporains/rocher_guy/majorite_trop_minoritaire/majorite_texte.html). See also my own explanation in Luc B. Tremblay, «Religion, Tolérance et laïcité: le tournant multiculturel de la Cour suprême », in Jean-François Gaudreault-Desbiens (ed.), *Le droit, la religion et le raisonnable*, 2009, 213-59.

<sup>27</sup> For a very penetrating analysis, see Raymond Breton, «From Ethnic to Civic Nationalism: English Canada and Quebec» *Ethnic and Racial Studies* (1988) 11, 85-102.

<sup>28</sup> Influential criticisms came from Pierre Elliot Trudeau when he was professor of law. See, for example, P.E. Trudeau, «La nouvelle trahison des clercs», in P.E. Trudeau, *Le fédéralisme et la société canadienne-française*, 1967 (text originally published in 1962).

<sup>29</sup> A very good analysis of the Canadian policy of multiculturalism is found in François Houle, «Citoyenneté, espace public et multiculturalisme: la politique canadienne de multiculturalisme », *Sociologie et sociétés*, Vol. XXXI, No. 2, automne 1999, pp. 101-123.

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nationalist ambition. In order to examine the fate of Canadian national unity, the Canadian Liberal Government created in 1963 the Royal Commission on Bilingualism and Biculturalism (the «B.B. Commission»). Its mandate was to help Canada to favour bilingualism and to understand better its fundamental bicultural character based on the principle of equality between its «two founding peoples», and to examine the contribution of non-British, non-French and non-aboriginal Canadians to the culture in Canada and the measures to be taken to preserve it. However, certain members and representatives of ethnocultural groups living in Canada since two or three generations protested against the idea that Canada was a «bicultural» country because it devaluated their own culture and their own contribution to the country: it made them second-class citizens. In 1969, the B.B. Commission abandoned the idea of biculturalism and favoured the idea of multiculturalism in a bilingual country. Canada was a «cultural mosaic».<sup>30</sup>

In 1971, the Canadian Government led by Pierre Elliot Trudeau followed the B.B. Commission's recommendations. It introduced the first official policy of multiculturalism in the world.<sup>31</sup> This policy asserted that «cultural pluralism is the very essence of Canadian identity. Every ethnic group has the right to preserve and develop its own culture and values within the Canadian context.» Prime Minister Trudeau stated that in Canada «there is no official culture, nor does any ethnic group take precedence over any other. No citizen or group of citizens is other than Canadian, and all should be treated fairly.»<sup>32</sup> The main policy's purposes were to promote individual freedom and national unity. According to Trudeau, a policy of multiculturalism is «the most suitable means of assuring the cultural freedom of Canadians»; «[it] is basically the conscious support of individual freedom of choice. ... If freedom of choice is in danger for some ethnic groups, ... [it] is the policy of this government to eliminate any such danger and to "safeguard" this freedom». Moreover, he added that if national unity is to mean anything «in the deeply personal sense», it «must be founded on confidence in one's own individual identity ... A vigorous policy of multiculturalism will help create this initial confidence». For these purposes, the federal government would support and encourage the various Canadian cultures and ethnic groups in different ways, notably financially provided that these groups have demonstrated a desire and effort to continue to develop a capacity to grow and contribute to Canada and a clear need for assistance.<sup>33</sup> The policy of multiculturalism was supported by all federal political parties. In 1988, the Canadian Parliament enacted a law affirming, and specifying, the purposes of the policy.<sup>34</sup> Over the years, cultural pluralism and diversity came to define the Canadian identity and the idea of national unity.

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<sup>30</sup> See Royal Commission on Bilingualism and Biculturalism (1969), *The Cultural Contribution of the Other Ethnic Groups*, Report of the Royal Commission on Bilingualism and Biculturalism, Book IV, Ottawa, 1969.

<sup>31</sup> See Canada, House of Commons (1971) *Debates*, October 8 :8545-48.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid. The four ways are: 1/ resources permitting, the government will seek to assist all Canadian cultural groups that have demonstrated a desire and effort to continue to develop a capacity to grow and contribute to Canada, and a clear need for assistance, the small and weak groups no less than the strong and highly organized; 2/ the government will assist members of all cultural groups to overcome cultural barriers to full participation in Canadian society; 3/ the government will promote creative encounters and interchange among all Canadian cultural groups in the interest of national unity; 4/ the government will continue to assist immigrants to acquire at least one of Canada's official languages in order to become full participants in Canadian society.

<sup>34</sup> *Canadian Multiculturalism Act*, 1985, c. 24 (4th Supp.).

Subject to certain criticisms, the Canadian policy of multiculturalism has been generally accepted by English-Canadians.<sup>35</sup> However, this policy has never been accepted in Quebec, neither by its governments nor by the general population. Two objections have been recurrent.<sup>36</sup> First, Canadian multiculturalism has been seen as inconsistent with the nationalist ambition of Quebec French-Canadians -- certain persons have even argued that it was one of the policy's purposes to neutralize this ambition.<sup>37</sup> According to multiculturalism, Quebec French-Canadians constitute one ethnocultural group among others. They are no more significant to the Canadian national identity than, say, the Chinese community of Toronto. Their political project to create a nation-state in Quebec can hardly be accepted as legitimate, even if it is founded on a history that traces its roots back to the «Nouvelle-France» and even if the nation's ancestors were settlers instead of immigrants. Since no culture and no ethnic group may legitimately take precedence over any other, their policy of integration of new immigrants into the French society is problematical. Secondly, multiculturalism has been seen as fostering cultural diversity at the expense of unity and social cohesion. Since it promotes ethnic differences, it favours cultural separation, the «ghettoisation» of communities and, ultimately, their marginalization.<sup>38</sup>

In 1982, the notion of multiculturalism was constitutionally entrenched in section 27 of the Charter. This section provides that the «Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians». Most judges and legal scholars understood it as having the function of a preamble, purporting to state one fundamental constitutional principle and to express the Canadian identity. Accordingly, the courts have used multiculturalism as a standard for the interpretation of the Charter's rights and freedoms and for the assessment of the legitimacy of laws limiting them. However, no Quebec Government has ever ratified the Charter. Among the reasons, it has been objected that constitutional multiculturalism denies the equality of the two founding peoples and is inconsistent with the fact that Quebec is a «distinct society».<sup>39</sup>

Since 1981, all Quebec Governments have affirmed the legitimacy of promoting French as the common language of public life and a certain idea of the Quebec nation as a pluralist, but integrated democratic political community. They have sought to respect ethnocultural diversity in accordance with the principle of equal citizenship, but have placed a «variable emphasis» on the continuity of the French-language culture and on the value of social bonds. So, the integration policy has emphasized intercommunity and intercultural exchange, relations and rapprochements, while

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<sup>35</sup> Polls tend to show that diversity and multiculturalism is generally accepted in Canada. See, for example, a survey published by the Centre for Research and Information on Canada (CRIC) in October 2003: 54% of those surveyed said that multiculturalism made them feel very proud to be Canadian. In a recent case, the Canadian Supreme Court wrote: "Canada rightly prides itself on its evolutionary tolerance for diversity and pluralism. This journey has included a growing appreciation for multiculturalism, including the recognition that ethnic, religious or cultural differences will be acknowledged and respected. Endorsed in legal instruments ranging from the statutory protections found in human rights codes to their constitutional enshrinement in the *Canadian Charter of Rights and Freedoms*, the right to integrate into Canada's mainstream based on and notwithstanding these differences has become a defining part of our national character." See *Braker v. Marcovitz*, [2007] 3 S.C.R. 607, 2007 SCC 54.

