

Dismantling the narrative for a possible reconciliation

Quebec society believes there is a fundamental tension between religious freedom and gender equality, chiefly because religion does not respect women's rights. Although this belief is rooted in the province's unique history, it is not unique to Quebec.

In legal language, the term "tension" is used to describe the interplay between these two principles. The word, especially when used in the expression "irreconcilable tensions," tends to crystallize and polarize the dynamic between these rights. It implies a perpetual conflict and portrays religion as a monolithic entity where the domination of women is ubiquitous, manifesting itself in all relations between the sexes. I hope I have made it sufficiently clear that Canadian law makes no mention of such tension. That, in fact, very few appeals and court decisions pit these rights against each other.

If this tension is not expressed in the rule of law, where is it expressed? And who shapes it? I believe the seeming conflict between religious freedom and gender equality to be theoretical and media-driven. By focusing on women, the media has created a narrative that perceives requests for religious accommodation and freedom of expression as a threat to women's rights and gender equality. In reality, however, religious freedom doesn't just affect women's rights; it touches all spheres of society. When the media and popular discourse pit feminism, women's rights and gender equality against freedom of religion, it only marginalizes religious women—and especially racialized women—further.

The media has created a reductive narrative in which requests for religious accommodation, and therefore religious freedom, invariably undermine women's rights and gender equality. Yet the reality is that apart from a handful of cases involving women,¹ these requests mainly involve issues such as absenteeism from work,² public education,³ contract law,⁴ state neutrality⁵ and obtaining a driver's licence without having to be photographed.⁶ This is by no means an exhaustive list, but the point is that freedom of religion does not just affect women's rights—it affects all spheres of society. Conversely, the exercise of religious freedom affects more than women's rights. These include the

¹ Ishaq c. Canada (Citoyenneté et immigration), op. cit. ; Commission des droits de la personne et des droits de la jeunesse c. Hôpital général juif Sir Mortimer B. Davis, op. cit.

² Syndicat de l'enseignement Val-Maska c. Commission scolaire de St-Hyacinthe, 2015 CanLII 2216 (QC SAT); Commission scolaire régionale de Chambly c. Bergevin, [1994] 2 RCS 525. À ce sujet, rappelons que la Fédération des chambres de commerce du Québec a qualifié d'« anecdotiques » les demandes d'accommodement religieux à l'emploi. Voir Fédération des chambres de commerce du Québec, op. cit.

³ Multani v. Commission scolaire Marguerite-Bourgeoys, op. cit.

⁴ Syndicat Northcrest c. Amselem, op. cit.

⁵ Mouvement laïque québécois c. Saguenay (Ville), op. cit.

⁶ Alberta c. Hutterian Brethren of Wilson Colony, op. cit.

right to abortion,⁷ the right to Indian status when an Indigenous woman marries a non-Indigenous man,⁸ challenging the standards for passing a physical fitness test designed based on male physiology⁹ and allowing expert evidence from a psychiatrist in cases of domestic violence.¹⁰ The latter case involved submitting a psychiatrist's evaluation as proof that Mrs. Lavallée, a victim of domestic violence pleading self-defense to murder, suffered from "battered woman syndrome" and killed her spouse because she legitimately feared for her life. The Supreme Court accepted the notion that "battered woman syndrome" could explain the appellant's mental condition and the circumstances that led her to commit the act. Mrs. Lavallée's acquittal was restored, and the decision is considered foundational in feminist circles today for the courts' sensitive position regarding gender differences.¹¹

Instead of addressing the "tensions" that exist between religious freedom and equality, what if we simply acknowledged that conflicts arise from "claims" about these issues? Embracing the term "claim" would allow us to acknowledge that although tensions emerge in certain contexts, they do not necessarily dominate the interaction between these two rights.

What if, by the same token, we stopped racializing violence against women and acknowledged that violence is not exclusive to religion—that it has no religious, social or racial underpinnings? We cannot keep dwelling on the fate of Muslim women. We must accept that patriarchy in its most harmful and insidious form affects all women.¹² Instead of declaring that gender equality takes precedence over religion (as the Bouchard-Taylor Commission, the Conseil du statut de la femme and the Quebec government's new preamble to the Charter of Human Rights and Freedoms have all done), it's time for women's rights to prevail over the patriarchy, whether it takes a religious form or not. In so doing, we can avoid stigmatizing and alienating men of faith—particularly Muslim men—and demonizing all "religious men."¹³

We must stop overlooking relationships of domination that exist in mainstream society.¹⁴ There are many non-religious spaces where discrimination of and domination over women occur. By focusing exclusively on religion, we sidestep all attempts to examine the patriarchal practices "at home," or at least those in non-religious spaces. Western feminists are obsessed with scrutinizing minority practices to ensure they are fair and non-

⁷ R. v. Morgentaler, op. cit. ; Tremblay c. Daigle, [1989] 2 R.C.S. 530.

⁸ McIvor v. Canada (Registrar of Indian and Northern Affairs), 2009 BCCA 153.

⁹ Colombie-Britannique (Public Service Employee Relations Commission) c. B.C.G.S.E.U., [1999] 3 R.C.S. 3.

¹⁰ R. c. Lavallée, [1990] 1 RCS 852.

¹¹ Martha Shaffer, « The Battered Woman Syndrome Revisited: Some Complicating Thoughts Five Years After R. v. Lavallee », The University of Toronto Law Journal, vol. 47, no 1, 1997, p. 1-2.

