

Reasonable Accommodation

Managing Religious Diversity

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Reasonable Accommodation

Introduction

Exploring Reasonable Accommodation

LORI G. BEAMAN

In 2007, the phrase “reasonable accommodation” began to seep into public discourse in Canada whenever disputes about the practices of religious minorities were at issue. The phrase was intended to capture the guiding principle by which religious diversity could reasonably be managed or governed.¹ For some, there was too much “accommodation” occurring, for others not enough, and for yet others, accommodation was not the appropriate language for assessing claims based on religious identity. What prompted this sudden public interest in and discussion about the notion of reasonable accommodation? What were the geographic contours of its reach? Where had the idea of reasonable accommodation as a governing principle originated?

Does the language of reasonable accommodation assume a certain privilege, or reserve for certain groups privileges of “giving” and, by implication, position the receiver as “getting,” thus creating an inherent inequality? This volume considers the tensions between equality rights and the language of accommodation in light of the power relations implicit in giving and receiving. Conversations about diversity, identity, and equality are especially likely to emerge in the context of religion, presenting as claims about this or that group’s right to engage in particular religious practices. Religion intertwines with other identity markers or points of references in claims-making processes, but very often it is the

“religious” part of a group or individual that is the standard bearer for an essentialized identity. In Western culture, diversity has generated a number of patterns of response, including the separation of church and state; the recognition of a state church with provision for “Other” religions; and the de facto establishment of a religious hegemony with some protection for religious minorities. These patterns are woven through the social and cultural fabric of day-to-day life, and each impacts on the ways in which religious believers and groups construct their identities. Moreover, the language of accommodation occurs not only in the legal context but in public discourse as well. This volume develops this discussion by using the Canadian context as a point of departure but also includes a consideration of these issues from an international perspective.

In Canada, reasonable accommodation as a legal approach or principle was originally isolated in employment law as a mechanism of response by employers to employees’ requests for flexibility in relation to their religious practices. So, for example, if an employee’s holy day or day of rest required time off from work, the employer was enjoined, through a series of Supreme Court of Canada decisions,² to reasonably accommodate the employee as long as that accommodation did not cause the employer undue hardship.³ This approach remained within the confines of law, and within the specific confines of employment law, until it broke free in 2006 in the *Multani* decision.⁴

In *Multani*, the Supreme Court shifted attention to reasonable accommodation in its examination of whether a Sikh schoolboy should be allowed to wear his kirpan, or ceremonial dagger, to school:

A total prohibition against wearing a kirpan to school undermines the value of this religious symbol and sends students the message that some religious practices do not merit the same protection as others. *Accommodating* G and allowing him to wear his kirpan under certain conditions demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities. (7, emphasis added)

Although the court described the use of accommodation language as “analogous” to the duty to accommodate, the tone had been set, and the

public reaction heated up when the court declared that indeed the youth in question could wear his kirpan to school. Reaction was swift, much of it negative, and much of it focused on the idea that there was simply “too much” accommodation happening. The discussion was most intense in Quebec, but this was not and is not solely a Quebec issue.

It was, however, the Quebec government that initiated a public discussion and generated a public response, and thus the legal framework of reasonable accommodation was transposed into a public framework for discussion. In February 2007, Quebec premier Jean Charest announced the establishment of the Consultation Commission on Accommodation Practices Related to Cultural Differences, as a response to public discontent across Quebec with legal and public “obligations” regarding the reasonable accommodation of religious minorities. The commission (commonly known as the Bouchard-Taylor Commission, for the two co-chairs, Gérard Bouchard and Charles Taylor) was mandated to “take stock of accommodation practices in Quebec; analyze the attendant issues bearing in mind the experience of other societies; conduct an extensive consultation on this topic; and formulate recommendations to the government to ensure that accommodation practices conform to the values of Quebec as a pluralist, democratic, egalitarian society” (Bouchard and Taylor 2008).⁵

In part, the commission, through no fault or doing of its own, can be attributed credit (or blame) for the emergence of the language of reasonable accommodation in the public sphere. The commission process, which involved public hearings and submissions, attracted much attention, albeit more within Quebec than outside it. But the common language to describe the management or governance of religious diversity became that of reasonable accommodation, although there was almost no consideration in public discourse of what exactly that meant. That the issue was really religious diversity is evidenced by the “cases” considered by the commission in its report – they dealt with religious minorities, frequently immigrant Muslims, but also, especially in Montreal, Jews. To say that reasonable accommodation discussions were focused almost exclusively on religion is not, therefore, an overstatement.

Within the commission’s report a distinction was made between reasonable accommodation and what the commission called “concerted

adjustment.” The former was described as being a formal, legal response to diversity and was downplayed by the commission as a desirable option in the resolution of disputes about diversity. Concerted adjustment was valorized as the preferable option, involving citizens in democratic engagement working out their own solutions to disputes. The implications of this are beyond the scope of this discussion, but it is important to note that despite the commission’s distinction, the language of reasonable accommodation took on a life of its own and has become the framework within which much public discussion about religious diversity takes place.

Core to the determination of reasonable accommodation of religious practices is the very definition of religion, which involves a multilevel consideration of religion as a social institution, an organization, or an individual perspective. Designating or recognizing something as a religion attaches a certain status or privilege (Riis, this volume), which in turn invokes normative debates or, more subtly, positions. Of key importance here is the notion of religious hegemony. This too, though, is complex, in that what may seem at face value to be homogeneity, providing the core for hegemony, is often far less unified than it may appear. So, for example, though we might say that Canada is a nation that has been characterized by Christianity, what exactly does that mean (Beyer, this volume)? The simple binary of majority/minority can work as a beginning place, and indeed the Supreme Court of Canada has recognized that Canada is a Christian majority nation. However, what if the majority is only nominally religiously committed? Moreover, how do we measure the Christian-ness of social institutions and ideologies? How is it possible to disentangle liberalism and its emphasis on individualism and free choice and protestant Christianity and its basis in individual choice and relationship to God? These are the subtle and sometimes not so subtle strands that run through the matrix of reasonable accommodation.