<sup>36</sup> See, for example, the remarkable study presented to the Bouchard-Taylor Commission: François Rocher, Micheline Labelle, Ann-Marie Field and Jean-Claude Icart, «Le concept d'interculturalisme en contexte Québécois: Généalogie d'une néologisme», December 21, 2007. It can be found at <http://www.accommodements.qc.ca/documentation/rapports/rapport-3-rocher-francois.pdf>.

<sup>37</sup> A policy of «biculturalism» would have been consistent with the Quebec nationalist ambition, for it would have maintained the idea of two founding peoples.

<sup>38</sup> See, for example, Neil Bissoondath, *Le marché aux illusions. La méprise du multiculturalisme*, Montréal, Boréal-Liber, 1995.

<sup>39</sup> See, for example, René Lévesque, in *René Lévesque Textes et entrevues 1960-87*, 338.

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prioritizing the enrichment of the French-speaking culture conceived as common public culture.<sup>40</sup> In popular opinion, this came to be known as «interculturalism». In official government documents, it has been described in terms of «convergence» (French-speaking culture as the rallying point of ethnocultural convergence) and «moral contract» (all persons living in Quebec must accept French as the common language of public life, democracy and equal right to participate, reasonable pluralism and intercommunity exchange). Where these documents refer to Canadian multiculturalism, they mention it in order to take a distance from it (118-19).<sup>41</sup>

When Quebecers became aware that the courts imposed to the citizens a duty to reasonably accommodate the religious practices and beliefs of other citizens, notably on the basis of the Canadian Charter, many believed, rightly or wrongly, that this duty had something to do with, derived from or purported to promote Canadian multiculturalism. This inference was not unreasonable. Multiculturalism, as entrenched in the Charter, had been one reason why the Supreme Court had given a very broad interpretation and great strength to freedom of religion.<sup>42</sup> It had also been one consideration why a substantial cost or burden must be shown before the complainant's right to accommodation can be defeated.<sup>43</sup> Moreover, one might reasonably think that a long-standing practice of reasonable accommodation of religious practices and beliefs might promote a form of «multireligious» society.<sup>44</sup> One might also think that certain religiously-minded citizens could use the duty of reasonable accommodation as a reason not to integrate, make compromises with others or accept the society's fundamental values. Finally, many Quebecers believed that the duty was inconsistent with the Quebec policy of interculturalism and nationalist ambition (67-68).<sup>45</sup> It is significant that the legal duty to reasonably accommodate victims of discrimination on grounds of disability, gender, or race, for example, has not been a controversial issue.

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<sup>40</sup> According to the Co-Chairs, the reason why interculturalism places a «variable emphasis» on the pole of unity and continuity lies in the cultural insecurity and anxiety of the French-speakers' who, even if they constitute a majority in Quebec, constitutes a minority in Canada and North America (119). This explanation is significant insofar as the search for unity and continuity would not be justified by a nation-building assimilationist project, as it has been the case where the people aspire to become nation state, but by the anxiety of a minority cultural group for its survival. This characteristic has two consequences: on the one hand, the promotion of unity and continuity appears more legitimate than where it is supported by a strong national group and, on the other, it reduces intercultural relationships as a "face-off between minority groups, all anxious about their future" (18, 187). See also Rocher et al., *supra* note 36.

<sup>41</sup> See Rocher et al., *ibid.*

<sup>42</sup> See *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, par 99-100; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, par. 96.

<sup>43</sup> See *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970.

<sup>44</sup> The proposed application of sharia in Ontario gave a reason to so believe. See also the dissenting opinion of Justice L'Heureux-Dubé in *Adler v. Ontario*, [1996] 3 S.C.R. 609.

<sup>45</sup> The negative reaction of Quebecers may have various causes. However, most of the reasons examined in the report support this general claim (67-68) : accommodation would be out of control, due to a large extent to the corrosive impact of the charters; there would be a lack of reciprocity in accommodation processes between immigrants and French-Canadians; immigrants would be intransigent and would refuse compromises, which is contrary to our culture; they would refuse to integrate, rejecting thereby the Quebec society's rules and breaking the implicit pact with the host society (mutual trust, interculturalism, reciprocity, and so on); in so doing, they would endanger Québec's French-language culture, showing thereby that they do not feel concerned by the situation or the fate of French-speaking Québec, by the constant battles that it must wage for its survival and by their collective memory; traditional or archaic religions would compromise the French language, the principle of gender equality, and secularism in our society; and certain seemingly trivial incidents would undermine the society's core values. Indeed, the Co-Chairs affirm that multiculturalism was overwhelmingly rejected, both as a policy and as a constitutional principle (121), and that interculturalism was often promoted as a manner to reject multiculturalism (39).

The Co-Chairs report that “almost all of the interveners who expressed themselves at our consultations said they were in favour of interculturalism and rejected Canadian multiculturalism” (121). They acknowledge that Canadian multiculturalism was often presented in a simplified or distorted manner that did not take into account the important changes this model has undergone over the past 30 years.<sup>46</sup> However, they ultimately agree with the interveners. Canadian multiculturalism, “inasmuch as it emphasizes diversity at the expense of continuity, is not properly adapted to Quebec’s situation” (121). Four reasons, that have no counterpart in English Canada, are given: “language-related anxiety”, “existential anguish of the minority”, “a majority ethnic group”, “a concern for the continuity or preservation of an old founding culture” (121-22).<sup>47</sup> More fundamentally, the Co-Chairs reject multiculturalism, inasmuch as it conceives unity as merely based upon respect for universal values codified by law (123). In their view, this perspective of the social bond is “very abstract”: “all communities need a few strong symbols that serve as a bonding agent and a rallying point, sustain solidarity beyond cold reason and underpin its integration.” (123)

The Co-Chairs propose to follow the path that Quebec has followed in recent decades on matters of integration. They see no good reason to depart from it: “the foundations of collective life in Quebec are far from being in a critical situation” (39). However, there is reason to believe that the Co-Chairs’ model is not substantially distinct from multiculturalism, notably from its Canadian version, both in its principles and application. Both models of integration seem to equally emphasize “diversity at the expense of continuity”. Given the standing rejection of multiculturalism by all Quebec governments and by the population at large, the report seems to contain many elements of break. Therefore, one may legitimately wonder whether it really pushes Quebec’s collective choices one step forward or whether it actually invites us to make one big step aside. In the Part III, I examine this issue with respect to cultural integration, collective identity, church-state relations and the framework to handle harmonization requests.

### III. Interculturalism: A Rose by Any Other Name?

In the report, interculturalism and multiculturalism constitute two genuine but competing pluralistic models of sociocultural integration. Both bear a tension between two poles: a concern for ethnocultural diversity and the need to perpetuate both the social bond and the symbolic references underlying it (118).<sup>48</sup> They are distinguished by the emphasis each gives to one of the two poles. Multiculturalism emphasizes diversity whereas interculturalism places a «variable emphasis» on the preservation of the social bond and on the continuity of symbolic references (119). As we saw, the Co-Chairs believe that multiculturalism, notably its Canadian version, is not properly adapted to Quebec’s situation, “inasmuch as it emphasizes diversity at the expense of continuity” (121). In their

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<sup>46</sup> From the mid-1980’s, the idea that the Canadian policy of multiculturalism would contribute to maintain cultural and social separation and fragmentation, instead of promoting sociocultural integration, led the Federal Government to move the priorities of the policy from the protection and enhancement of the multicultural heritage of Canadians to the promotion of equality of opportunity and of a more integrated society. National identity, integration, social cohesion, fight against inequality and discrimination, intercultural understanding and promotion of Canadian values of democracy, freedom, human rights, and rule of law became dominant themes. See, for example, the Annual Report on the Operation of the *Canadian Multiculturalism Act* 2007-2008: <http://www.cic.gc.ca/english/resources/publications/multi-report2008/part1.asp>

<sup>47</sup> “Language-related anxiety”: in English Canada, sooner or later, immigrants will have to learn English, whereas in Québec language is the field of a perpetual battle. “Existential anguish of the minority”: this factor is not found in English Canada. “A majority ethnic group”: in 1986, Canadian citizens of British origin accounted for roughly 34%, while in Quebec citizens of French-Canadian origin made up a strong majority of 78%. “A concern for the continuity or preservation of an old founding culture”: in English Canada, there is less concern for this than for national unity and cohesion (121-22).

