Yankova, Diana

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Diana Yankova
New Bulgarian University, Sofia, Bulgaria

Reasonable Accommodation: A Blessing or a Curse?

Abstract

The article presents recent developments in Canada's multicultural policy and approaches to integrating immigrants. The policy has received criticism from within the country itself, especially in the province of Quebec. A concept that has been attracting the attention of employers, media and the general public is that of reasonable accommodation, or modifications and adjustments made to accommodate various minorities. Some issues concerning the practice of reasonable accommodation will be discussed from the vantage point of the individuals requesting adjustments and from the perspective of the individuals and institutions voicing concern that it will eventually lead to the dissolution of Québécois traditional values.

Résumé

Le présent article traite des développements récents de la politique canadienne du multiculturalisme et les approches à l'intégration des immigrants. La politique a été critiquée au sein même du pays, en particulier dans la province de Québec. Le concept qui a attiré l'attention des employeurs, des médias et du grand public est celui de l'accommodement raisonnable, ou des modifications et des ajustements effectués pour prendre en compte les diverses minorités. Quelques problèmes concernant la pratique de l'accommodement raisonnable seront abordés par des points de vue divergents des personnes demandant des ajustements et ceux qui expriment leur préoccupation sur le plan des valeurs traditionnelles de la société québécoise qui risquent d'être dissoutes.

Since the early 1990s, the notion of diaspora has become an essential issue in international politics and has acquired a new place in public discourse. The disintegration of the bipolar power structure and the breakdown of national barriers with the end of the Cold War laid the ground for a massive short- and long-term movement of people. Historically, migration was always an important element in nation-building and industrialisation, but the current interest in migration marks a different perspective to the issue, a different perception of the phenomenon, rather than a shift in the fact itself. The process of globalization and the new communication technologies have facilitated the frequent flow of capital, goods and services and have resulted in the creation of a new context for migration and the blurring of boundaries between the various forms of migration.

Views have been expressed that the very concept of transnational communities may bring about a reconceptualization of the constituents of citizenship in order to accommodate the various types of relations that transmigrants enter into with different states, i.e. acquiring

political rights in one country, economic rights in another and cultural rights in a third one (Bauböck and Rundell) or 'quasi-citizenship' or 'denizenship' (Hammar).

The causes for migration have been the object of study of many scholars, who have looked for explanations from various perspectives: better economic opportunities, family survival strategies, long-term concerns for security and sustainability, among others. Immigration flows are also shaped by the host countries' policies for recruitment of labour. The rapid development of communication technologies and the wide availability of Internet access have materialized in access to knowledge about other societies as well as in establishing migration networks and connections needed to migrate safely and cost-effectively. At present, receiving countries such as the United States, Australia, Canada and West European nations have migration laws that welcome highly-skilled workers, which leads to the transfer of human capital from poor to rich countries, or to a brain drain.

Although different countries have different policies for integrating immigrants, three main approaches can be delineated: assimilation, differential exclusion and multiculturalism. Assimilation was considered the norm in the past – it was presumed that immigrants moved permanently and severed connections with their country of origin, thus becoming completely assimilated into the host country. Immigrants were encouraged to learn the language and to embrace the social and cultural values and customs of the host country, leading to the appropriation of a new national identity. Temporary migration schemes, however, have led to recruitment of workers for the labour market who are excluded from political participation and citizenship. This type of incorporation has been referred to by Castles as "differential exclusion" (1155). Neither of the above two types of incorporation was meant to lead to any noteworthy changes in the host country, since the underlying understanding was that ethnic difference could be controlled. Practice, however, showed that some temporary migrants settled in the host country, reunited with their families and formed ethnic minorities. Long-term assimilation became to appear a chimera, since ethnic communities held on to their language and culture even through subsequent generations.

In order to address these new developments, some countries adopted official policies of multiculturalism: Canada in 1971, followed by Australia in 1973 and by most member-states of the European Union. In 1971 Prime Minister Pierre Trudeau introduced Canada's first official policy of multiculturalism, named 'Multiculturalism within a Bilingual Framework', and Canada established itself as the world's first officially multicultural nation. Since its adoption, the 1971 Multiculturalism Act (revised in 1985 and amended in 1993) has been the focus of numerous debates and has broached a number of contentious issues. In Australia, the abolition of the 'White Australia' policy to immigration which was dominant from federation until the late 20th century took place over a period of 25 years. It culminated in a decision by the Whitlam Labour Government in 1973 to dismiss ethnicity as a criterion for entry of immigrants. Australia later on adopted legislation stipulating that all immigrants are eligible to obtain citizenship after three years of permanent residence and ratified all international treaties and agreements on immigration and race. Most EU member countries had by the late 1970s adopted legislation that was non-discriminatory regarding the ethnicity of immigrants and in 2000 the official motto of the European Union became 'Unity in Diversity.'