So too does the framework of multiculturalism influence the determination of what is reasonable and what is to be accommodated, as well as the extent to which diversity is highlighted as a part of the conceptual framework. The positive presence of multiculturalism as an ideology alongside advocates of secularism or state neutrality often result in contested definitions of diversity, never mind responses to it (Beckford, this

volume). As Natasha Bakht in her chapter so eloquently puts it, “A normative project of multiculturalism wherein people from many different walks of life with diverse and deep commitments try to live peacefully together will always entail negotiation and renegotiation” (71). Reasonable accommodation has emerged as one of the ways in which negotiation is framed within the Canadian multicultural framework.

The content of the framework and the processes used to determine accommodation are highly contested on a number of fronts but perhaps most importantly in relation to identity. This nebulous and controversial concept has played a key role in discussions about rights and freedoms for over two decades, with polar extremes being the disparaging of so-called identity politics and the emphasis on identity as an essential beginning place for rights claims, and, for our purposes, determinations of the appropriateness of reasonable accommodation. Two types of criticism of identity claims impact on the ways in which religious diversity is assessed: “identity quietists” and “identity skeptics.” In the words of Avigail Eisenberg (this volume), the latter raise deep reservations about the form that politics takes when it incorporates recognition of identity claims and groups. The former believe that multicultural principles “can be applied without recourse to identity assessment” (51). Each type of critic plays an important role in heightening public anxiety about multicultural accommodation (and specifically religious accommodation), and there are very real consequences to their approaches, as was evidenced in the sharia law debates and resolution in Ontario (see Eisenberg, this volume).

In diverse societies, one of the ways in which religious groups seek to protect their identities is to advance claims for or based on group rights. This can, some argue, result in pillars of identity (see Riis, this volume), which have been criticized on a number of fronts. So, from an accommodation perspective, is it individuals or groups that should be accommodated? What the group or individual discussion often seems to miss is that although claims may be advanced by individuals, they inevitably invoke an attachment to a group. Thus, for example, the claim by the Sikh schoolboy in *Multani* cannot be understood apart from his Sikh reference group. Most claims, whether in formal legal processes, other public discussions and negotiations, or day-to-day interactions, invoke

this recollection of group identity. Even Wiccans, who are notoriously individualistic in their religious practices, rely to some extent on group identity when requesting accommodation.

Embedded in discussions of accommodation are notions of the slippery slope – if “we” allow this, then what next? Linked with this is a fear of being out of control, of the religious Other, and intertwined in this, fear of the racial Other. Moreover, as Beyer points out, accommodation is not strictly an issue of native “we” and the immigrant “they,” as there is plenty of evidence that the contested issues often involve long-established religious minorities, such as Jehovah’s Witnesses, fundamentalist Christians, and Jews. Further, even the immigrant “they” construct themselves as part of the “we,” adding more analytical blurriness to the determination of who, exactly, is the we doing the accommodating. Issues of power are at the heart of debates about how much accommodation is too much, and there is evidence that these issues have some traction across countries. However, the exact parameters of the framework and the discussion are society specific and take sometimes surprising turns. So, for example, the very different social and cultural contexts of Britain, which includes religion in official statistics, and France, where official statistics are not kept about religion, nonetheless result in disadvantages for religious minorities, but in different ways (see Beckford, this volume). Similarly, the discourse of reasonable accommodation is muted in Australia, but debates about multiculturalism and the degree of space for religious minorities is decidedly present in public discourse and the realm of law and public policy (see Bouma, this volume).

Perhaps the most controversial of the issues to emerge in the context of contests over accommodation are those involving identity categories of sexual orientation and religion. There is a troubling leap to a binary that establishes one as defined by either religion or sexual orientation in one’s identity, and it is perhaps this contest that illuminates most forcibly the problems with identity identification as a beginning place in rights claims. The reality is that these two categories are not mutually exclusive – sexual orientation and religion exist as identity categories simultaneously for many people. Yet, in key cases like *Chamberlain*, gays and lesbians are portrayed as having no religion, whereas heterosexuals are

religious (Shipley, this volume).⁶ This clash of identities is echoed in public discussions and discourse that emphasize the bifurcated rather than often merging identity categories.

As religious diversity has increasingly become seen to be both problematic and something to be managed in a number of Western democracies, the discourse of equality has declined and frameworks like accommodation and interculturalism have emerged and gained strength. These developments warrant further attention, and this volume attempts to begin the conversation about these broader international trends of which Canada is a part.

The chapters in this volume grapple with the many issues, some of which are raised above, that emerge from the use of reasonable accommodation in both law and public discourse. In Chapter 1, Peter Beyer asks whether the focus on reasonable accommodation is really the appropriate place for our energies, particularly as the boundaries between majority and minority becomes blurred, and the idea that a native majority is tolerating or accommodating a newcomer minority is challenged by the many examples of lack of tolerance for native minorities. Beyer challenges the idea that there is a clear majority and asks whether, assuming a majority can be identified, it is Christian in any meaningful sense. Moreover, religious diversity is generally perceived as something that is a good thing. If we don't know what is being accommodated and who the parties are to this engagement, then the whole discourse of reasonable accommodation becomes moot.

In Chapter 2, Solange Lefebvre describes the interesting problem that emerges when an emphasis on individualism combines with a commitment to religious freedom. The paradox that results is that sometimes individuals choose to commit to orthodox religions. Thus, accommodation, if it is to be used, must incorporate those who take what may be seen as illiberal positions. The subjective turn in religious commitment, which arguably creates more possibility for choice, and freedom to interpret one's beliefs as one wishes also leaves open the possibility of choosing orthodoxy. Lefebvre's chapter points to the tendency to conceptualize those who make such choices as not really choosing, or as having limited options in their choices. As Lefebvre points out, there is a curious reliance

on orthodoxy as a test of sincerity even as orthodoxy as practice may be treated with suspicion.

Avigail Eisenberg highlights the issue of identity in Chapter 3. Reasonable accommodation calls for some articulation of group identity, even in the face of human rights regimes that are predicated on individual claims. Eisenberg argues that, more than articulation, religious freedom and the determination of what might constitute a reasonable accommodation call for an assessment of identities. She positions herself against what she calls “identity quietists” and “identity skeptics,” arguing that, by remaining silent on the issue of identity assessment, identity quietists lend weight to the arguments of identity skeptics, who deny the importance or relevance of identity to political and legal processes. The latter position seems to rely on a notion of social cohesion that masks difference and thus refutes the value of identity claims. Eisenberg argues that identity claims must be assessed in detail in fair, open, and public discussions. Her position is difficult because it requires a concerted effort to lay open the content of religious beliefs and practices, asking about their importance to religious identity. This is a process that has been officially avoided in political and legal processes (even as it is being engaged in). Ultimately, in assessing identity claims and their reasonableness, Eisenberg advocates a new and challenging process, but one that may be ultimately necessary if religious minorities are to be treated fairly.