<sup>48</sup> The symbolic references include: the founding traditions and values that have been forged through history and collective imagination (118).

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view, Quebec should follow, extend and advance the model of integration it has adopted in recent decades. This model, which might be called “interculturalism”, would achieve a better balance between the two poles than multiculturalism.

In this Part, I maintain that there are good reasons to believe that the Co-Chairs’ model of interculturalism constitutes a form of multiculturalism. I do not claim that it corresponds to the caricature they denounce, nor that it is its most radical version (121, 123, 192). I do not claim either that their model is not desirable or that it is not well adapted to Quebec’s situation. My point is that their version of interculturalism emphasizes ethnocultural diversity in ways that are very similar in principle to that of multiculturalism. I acknowledge that the question whether the Co-Chairs’ positions proceed from or, on the contrary, constitute a break with the path that Quebec has followed in the last thirty years is largely a matter of interpretation.<sup>49</sup> However, if the hypothesis is true, then the Co-Chairs’ model probably departs from what all Quebec Governments and many Quebecers understood, and still understand, by « interculturalism ».

For the purposes of this paper, multiculturalism constitutes a general normative model of sociocultural integration. Although there are profound disagreements, even among multiculturalists, as to what constitute its basic philosophical or moral commitments and its main political principles and policies, all versions of multiculturalism seek the public recognition and political accommodation of group difference, be it cultural or religious. According to Will Kymlicka, three general principles are common to all different struggles for a multicultural state.<sup>50</sup> The first is the repudiation of the nation-state, that is, of the idea that the State belongs to one dominant national group. According to multiculturalism, the State belongs equally to all citizens. The second principle is the repudiation of all nation-building policies that assimilate or exclude members of non-dominant ethnocultural groups. Multiculturalism considers that each citizen must have equal access to all institutions and equal right to act as full citizen in political life, «without having to hide or deny their ethnocultural identity».<sup>51</sup> Accordingly the State must recognize and accommodate the history, language, and culture of all ethnocultural non-dominant groups «as it does for the dominant group».<sup>52</sup> The third principle provides that historic injustice that was done to non-dominant ethnocultural groups by policies of assimilation and exclusion must be acknowledged by the state and, where possible, rectified and remedied.

I agree with Kymlicka that these principles are common to most, if not all, versions of multiculturalism. If we use them to assess the model of integration propounded in the Bouchard-Taylor report, then interculturalism constitutes a form of multiculturalism. It clearly repudiates the idea of nation-state, that is, that the Quebec State belongs to the dominant national group. It also clearly repudiates the idea that nation-building policies that tend to assimilate or exclude members of non-dominant ethnocultural groups might be legitimate. It is significant that the Co-Chairs avoid the

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<sup>49</sup> One must establish the facts that may be accepted as constitutive of the path Quebec has followed in recent decades and give them a coherent meaning. Then one must determine what are the contemporary requirements and priorities and give them a coherent meaning. Finally, one must identify the directions the society must take in order to best adapt the “path” to contemporary conditions. None of these tasks can be purely descriptive: they all require normative judgments. For the same reason, the methodological approach of the Co-Chairs has generally been “interpretive” or “hermeneutical”. It has both descriptive and normative components. This is explicitly stated in places (113) and obvious in others (133-52).

<sup>50</sup> See Will Kymlicka, *Multicultural Odysseys*, 2007, 65-66. In this book, Kymlicka uses «multiculturalism» as an umbrella term to cover a wide range of policies «designed to provide some level of public recognition, support or accommodation to non-dominant ethnocultural groups» (p. 16). These policies are mostly concerned with immigrants, racial and ethnic groups, religious or ethnoreligious groups, national minorities and indigenous peoples. They only indirectly deal with other kinds of non-dominant groups, such as women, gays and lesbians, disabled, and others. See also, Will Kymlicka, “The New Debate on Minority Rights (and Postscript),” in Anthony Simon Laden and David Owen, *Multiculturalism and Political Theory*, 2007, 25-59.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid, 66.

expression “Quebec nation”, except occasionally to describe the fact that a distinct political community exists in Quebec and possesses a distinct collective identity (119). The difficult issue of historic injustice that was done to aboriginal people is voluntarily left aside, notably for the reason that it must be discussed “nation to nation” (34). Nevertheless, the report’s underpinning guidelines express the idea that the State belongs equally to all citizens, that each citizen must have equal access to all institutions and equal right to act as full citizen in political life, without having to hide or deny their ethnocultural identity, and that the state must recognize and accommodate the history, language, and culture of all ethnocultural non-dominant groups as it does for the dominant group. In a word, it emphasizes public recognition and political accommodation of group difference, be it cultural or religious.

One may legitimately describe the Co-Chairs’ model in term of «interculturalism» instead of «multiculturalism». However, since the report claims that the labels cover distinct meanings and since these labels are politically loaded, it is important to determine whether it proposes a model of integration that is substantially distinct from multiculturalism. Moreover, one might wish to use the term «multiculturalism» only to describe its radical versions (192). But this might be misleading. As the Co-Chairs argue, the radical versions are caricatures or «truncated» versions of multiculturalism (192). In reality, most versions of multiculturalism promote at least a minimal set of integrating elements in order to foster a sense of unity, common belonging, and social bond.<sup>53</sup>

In what follows, I substantiate these claims with respect to four positions: interculturalism (strictly speaking), inclusive collective identity, open secularism and the citizen route.<sup>54</sup>

### ***The Model of Cultural Integration: Interculturalism***

Interculturalism is conceived as a model of cultural integration that promotes ethnocultural interactions in a spirit of respect for differences. It places a “variable” emphasis on unity and continuity, notably through ethnocultural interaction, but does not promote assimilation to one particular culture. By fostering both the formation of a common collective identity and respect for ethnocultural diversity, it affords security both to the dominant cultural group and to ethnocultural minorities and respects the rights of all. Stated as such, interculturalism may appear as a middle term between assimilationist and multiculturalist models of cultural integration.

However, the Co-Chairs’ interpretation of interculturalism emphasizes respect for ethnocultural diversity. Where it actually emphasizes unity and continuity, it still fosters ethnocultural diversity. The reason is that public recognition and political accommodation of cultural and religious diversity are seen as facilitating integration into wider society and, consequently, as adequate, indeed the best, means to promote unity and continuity. To this extent, interculturalism promotes ethnocultural diversity, not only for the purposes of promoting diversity, but also for the purposes of unity and continuity. So conceived, a policy promoting cultural and religious diversity is a policy of unity and continuity. However, two things must be said. First, this consideration expresses a multiculturalist thesis. In Canada, for example, it has been one reason put forward by the federal government to justify the policy of multiculturalism<sup>55</sup> and by the Supreme Court to support the constitutional principle of multiculturalism.<sup>56</sup> It is a central theme within political philosophy and social theory, as

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<sup>53</sup> See, for example, Bhikhu Parekh, *Rethinking Multiculturalism*, 2006, ch. 7; Tariq Modood, *Multiculturalism. A Civic Idea*, ch. 6; Will Kymlicka, *Multicultural Citizenship*, ch. 9; James Tully *Strange Multiplicity. Constitutionalism in an Age of Diversity*, 1995. Paradoxically, this point is also recognized in the report (192-93).