Migrant groups formed state and national associations to maintain their cultures, and governments encouraged the survival of their languages and heritages within mainstream institutions. Government multicultural policies recognized multiple citizenship, offered government support for newspapers, television, and radio in minority languages, acceptance of traditional and religious dress in society, programs to encourage minority representation in politics, etc. Multiculturalism presupposes forsaking the illusion of a homogenous and monocultural nation-state and acknowledging the rights to preservation of culture, community formation and ensuring protection from discrimination on the basis of colour, race, religion, age, gender, language, etc.

According to a survey published by the Centre for Research and Information on Canada (CRIC) in October 2003, 54% of those surveyed said multiculturalism made them feel proud to be Canadian (the figure is 66% in the age group 18-30) (qtd. in Dewing 12). After the September 2001 terrorist attacks on the United States, another CRIC survey published in October 2005 found that two-thirds of Canadians see multiculturalism as "guarding against extremism" rather than engendering it (qtd. in Dewing 12).

Although multiculturalism is firmly established in Western societies, currently some countries such as the Netherlands and Denmark have returned to an official monoculturalism, and this issue is the subject of debate in the United Kingdom due to concerns about home-grown terrorism. Some have introduced policies for social cohesion, integration, and assimilation which are considered a reversal of earlier multiculturalist policies, striving to assimilate immigrant minorities and restore a monocultural society. Some of the adopted measures are: courses and tests on national history (e.g. Life in the United Kingdom test), official campaigns to promote national unity and individual identification with the nation (e.g. the 'Du bist Deutschland' campaign in Germany), tests designed to point out unacceptable values, prohibitions on Islamic dress. Right-wing parties in Western Europe have campaigned for a loyalty oath for all citizens, a ban on public use of foreign languages, a halt to all immigration, a complete ban on Islam, and even withdrawal from the European Union (cf. recent events in Europe: the publication of the essay "The Multicultural Tragedy" by Paul Scheffer in 2000, statements such as the one by the Dutch sociologist J. A. A. van Doorn that immigrants in the Netherlands had "put the clock back" 100 or 150 years; "Keep Sweden Swedish," the slogan of Swedish Democrats, the far-right political party in Sweden, and their appeal to renegotiate Swedish membership to the European Union, among many).

The Canadian multicultural policy has received a lot of criticism from within the country itself. Both Francophones and Anglophones have voiced deep concerns about the consequences of this policy. Quebecers have been complaining for quite some time that they have been reduced to just another ethnic group contending that the official policy of the province aspires to promote interculturalism – accepting people of various origins while insisting that they integrate into Quebec's majority French-speaking community. They feel that the Canadian multiculturalism model is not suitable for Quebec, since in Anglophone Canada concern about language is not a key factor, nor is there minority insecurity or concern for the preservation of a founding cultural tradition. Therefore, conditions in Quebec are significantly different from those in the rest of Canada and the policy of interculturalism aims to unify ethnic and cultural diversity with the preservation of the French-speaking core, integrating immigrants into the

mainstream francophone environment and encouraging them to participate in a common civic culture. In this way, interaction between the communities is advocated by providing common cultural anchors, while the right to affiliate with one's ethnic group and the right for cultural and religious differences to be displayed in the public domain are recognized. The intercultural purpose of the approach is to eliminate the disadvantages of the policy of multiculturalsm, more specifically "folklorization of cultures, static juxtaposition of diverse groups and promotion of undemocratic practices under the guise of cultural relativism" (McAndrew 211).

In Anglophone Canada views have been expressed that the shift from biculturalism to multiculturalism has had a deteriorating effect on relations between Quebec and the rest of Canada, since it offended the Québécois and their dualistic vision of Canada as a bilingual and bicultural society. In his book *Selling Illusions: The Cult of Multiculturalism in Canada*, published in 1994, the Trinidad-born novelist Neil Bissoondath argues that there is potential divisiveness inherent in the official multiculturalism policy. Promoting cultural diversity may result in a 'psychology of separation' in immigrants from the mainstream culture, in confining them to cultural ghettos. In this way, according to Bissoondath, unity and cohesion is sacrificed for a policy which divides and breeds misunderstanding and hostility by placing one ethnic group against another. Other academics and theorists have claimed that multiculturalism may bestow on non-egalitarian cultural groups power and influence, which in turn may alter the value system of the larger society.

Section 3(1) of the Canadian Human Rights Act stipulates that:

> For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. (1)

However, due to a number of recent manifestations of discrimination and intolerance in Quebec connected with non-observance of personal minority rights, there was an appeal that adjustments should be made to make fair the same system for an individual based on a proven need. This came to be known as reasonable accommodation. The topic has sparked a lot of public discussion on issues such as: should employees be allowed to speak languages other than French and English at the workplace and would that lead to miscommunication between colleagues; can a Sikh schoolboy carry a ceremonial kirpan[1] to school; should Muslim girls and women be allowed to wear the niqab[2] or burka[3] to school or when voting, and a number of other ambiguous moral, ethic, religious issues.