The necessity for sustained and serious dialogue is well illustrated by Natasha Bakht in her chapter documenting reactions to the niqab. What is it, asks Bakht, that we find so threatening about a Muslim woman wearing the niqab? Bakht examines ten (negative) responses to the niqab, including that it poses problems of identification, that it is “impolite,” and, predictably, that it is a security concern. In the context of accommodation, these responses are often invoked as reasons to limit accommodation. Bakht’s chapter thus illustrates the fickleness of the accommodation framework. Bakht points to the paradox of the Muslim woman as both victim and danger to the public. In her conclusion, Bakht suggests that we might do well to turn the gaze back on ourselves, examining how it is that the creation of the “stranger stranger” allows us to construct a flattering image of ourselves, rather than doing the work of asking harder questions about who we are as a society.

In his close examination of the policies of prisons in France and England, James Beckford offers compelling insights into the ways in which the public and legal discourses of these two countries translate into policy about religious diversity and practice in prisons. Beckford reminds us that it is not diversity that is problematic but the ways in which it is framed by a wide range of actors in the public sphere. The challenge is to find ways to both frame and respond to diversity that highlight “justice, equality, and respect for human rights.” The fluidity of the concept of religious diversity and the wide range of responses to it means that it must be examined in the details of the ways in which it is refracted in a society’s institutions. Beckford chooses prisons as a prism through which to shine his analytical light, and what he finds is revealing. Although public responses to religious diversity in the two countries is growing increasingly similar, Beckford maintains that institutionally they remain very distinct, with the consequence that prisoners in France, with *laïcité* as its official approach to religion, do not have any officially recognized religious identities and thus have no corresponding accommodations. Multiculturalism also plays an important role in England, which approaches prisoner religion much differently. Beckford’s chapter underscores the necessity of considering the social context of religious diversity and responses to it.

Although the language of accommodation is much more muted in Australia, Gary Bouma’s chapter engages in comparative considerations of the responses to religious diversity. As his work illustrates, there is no uniform positive or negative response; rather, the terrain is uneven and complex, with varying responses that are often difficult to predict or to analyze. Despite its reduced religiosity by way of standard measure, Australia, like Canada and the United Kingdom, retains a residual Christian hegemony that informs, both positively and negatively, the response to religious diversity more generally. As is the case in Canada, multiculturalism and its official policies and discourses has offered a context within which religious diversity is managed. In Bouma’s view, this has created possibilities for genuine respect for religious minorities to flourish. But, as he points out, there are still tensions that emerge in the Australian context that resemble those present in other liberal democracies which, at least officially, embrace religious diversity. Bouma

points to the danger of the rhetoric of “shared values,” which begins, he argues, from a point of disrespect. Social inclusion requires a respect for difference that must go beyond accommodation.

In Chapter 7, Heather Shipley examines the ways in which religiously based normative standards about sexuality are implicated in court decisions. Once again, identity, specifically what constitutes Canadian-ness, plays a key role in the sorting through of claims related to sexuality and religion. In this chapter it is sexuality that is, argues Shipley, accommodated in ways that maintain a subtle sexual normativity that maintains heteronormativity. In cases that seem to pit sexuality against religion, the complexity of identity seems to be stripped away to a reductionist portrayal of “the religious” and the sexually different. The possibility of having both a sexual identity and a religious identity is only conceptualized, it seems, for the heterosexual believer. The establishment of an “us” and a “them” is a core component of the notion of accommodation and acts to subvert equality. Difference in this context is deployed to establish the basis from which to assess harm and to bound and protect normalcy.

Ole Riis picks up the theme of religious identity and its construction at the individual, collective, and societal levels, presenting a complex framework within which religious diversity in advanced modern society can be understood. Situating religion in the myriad tensions that exist between the free individual and the bureaucratic requirements for efficiency, Riis argues that religion must be considered as a social institution, an individual perspective, and an organization. At the heart of Riis’s argument is a call to acknowledge the stratification of advanced modern life and to recognize that religion for elites is a different phenomenon from what it is for those on the margins. His implicit critique is that religion has often been theorized apart from those on the margins, a fact that represents a serious flaw in social scientific understandings of religion and religious diversity. Riis picks up the tension identified in the earlier chapter by Lefebvre, which is that choice is regarded positively as long as it is not a choice to submit to religious authority. This is especially so when the guiding ideal is one of free individuals rather than one of a constellation of cultures. Ultimately, Riis calls for “serious and open

dialogues between religions and nonreligious world views regarding the conditions for human coexistence” (206).

The chapters of this book illuminate a wide range of issues related to religious diversity and the ways in which it is managed or governed in Canada and more broadly. Many of the comparative possibilities remain unexplored, but some of them are hinted at in this volume. We will return to some of the broader issues raised by the discussions that follow in the concluding chapter, which considers the limitations of reasonable accommodation as a guiding discourse and offers a point of beginning for a new discourse of religious diversity.

Notes

- 1 The use of the words “managed” or “governed” are also problematic. Among other things, the implication is that religious diversity requires management or governing in the first place.
- 2 *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536; *Bhinder v. CN*, [1985] 2 S.C.R. 561; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489.
- 3 In their article “The Duty to Accommodate: Who will Benefit?” Day and Brodsky (1996, 435) raise some serious concerns about the idea of accommodation in relation to the religion/employment context, arguing that “the developing reasonable accommodation framework lacks the capacity to effectively address inequality and foster truly inclusive institutions. It is flawed by its implicit acceptance that social norms should be determined by more powerful groups in the society, with manageable concessions being made to those who are ‘different.’ As long as this is the framework for accommodation, less powerful groups cannot expect much from it, since accommodation discourse will serve primarily as a means of limiting how much difference ‘the powerful and the majority’ must absorb.” Day and Brodsky’s piece has been a key catalyst for my examination of the concept of reasonable accommodation as a framework for the adjudication of religious freedom claims. Despite Day and Brodsky’s able criticism, the use of reasonable accommodation by the courts, particularly the Supreme Court, has escalated.
- 4 *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6.
- 5 For discussions of the circumstances of the formation of the commission see Lefebvre (2008) and Côté (2008).
- 6 *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710, 2002 SCC 86.