<sup>54</sup> For a description of these positions, see supra, Part I of this text.

<sup>55</sup> See, for example, Canada, House of Commons (1971) *Debates*, October 8 :8545-48.

<sup>56</sup> See, for example, *R. v. Zundel*, [1992] 2 S.C.R. 731. The dissenting opinion in which two judges introduced the first systematic judicial statement about constitutional multiculturalism.

exemplified by the works of Will Kymlicka, Bhikhu Parekh, Tariq Modood and James Tully.<sup>57</sup> Secondly, it is an empirical thesis that may be true or false. Although it might be premature to conclude either way, it should be admitted, meanwhile, that it emphasizes ethnocultural diversity.<sup>58</sup>

Let me give four illustrations drawn from what the Co-Chairs regard as the objectives of interculturalism (119-21). First, interculturalism assumes that it is a good thing, for those citizens who so desire, «for initial affiliations, those rooted in the ethnic group of origin, to survive» (120). Similarly, it postulates that it is useful, for immigrants and their children, «to make available ... at least for a certain time, the means to preserve their mother tongue» (120). There are two underlying justifications. The first concerns diversity. These means contribute to preserve “the enrichment cultural diversity affords” (120). The second justification concerns unity and continuity, social cohesion and integration: survival of initial affiliations and preservation of mother tongue would allow cultural groups to mediate between their members and society overall and would mitigate the migratory shock of immigrants.

Secondly, according to the Co-Chairs, interculturalism entails that cultural and religious differences do not have to be confined to the private domain: they «must be freely displayed in public life» in accordance with what they call “open secularism” (120). The same two justifications are given. Open secularism is an appropriate way to “benefit fully from cultural diversity” and enhances social cohesion and facilitate integration: «to display one’s differences and become familiar with those of the Other» would prevent marginalization that «can lead to fragmentation favourable to the formation of stereotypes and fundamentalisms» (120).

Thirdly, the Co-Chairs maintain that interculturalism recognizes the principle of multiple identities. Each person has a «right to preserve if he so desires his affiliation with his ethnic group» (120). Accordingly, the mode of integration must be plural: citizens may decide, «according to their choice», to achieve their own integration to society either by means of their culture of origin or by distancing themselves from it. The Co-Chairs’ adaptation of the moving train’s metaphore used to describe the integration process is significant. They say that «it also happens that not just passengers but railway cars also join the train» (120).

Fourthly, the Co-Chairs argue that interculturalism encourages both plurilingualism and the language of the majority as the common public language. Each individual has a right to define «as he sees fit his relationship to the common or any other language and to adopt it in his own way» (120). It follows that the debate on the language of the majority group as an identity-related language or as a vehicular language is a dead end. What counts is to disseminate the language of the majority. Of course, these claims might be acceptable. However, they clearly entail that the function of the language of the majority as a common public language is vehicular only: the common public language is instituted for the purposes of communication, collective deliberation, cultural exchanges and interaction (119). It follows that the distinction between multiculturalism and interculturalism is reduced to this. Where the language of the majority is dominant in fact, the force of the market is sufficient: sooner or later,

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<sup>57</sup> See Kymlicka, supra note 53, ch. 9, esp. 189 ff; Parekh, supra note 53, for ex., 196, 211, 248; Modood, supra note 53, for ex., 150 ff; Tully, supra note 53, for ex., 196-98.

<sup>58</sup> It is not easy to verify the truth of this multiculturalist thesis because most countries tend to foster homogeneity. Except for Switzerland, perhaps, the countries that have promoted some form of multiculturalism, such as Canada and Spain, tend to show that unity, the sense of belonging to society as a whole and the sense of sharing a common fate with all citizens are rather weak -- indeed we even encounter various secessionist movements. However, it might be premature to conclude that the thesis is false. So it might be well advised to get more empirical evidences before making a probable judgment, provided that it is frankly acknowledged that there might be a cost if the thesis ever appears to be false.

immigrants will have to learn it. Therefore, the state has no need to institute it as a common public language. Where the language of the majority is not dominant, the force of the market may not be sufficient to produce a common public language. Consequently, the state may be justified to use the law to institute it. In my view, this distinction is formal.

These examples show that the Co-Chairs' interpretation of interculturalism is difficult to distinguish from multiculturalism. It places a certain emphasis on diversity, even where the proposed policies are also justified in terms of unity and continuity. Both recognize the principle of multiple identities and both reduce the common public language's function as vehicular only. Of course, the Co-Chairs say that interculturalism encourages numerous form of cultural interaction in a spirit of reciprocity, fostering thereby continuity and unity. However, the purpose and effect of these forms of interaction is to transform the culture of all ethnocultural groups, including the majority group, and to change the Quebec identity (120-21). They also say that "Quebec as a nation ... is the operational framework for interculturalism" (119). But since interculturalism is faithful to the «ideal of equality», it does not institute a hierarchy among citizens. It confers equal status to all cultural groups and it recognizes that each group has an equal right to survive and develop. This is why the Co-Chairs may affirm that interculturalism affords security both to the dominant cultural group and to ethnocultural minorities and protects the rights of all (119).

### ***The Type of Collective Identity: Inclusive***

The Co-Chairs' conception of the collective identity of the political community is «inclusive»: it «opens itself fully to ethnocultural diversity through exchanges and interaction such that all citizens can at once be sustained by and contribute to it» (128). It is «constructed» by everyone and may «shift» at any time (123). An inclusive collective identity is united by what they call a «citizen culture». The constitutive features of this culture contain both certain symbols, values or ideals of the dominant national culture and certain common values historicized by each ethnocultural tradition. Its basic common reference points, thus, are based on the combination of different cultures and traditions (123). They can be shared by all citizens within or beyond their specific identities (124). Stated as such, an inclusive conception of collective identity might be conceived as a middle term between ethnic and civic conceptions.

I have no doubt that a collective identity of that type has been developing in Quebec for several decades. However, it is difficult to conceive how it can be distinct from the type of collective identity that may emerge in multicultural society such as Canada. The types of collective identity that characterizes a society is a matter of social fact and interpretation. Collective identities are not essences and their characters are not immutable: they are social constructs «forged in history from the experience of communities» (123).<sup>59</sup> It is therefore a question of fact and interpretation whether the collective identity of the political community of a multicultural society is inclusive.

Two reasons show that the type of collective identity that emerges in a society committed to interculturalism needs not be distinct from the one that may emerge in a society committed to multiculturalism. The first reason derives from the Co-Chairs' objection to the view that a multicultural society could be united only by respect for universal values codified by law.<sup>60</sup> According to them, this view of the social bond is too «abstract»: «all communities need a few strong symbols that serve as a bonding agent and a rallying point, sustain solidarity beyond cold reason and underpin its integration» (123). They agree with Toqueville that «no society can prosper without

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<sup>59</sup> They survive because they perform a useful function, namely, to symbolically underpin, express and consolidate a social relation of solidarity. (123).

