

Introduction

They are feminists and Canadians. They are religious and unapologetic. They are women. To some, this multiple, intersecting and irreducible identity is self-evident; to others, it is suspect. There is a growing divide between the convictions of the former and the misconceptions of the latter. But the problem with convictions is that they are difficult to explain.

How can we bridge this intellectual and emotional gap and put words to what seems self-evident? Having struggled with this question since adolescence, I felt compelled to write this essay and examine the issue from a legal, sociological and feminist perspective.

I grew up in the 1990s in a Muslim family with an English-speaking father from Eritrea and a French-speaking mother from Quebec who converted to Islam. This meant I was constantly surrounded by a mix of cultures and opinions that occasionally clashed. I felt connected to my Catholic French-Canadian family because we shared a language and cultural references, but I felt just as close to my Eritrean family because we shared a common faith. At that time, Islam was not seen as a major threat in Canada or in the world for that matter. It was only after the events of September 11, 2001 that the debate on the place of religious minorities in Quebec and Canada became omnipresent. And yet, that was the decade I truly began to feel anchored in my faith. I was 16, and for the first time I was attending classes on Islam that went beyond the dos and don'ts I had been taught as a child. I was a young woman, and this was one of the most transcendent periods of my life; it was when I made my first true feminist choice: to wear the *hijab*.

I could see my decision made people uncomfortable. Was she indoctrinated? Radicalized? Did her parents force her to do it? Is she happy? I fielded the same questions from friends and perfect strangers. It was difficult to explain my decision over and over again, and what had started as an empowering spiritual choice turned into a political endeavor to prove my autonomy, intellectual agency and to challenge the stereotypes pigeonholing me. And I was not alone. I observed this same need for affirmation among peers of different religions, notably during the 2008 public hearings on reasonable accommodation. Quebec society did not seem willing to accept the idea that a person can feel emancipated and in control of their life while practising their religion.

The attack on religious minorities reached its peak in 2013 during the discussions surrounding Bill 60, the Québec Charter of Values, which deeply divided the province¹. The debates centered on the “irreconcilable differences” between religious freedom and gender equality and everyone appeared to support this idea. Yet I was surrounded by women—myself included—demanding to be acknowledged as feminists with a

¹ 1 P.L. 60, Charte affirmant les valeurs de laïcité et de neutralité religieuse de l'État ainsi que d'égalité entre les femmes et les hommes et encadrant les demandes d'accommodement, 1^e e sess., 40^e e lég., Québec, 2013.

religious identity. During this period, it felt like we were all talking at each other, and not with each other. This was around the time that I started my graduate studies in law and wrote my interdisciplinary master's thesis on the question: how can we reconcile religious freedom and women's rights in a manner that develops our understanding, builds bridges and encourages peaceful cohabitation without simply "tolerating" the other?

In 2017, I had the opportunity to present my thesis in different countries. I noticed the topic was of great interest and realized that although my argument stemmed from a personal perspective, the issue was a global one. My primary interest was in trying to strengthen relationships between Canadians. I hoped my thesis would make its way into bookstores across the country and reach a wider audience. I wanted to document and examine the problem from another angle, adding to the discussion and even changing a few minds in the process. I am very proud of my thesis. It is the result of years spent thinking about how to bridge the gaps between religious freedom and gender equality, an issue that is unfortunately still relevant today. Although I left my homeland in 2018, I remain hopeful that my province and my country will accept its differences rather than strive for a vision of homogenous identity. This book is an extension of my activism and commitment to my society.

I want to be clear about my intentions: exploring possible reconciliations between religious freedom and women's rights does not mean overlooking the tensions between them. The two do not exist in perfect harmony². Nor am I trying to paint a rosy picture of religions and ignore the atrocities that women have suffered for centuries in the name of religious doctrines. The history of the world's major religions, as with that of more recent religious movements³, is far from ideal⁴. For their part, religious feminists do not deny either religion's patriarchal roots or the structures put in place to subjugate women.

Still today, patriarchal values and practices are perpetuated in the name of religion⁵. In all religions, women are prohibited access to the same rights and spaces as men. According to the Christian Bible's creation narrative, a woman is considered inferior to a man⁶. A Jewish woman cannot remarry without first obtaining permission from her husband (*get*)⁷. A Muslim woman's inheritance share is not equal to that of the men in her family⁸. In Buddhism, a woman cannot be ordained as a monk⁹ while in Hinduism,

² Carolyn Evans, Anna Hood et Jessica Moir, « From Local to Global and Back Again: Religious Freedom and Women's Rights », *Law Context: A Socio-Legal J.*, vol. 25, 2007.