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Religion and Immigration in a Changing Canada

The Reasonable Accommodation of “Reasonable Accommodation”?

PETER BEYER

“Reasonable Accommodation” and Canadian History

In a very strong sense, the question of “reasonable accommodation” has been a constant of Canadian history since the first settlement of Europeans in the seventeenth century. These early arrivals, and specifically the French, came with the question in mind, and the answer that prevailed among their elites was that religious differences should not be tolerated or accommodated, whether among the indigenous people whom they encountered – and on whom they often depended for everything from trade and survival to exploration and military support – or among other Europeans who could be convinced to trade and settle in their new colony. The former were to be converted to Roman Catholic Christianity, an aim that later French Canadian national mythology incorporated as an important motif. The latter were restricted to Roman Catholics in tune with the royal power’s policy in the mother country, as elsewhere in the budding empire. When the British Crown took over the territory in the later eighteenth century, the new colonial masters were immediately faced with the question as a critical political issue. In light of the unrest in its colonies to the south, ferment that would in relatively short order lead to American independence, the British felt compelled to tolerate the Roman Catholicism of the new French-speaking subjects in the hope that this faith and its priests would prevent

their infection with the democratic and republican disease. They adopted this strategy at a time when the British were officially as intolerant of Roman Catholicism in their realm as the French had been of non-Catholics in theirs. It would be another fifty years before policy changed in Britain to remove most such restrictions in the motherland. One could, therefore, say that the Quebec Act of 1774, which promulgated this tolerance, was the first official act of “reasonable accommodation” of religious diversity in Canadian history. Ever since the eighteenth century, the question has been a recurrent, important issue, with contestation and conflict about what should and should not be “tolerated” and “accommodated” manifesting itself through developments and events in the domains of politics, law, immigration policy, and schooling, not to mention the religious institutions themselves.

Majorities/Minorities and Natives/Newcomers:

Shifting and Ambiguous Categories

For the present analysis, the twin examples of French colonization and British conquest serve as a point of departure. Both the French and the British faced a combination of what they understood as religious differences between themselves and those who were living in the country on their arrival, as well as those who immigrated from other places after they had established their control. Both established policies to deal with these differences, but they did so quite explicitly with reference to the legitimated hegemony of the official religion of their respective European countries. They followed the logic that the 1648 Treaty of Westphalia rendered official among Europeans in the wake of the prolonged period of religious conflict set off by the sixteenth-century reformations. This dictated that each country would have an established official, or at least a dominant, religion, envisioning thereby the suppression or toleration of what were by contrast so-called religious minorities. Toleration here, where it existed at all, almost always included a grudging aspect that one put up with the “minorities” more or less for practical purposes; that the dominant and the majority, as officially defined, would grant toleration to the minorities, not that these latter “rightfully” belonged the way that the majority did. The British Canadian toleration of Roman

Catholics is in tune with this orientation, but, as noted, the subsequent developments were further complicated through the continuous arrival of immigrants, “newcomers” whose relation to those already established, the “natives,” had to be defined, including in terms of religion (cf. Trigger 1985, where the distinction is primarily applied to Aboriginal and European peoples).

In Canada, therefore, there have been two non-coterminous distinctions at play, between natives and newcomers and between religious majority and minorities. Explicitly or implicitly, these have played a key role, historically and today, in structuring the question of how to respond to religious diversity. It is to a large extent in terms of these distinctions that people in Canada have perceived whether there exists a “problem” with respect to religious diversity, to what extent, and what might be deemed “reasonable” in response. Logically, one would expect that the least problematic at any given time will be majority natives. The most problematic will tend to be minority newcomers, with the other two permutations, minority natives and majority newcomers, generally falling somewhere in between. There is, however, a further complicating factor, namely that these structuring categories have never remained stable over time. Newcomers, after a time, can and do come to be considered as natives; minorities – as were, in effect, if not in actual demographic reality, Roman Catholics at the time of the British conquest – can and do come to be considered as part of the majority. In light of these ambiguities, it is perhaps a little bit surprising that in today’s public, even scholarly, debates about reasonable accommodation, there operates the at least implicit assumption that the categorizations are relatively clear concerning who is doing the accommodating and who is receiving it. Thus, one could argue that in these debates the dominant assumption is that “reasonable accommodation” refers primarily to the question of how far the majority native or established population will tolerate the religious differences of newcomers or of the minorities; that the religious differences among the majority natives are stable, have somehow been dealt with, or are no longer at issue; that there exists some kind of official, say “Christian,” religious identity that acts as the presumptive standard for what may be deemed “reasonable” accommodation. The fact that the

religions of the newcomers *and* the minorities, not just the newcomer minorities, are at issue is evident from the flashpoint incidents that have informed the contemporary debate. Although the religion of newcomers is quite prominent, the accommodation of the religion of some of the natives is still very much at issue.¹

Altogether, the assumptions and character of these debates show that the official standard, the native-majority religion, to the extent that one can even identify such a thing, is, today at least, much more nebulous than was the case at the time of the French and British Crowns in bygone centuries. Above all, the boundaries between all four categories – native, newcomer, majority, and minority identities – are far from clear and actually quite fluid. The upshot of this situation, and the conclusion I want to defend in this analysis, is that the accommodation or management of religious differences, however understood, is not the only difficult issue in this matter and in fact often serves to hide in its interstices a more fundamental issue as to what will count as religion at all and, more importantly, what place such acknowledged religion is going to have in Canadian society. Reasonable accommodation thereby is on the surface a question of dealing with religious differences or diversity, but on close examination obfuscates more fundamental issues simply by the way the idea constructs the problem. What I want to suggest, therefore, is somewhat of a reversal of the question of reasonable accommodation to ask how and to what degree we will, we can, or we should in Canada even accommodate the framing of the debate in its current terms: What is a reasonable level of accommodation of those who wish to frame the matter of religion in terms of reasonable accommodation?