<sup>60</sup> This view has often been attributed to Canada. It has some affinity with certain versions of civic nationalism, constitutional patriotism and cosmopolitanism.

similar beliefs or rather that none subsists thus ... without common ideas... it is therefore necessary that the minds of all citizens always be assembled and held together by a few main ideas» (123). However, if the Co-Chairs' objection is true as a matter of fact, then the view that the identity of a political community can be merely united by respect for universal values codified by law has no anchor in the real world. All collective identity would actually be thicker and their social bond would be more concrete. And if this is true, then it might be difficult to distinguish interculturalism from multiculturalism on the ground of the type of collective identity and social bond they allow to produce.<sup>61</sup>

The second reason derives from what the Co-Chairs identify as the avenues or spheres within which an inclusive collective identity can be formed and develop as a citizen culture (125-28). For example, they maintain that the formation of an inclusive collective identity requires the recognition of one common public language, the maintenance of certain symbols and mechanisms of collective life, such as institutional rituals, symbols, codes and holidays, and the edification of a genuine national memory (125, 127). However, as we saw, the integrative function of a common public language is vehicular only. Moreover, the symbols and mechanisms of collective life must accommodate cultural and religious diversity. For example, crucifix in legislatures must be removed, prayers must not be part of any institutional rituals and the national holidays must be inclusive, that is, they must not be conceived as celebrating the dominant cultural group (152). Finally, the edification of a genuine national memory must not only make the history of the dominant group significant and accessible to citizens of all origins. It must take into account the growing ethnocultural diversity, notably because the members of the ethnic minorities can substantially enrich Quebec's collective memory «by contributing to it their own stories» (127). Unless one supposes that multicultural societies have no common public language, no symbol and no mechanism of collective life and no national memory, it is hard to see why any of these avenues or spheres cannot also contribute to the development of an inclusive collective identity in a society committed to multiculturalism.

A second example can be drawn from what we may call the «historicization thesis». As we saw, the Co-Chairs maintain that a citizen culture is constituted by common values that have been historicized by the various ethnocultural groups and traditions found in the society, such as certain universal values (126). These values are not conceived as mere abstract ideals or empty conventions (127). Being historicized, each common value has a specific meaning or connotation for the groups that have adopted it by virtue of some collective experiences that made it part of their «founding» values (126).

The historicization thesis may, I think, be admitted. However, two difficulties arise. The first is that it gives us no reason to assume that a society committed to multiculturalism cannot have such common values. Since they depend on historicization processes, their existence and specific content are matters of fact.<sup>62</sup> So, it is an empirical question whether such common values actually exist in a multicultural society. The second difficulty is that the historicization thesis gives us no reason to assume that the collective identity of a society committed to interculturalism is substantively any thicker than the one we may find in a society committed to multiculturalism. The thesis claims that a value becomes a common value of a society committed to interculturalism when it is inherent in the historicization processes of the various ethnocultural groups and traditions found in this society. It does not claim that it is necessary for the value to be historicized by the wider society as a whole, conceived as a distinct group or community, indeed as a distinct «ethnocultural» group or community. If this were a necessary condition, then the fact that it would also be inherent in the historicization processes of the

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<sup>61</sup> See, for example, Modood, *supra* note 53, ch. 6, esp. 146 ff; Parekh, *supra* note 53, ch. 6, esp. 219 ff.

<sup>62</sup> As far as Québec is concerned, the Co-Chairs suggest that the existence and content of a significant core of common value has still to be confirmed (126-27). However, they believe that the value of equality would qualify because it is deeply rooted in the collective memory of many ethnocultural groups and inherent in several historicization processes (126).

various ethnocultural groups and traditions found in this society would add nothing to the status of the value as a common value of the wider society. Now, since the foundation of the common values of an intercultural society may be totally independent from any historicization process of this society, qua distinct group or community, these values may have quite distinct meanings and connotations according to the particular collective experiences of the various ethnocultural groups and traditions.<sup>63</sup> So, the common values, conceived as the value of the wider society, may express nothing more than abstract ideals or empty conventions. The case being, the bonding agent of the collective identity of a society committed to interculturalism may not be thicker than the one found in a society committed to multiculturalism.

The other avenues and spheres within which an inclusive collective identity can be edified give no more reason to distinguish it from the type of collective identity that may be formed in a multicultural society. For example, the Co-Chairs favour the development of a sense of belonging through the schools, civic life, intercultural exchanges, knowledge of the territory, and so on (125). But they immediately add that such a development must not be exclusive: it must leave room «for other parallel ethnocultural or other affiliations» (125). Similarly, artistic and literary creation fosters the formation of a common imagination. However, such creation is pluricultural: it enriches and transforms the imagination of the dominant group (127).

As these examples show, the type of collective identity that may emerge in a society committed to interculturalism gives us no good reason to distinguish this model of integration from multiculturalism. In particular, in both cases, the conception of national identity fostered by the idea of nation state is rejected.<sup>64</sup>

### ***The Model of Church-State Relations: Open Secularism***

Open secularism is a model of church-state relations that simultaneously favours the separation between religion and state and the greatest possible access of religious beliefs, practices and convictions to the public sphere and institutions. The State must be neutral on matters of religion -- it must not favour, nor identify itself with any particular religion --, but this does not entail a strict church-state separation freeing the public realm from religion. People must be allowed to express in private and in public their religious convictions «inasmuch as this expression does not infringe other people's rights and freedoms» (141). State neutrality in matters of religion and the separation between religion and state are two principles expressing the institutional structures that are essential to achieve the two purposes of secularism. These purposes are conceived as coming within the framework of a democratic, liberal political system. They are the «moral equality of persons» and «freedom of conscience and religion» (135). Since the moral equality of persons requires the state to treat equally all citizens, the state must be separated from the religious and secular organizations and neutral in its relations with the different religious and secular perspectives and worldviews. Freedom of conscience and religion requires the state to ensure that each individual can live his life in light of his convictions of conscience, be they religious or secular (136). Open secularism, then, establishes a balance that best achieves the two purposes of secularism (148) and best fulfils the four principles of secularism.

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<sup>63</sup> In my view, the example drawn from the value of equality is striking (126). Each particular ethnocultural group may give a different meaning to the value of equality given their own specific collective experience of oppression and domination. Moreover, it might be the case that the meaning of equality is controversial and contested, indeed plural, within a same ethnocultural group found in the society.

<sup>64</sup> See, for example, Modood, supra note 53, esp. 48 and ch. 6; Parekh, supra note 53, ch. 6, esp. 219 ff, 230 ff.

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The Co-Chairs' approach is basically normative (134-38; 142-48).<sup>65</sup> Although they claim that this model has «gradually established itself» in Québec (141), they acknowledge that the governments have remained “remarkably silent on the Québec secularism model”: no elected government has ever adopted a text in which “the key directions of the Québec secularism model are defined” (153). Although they also claim that there is “a fairly broad consensus” on open secularism among “the organizations that have reflected on Québec secularism over the past decade» (140), this consensus has been quite limited in scope (it concerns less than ten organizations), quite recent (no more than fifteen years) (140-41) and tend to ignore various organisations that have taken a stance in favour of a more rigid form of secularism.<sup>66</sup> In fact, the Co-Chairs acknowledge that no social consensus actually prevails among Quebecers on this question: “there is profound disagreement on the policy directions that the Québec State should now adopt in respect of secularism”. Most people who took a stance on this issue before and during the public debate in 2007 rejected the open secularism model and favoured a more rigid form secularism, something pointing towards the strict church-state separation model (133, 141, 142).<sup>67</sup> As reported, a number of Quebecers “expressed their reservations about this model. In fact, the accommodation cases that have aroused the greatest discontent were based on religious reasons and implicitly related to this open secularism. What explains this malaise?” (142)

Furthermore, although the Co-Chairs argue that there is no pure secularism model that one could apply properly and, accordingly, that each society must define its own model in light of its own context, values, outcomes and balances (133), they ultimately propound the “one” model that “best allow us to respect the equality of persons and their freedom of conscience and religion” (141). In their view, the choice of open secularism is “the right one” for the “basic reason” that it best fulfils the four principles of secularism (148). Finally, the Co-Chairs take many pages to refute the arguments of the critics in a manner typical of normative political philosophy. Open secularism, therefore, is a normative model and, for this reason, may have a claim to universality, at least within democratic, liberal states.

