

RELIGION, DROIT ET ÉTAT.

INTERFERENCE, INTERSECTION ET INTERFACE

Liberté de religion et laïcité au Canada : analyse des discours légaux eu égard au cas du kirpan sikh dans les écoles publiques québécoises

Marie-Ève MELANSON

Abstract : This article examines two different approaches to manage religious freedom and apply the principle of secularism in Canada by analyzing the legal arguments presented to the Supreme Court of Canada during the court case over the wearing of a kirpan in a Quebec public school (2006). The aim is to highlight the dilemma at the heart of the way religion is regulated, religious freedom being opposed to public interest. The first section examines the social and political contexts that led to the debates surrounding the wearing of the kirpan in a public school. The second section focuses on the importance of religious symbols for orthodox Sikhs. The third section proposes an analysis of the defendant's and the applicant's arguments, which enables us to highlight the discrepancies in their opposing approaches : a first *objective* approach places more importance on the *social* nature of religion, while a second *subjective* approach gives greater importance to the *personal* nature of religion. The last section discusses the decision of the Supreme Court, and seeks to demonstrate that a religious accommodation enabling the wearing of the kirpan would be indispensable to insure the right to public education.

Keywords : kirpan, public school, secularism, freedom of religion, reasonable accommodation, Supreme Court of Canada

Comment le juge délimite-t-il les frontières entre croyants et non-croyants ? Une analyse wébérienne de la liberté de religion en droit canadien

Bertrand LAVOIE

Abstract : Grounded in a Weberian reading, the author argues that current jurisprudence on the right to religious freedom in Canada yields contradictory analyses : on the one hand, a personal and generous understanding of religious beliefs, grounded in the believer's sincerity and, on the other hand, an understanding more attentive to the social dimension and oversight of this religious belief. In discussing this contradictory jurisprudence, the author proposes a sociological analysis of the symbolic boundary between believers and non-believers, a boundary normatively regulated by the Supreme Court of Canada. Also proposed are some thoughts on the current state of religious freedom in Canada, where security imperatives seem to be decisive in the implementation of a more restrictive approach to this fundamental freedom.

Keywords : freedom of religion, legal definition of religion, Max Weber, Canadian law and religion

Liberté de religion, accommodements raisonnables et neutralité religieuse de l'État : les fluctuations de la jurisprudence de la Cour suprême du Canada

José WOEHLING

Abstract : In this paper, the author seeks to show that, if it is true that the Supreme Court has adopted, with the 2004 *Amselem* and the 2005 *Multani* decisions, interpretations of religious freedom that could give the impression that the Court was granting this freedom undue precedence over other rights and liberties, as well as excessively facilitating the claim of religious accommodations, the decisions adopted by the Court after 2009 allow to dispel such concerns. The Court confirmed what earlier decisions had already shown, that is to say that it is willing to limit the scope of freedom of religion and of the duty to accommodate when considered necessary for reasons of general interest or to reconcile religious freedom with other rights and freedoms. Moreover, when interpreting the scope of freedom of religion, the Court also takes into account the principle of religious neutrality of the state (or principle of secularism), which it understands as one of the constitutive elements of freedom and religion itself.

Keywords : religious freedom, secularism, reasonable accommodation, religious neutrality of the State

La Cour suprême du Canada et la liberté de religion : regard religiologique sur un parcours sinueux

Jean-René MILOT

Abstract : In order to define what freedom of religion encompasses, one must have a certain idea of what religion is. This article examines the evolution of the concept of religion in some landmark judgements of the Supreme Court of Canada. It suggests that trends in the rulings of the highest court in the land present an evolution on par with the development of a "religiological" approach in the study of the religious object and the religious subject. Quite distinct in their epistemological and methodological foundations, these two pathways borrow very little from one another. However, they yield, in part, convergent results when it comes to acknowledging the constantly evolving nature of religion and its positioning in a secular State and within a secularized society : State and society still bear the imprint of Christianity on its law ; both are exposed to the unique and plural ethno-confessional nature of the current religious landscape.

Keywords : religion, semiotics, religious object, religious subject, multiculturalism, secularization

Le débat sur la Charte québécoise de la laïcité : un brouillage produit par la diversité des conceptions du rapport entre espace public et espace civique

Gille GAUTHIER

Abstract : The aim of this article is to analyze how the relationship between the notions of "public space" and "civic space" has been taken into account, either explicitly or implicitly, or understood in various ways, in the debate on the Charter of secularism proposed by the Government of Quebec in 2013 and 2014 with its Bill 60, and how the conceptual confusion thus produced has muddled the debate. First, we look at how the relationship between the concepts of "public space" and "civic space" is at the heart of the debate on the Charter of secularism. Second, we identify and list the various conceptions of this relationship, highlighted in the interventions in the debate. Finally, we propose the idea that this plurality, that gives the debate a great , in fact confuses it.