Going about such a reversal requires that I first attempt to undo some of the assumptions just adumbrated. These include:

- that the religious expression of “majority natives” is not at issue and can serve as a presumptive standard,
- that it is rather mostly the religious expression of “newcomers” like Muslims and Sikhs or “minorities” like Jews and Mormons that is at issue, and
- that the implicit, official, or hegemonic religious or even quasi-religious identity is in any sense clear or even clearly Christian.

The first of these is handled rather easily. Flashpoint issues in the current debate have just as often, if not more often, concerned the religious expression of people who were born in Canada, whose ancestors have even lived here for generations, and who are not members of so-called minorities. Beside the Mormons who want to practise polygyny and Orthodox Jews who don't want to see the activities of the health club next door through their synagogue windows – both themselves numeric if not normative minorities – there are Jehovah's Witnesses who want to refuse blood transfusions; conservative Christian parents who want to inflict corporal punishment on their children; Roman Catholics and conservative Christians who want abortion outlawed and marriage restricted to heterosexual, monogamous couples; and combinations of Christians and others who want their religious schools publicly funded.

As concerns the second assumption, some Muslim and Sikh religious manifestations have certainly been the subject of controversy. Khalsa Sikh youth wish to be allowed to wear their kirpans to public schools; Muslim girls and women want to wear the hijab on the soccer field; Muslims want to have prayer space provided for them in public institutions like schools and in workplaces; Muslims, along with Roman Catholics and Orthodox Jews, wish their religiously based arbitration agreements to be recognized by the courts; Sikhs want to wear turbans as part of their RCMP uniforms. Nonetheless, the vast majority of Muslims and Sikhs, as well as the adherents of other religions and forms of predominantly immigrant religious expression, such as Hindus, Jains, Buddhists, Zoroastrians, and Daoists, have no difficulty or almost never encounter difficulty in practising their religions in the way and to the extent that they wish. In other words, the "newcomers" do not engender controversy more often than the "natives," and therefore one has to ask what exactly requires "accommodation."

The third assumption is a bit more difficult, but not overly. From certain perspectives, it does seem that various "Christian" assumptions implied in the debate act as the norm by which all religious expressions are judged and define who or what is doing the accommodating. The debate, for instance, usually assumes monogamy to be the norm, still favours Sundays as the default day off, God is still in the national anthem

and constitution, the calendar is Christian (although the days of the week are, by that token, clearly “pagan” in both official languages), major holidays like Easter and Christmas are Christian, and religion as such is usually assumed to be and only recognized if it is organized, with a definable set of rules and clear representatives. The large majority of the overall population is also at least culturally “Christian” or of Christian family background. Nonetheless, it is entirely possible to argue that these features have become so watered down or voided of actual religious content, so isolated with respect to how Christian religion has actually operated both in the past and today, that probably the best one could say is that the implicit, official, or hegemonic position has Christian resonances and remnants that are evidence of the centrality of Christian religion in Canada’s past, not in its present. Christian hegemony is a matter of history and heritage, not of practical everyday social consequences. The presence of quite a number of Christian examples among the flashpoint issues also points in this direction, as does the fact that the country has been busily removing Christian features from its various institutions and collective standards, ranging from crucifixes, prayers, and Christmas concerts in schools to the progressive normalization of abortion, “children out of wedlock,” and homosexuality.

Moreover, moving away from the claim that the official standard is implicitly Christian and considering other possibilities does not yield a better result. Notably, the option that this standard is some version of secularism or its French variant, *laïcité*, that it is a kind of anti-religiousness, introduces the same difficulties, only in reverse. On the one hand, there does seem to be the assumption that religion, whatever it is and whatever its form of expression, should be strictly private, invisible from public view and confined to the interior of the home and religious establishments like churches and mosques. Politicians in this country take a serious risk if they let their private faith even show in their public personas, let alone speak in religious terms on the hustings, in media scrums, or in parliamentary debates. And to this one could add the just-mentioned moving away from traditional religious moral standards, some of which most of the so-called world religions actually share. On the other hand, debate participants who openly advocate such a secularism as the presumptive standard are relatively few, do not have a

high profile, and are at best one voice among many. There is Quebec, but this is not France. Those same politicians who have to keep their religious orientations private also cannot easily come out and attack religion in Christopher Hitchens and Sam Harris style, or limit its recognition in Stasi Commission style (Harris 2004; Hitchens 2007; Willaime 2005). The Bouchard-Taylor Commission is not only a pale reflection in this regard; it came to different conclusions (Bouchard and Taylor 2008; Côté 2008). Generally, religion as such, whatever people mean by this in Canada, is generally looked on favourably, as good or at least as something that for many people is good. In addition, law and government tend to support religion and laud religious pluralism – not a few of the decisions made by courts in flashpoint cases find in favour of religion: Sikh youth are allowed to wear kirpans and RCMP officers, turbans; eruvim are permitted in Montreal; Muslim girls outside Quebec can and do wear their headscarves on the soccer pitch; faith-based schools are publicly funded in many parts of the country; and even religiously based arbitration in Ontario was not a problem until recently.

If we can accept that the official religious position is neither really Christian nor really secularist, we are left with the question of what that standard then is. The idea of reasonable accommodation makes the answer to this question important: for it to have any real meaning, we need to know who or what is accommodating, who or what is doing the accommodation, and by what standards we might possibly judge reasonableness. That was rather clear in colonial times; it is not so now. Either that, or we arrive at my opening question: How much can we even accommodate the framing of a debate about religion and diversity of religious expression in terms of reasonable accommodation if the idea itself cannot be reasonably clarified in terms of its meaning and therefore practical implications. How accommodating can we in that case reasonably be of reasonable accommodation given that seeing a problem in this way itself creates most of the problem?

A Representative Example: Second-Generation Muslims, Hindus, and Buddhists

To move my argument forward at this point, I want to shift strategy a bit, specifically from the more general to the more particular. The

ambiguities to which I have been pointing, the lack of clear validity to some of the underlying assumptions that seem to operate in the current Canadian debate, are in addition and perhaps more clearly illustrated by an examination of the religious characteristics, attitudes, and orientations of a group of Canadians that crosses a couple of the key boundaries that inform the discussion on reasonable accommodation. These are members of the second generation of immigrant families, people who were born and/or raised in Canada, but in immigrant families of religious identities not of the dominant majority. They are not Christian and yet they are natives, but from newcomer families. They are not necessarily secularist either. They are native-newcomers who identify with, practise, or at least have a background in religions that are not the majority religion and not even one of the well-established and long-familiar religions in Canada. From one angle, they may seem to be those who seek accommodation; from another, they are from among those who would seem to be doing the accommodating. If we ask the question of reasonable accommodation with this subgroup as our concrete case study, what does that show us about the idea of reasonable accommodation?