Open secularism is conceived as an aspect of Quebec interculturalism (120)<sup>68</sup> and as coming within the framework of a democratic, liberal state, notably, “political liberalism” (134, n.1). It is «much more liberal than republican»: it is an institutional arrangement that is «aimed at protecting rights and freedoms» and not, as in France, «a constitutional principle and an identity marker to be defended» (141). However, the model is hardly distinguishable from the kind of secularism that would derive from multiculturalism. Open secularism offers “the broadest protection to freedom of conscience and religion” (148). It takes the fact of pluralism very seriously and seeks to allow a variety of religious and secular perspectives or worldviews to coexist and flourish. It is probably the most accommodationist model of church-state relations conceivable in a democratic state committed to the moral equality of persons.<sup>69</sup>

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<sup>65</sup> The approach taken in the other chapters is both descriptive and normative. From a normative point of view, the chapter on secularism is the most important of the report. First, it directly deals with the main issue that had led to the crisis on reasonable accommodation, that is, the place of religion in society. Secondly, and more fundamentally, it explicitly provides the normative foundation of the whole report. It explains and articulates its fundamental principles and values. These principles and values are conceived as liberal and democratic.

<sup>66</sup> For example, le mouvement laïque québécois.

<sup>67</sup> The Co-Chairs report: «our debate that preceded the establishment of our Commission and our public hearings revealed that there is profound disagreement on the policy directions that the Québec State should now adopt in respect of secularism. Some people believe that the current context demands a radical modification of the secularism model centred on the protection of rights and freedoms that we have known until now (141)”.

<sup>68</sup> It is significant that the French specialist on secularism, Jean Bauberot, entitled his book examining the Bouchard-Taylor report: *Une laïcité interculturelle- Le Québec, avenir de la France?*, 2009.

<sup>69</sup> Open secularism has much in common with the conception of secularism elaborated by Canadian Supreme Court in *Chamberlain c. Surrey School District No. 36*, [2002] 4 S.C.R. 710. The majority of the Court argues that the concept of “strict secularism”, as used in a 19<sup>th</sup> century statute, “reflects the fact that Canada is a diverse and multicultural society,

Let me illustrate this claim by six examples. First, open secularism conceives freedom of religion in broad, probably its broadest plausible terms (176). This conception derives from the Canadian Supreme Court's definition. According to the Court, the «essence of the concept of freedom of religion» is the right to «entertain such religious beliefs as a person chooses», the right to «declare religious beliefs openly and without fear of hindrance or reprisal», and the right to «manifest religious belief by worship and practice or by teaching and dissemination».<sup>70</sup> Originally, freedom of religion was inherently limited by the rights and interests of others and one could expect the beliefs to have some objective basis in some religious tradition.<sup>71</sup> However, over the years, the Court's conception has become «subjective» and «quasi-illimited». Freedom of religion includes any act or practice a person «sincerely» believes has a nexus with his religion, even if it injures or threatens the interests of others, such as their life, safety or health,<sup>72</sup> if it is not required by an official religious dogma, if it is not in conformity with the positions of religious officials and if he is the only member of a religious group to believe it has such a nexus.<sup>73</sup> Individuals are thus allowed to adopt the religious beliefs «of their choices» and «to put them into practice» if they sincerely believe they are bound to conform (176): it is «incumbant on the individual to define his own position in relation to religion» (145). Moreover, the protection of the sphere of freedom is very strong. Freedom of religion is infringed in *law* as soon as a norm, act or practice imposes a non-trivial or not insubstantial burden or cost to a person's ability to act in accordance with his religious beliefs.<sup>74</sup> Whether the person's ability to act in accordance with his religious beliefs has been impaired in *fact* does not matter.<sup>75</sup>

The Co-Chairs maintains that the subjective conception of religion marks «the phenomenon of the individualization of belief», deriving from the people's «personal quest for meaning» (176): more and more people «are turning to an array of religious, spiritual and secular traditions to draw from them elements that allow them to structure their worldview» (176). One might thus reasonably believe that open secularism seeks to secure a liberal individual right. However, it should be recalled that the Supreme Court's broad and strong conception of freedom of religion was partly justified on the basis

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bound together by the values of accommodation, tolerance and respect for diversity. These values are reflected in our Constitution's commitment to equality and minority rights" (par 21). Strict secularism "does not mean that religious concerns have no place in the deliberations and decisions of the Board. Board members are entitled, and indeed required, to bring the views of the parents and communities they represent to the deliberation process. Because religion plays an important role in the life of many communities, these views will often be motivated by religious concerns. Religion is an integral aspect of people's lives, and cannot be left at the boardroom door." (par 19). The majority adds: "What secularism does rule out, however, is any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community. A requirement of secularism implies that, although the Board is indeed free to address the religious concerns of parents, it must be sure to do so in a manner that gives equal recognition and respect to other members of the community. Religious views that deny equal recognition and respect to the members of a minority group cannot be used to exclude the concerns of the minority group. This is fair to both groups, as it ensures that each group is given as much recognition as it can consistently demand while giving the same recognition to others" (par 19). It follows that the administrative board "must act in a way that promotes respect and tolerance for all the diverse groups that it represents and serves" (par 25). This view is shared by all judges. On the accommodationist model in general, see, for example, Cole Durham, "Perspectives on Religious Liberty: A Comparative Framework" in Johan van der Vyver and J. Witte Jr. (eds.), *Religious Human Rights in Global Perspective*, 1996, 12.

<sup>70</sup> See *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 par 94.

<sup>71</sup> See *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at 346; *Young v. Young*, [1993] 4 S.C.R. 3. hogg, 39.6 par 99-100.

<sup>72</sup> *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 par 105; *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 par 73.

<sup>73</sup> *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 par 46.

<sup>74</sup> *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47; *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6 par 53. The source is found in *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713.

<sup>75</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6 par 53.

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of constitutional multiculturalism.<sup>76</sup> Secondly, it also protects the rights of people to act as part of a larger religious community. Thirdly, the subjective conception of religion recognizes the normative importance of the religious identities as they matter to particular individuals. The individuals' religious beliefs, as well as their expressions, define who they are and shape their identity (144). The meaning of such beliefs and expressions must be decided by the individuals themselves. Otherwise, one would use "words that tend to interpret the other persons in light of oneself, as though the other person's semantics necessarily reflected the semantics that informs the dominant culture here" (145n.24). Fourthly, the subjective conception of religion recognizes that the identity of religious cultures may be internally plural. The Co-Chairs say, for example, that it avoids "the risk of falling back on the majority opinion in a religious community and contributing to the marginalization of minority voices" (176, 145). Given these considerations, it seems difficult not to associate the broad and strong conception of freedom of religion with multiculturalism.