³ Susan J. Palmer et collab., *Moon Sisters, Krishna Mothers, Rajneesh Lovers: Women's Roles in New Religions*, Syracuse University Press, 1994.

⁴ Paula M. Cooey, William R. Eakin et Jay B. McDaniel, *After Patriarchy: Feminist Transformations of the World Religions*, Orbis Books, 1991.

⁵ Gila Stopler, « A Rank Usurpation of Power. The Role of Patriarchal Religion and Culture in the Subordination of Women », *Duke J. Gender L. & Pol'y*, vol. 15, 2008

⁶ Jennifer Emily Sims, *Christian Patriarchy and the Liberation of Eve*, mémoire de maîtrise, Georgetown University, 2016.

⁷ Faye Lisa Rosenberg, « Jewish Women Praying for Divorce: The Plight of Agunot in Contemporary Judaism », 2001.

⁸ Bernard Durand, « Droit musulman : droit successoral : farâ'idh », 1991.

a widowed woman cannot remarry¹⁰. These are just a few examples to underscore the fact that the world's major religions do not, in principle, offer equal spaces to women.

Given this context, many people are understandably concerned that the Canadian Constitution's protection of religious freedom defends not only individual practices, but also structures that discriminate against and oppress women. Constitutional law expert Beverley Baines once went as far as to propose we deconstitutionalize religious freedom to better protect women's rights¹¹, this undemocratic proposal has not been adopted to date. Many jurists have argued that women's rights should always take precedence over religious freedom, noting that any request for religious accommodation that is coercive in nature is unacceptable. Gila Stopler, associate professor at the College of Law and Business in Ramat Gan, Israel, writes that the legal protections granted to certain aspects of religion perpetuate the hegemony of patriarchy and undermine women's ability to achieve equality. She believes the manner in which freedom of religion and association are currently understood and applied perpetuates gender hierarchy. And that liberalism ignores the social and political power afforded to religious institutions, practices, discourses and norms¹².

In Quebec, there is widespread belief that religion is the direct cause of women's oppression¹³. This can be traced back to the province's history: to tighten its hold on the population, the Catholic church normalized gendered identities that informed people's thoughts and actions. Although the church's influence faded with the Quiet Revolution, Quebec society is still marked by memories of a time when religion controlled many aspects of women's lives – notably by pressuring them to have large families. What remains today is the conviction that religion in all its forms opposes gender equality. Quebecers have turned their backs on religion, renouncing all religious symbols in the public sphere (excluding those considered part of the province's cultural heritage¹⁴). This collective rejection of religious institutions occurred only a few decades ago.

When it comes to religious symbols in the public sphere, opinions abound. Isabelle Charest, minister responsible for the status of women, recently contended that any religious symbol, beginning with the *hijab*, is a sign of oppression¹⁵. Former Premier Pauline Marois reportedly referred to the Islamic headscarf as a symbol of inequality between men and women¹⁶. In the run-up to the 2019 federal election, NDP leader

⁹ Monica Lindberg Falk, « 7 Feminism, Buddhism and Transnational Women's Movements in Thailand », dans *Women's Movements in Asia: Feminisms and Transnational Activism*, Routledge, 2010.

¹⁰ Gavin D. Flood, *An Introduction to Hinduism*, Cambridge University Press, 1996.

¹¹ Beverly Baines, « Equality's Nemesis », *Journal of Law and Equality*, vol. 57, 2006.

¹² Gila Stopler, *op. cit.*

¹³ Éric Sévigny, « L'articulation des droits : égalité des sexes et liberté de religion au Québec », *Phares*, vol. 12, 2012.

¹⁴ À Montréal seulement, le christianisme représente 84,56 % du portrait global avec plus de 200 lieux de culte. Voir Dominique Quirion, « Spatialisation du sacré et cohabitation interreligieuse dans l'espace montréalais », *Études d'histoire religieuse*, vol. 77, 2011.

¹⁵ Alice Chantal Tchandem Kamgang, « "Le hijab est un symbole d'oppression" : une goutte de trop dans le vase débordant de la Coalition avenir Québec ? », *Radio Canada International*, 2019.

¹⁶ Marie-Claude Boivin, « Manque de cohérence », *Le Devoir*, 2010.