The material for this example I take from the results of a research project a group of us carried out between 2004 and 2008 involving second- and one-and-a-half-generation young adults from immigrant families that were of Muslim, Hindu, or Buddhist background.² The data consist of about two hundred interviews with women and men ranging in age from eighteen to twenty-seven, most of them university students in Montreal, Ottawa, or Toronto. As a group, these participants are perhaps not representative of their broader populations, but given the very high percentage of their generation that has postsecondary education – from 80 to 95 percent – they are exemplary of at least the majority of the corresponding populations in Canada. They include quite a number of highly religiously practising people but also a sizable number who declared themselves anything from nonpractising to atheist, with representation of all shades in between. In looking at what they told us about their religion, religion in general, and – most importantly in the present context – religion in Canada, I want to show the degree to which the attitudes, orientations, and characteristics that they displayed illustrate

how the framing of the question of religion and religious diversity in terms of reasonable accommodation is problematic because its core assumptions are only selectively appropriate.

As one might expect from a group of people who were born and/or grew up in Canada but are of newcomer families, the participants in this project were very aware of their status as belonging to national religious and cultural minorities – although this feeling was very much attenuated in Toronto, where many understood that culturally everyone, including themselves if they were part of local religious minorities, belonged to minorities. As one young woman from a Southeast Asian Buddhist family put it: “Sometimes I find that in Toronto and areas like that ... people who are immigrants are not the minority. It’s actually the Caucasians who are the minority (BF20).”³ In addition, the “immigrant” status of their families was both important to them and an uncontested aspect of their lives. To that extent, they saw themselves as newcomers. Balancing this, however, was a very widespread – although not unanimous – insistence that they were also Canadian in the sense of belonging here and feeling at home here; in short, also being *from here*. They declared themselves to be native. As the same woman put this combination: “Part of my identity is like a mixture ... I was raised in Canada, so I’m Canadian as well. And like there’s a term, it’s called a banana, which is like a Chinese person on the outside, but a Canadian, a white person on the inside.” Correspondingly, although almost all of them felt that Canada was not without its problems – problems such as injustice, racism, failure to live up to some of its stated ideals – very few would rather live somewhere else, and only a small minority felt that they “belonged” somewhere else, say the country of family origin. The vast majority approved of the policy and/or the reality of a multicultural Canada, a great many even showing high enthusiasm in this regard, albeit again not uncritical enthusiasm. To the extent that there was a small minority who did feel “not at home,” out of place, or “other,” these were actually outnumbered by those who not only “felt at home” but thought that newcomers to Canada should just assimilate and not try to preserve, let alone promote, their inherited differences.

Looked at in terms of these participants’ concrete situation, this dominant sense of being native and newcomer should not be surprising; it

nonetheless points to how problematic it is to assume that the difference is always, even ever, clear. The way that the participants' religious orientations and practices were woven into their view of themselves and of Canada points in the same direction. As noted, there were a large number of very religiously involved people in this sample, especially among the Muslims, both male and female; far less so among the Buddhists and Hindus. Even among the sizable portion that was not religiously involved, including atheists, there was a majority opinion that religion could be good and was good for a great many people. Among the religiously involved, exceedingly few felt that there were meaningful impediments to their practising their religion fully in Canada, although few denied that living in such a secular environment presented challenges and temptations. Muslim women who wore or wanted to wear the hijab, for instance, recognized that this required a higher degree of self-confidence and determination in Canada than might be the case in a Muslim-majority country other than Turkey. Most Muslims understood that school and work schedules made praying five times a day at the prescribed times somewhat difficult. Yet, the overall sense one gets is that these challenges were for most of them much more those of living in a diverse and secularist environment where doing something different from others, especially following the prescriptions of a demanding religion, required dedication and effort than it was a matter of being prevented, of not being allowed to practise as they saw fit, of not being accommodated. As one highly devout young Muslim man from a Somali family put it cogently when asked if he could practise Islam to its fullest living in Canada:

Yes, I believe that. I believe that it's tough. It takes a lot of determination ... Like I said, you can't just be, you know, thinking of Canada as an intolerant society ... you can practise your religion. But you're going to have to face a lot of hurdles and downright discrimination against you. (MM08)

Most statements of this kind from the devout interviewees were not even this pessimistic. That said, most of the Muslims also recognized that their religion suffered, unjustly, from a negative stereotype. But they attributed this mostly to the mass media and to ignorant people in the

population, whom they generally considered to be far from the majority (compare the findings in Adams 2009). In other words, with such qualifiers, the vast majority of them insisted that “accommodation” of their religious difference was not a serious problem. In fact, many felt that Canada was doing a reasonably good job in this regard and that all these religions existing side by side provided a unique opportunity for people to acquire better understanding. As one young Buddhist man stated when asked if he thought Canada’s religious diversity was important:

Yes, I believe it is because it’s like a mosaic ... of the rest of the world. If acceptance and openness of some religions, most of them, every religion actually is accepted, you learn to understand the rest of the world more because you live in a microcosm of the rest of the world. (BM10)

Even for those who were totally devoted to their religion, those for whom religion was the centre of their identity and life and who were utterly convinced that theirs was the best religion, they accepted and even celebrated the juxtaposition of other religions, meaning that they had no trouble “accommodating” the religious differences, including secularists, around them. There did not seem to be a problem of either being accommodated or accommodating. Both were already there, by and large, to a sufficient degree.