Secondly, open secularism conceives freedom of religion as an aspect of freedom of conscience (144) and seeks to protect both (137). Of course, as we saw, it offers the broadest protection to freedom of conscience and religion. Accordingly, "all deep-seated convictions or convictions of conscience that allow individuals to shape their moral integrity" must enjoy the same status, whether they stem from a religion or from a secular moral philosophy (144). Once again, one may infer that open secularism seeks to secure a liberal right, notably, the right of individuals to adopt the religious, spiritual or secular beliefs of their choice and to act accordingly provided that they respect the rights of others. However, there is more to be said.

Open secularism requires the State to be neutral, not only toward all religious groups or beliefs, but also toward religious and secular worldviews. It should neither favour nor burden any particular religion, religion as a whole or any secular system of beliefs as a whole. It should not influence its citizens's choices for or against certain secular or religious worldviews by laws or policies that advantage or burden them (148). It follows that a secular State should not operate on the basis of a secular system of beliefs. It must not presuppose, for example, the superiority of reason and science over faith. This would be inconsistent with the principle of neutrality based upon the moral equality of persons (134-36). Indeed, secular systems of beliefs are conceived as forms, or equivalent, of religion.<sup>77</sup> The Co-Chairs argue that «this characteristic of secularism is of fundamental importance in the context of societies that are constantly diversifying from a cultural and religious standpoint» (148). I think it fair to say that the Co-Chairs would characterize as "assimilationist" a secular state operating on the basis of a secular system of belief.

Thirdly, open secularism claims that individuals, as private citizens, must be allowed to express their religious beliefs in public spaces and public institutions and, for this purpose, have a right to reasonable accommodations (178-79). Cultural and religious differences need not be privatized. The Co-Chairs give various reasons for this position. A rigid private/public distinction is too general to be functional and too restrictive to be pragmatical (143). For example, in hospitals, vulnerable persons may wish to be surrounded by their loved who are religious and by religious rites. The distinction is also incoherent. For example, even if a law prohibiting all religious signs in public establishments treats everyone uniformly, it is not neutral between those whose religion requires the wearing of signs and those whose philosophical, religious or spiritual views do not require it (148). However, as we saw earlier, the main justifications are twofold: "it is healthier to display one's differences and become familiar with those of the Other than to gloss over and marginalize them" and allowing the expression of religious beliefs in public spaces and institutions allow all of us to "benefit fully from cultural

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<sup>76</sup> See *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, for the broad interpretation of the sphere of freedom, and *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, for its strength. See also *supra* notes 42-43 and accompanying text.

<sup>77</sup> See, for example, the expression "secular religions and philosophies" (145), "civil religion" (135), and "secular equivalent of religion" (134).

diversity” (120). The extent to which the right to express one’s religious beliefs in public spaces and public institutions holds is a matter of context. However, it reaches the wearing of religious symbols by citizens in public institutions and in sports competitions, dietary prohibitions and the granting of temporary or permanent prayer rooms in public institutions, the installation of an erub on public streets, the students’ exemption from certain optional courses at school, and the use of religious language in citizen deliberation (178-79). Although the Co-Chairs do not mention it, open secularism seems to allow the use of religious language in legislature deliberation, for the reason stated below.<sup>78</sup>

Fourthly, although open secularism requires the State and public institutions to be neutral towards, and separated from, religion, it also provides that the agents of the State must be allowed to express their religious beliefs while they are in function and, for this purpose, they have a right to reasonable accommodation (178-79). This position may reduce the «appearance» of neutrality of the public institutions, for the employees might be seen as serving their religion before serving the State. However, the main consideration is that the State employees «display impartiality in the performance of their duties» (149). Their acts must not be dictated by their faith or philosophical beliefs, but by the desire to achieve the purposes inherent in the position they occupy (149). Partial acts (proselytism, for example) should be sanctioned on the merit (150). But the mere fact that a person is wearing a religious sign is not a reason to believe that he is less impartial, professional or loyal than those who do not externalize their religious or philosophical beliefs (149). Each employee must be equally presumed to act with impartiality.

The public expression of religious beliefs by an agent of the State may be subject to limits and prohibition if, in context, it imposes an «undue hardship» to the institution, its mission and the rights of others (150). For example, the wearing of a burka or a niqab in class may be prohibited if it hampers the performance of a female teacher (150). Similarly, the public expression of religious beliefs may be prohibited where the «appearance of impartiality» is expected from certain public duties, such as the duties of judges, Crown prosecutors, police officers and prison guards who possess a power of punishment and coercion or symbolically embody the State (151). Otherwise, the employees of the State may express their religious beliefs as they think appropriate and the public institutions have a duty to accommodate them. This may include the wearing of the headscarf in class and the burka and the niqab for all employees of the State. It follows that no general and uniform prohibition of the public expression of the religious beliefs of the agents of the State is justified. Judgments must be made on a case by case basis. This position upholds simultaneously the neutrality of the State and the freedom of religion and conscience of the agents of the State. Moreover, it guarantees equal access to jobs in the public and parapublic service, independently of religion. Finally, it fosters the integration of all (150).<sup>79</sup>

Fifth, open secularism claims that the practices and symbols of public institutions and displays that have originated in the religion of the majority may be maintained insofar as they constitute a part of the society’s religious heritage. The “Croix du Mont-Royal” would be an example. However, if «in point of fact» a given practice or symbol identifies the State with a religion, it should be changed or removed even if it seems to have only heritage value. For example, crucifix in legislatures and prayers recited on a voluntary basis at the beginning of public meetings identify the State with a specific religion. In these cases, the appearance of neutrality and impartiality should be paramount (152, 178).

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<sup>78</sup> In *Chamberlain c. Surrey School District No. 36*, [2002] 4 S.C.R. 710, the Canadian Supreme Court’s conception of strict secularism goes that far. *Supra* note 69.

<sup>79</sup> The proposition that accommodating religion practices and beliefs fosters integration has probably not been proven yet. I might certainly be true with respect to certain religious groups and practices. But it is uncertain, at least with respect to all religious practices and beliefs. One may reasonably believe that the more the practices and beliefs of a religiously-minded person are accommodated, the more the accommodations allow the person to remain in his religious worldview without having to participate to the intercultural exchanges and dialogue processes. The case being, one might say that the religious group is nevertheless integrated, say because it lives peacefully. But this form of integration would be very thin and rather formal.

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Although one may agree with this position, it raises a difficulty. A given practice and symbol conceived as identifying the State may not infringe the freedom of religion or conscience of any citizen and not require any of them to act against their conscience. In all cases, it may not entail that those who work in these public institutions, such as elected representatives, are unable to display impartiality in the performance of their duties. Since the agents of the State may, as employees, publicly express their religious beliefs on the ground that their mere appearance of neutrality does not constitute the main consideration, one might wonder why open secularism would not submit all practices and symbols that now have only a heritage value to the same consideration.

Sixth, open secularism entails that the State may maintain the traditional common calendar, even if the holidays coincide with the holidays of the dominant religious group. However, it also provides that it should reasonably accommodate members of other religions allowing them to take leave on their most important religious holidays. So, the principle of equal respect is upheld (153).

