Lifting the Veil: Exposing The False Neutrality of Quebec's Bill 21

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I. Introduction

In modern liberal democracies, a central challenge is navigating the complex relationship between the state and its citizens' religious beliefs. For decades, Canada has sought to forge a path of substantive religious neutrality, a doctrine that requires the state to be impartial not by ignoring religion, but by accommodating the diverse religious practices of its population.[1] This approach, rooted in the foundational principles of the Canadian Charter of Rights and Freedoms, has long been a hallmark of Canadian pluralism.[2] The 1985 decision in *R*. v. *Big M Drug Mart Ltd*. reinforced the Supreme Court's commitment to religious equality, with Dickson C. J. writing, "The Charter safeguards religious minorities from the threat of 'the tyranny of the majority'."[3] However, Quebec's "*An Act respecting the laicity of the State*," marks a significant departure from this jurisprudence.[4] By prohibiting public servants from wearing religious symbols, the province is asserting a more restrictive, assimilationist vision of secularism, known as *laïcité*. While supporters argue that the bill is necessary to ensure the religious neutrality of public institutions, this essay argues that Bill 21 fundamentally misunderstands and misapplies the principle of state neutrality and unjustly restricts the freedoms guaranteed under Section 2(a) of the Charter. The state's legitimate interest in neutrality does not extend to demanding the public erasure of religious identity; rather, a just and truly neutral state must balance its secular principles with the imperative to protect and accommodate the religious expression of its citizens.

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[1] Laycock, Douglas. 1990. "Formal, Substantive, and Disaggregated Neutrality Toward Religion." DePaul University College of Law. https://via.library.depaul.edu/law-review/vol39/iss4/3/.

[2] *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c11 (hereafter "the Charter").

[3] [1985] 1 S.C.R. 295, at para. 96.

[4] SQ 2019, c 12 (hereafter "Bill 21").

II. *Laïcité* vs. Substantive Religious Neutrality

The debate surrounding Bill 21 lies in the clash between two competing ideals of state-religion relations. Quebec's *laïcité* is a concept with deep historical roots in post-clerical France, where secularism was a means to liberate the state from the entrenched power of the Catholic Church.[5] This model conceives of secularism as the separation of church and state, where the public sphere is purged of religious symbols to ensure state institutions are seen as impartial. As Kristopher Kinsinger argues, this is a restrictive understanding of neutrality that "confines religion to the private sphere" and promotes a "secular conceit" that paradoxically elevates a particular vision of secularism to a quasi-religious status.[6] This approach misinterprets state neutrality as the absence of religion, a perspective that inevitably leads to the suppression of religious expression rather than its accommodation.

In contrast, Canada, guided by a series of landmark Supreme Court decisions, has gravitated toward a model of substantive religious neutrality. This framework, as explored by Bruce Ryder, holds that the state must remain neutral *between* and *about* religion. State neutrality does not require removing all religious signs from the public sphere, but rather ensuring that its laws and policies do not favour or disadvantage any particular religious group.[7] This necessitates a proactive duty of accommodation, where the state must take reasonable steps to allow individuals to practice their faith unless doing so would cause undue hardship. This is a crucial distinction. The Canadian model recognizes that a state with a diverse population cannot achieve true impartiality by ignoring religious differences. Instead, it must create a public space where all

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[5] Colosimo, Anastasia. 2017. "Laïcité: Why French Secularism is So Hard to Grasp." Institut Montaigne. https://www.institutmontaigne.org/en/expressions/laicite-why-french-secularism-so-hard-grasp.

[6] Kristopher E. G. Kinsinger, "Quebec's Bill 21 and the secular conceit of religious neutrality," *International Journal for Religious Freedom* 13, no. 1/2 (2020). Available at: https://ssrn.com/abstract=4048444.

[7] LeBel J. n.d. "State Neutrality and Freedom of Conscience and Religion." Osgoode Digital Commons. Accessed September 24, 2025. https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1076&context=sclr.

citizens, including those with religious convictions, can participate fully without having to hide who they are.[8]

III. Bill 21's Violation of Fundamental Freedoms

Bill 21 is inconsistent with the Canadian tradition of "an inclusive conception of religious neutrality that makes room for the participation of visible religious minorities in public life."[9] The legislation prohibits a range of religious symbols, from hijabs and turbans to kippahs and crucifixes, for a specific class of public servants. While the law claims to be a universal measure to promote equality, its impact is disproportionately felt by religious minorities.[10] For many Muslims, Sikhs, and Jews, the wearing of religious symbols is not a mere statement of belief but a required act of faith. By forcing these individuals to choose between their employment and their religious identity, the law creates a coercive and discriminatory environment. As Richard Moon asserts, "The Charter right to freedom of religion is breached any time the state restricts a religious practice in a non-trivial way."[11] The state is essentially dictating that to be a public servant, one must publicly renounce or conceal a core part of their identity. This constitutes a clear violation of the freedom of conscience and religion guaranteed by Section 2(a) of the Charter.