Jagmeet Singh was told to cut off his turban to “look more Canadian.” Guy Durand, a professor for the Institute of Religious Studies at the Université de Montréal, is quoted as saying the *kirpan*, the small dagger carried by Sikhs, is “a weapon, period”¹⁷. In Europe, some French academics have argued that displaying one’s religious affiliation is part of a logic of opposition to the law and, more broadly, to civil society¹⁸. One Dutch politician proposed a “headrag tax” in an effort to eliminate the headscarf from the public sphere, arguing that its social costs (“pollution for the eyes”) must be compensated¹⁹. To me, these opinions reflect a profound discomfort with public displays of immigrant religious affiliations. As if in its essence, the symbol or garment—I use these terms interchangeably, although it is an inexact equivalence—represents women’s oppression or a challenge to modern, democratic life. A conflation that reveals the hierarchical binarities from which we reason, those binarities that make the West the promised land of gender equality²⁰.

Such opinions find a regular platform in both the mainstream media and on social media. The greatest offender seems to be the Islamic headscarf: the *hijab*, or worse, the *niqab*.

Seen but not understood

The term “religion” comes from the Latin word “religare” or “to bind.”

[Religion] is a set of symbolic practices with a unique structure unifying general and specific representations of the world, rituals that ease transitions between phases of the life cycle and periods of crisis, and rules that act as a code of moral conduct. These practices are performed within a community featuring specialized social roles²¹.

Religious identity is expressed through various symbolic registers²². When we talk about religion, we think about practices, sacred texts, symbols and garments. The religious symbol plays a self-transcendent role²³ and embodies both a metaphysical and spiritual meaning. Each symbol represents a virtue to perfect or a metaphysical belief. The *bindi*, the red dot worn by Hindus on the centre of the forehead, represents wisdom. It retains energy and enhances the sixth chakra, strengthening concentration and the third eye. To Sri Lankan Hindus, the *vibhuti*—the sacred ash applied on the

¹⁷ Guy Durand, *Le Québec et la laïcité : avancées et dérives*, Éditions Varia, 2004.

¹⁸ Vincente Fortier, « Les incertitudes juridiques de l’identité religieuse », 38 R.D.U.S 385, 2008.

¹⁹ Pascale Fournier, « Headscarf and Burqa Controversies at the Crossroad of Politics, Society and Law », 2013.

²⁰ Sherene H. Razack, « The “Sharia Law” Debate in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture », *Feminist Legal Studies*, vol. 15, no 1, 2007.

²¹ Frank William Remiggi, *Atlas historique des pratiques religieuses : le Sud-Ouest du Québec au XIXe siècle*, University of Ottawa Press, 1998, p. 10.

²² Louis Rousseau, *Québec après Bouchard-Taylor. Les identités religieuses de l’immigration*, Presses de l’Université du Québec, 2012.

²³ Paul Tillich, « The Religious Symbol », *Daedalus*, vol. 87, no 3, 1958.

forehead—is a reminder of the mortal nature of life²⁴. To Jews, the *kippah* is a reminder of God’s omnipresence²⁵. The *kirpan* symbolizes a Sikh’s duty to protect and defend their community (*kirpan* comes from *kirpa* or “mercy” and *aan* or “honour”)²⁶. The small comb Sikhs usually carry symbolizes purity²⁷. A Muslim woman’s headscarf represents modesty and humility, virtues that are highly prized in Islam²⁸ and should be expressed through the conduct and dress of both sexes²⁹.

Although religious symbols are frequently worn to reflect certain spiritual virtues, their function can change over time. For some women, wearing the *hijab* is a religious spiritual choice³⁰. For others, it represents a reaction to Western cultural dominance. Choosing to wear a headscarf can reflect a feminist ideology that opposes the diktats of female objectification³¹; the veil can also be worn in defiance of Western feminism, expressing individual agency and attempting to redefine what “true” freedom for women looks like. By choosing to wear it, women reject the supposedly universalist vision of Western feminism along with its dress code. To some, wearing the *hijab* frequently acts as a way to neutralize the risk of sexual objectification, harassment or assault when outside the home³². For other women, choosing to wear the *niqab*, one of the most controversial religious symbols, reflects a desire to prove their religiousness by adopting one of Islam’s most “intense” symbols³³. It can serve as part of the search for identity among Western women reconnecting with their faith.