Open secularism might rightly be conceived as providing the best balance between equality, freedom of religion, church-state separation and state neutrality. However, as these examples show, it fits the requirements of a society committed to multiculturalism. It seeks to give to each citizen, religious or not, equal access to all institutions and equal right to act as full citizen without having to hide or deny their religious identity. For these purposes, it interprets freedom of religion in a very broad, quasi-illimited, sense, conceives it as a part of freedom of conscience and requires the State to accommodate the practices, beliefs and symbols of non-dominant religious groups as it does for the religious or secular practices, beliefs and symbols of the dominant group.<sup>80</sup>

***The Framework for Handling Harmonization Requests: The Citizen Route***

For the purposes of handling harmonization requests that arise through the encounter of different cultures, the Co-Chairs favour what they call a «citizen route». A citizen route relies on negotiation and the search for compromises that satisfy all parties. It is a case-by-case approach structured by a contextual, deliberative and reflexive procedural framework that fosters dialogue and self-criticism. A citizen route leads to solutions corresponding to what they call «concerted adjustment» (19). This method is said to allow for a smooth transition from abstract and general principles, such as the duty to reasonable accommodation, to a specific solution in an often unique situation (19, 40, 64, 167, 168, 172). It seeks to empower those who know best the conditions in the relevant context, while imposing at the same time a set of procedural constraints (171, 172, 173).

In the Co-Chairs' opinion, «a sound harmonization practices policy must reduce as much as possible the judicialization of interpersonal relations» and the citizen route is the «surest way to avoid one of the party's resorting to courts» (167, 173). This position is supported by various reasons: it is good for citizens to learn to manage their differences, the citizen route avoids congesting the courts and it fosters the values that underpin interculturalism. The Co-Chairs maintains that the citizen route proceeds from a «new vision» that is «respectful of diversity» and «based on a general ideal of intercultural harmonization» (160). This new orientation «essentially» promotes pluralism and enables individuals or groups to achieve «fulfillment according to their choices and traits» and to participate in the dynamic of intercultural exchanges, and full integration.

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<sup>80</sup> Open secularism is somewhat similar in principle to the views of Modood, supra note 53; Parekh, supra note 53; Kymlicka, supra note 50. See also, Geoffrey Brahm Levey and Tariq Modood (eds.), *Secularism, Religion and Multicultural Citizenship*, 2009, esp. ch. 7.

This being said, the citizen route is similar in principle to many dialogical theories and has much in common with multiculturalism.<sup>81</sup> Multicultural theories generally stresses the importance of institutionalised dialogue, negotiation, compromises, openness, mutual learning and mutual respect between different cultures and their norms and values under conditions of equality. They tend to conceive the alternative approaches of managing ethnocultural diversity, including the legal route, as fostering confrontation and domination. These alternatives are seen as rigid, as using non-negotiable abstract standards and as working out solutions that are embedded in, and structurally biased toward, one particular cultural view. They accordingly cannot do justice to all parties. According to multiculturalism, solutions to ethnocultural conflicts and disagreements cannot be universally valid for all situations. They are highly contextual and should be adjusted to the different kinds of groups involved. In all cases, they may have transformative effect both on the minority and on the majority or dominant practices and values. The citizen route shares these postulates.<sup>82</sup>

## Conclusion

In this paper, I did three things. First, I elaborated what can be seen as the main contribution of the Bouchard-Taylor report to the normative and conceptual debates over sociocultural integration. This contribution concerns four issues: cultural integration, collective identity, church-state relations and the best framework to handle cultural and religious harmonization requests. On each issue, the Co-Chairs take a stand that appears to be in the middle between two opposing alternatives. All together, their positions form an original conception of sociocultural integration, a conception that we may call “interculturalism”.

Secondly, I recalled the general socio-political context in which the report was written. For this purpose, I summarized the socio-political processes the Quebec society has followed with respect to the French-Canadians nationalist ambition, the Canadian policy of multiculturalism and the Quebec policy of interculturalism. In particular, I explained how these considerations have produced a negative impact on Quebec society’s reception of the legal duty to reasonable accommodation. This discussion showed why the Co-Chairs’ analysis is relevant to other democratic society.

Thirdly, I argued that the Co-Chairs’ interpretation of interculturalism constitutes a form of multiculturalism. Interculturalism, as interpreted, clearly seeks public recognition and political accommodation of group difference, be it cultural or religious. It clearly repudiates the idea that the Quebec State belongs to the dominant national groups and that it can legitimately promote nation-building policies that tend to assimilate or exclude members of non-dominant ethnocultural groups. The State must belong equally to all citizens and each citizen must have equal access to all institutions and equal right to act as full citizen in political life, without having to hide or deny their ethnocultural identity. For these purposes, the state must equally recognize and accommodate the history, language, and culture of all ethnocultural groups, dominant and non-dominant. Consequently, as defined in the report, interculturalism appears to be a rose by any other name.

This conclusion does not entail that this is a bad thing. Multiculturalism might be the best political arrangement possible for Quebec society as it exists today or, indeed, for any other society. However, the fact that interculturalism is presented as an alternative to multiculturalism, indeed as rejecting it, and as pursuing the path Quebec has followed in recent decades, the report has created a certain malaise. It has been perceived as proposing breaks and new directions. However, in my view, given

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<sup>81</sup> Among these theories, we find, for example, deliberative democracy.

<sup>82</sup> This is central in Parekh’s theory, supra note 53, esp. intro, and ch. 10. See also Tully, supra note 53, 49ff. It is an important aspect of Modood, supra note 53, 65-66, 79-80. See also Iris Marion Young, *Justice and the Politics of Difference*, 1990; *Inclusion and Democracy*, 2000; Charles Taylor, “Foreword. What is Secularism?” in Brahm Levey and Modood, supra note 80, xi.

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their basic normative postulate and commitment, namely, the moral equality of the persons, the Co-Chairs positions were bound to uphold, and be governed by, a set of political principles constituting a form of multiculturalism.

In the report, the basic egalitarian commitment is conceived as requiring the State, in order to act legitimately, to operate on the basis of an overlapping consensus. For reasons I intend to develop elsewhere, I do not find that this ground is sufficient to support all Co-Chairs' positions, notably the position on secularism. If the social crisis over the legal duty of reasonable accommodation for religious and cultural practices and beliefs has shown something, it is that there is no overlapping consensus over the most basic political values of the society. For example, there is no overlapping consensus over the meaning and the scope of freedom of religion, equal treatment, universality of laws, the rule of law, democracy, State neutrality, the separation of Church and state, and so on. To the extent to which there is a consensus, this consensus looks rather abstract and formal. Moreover, the idea that we may realistically hope for an overlapping consensus, or that it is possible in principle, in a pluralist and culturally diverse society is hard to believe, precisely because the citizens «come to adopt these values by often very different routes» (134) and that their understandings of the nature, scope and force of these values are likely to be affected by their competing and contested fundamental reasons and worldviews.

Nevertheless, in my view, the basic egalitarian commitment underlying the report may be conceived as requiring the State, in order to act legitimately, to operate on the basis of the principle of proportionality. Accordingly, it requires the State to optimize, in accordance with the principle of proportionality, the conflicting claims, interests and views of each citizen or group of citizens, taking into account the context in which the conflicts arise and the subjective meaning the citizens give to the conflicts. For this purpose, all competing worldviews, conceptions of the good and conceptions of the political community have the same normative status and all conflicting claims, interests and views of citizens have the same weight in the abstract. The purpose of the deliberation process is to realize each conflicting claim, interest and view to the greatest extent possible, in context, given the basic commitment to equality. Accordingly, the process must comply with the principle of moral impartiality and seek a balance that respects the principle of proportionality: the realization of the claim of one citizen or of one group of citizens must not be disproportionate by comparison to the realization of a citizen's conflicting claim. There are reasons to believe that this proportionality-based process of reasoning is more consistent with the basic commitment to the moral equality of persons in a pluralist and culturally diverse society than its alternative based upon the idea of an overlapping consensus. Moreover, there are reasons to think that the Co-Chairs have been fundamentally guided by such an approach, despite their reference to the idea of overlapping consensus. However, the demonstration of these assertions should be left for another occasion.

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