Keywords : Quebec Charter of Secularism, secularism, public debate, public space, civic space

La légalisation du pluralisme religieux : la normativisation du paradigme des grandes religions mondiales au sein du programme Éthique et culture religieuse au Québec

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Abstract : Public education about religious pluralism in Quebec's Ethics and Religious Culture program provides unique terrain for an exploration of the ways in which the law and the State might be invested in multicultural citizenship, and the consequences of this with respect to the legitimacy of the interests of religious citizens. We argue that with the support of the Canadian courts, the "normative pluralism" the program promotes narrows the scope of any recognition to a State-defined ideal of citizenship in which many religious identities are, at worst, effaced, and, at best, accommodated within a benevolent hegemony. Insofar as this reveals the inherent tensions within pluralistic societies, we argue that the State's efforts to resolve them through religious education in particular, creates an Agamben-like space of indistinction. The apparatus Religious Education employs to accomplish this is a form of World Religions discourse that deauthorizes any religious normativity deemed contrary to an implied theology of pluralism: but does religious education promote autonomous citizenship or undermine it?

Keywords : Ethics and Religious Culture program, world religions, multiculturalism, interculturalism, Agamben, space of indistinction

L'objection de conscience pour motifs religieux : un impossible défi démocratique

Claude PROESCHEL

Abstract : The forms and social implications of conscientious objection has evolved over the last two decades. For a long time, conscientious objection was an individual request. Today, it seems that it expresses, with some of its manifestations, a willingness to question common norms on behalf of a superior natural law. A request for conscientious objection is used to refuse a general evolution of the law and the social norms (in their relationship to the law) in a field where certain norms, in particular religious norms, have for a long been endorsed by the law. This paper discusses one contemporary example, that is, the request put forward, during a recent French debate on marriage for all, for the introduction of a conscientious objection clause for civil servants who did not wish to celebrate a homosexual union.

Keywords : conscientious objection, law, morality, ethics, democracy

Le statut juridique des femmes musulmanes d'Israël à travers l'expérience du divorce : statique ou dynamique ?

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Abstract : In Israel, only religious courts have jurisdiction over marriage and divorce issues. However, it is permissible to apply to the civil court for all other matters relating to personal status and other ancillary issues to the divorce (for example, alimony, child custody, etc.). Therefore, Muslim women who go through the experience of divorce in Israel are inevitably subject to the intertwining of religious norms and civil laws. However, religious laws are often depicted as discriminatory and oppressive towards women, which leads some to advocate the introduction of civil marriage in Israel as a "loophole" to the religious sphere. We will focus specifically on how these Muslim women live this legal situation through a field study conducted in Israel with Muslim women who have experienced divorce.

Keywords : Muslim women, Israel, religion, divorce, marriage

La montée de l'intégrisme religieux au Proche-Orient : l'État libanais sous l'emprise des groupes confessionnels

Roy JREIJIRY

Abstract : Created in 1920 and consisting of eighteen religious communities, the Lebanese state entrusted all matters of private and personal status law to each of the religious communities' jurisdiction. Ending a fifteen-year civil conflict, the Taif Agreement (1989) provides for a "progressive phasing-out of communitarianism" as "an essential national objective that requires everything be undertaken to carry out this sequenced plan". Twenty-five years after the agreement came into force, these reforms were never implemented, and achieving them remains increasingly a utopian objective for the advocates of a non-denominational State. This article aims to show how the rise and radicalization of religious identities in the region and, more specifically, in Lebanon, has weakened the State and favored the religious communities and their inward-looking attitude. This is achieved by observing and analyzing the relationship between some state institutions and important figures during the period between 2000 and 2015.

Keywords : Lebanon, denominationalism, secularism, federalism, denominational system

L'État indien et le statut « spirituel » d'Auroville

David BRÊME

Abstract : The Auroville Acts of 1980 and 1988 constitute an interesting case study for our understanding of the correlation between India's Rule of Law and one of its minority heterodoxies. This article looks at Parliament debates over the religious or spiritual nature of Auroville, an international agroforestry ecovillage located near Pondicherry in Tamil Nadu (South India), established in 1968 by Mirra Alfassa, called "the Mother" (its founding charter's author). Parliament eventually legislated over the spiritual, rather than religious, nature of the Auroville community (Minor, 1999). This article expands on Minor's work to highlight the national and international importance "the Mother" had for a number of officials of the Indian State.

Keywords : Auroville, India, constitutional rights, spiritual, religious, the Mother, Sri Aurobindo, Indira Gandhi, *Bharat Mata*