Religious symbols take on a figurative quality as a direct result of their visibility³⁴. Symbols are by nature external, apparent and observable; they are meant to actualize the invisible, the ideal, the transcendent³⁵. And yet, as Khadiyatoulah Fall and Georges Vignaux note, a symbol’s visibility cannot ensure it will be rightly perceived:

²⁴ Mark Bradley, *La transmission de l’identité religieuse dans un contexte d’immigration : le cas de réfugiés tamouls hindous d’origine sri lankaise à Montréal, mémoire de maîtrise, Université du Québec à Montréal, 2007.*

²⁵ Lorne Rozovsky, « What is a Kippah (Yarmulke)? », Chabad.org.

²⁶ Muninder K. Ahluwalia, Anna Flores Locke et Steven Hylton, « Sikhism and Positive Psychology », dans *Religion and Spirituality Across Cultures*, Springer, 2014, p. 125-136.

²⁷ Cynthia Keppley Mahmood, « Sikhs in Canada: Identity and Commitment », dans *Religion and Ethnicity in Canada*, University of Toronto Press, 2009.

²⁸ Elissa Woodruff et collab., « Humility and Religion: Benefits, Difficulties, and a Model of Religious Tolerance », dans *Religion and Spirituality Across Cultures*, Springer, 2014, p. 271-285.

²⁹ Jean-René Milot et Raymonde Venditti, « “C’est au Québec que j’ai découvert le vrai islam” : impact de la migration sur l’identité ethnoreligieuse de musulmans d’origine maghrébine », dans *Le Québec après Bouchard-Taylor. Les identités religieuses de l’immigration*, Presses de l’Université du Québec, 2012, p. 241-293.

³⁰ *Ibid.*

³¹ Paul Eid, « Balancing Agency, Gender and Race: How Do Muslim Female Teenagers in Quebec Negotiate the Social Meanings Embedded in the Hijab? », *Ethnic and Racial Studies*, vol. 38, no 11, 2015, p. 1902-1917.

³² *Ibid.*

³³ David Koussens, Stéphane Bernatchez et Marie-Pierre Robert, « Le voile intégral : analyse juridique d’un objet religieux », *Can. JL & Soc.*, vol. 29, 2014.

³⁴ Paul Tillich, *op. cit.*

³⁵ Jean Richard, « Symbolisme et analogie chez Paul Tillich (1) », *Laval théologique et philosophique*, vol. 32, no 1, 1976.

The problem is that these seemingly “visible” markers are in many cases invisible. Outsiders are frequently unable to read them, which means they cannot understand and interpret these symbols in their original context. Dictates, to unfamiliar eyes, can prompt misunderstanding and rejection³⁶.

This is the heart of the issue. Religious symbols, too often perceived as hostile to the host society—even as a challenge to mainstream society and modernity—can make others uncomfortable. They are seen as conspicuous and ostentatious, i.e. a deliberate overstatement, and are frequently considered a form of proselytizing whether religious, political or discriminatory towards women. People not affiliated with these so-called minority religions regularly scrutinize and misrepresent adherents’ notions of identity and belonging. Understanding religious symbols in all their complexity would considerably reduce our tendency to see religious freedom as being at odds with women’s rights³⁷.

Some symbols “disturb” more than others. Although the West is slowly beginning to accept the Muslim headscarf, the *niqab* still raises hackles³⁸. Women who wear the *niqab* are seen as true outsiders who have failed to integrate into their country’s national identity³⁹. And yet, on the opposite end, other symbols have been “bleached” of their religious connotations so as not to conflict with secular society. Some communities have adopted a *symbolic religiosity* in lieu of religious symbols or have adapted their practices to better integrate into Canadian society and shield themselves from criticism. One example of symbolic religiosity is yoga, which was originally a form of Hindu prayer that was adopted by the West for recreational purposes⁴⁰. As such, yoga lost its religious dimension and was rebranded as an exercise centering on spirituality, mental wellbeing and physical fitness. Unlike traditional Muslim prayer⁴¹, yoga does not alarm; it has been culturally accepted and purged of its religious dimension in the West, although it remains a religious practice for many Hindu communities⁴².

Regardless of the faith (Muslim, Hindu, Buddhist and Sikh), both women and men are making far more accommodations with their practice than the general public appears to realize. Every religious community has adjusted its values and practices to

³⁶ Khadiyatoula Fall et Georges Vignaux, *Images de l’autre et de soi : les accommodements raisonnables : entre préjugés et réalité*, Presses Université Laval, 2008, p. 48.