Corresponding to this attitude was the virtual absence of politicized forms of their religions, and mostly a very express disapproval of such forms. Few of the Hindus were even all that aware of the details of Hindu nationalist groups like the Vishwa Hindu Parishad, or VHP; and the one person who portrayed such views was not particularly a practising Hindu. Similarly, the few Muslims who were, for instance, openly critical of the West were for the most part not particularly devout Muslims – quite the contrary in some cases. This clear absence of sympathy for what many even labelled as “extremism” was further reflected in a lack of concern over issues such as whether faith-based schools should be publicly funded and the total absence of any suggestion among the Muslims that sharia law had any place in the Canadian legal system. In addition, although some felt that religion should have more influence in Canadian society,

this feeling applied for all religions in a general way, not specific ones such as their own. In this regard, many and even most recognized that the majority religion and population in Canada was at least nominally Christian. Many felt that this religion had significantly more influence in Canada, that Canada was at least culturally, if not officially or practically, a Christian country. But these observations generally never extended to saying that religious freedom was limited for non-Christians or that other religions did not have equal rights in Canada. Most agreed that the official position, to the extent that there was one, was one of multiculturalism that included religious pluralism.

The upshot of all these features is that, in light of this sample, it becomes rather unclear as to who and what is accommodating and who and what is requiring accommodation. Although the participants in this study are mostly nominal adherents to minority religions – many in fact belong to that decidedly majority category of “no religion” – they are both natives and newcomers depending on which characteristics one chooses to emphasize. In addition, even in the context of their minority status, it is not clear that accommodation of their differences vis-à-vis the putative majority is what is really at issue. By and large, “accommodation” is already happening. And as concerns reasonableness, these Canadians, who from one perspective are supposedly precisely among those who require accommodation, themselves appear to have standards of reasonableness that they wish to apply to all religions, whether majority or minority, whether native or newcomer. Among their clearest standards is an intolerance of “extremism,” usually meaning that which expresses itself in violent acts, and a strong advocacy that Canada should remain pluralistic in ideal and become more so in practice. As to the question of their representativity, two factors need to be taken into further consideration. First, if they are not representative, one might ask which group would be more representative? Second, although the research design in this case did not permit it, the researchers came away with the definite impression that, if we had conducted the research among people in the same age and educational group but who were “white” and of long Canadian ancestry, namely so-called majority natives, the results would have been largely the same (cf. Graves 2008).

One could, of course, counter with the claim that this research demographic group is a small, unrepresentative segment of the Canadian population and that the real issue is with the parents of these second generationers and 1.5ers. To this one can only answer that, in terms of religion, and judging by the responses of the participants themselves, the parents may have different attitudes toward their own religions; they may be more or less religiously involved than their children, but they were on average no more, and perhaps even less, concerned about being able to practise their religions freely in Canada than their children.⁴

Roots of the Reasonable Accommodation Question:

Anti-Religiousness, Prejudice, and Islamophobia

On the basis of this analysis, the question that becomes clear is, if the on-the-ground picture does not show that there is a serious problem with religious accommodation in contemporary Canada, if approaching the question of religious difference or diversity in these terms is at best a minor and occasional issue as revealed in the sorts of flashpoint issues introduced above, why then are we debating this issue? What is the source of the problem? My suggestion is that there are at least four inter-related elements that belong in any answer to these questions.

Anti-Religiousness

In the wake of a long period, lasting perhaps thirty years, during which religion has at the very least become a more visible force around the world (Berger 1999), there is probably still a widespread attitude in Canada, as elsewhere in the world, that religion as a force should be spent; that it is a characteristic of those who are perhaps marginalized or marginal to the mainstream but not a regular, publicly present force whose importance matches that of other domains, such as art or education or health. Asking the question of reasonable accommodation from such a perspective is in effect asking how much room a society should leave for the “irrational” and the “unreasonable,” and only secondarily a question of religious diversity. In a global and national climate where other factors like constant immigration from all parts of the world, geopolitical events such as wars in which the opposing sides carry religious labels, and

transnational violent religiously identified movements are at play, those of us who are so inclined come to phrase our distrust of religion in terms of religious diversity.

Prejudice

To the extent that the sort of religious expression that has recently ignited the most controversy is that of the newcomer, but above all to the extent that it is of the religiously other newcomer, asking the question about reasonable accommodation reflects prejudice against the new and unfamiliar, against the stranger and her or his strange ways. In this regard, “old” strangers, ones that never were entirely accepted, can again become the subject of concern.

Islamophobia

There is no denying that the reasonable accommodation debate has much to do with the post-9/11 environment. A disproportionately large number of flashpoint issues are about Islam and the stereotypical image of Islam as a violent and misogynist religion. The litmus test in this case would be: Would all the other flashpoint issues have taken on the importance that they have if Islam and Muslims were not in the picture? Would, for instance, religiously based arbitration still have become so controversial if certain Muslims had not publicly started to avail themselves of the possibility? I think probably not.

Egalitarian Inclusion, with Regard Primarily to Gender

Secondarily to sexuality and woven into the first three elements is the idea that a consistent way that religion manifests its problematic, retrograde, and unacceptable nature is through the patriarchal characteristics of so much of it. The differences that “we” cannot reasonably accommodate are those that declare and put into practice that women are inferior to men, a position that the majority – but certainly not all – of people in Canada consider to be self-evidently reprehensible.

Accepting for the moment that these four factors are at least among the more important ones underlying why we are talking about reasonable accommodation, one notes that none of them is directly related to

religious diversity as such. The issue, then, is religion as such and what one could roughly call “social order.” If religious diversity is not the underlying issue, but rather a fear that certain, if not all, *forms of religion* are potentially or inherently inimical of institutionalized senses of what constitutes a proper social order, then this leaves space for rephrasing the issue to something like this: Is (some) religion dangerous or contrary to core values of Canadian and, by extension, any society? If so, in what way? Are there certain detectable forms of religion that are dangerous? How would we recognize them?