In addition, the state's neutrality with respect to public spaces, like parks and streets, means that it does not organize or fund religious ceremonies in such places. It does not mean it can forbid individuals from gathering to pray in these spaces to keep them secular. Rather, laws

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[8] Ryder, Bruce. 2006. "The Canadian Conception of Equal Religious Citizenship." SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1720745.

[9] Kinsinger, "Quebec's Bill 21 and the secular conceit of religious neutrality," at p. 82.

[10] Kinsinger, Kristopher. 2019. "Quebec's Bill 21 misapplies religious neutrality principle." Policy Options. https://policyoptions.irpp.org/fr/2019/05/quebecs-bill-21-misapplies-religious-neutrality-principle/.

[11] Moon, Richard. 2023. "Freedom of Religion under the Charter of Rights: The Limits of State Neutrality." CanLII. https://www.canlii.org/en/commentary/doc/2012CanLIIDocs758.

"must be structured in such a way as to avoid placing unnecessary obstacles in the way of the exercise of religious freedoms."[12] To ban prayer in public spaces, as was suggested by Quebec's premier, would be a gross violation of the fundamental freedoms of conscience and religion.

IV. The State's Right to Neutrality and Its Limits

The central justification for Bill 21 is the state's right to declare that its public spaces and institutions are secular and neutral. This is a legitimate and important goal. The state must be neutral in its dealings with its citizens, ensuring that public services are delivered without bias or favouritism. However, this ideal of neutrality should be interpreted as an obligation of the state *towards* its citizens, not as an obligation of citizens *towards* the state. Indeed, as Justice Gascon noted in the 2015 Supreme Court decision in *Mouvement laïque québécois* v. *Saguenay (City)*, "Neutrality is required of institutions and the state, not individuals."[13] A judge wearing a kippah, a teacher wearing a hijab, or a police officer wearing a turban does not, by the mere presence of their religious symbol, compromise their ability to perform their duties impartially. True impartiality is found in a public servant's conduct, their commitment to justice, and their respect for the rule of law, not in their attire. A teacher wearing a hijab is not an endorsement of Islam by the state; it is a visible manifestation of a pluralistic society where a public servant can be both a person of faith and a loyal servant of the state.

V. Balancing Competing Principles and Practical Policy Proposals

The key to resolving the tension between religious freedom and state neutrality requires careful consideration of these competing principles. The Canadian approach balances the individual's right to religious freedom against the state's interest in limiting that right, with the

[12] *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village),* [2004] S.C.J. No. 45, [2004] 2 S.C.R. 650, at para. 71.

[13] 2015 S.C.C. 16, at para. 74.

burden on the state to justify any infringement. Bill 21, however, uses the notwithstanding clause to circumvent this balancing act, effectively declaring that the state's interest in *laïcité* is absolute and trumps all other considerations.[14] This approach is not a balance but an outright rejection of the principles of accommodation and pluralism.

To achieve a true balance, policy must move away from prohibition and toward accommodation. Scholars like Moon, Ryder, and Kinsinger advocate a more practical and constitutionally sound approach, including the following policy proposals:

1. Shift from *Laïcité* to Substantive Religious Neutrality: Quebec should abandon its restrictive *laïcité* model and align its policies with the broader Canadian constitutional understanding of substantive religious neutrality. This would require the state to engage in a duty to accommodate rather than prohibit.[15]
2. Focus on Conduct, Not Symbols: Instead of banning religious symbols, public employers should focus on regulating the conduct of their employees. Policies should be in place to ensure that all public servants act impartially and do not use their positions to coerce or discriminate. These policies would be more effective and less discriminatory than a blanket ban on symbols.
3. Encourage Diversity and Inclusion: Public institutions should actively work to promote a "non-assimilationist model of citizenship," with a workforce that reflects the religious and cultural diversity of the population.[16] This would signal to religious minorities that they are valued and welcome in the public sphere, strengthening social cohesion and trust in government institutions.

[14] Kinsinger, "Quebec's Bill 21 and the secular conceit of religious neutrality," at pgs. 85-86.
[15] Moon, Richard. 2023. "Freedom of Religion in Canada – The Principled and the Pragmatic." Windsor Yearbook of Access to Justice. https://wyaj.uwindsor.ca/index.php/wyaj/article/view/9020/5816.
[16] Ryder, "The Canadian Conception of Equal Religious Citizenship", at p. 18.

VI. Conclusion

Quebec's Bill 21 represents a profound misstep in the delicate dance between state neutrality and individual freedoms. By creating a barrier to entry for public employees who wear religious symbols, the legislation violates the fundamental freedoms of conscience, religion, and expression by imposing a discriminatory burden on religious minorities. While the state has a legitimate interest in ensuring its institutions are neutral and impartial, this cannot be achieved by forcing citizens to conform to a secular ideal that discourages civic participation from marginalized communities - a powerful message of exclusion. A truly neutral and just state is one that accommodates, rather than prohibits, diverse religious expression. The balance between secular principles and religious freedom is not found in *laïcité*, but in a commitment to a pluralistic and inclusive model of substantive religious neutrality that ensures all citizens can participate in public life without having to sacrifice their beliefs. The future of Canadian secularism must be one that embraces, not erases, the rich tapestry of faiths that define our nation.

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