³⁷ Pierre Bosset, « Accommodement raisonnable et égalité des sexes : tensions, contradictions et interdépendance », dans *Appartenances religieuses, appartenance citoyenne. Un équilibre en tension*, Presses de l’Université Laval, 2009.

³⁸ Natasha Bakht, « Veiled Objections: Facing Public Opposition to the Niqab », dans *Reasonable Accommodation: Managing Religious Diversity*, UBC Press Vancouver, 2012, p. 70-108.

³⁹ *Ibid.*

⁴⁰ Sarah Mostafa-Kamel, *Taking Yoga Off our Mat: Approaching Montreal’s Yoga Culture with a Critical Lens*, mémoire de maîtrise, McGill University Libraries, 2015.

⁴¹ Ashley Coleman, « Born-Again’ Christian Government Worker Could Face Hate-Crime Charges After She Was Caught on Camera Throwing Coffee and Ranting at Muslims Praying in a Park », *Daily Mail*, 2015.

⁴² Sarah Mostafa-Kamel, *op. cit.*

fit its new environment, whether on an individual or a collective level. Examples include Muslim women who pair their headscarf with jeans and a blouse (the latest trend in *hijabi* fashion)⁴³ instead of a *djellaba* or an *abaya*; some Muslims delay the daytime prayer until night to avoid inconveniencing their employers⁴⁴; Montreal's Sri Lankan community giving up the morning fast and daily temple ritual, the many women who have stopped wearing the *sari* (although prescribed from puberty) and the men who have abandoned the *verti* and the *shawl* (a long white skirt they considered alienating)⁴⁵. Only in rare cases do immigrants continue practicing religious rituals from their home country with the same diligence. They seem to act as if adjustments — or reform, in many cases — were unavoidable. The problem arises when these adjustments appear too subtle, indeed nonexistent, in the eyes of the larger society.

Reconciliation: both possible and necessary

While it's true that religion is a *particular* means of furthering the patriarchal agenda, I believe that we can turn to other possibilities that allow religious freedom and women's rights to coexist. How can we envision such reconciliation in a less hostile manner?

Women across Quebec and Canada, whether they are religious or not, have different relationships with religion; not all adherents experience a tension between religious freedom and women's rights. The same religious symbol can be interpreted in a variety of ways⁴⁶. Religion itself is not static, and our rapport to it is complex. Religious institutions reinterpret, restructure, include, exclude and change. A religious woman does not necessarily experience her faith in opposition to women's rights, whether that faith is lived from a modern, feminist, liberal interpretation or one that leans traditional and conservative.

The legal system values autonomy and choice. It insists on separating the public and private realms⁴⁷. The right to religious freedom only becomes an issue once it violates the realms — especially public realms — of law. As long as religious expression remains in the private sphere, it does not pose a constitutional threat⁴⁸. The moment exercising one's religiosity adversely affects the collective, we look to the rule of law.

We live in a time when religious spaces are becoming decentralized. The call of feminism is growing louder, demanding more egalitarian and inclusive spaces, especially from a legal perspective.

With this essay, I am aware that I am walking down a well-trodden path. I am tackling an issue that has been the subject of much debate in feminist circles; it has prompted a reckoning with identity and society and is the source of much tension from a legal and political perspective. With this context in mind, I aim to find common

⁴³ Alvi Saba, *Voguing the Veil: Exploring an Emerging Youth Subculture of Muslim Women Fashioning a New Canadian Identity*, thèse de doctorat, Université d'Ottawa, 2013.

⁴⁴ Jean-René Milot et Raymonde Venditti, « C'est au Québec », op. cit.

⁴⁵ Mark Bradley, op. cit.

⁴⁶ Natasha Bakht, op. cit.

⁴⁷ Benjamin L. Berger, « Law's Religion: Rendering Culture », *Osgoode Hall LJ*, vol. 45, 2007.

⁴⁸ Benjamin L. Berger, « The Aesthetics of Religious Freedom », 2013.

ground on the issue and inspire greater intercultural and intergenerational understanding. I hope my arguments will relieve some of the existing tension between religious freedom and women's rights, and I hope they will open more inclusive spaces for us to view the other as an ally in the dialogue surrounding religious freedom, gender equality and systemic injustice. I hope to temper some of our country's prejudices and criticisms regarding religious freedom. I hope that one day we will think of religious freedom not as an obstacle to women's rights, but as a corresponding freedom. In so doing, enhancing a greater feminist vision of equality.

The following arguments are offered in a spirit of reconciliation.