¹² Kimberlé Williams Crenshaw, « Cartographies des marges: intersectionnalité, politique de l'identité et violences contre les femmes de couleur », Cahiers du genre, vol. 39, no 2, 2005, p. 52-53.

¹³ Fathima Cader, op. cit.

¹⁴ Joan Wallach Scott, op. cit.

discriminatory. We regularly doubt religious women's ability to exercise free will; we deny them agency. Catharine A. MacKinnon, visiting professor at Harvard Law School, argues that women who have been raised in a religious environment suffer from a "false consciousness" from having internalized the patriarchy to the point that they are no longer aware of religion's coercive effects on their daily lives and practices.¹⁵ This type of paternalistic posture assumes a falsely impartial point of view—a neutral position¹⁶—and justifies speaking out on behalf of the concerned parties. The result is that we infantilize women who demand to be acknowledged as a woman with a religious identity.

Natasha Bakht, professor of law at the University of Ottawa, argues that we should be asking how religious women are being oppressed.¹⁷ Don't they have access to the criminal and civil justice systems, as I demonstrated with the Bruker, N.S., Ishaq, Hamel and Hak cases? Don't they defend themselves within this system? In so doing, don't they assert their agency and a desire to help remake the space they occupy? Don't they reinterpret foundational texts, questioning male authority and the God-given patriarchy? These women attend and participate in legal proceedings, teach in schools, pursue advanced studies, and participate in the job market alongside their male colleagues. These women are capable of action and reflection. They have their own narrative. We must stop delegitimizing them when they say they're fine and comfortable with their religious practices, even if we perceive them differently. As feminists, we have to stop lumping all religious communities together and accept that resistance to patriarchal religious norms can take forms we fail to see.

It's exhausting to constantly have to explain, assert and justify oneself. One day the debate focuses on religious women, the next on women who conform to impossible standards of beauty, the next on women who defy these same standards. Why do you wear the hijab? Why do you get Botox on your face? Why don't you shave your armpits? We're always asking women to justify themselves. Can't we simply end these interrogations—as we do for men¹⁸—and give women the benefit of the doubt? Tell ourselves they're making choices for their own happiness, their freedom—even if we would never make such choices ourselves? I'm in no way suggesting that dialogue isn't constructive and instructive. Quite the opposite, in fact. But by focusing on women's choices, we are constantly reminding them of their struggles and challenges.

I see the relationship between religious freedom (and religion, more globally) and feminism as a circular relationship: one feeds the other, and vice versa. Feminism challenges our view of patriarchy in all its expressions and helps create more egalitarian spaces. More present in society on all levels, feminism informs religious women and

¹⁵ Catharine A. MacKinnon, « Feminism, Marxism, Method, and the State : Towards Feminist Jurisprudence », *Signs : Journal of Women in Culture and Society*, vol. 8, no 4, 1983, p. 635.

¹⁶ Howard Kislowicz, *op. cit.*

¹⁷ Natasha Bakht, *op. cit.*

¹⁸ For example, we do not obsess over the Sikh turban, the Jewish kippah or the Muslim kufi. Yet these head coverings conceal men's hair, in whole or in part.

encourages them to reinterpret their religion. This new conjuncture challenges the categorical tenets developed by Western feminism, which tends to reduce religion to a monolithic and patriarchal entity: secularism vs. religion, modernity vs. premodernity, coercion vs. consent. Religious women want their feminist identity to be seen as legitimate and prove that a feminist can also be religious. Acknowledging their existence and experience would make feminism more inclusive.

To this extent, I see a mutual relationship where one informs the other of its limits, and vice versa. Through the work of religious women, gender equality and feminism have enabled religions to create more equal spaces. These spaces now inform feminism's emphasis on inclusivity and diversity. Increasingly, feminism is seeking to include women with multiple identities—including religion—in its movements and reflections.

I dare to believe that dismantling false narratives will reduce the emotional baggage that surrounds religious freedom. I hope I have shed light on the contradictions that exist within this debate: the contradictory demands and relationship some feminists have with religious women's agency. Reconciling religious freedom and gender equality is not only possible but also necessary and manifold in order to legitimize the existence and experience of some women.

We can't forget that skirts, stilettos and many other female accessories were designed by men to keep women vulnerable.¹⁹ If we accept that women today can reappropriate these sexist symbols, why can't we accept that religious accessories hold the same potential for emancipation? What if the headscarf represented an opportunity for women to assert an identity symbolizing both religious and woman? What if women could stand up for gender equality without renouncing their faith?

This text represents my contribution to a debate that continues to create friction, fractures and mistrust within the Canadian society. Many Canadians have a fixed idea of religion and its role as a weapon of subjugation. I find this posture to be problematic and argue that we must recognize the nuances to better understand our relationship with the faithful. I wanted to humanize contexts that foster and nurture religious identity and show that religion is not synonymous with a rejection of modernity or secularism. Instead, it is an identity that evolves alongside one's environment.

I dare to hope I have contributed to this vital intellectual and emotional transition because I see how the mere mention of religion can incite strong reactions. I sincerely hope we seize these transitions as opportunities to view the "Other" as an individual, a person who is trying to evolve and develop according to their own notions of freedom and emancipation. Above all, I hope this essay will help broaden our spaces of inclusivity,

¹⁹ Francine Pelletier, *op. cit.*

reflection and openness to the “Other” to create a Canada that is not content to merely settle tensions, but that also seeks to reconcile the possible.