Phrased in this way, the worry about reasonable accommodation would be in continuity and connected with two slightly older and still ongoing debates, ones that also have worldwide proportions: that concerning so-called cults, and that concerning so-called fundamentalism (cf. Marty and Appleby 1991-95; Richardson 2004). In each of these cases, observers have adopted specific terms that mean more or less the same as “religion” but that designate in effect “bad” religion or “unreasonable” religion. The “cult” label carries with it concepts such as mental manipulation, brainwashing, and coerciveness. According to these ideas, there are certain religions that are dangerous to those who participate in them and possibly also to the larger society. People who adhere to them are not doing so of their own free will or they are dangerously deluded – in other words, irrational and unreasonable. These religions, according to, for instance, the French or Chinese governments, cannot be reasonably accommodated. This attitude does, however, raise the question of how one determines which religions are dangerous. And generally, the criteria applied are tautological: because a religion like Falun Gong or Scientology is a “cult,” it therefore constitutes the danger attached to that label (Ownby 2008; Palmer 2002; Robbins 1984). Somewhat analogously, analyses of “fundamentalisms” usually have difficulty defining their subjects consistently, but those religious manifestations that they target almost always feature conservative moral orientations – especially as regards issues of bodily control, sexuality, and gender relations – with a high degree of public presence, political influence, or other indicators of strength beyond the private lives of individuals and the voluntary organizations to which they belong. The “problem” with them appears to be, for the most part, their strength (cf. Almond, Appleby, and Sivan

2000). Looked at together, the questions associated with cults and fundamentalisms include most of the key characteristics of the flashpoint issues attached to the reasonable accommodation debates in Canada: most of the religious manifestations could be and have been characterized as fundamentalist, and the problems associated with matters like Mormon polygamy, sharia-based arbitration in Ontario, and Muslims in Hérouxville have to do with people, here women, supposedly being coerced, manipulated, and exploited, or bearing “false consciousness” as to their real situation.

In both these instances, with reference to cults and fundamentalisms, religious diversity and strange new religions have been at issue, but less the fact of diversity than that religion or some religions are bad and not to be tolerated. Cults and fundamentalisms also engendered the kind of debate in which the concepts used and their implicit meanings, the terms in which the debate was being phrased, also have been at issue – one might even say the source of the problem – at least as much as the concrete issues and cases that it concerned. So it is, I would suggest, with “reasonable accommodation.” Phrasing the issue in these terms is itself a good part of the problem, since the elimination of the phrasing by itself eradicates more than half the problem. If that is the case, then we can genuinely ask, how much can we reasonably tolerate the phrasing of the issue as one of reasonable accommodation if that phrasing itself becomes a large part of the problem supposedly being addressed?

In conclusion, however, a caveat: if reasonable accommodation is not to be a guiding concept for addressing the question of how, in Canada as elsewhere, religious diversity is best addressed or understood, then one must legitimately ask what the alternatives might be. This, in James Beckford’s terms (2003), is to ask the question of religious pluralism rather than just noting the fact of religious diversity. “Pluralism,” according to Beckford, refers to generally positive attitudes toward diversity and the institutional arrangements that protect or promote it. This, of course, includes such questions as which religious options count for such a positive orientation, meaning that a pluralistic attitude and pluralistic institutional arrangements can harbour anti-pluralistic attitudes and arrangements through invidious distinctions like that between religion and cult or fundamentalist and nonfundamentalist religion. Accordingly,

if the idea of reasonable accommodation implies just such invidious distinctions, as I have suggested, then an alternative conceptualization would have to address the issue of acceptable and unacceptable religious *content* directly. One does not avoid this task by simply declaring that all religions are equal and equally acceptable. The question has become a live one in so many – indeed one could argue in all – places around the world precisely because religious diversity inevitably brings with it the question of which religion is acceptable and therefore to be encouraged in a pluralistic attitude. This requirement, in turn, raises the logical question of what criteria we are to use to make such decisions. If such criteria are themselves to be what we recognize as religious criteria, we would have to select a religion or a limited set of religions that will serve as the putative standard for all others, that is to undermine or at least set limits on pluralism: it is a way of deciding the reasonable in reasonable accommodation. Alternatively, we could select what we deem to be a set of nonreligious criteria for judging all religious options in terms of the acceptability of their content, or distil a set of religious criteria from religious options but use nonreligious criteria to effect that selection. In either of these cases, the secular – in the sense of the nonreligious – becomes the source for judging the religious and thereby the “limits of pluralism” or reasonable accommodation. Looking at Canada, one could argue that in effect we combine or alternate between these options, either by using a set of implicitly Christian criteria (Beaman 2008; Beaman and Beyer 2008) or by resorting to what among French speakers and the Bouchard-Taylor Commission Report (Bouchard and Taylor 2008) is called *laïcité ouverte*, which, of course, is still *laïcité* or secularism. The effort to find an alternative is therefore fraught with the difficulty of arriving back at the point of departure, but using different concepts. It accordingly remains an open and unresolved task that has yet to be completed.

Notes

- 1 *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37.
- 2 The research project Religion among Immigrant Youth in Canada was funded by the Social Sciences and Humanities Research Council of Canada. The author was the principal investigator, with the collaboration of Rubina Ramji, Shandip Saha,

and Leslie Laczko at the University of Ottawa; Nancy Nason-Clark at the University of New Brunswick; Lori Beaman and Marie-Paule Martel-Reny at Concordia University in Montreal; and John H. Simpson, Arlene Macdonald, and Carolyn Reimer at the University of Toronto.

- 3 Interviews were designated by a code in order of transcription, using gender and religion as identifiers; thus, this interview was the twentieth Buddhist female to be transcribed. Based on 2001 census data, the most recent available, about 14 percent of the population in the greater Toronto region identified with a religion other than Christianity, or about 820,000 out of a population of around 6 million. Of these, about one-third were Muslims, one-quarter Hindus, one-fifth Jews, one-seventh Buddhists, and one-eighth Sikhs, with small minorities of other non-Christian identities. Culturally or ethnically, now using more recent 2006 census data, about 48 percent of the population in the Census Metropolitan Area (CMA) of Toronto was of non-European origin. Thus, the “Caucasians” to which this interviewee refers are actually in a slight majority. Yet, given the somewhat high degree of concentration of non-Europeans in certain parts of the region rather than others, her sense is probably a correct reflection of her “on the ground” experience in Toronto.
- 4 A possible statistical straw in the wind comes from the 2002 Ethnic Diversity Survey conducted by Statistics Canada. There one finds that the older and immigrant Hindus, Buddhists, and Muslims, namely those over thirty-five years of age, were more likely than their children to say that they felt a strong sense of belonging to Canada, indeed, more likely than the “native majority” population. In addition, the same survey showed that, although people with non-Christian religious identities sometimes or even often encounter discrimination, they are far more likely to see racism than religion to be the source of that prejudice. See Beyer and Martin, 2010.

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