The duty to accommodate has been construed by courts "as requiring the duty holder take all reasonable measures to accommodate, short of undue hardship, in order to avoid discrimination" (Barnett et al. 4). Although an elusive concept, 'undue hardship' has been defined by a number of factors such as the cost which must be substantial; the health and safety of all the employees; the absence of conflicting rights: reasonable accommodation should not lead

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1) A kirpan is a ceremonial sword or dagger carried by baptized Sikhs which must be worn at all times along with other Articles of Faith.
2) A niqab is a cloth which covers the face as a part of sartorial hijab.
3) A burka is an enveloping outer garment worn by women in some Islamic traditions to cover their bodies when in public.

to discrimination against others or interference with the rights of others. In addition, what is important to emphasise is that the duty to accommodate does not mean finding the *best* accommodation available, but a *reasonable* accommodation for all parties.

The most common ground in reasonable accommodation cases is disability; others include religion, gender or sex, family status. By far, the most contentious and widely discussed cases by the media and the general public have involved religious accommodation. This can be explained with the fact that such cases usually broach the sensitive subject of differences in social values between the majority and minorities, topics that include gender equality, secularism, and public safety.

One of the first instances was a judgement by the Supreme Court of Canada in the 2006 *Multani v. Commission scolaire Marguerite-Bourgeoys*, where the Court struck down an order of a Quebec school authority that prohibited a Sikh child from wearing a *kirpan* to school as a violation of freedom of religion. A number of decisions by organizations and businesses in Quebec as well as complaints by groups or individuals placed the concept of reasonable accommodation in the eye of the storm: a University was ordered to provide a prayer room for Muslim students; complaints were lodged concerning male doctors examining pregnant Muslim women; a Montreal health clinic began to organize prenatal classes for women only out of respect for their Hindu, Muslim and Sikh patients (Ferguson).

The Bouchard-Taylor Consultation Commission on Accommodation Practices Related to Cultural Differences was set up in 2007 by the then Quebec premier, Jean Charest, to inquire into the controversy of reasonable accommodation and propose recommendations for the Quebec government. One of the conclusions of the distinguished academics, the philosopher Charles Taylor and the sociologist Gérard Bouchard, was that people who inveighed against reasonable accommodation were often misinformed that minorities were continuously exempted from abiding by the law on the grounds of multiculturalism. In their report the academics also stated that the "foundations of collective life in Quebec are not in a critical situation" (12). There is a need to adapt and the government must play a leading role in establishing better guidelines for "interculturalism". They see recent developments as a new stage in Quebec's history and as a shift in selfhood, which is no longer a French-Canadian identity, but a Quebec identity, an inclusive type of identity.

> To summarize, we could say that Quebec Interculturalism a) institutes French as the common language of intercultural relations; b) cultivates a pluralistic orientation that is highly sensitive to the protection of rights; c) preserves the creative tension between diversity and the continuity of the French-speaking core and the social link; d) places special emphasis on integration; and e) advocates interaction. (Bouchard and Taylor 42)

The Quebec government devised a new immigrant integration policy, stating that one of the primary goals is to educate potential immigrants about shared Quebec values, namely that it is a free, democratic and pluralistic society, based on the rule of law, in which men and women have the same rights, a society with separate religious and political powers, and that the exercise of one's rights and freedoms must respect the rights and freedoms of others and the society's general well-being. Upon entry into Quebec each immigrant must sign a declaration

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(written only in French) affirming respect for Quebec values, must know or be willing to learn French and attend an information session "How to live in Quebec".

Nonetheless, some individuals and institutions have voiced their concern that Québécois common values are not respected and that reasonable accommodation has gone too far. For a number of activists, reasonable accommodation has come to mean exemption from law and extending the rights of new immigrants to proportions that are deleterious to the traditional Quebec values and beliefs. An expression of this view is the 2007 Town Council of Hérouxville's Code of Conduct for immigrants, constructing 'us' and 'them' concepts. Its aim was to promote standards of behaviour that immigrants had to observe, such as equality of men and women, the prominence of French and the secular nature of life. The most controversial rules were the ban against the stoning of women, burning them alive and female genital cutting. The code has been branded as racist, and has been thought to presume that potential immigrants are barbarians and Muslims are viewed as oppressors who torture women. It was, however, instrumental in bringing Quebec Francophones to face issues that were swept under the carpet and forced politicians to pay attention and take action. A number of other incidents have followed, for instance the banishment of a 9-year old female Muslim player from a soccer match in Gatineau because she would not remove her *hijab*[4]; outrage expressed at the Electoral Office of Quebec for allowing women with *niqabs* to vote with their faces covered; a complaint by a Montreal YMCA against the installation of frosted windows required by a Hasidic congregation so that young Hasidic males would not see women exercising.

In 2009 the case of ***Alberta v. Hutterian Brethren of Wilson Colony*** was referred to the Supreme Court of Canada on the basis of religious accommodation. The request was for exemption of Hutterite followers from being required to have a photograph on drivers' licences, a practice that is forbidden in their way of life and goes against their religious beliefs. The Supreme Court ruled that the need to protect the integrity of the licensing system and protect against identity theft rendered photographs mandatory and justified the limitation on the community's religious freedom (Barnett et al. 9). Therefore, reasonable accommodation has its limitations, especially where it can victimize an innocent member of the group and the courts have ruled against in such instances. In one recent case followers of Jehovah's Witnesses wanted to prohibit blood transfusions for their children; in another fundamentalists claimed the right to shelter their children from the teaching of science. In both cases the Supreme Court refused to grant the right.

The conflict further escalated in the period leading to the provincial election campaign in Quebec in August 2012. As ***Globe and Mail*** reporters phrased it "It found fuel from a mayor's racially charged comments, a candidate's distaste for the crucifix hanging in the National Assembly, and the Parti Québécois's pledge to ban civil servants' religious garb" (Séguin and Clarke). The reporters referred to the situation where PQ's leader (and present Premier of the province of Quebec) Pauline Marois declared support for the revived idea to create a Charter of Quebec Secularism where civil servants would be prohibited to wear obvious religious tokens, to which the Ukraine-born PQ candidate of Algerian descent Djemila Benhabib reacted by asking for the reciprocal removal of the crucifix hanging in the National Assembly. The

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4) A hijab refers to the traditional head, face, or body covering worn by Muslim women or men.

mayor of the Quebec city of Saguenay, Jean Tremblay, made the explicit xenophobic remark that it is outrageous that a person with an unpronounceable name who has come from Algeria dictates to French Canadians how to behave and respect their own culture: "It's not the [secular] charter in and out of itself [that peeves him off]. It's having someone whose name I can't even pronounce come from Algeria, who doesn't understand our culture at all, but she's going to make the rules. And I know how soft Quebecers are – they'll all give in to her" ("Saguenay Mayor…").

According to Julius Grey, the Montreal attorney who presented the Mutani case before the Supreme Court of Canada, reasonable accommodation serves its purpose in relation to two very important spheres – individual freedom and the effective integration of immigrants (34). Democratic societies should respect individual freedom, and society as a whole should provide the accommodation rather than the lobbists. If society accommodates *burkas*, veils, *kirpans*, kerchiefs, turbans, the author contends, this will provide access for immigrants to public institutions and public employment which "integrates them in the mainstream and, in the next generation, most of their children do not require accommodation" (Grey 35). In addition, accommodation curtails the feeling of alienation and the possibilities of employment foster economic equality – an important prerequisite for felicitous and swift integration.

Conclusion

The 1692 witch hunts of unoffending Baptists and Quakers in Salem, Massachusetts, by English Puritans, who themselves were Protestant dissenters running away from religious prosecution and who had first landed at Cape Cod only in 1620 reminds one of how fast people forget. It is disconcerting that Quebecers, themselves a minority in Canada, who have fought for years to achieve the status of a distinct society, are not ready or willing to grant equal rights to new immigrants that belong to minority groups. Perhaps Catholic Quebec Francophones feel threatened from two sides: both from the overwhelmingly Protestant Anglophone world that surrounds them in North America, and – judging by some of the recent events described above – from new immigrants of the Muslim, Jewish and Sikh faith.

No multicultural model other than one which has done its best to integrate its citizens can be successful in the long-term. Undoubtedly, individuals or groups that are not part of the mainstream in a given society need to be accommodated in order to feel equal. In cases when reasonable accommodation is truly reasonable, the law and the practice in Canada guarantee it and grant it. However, what needs to be in the spotlight are more general issues related to integrating differences within a multicultural society. For instance, does accommodation isolate different groups and ghettoize them into separate schools, residential areas, or jobs and in this way defer their integration?

"When the Anglo Saxons, the Scandinavians, the Celts and the Normans fused to form the English nation, and when the Romans, Celts and Germanic Franks became the French, both attained a cultural and social cohesion that no multicultural society can imitate" (Grey 35). The process is bilateral and mutually influential and potent: immigrants are influenced by the language and culture of the majority, but at the same time the majority is imbued and altered

by the effect of the immigrants. Equality entails different things to different individuals. Reasonable accommodation cannot be effective unless the whole of society regards it as a common effort: as deference to the freedom of minorities on the part of the majority and recognition of the values of the democratic society by the minorities.

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