

## Religious freedom and deference to religion

Ottawa *Citizen*, under the headline “We don’t need freedom of religion: If we properly respect more basic rights there is no need to grant special status to spiritual practices,” 20 December 2010

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There’s really no need to count freedom of religion separately among the civil liberties. A culture and legal system that respects freedom of expression, freedom of association and assembly, and freedom of conscience, and that doesn’t interfere with what people are doing so long as they are not harming others, will necessarily be a culture and legal system in which people are free to worship as they want.

Strangely, though, even as freedom of expression and the other basic civil liberties, “basic” in that they can’t be derived from others, are under attack from various quarters, people are invoking freedom of religion in defending exemptions from law, and the courts are listening.

Courts have ruled that Orthodox Jews living in a multi-dwelling building may erect on a common balcony a sukkah, a small hut used during the holiday Sukkot. Other residents, though, must abide by the rule they themselves have set against erecting structures in common areas. Courts have ruled that initiated Sikh children may wear small daggers, kirpans, to school. Other school children may not wear small daggers.

Muslim women may be veiled while testifying in court, at least so long as their religious belief is sincere enough, though neither men nor non-Muslims may.

Not always, certainly, do the courts or other authorities exempt religious people from the rules. They rarely exempt Catholic organizations from employment legislation, for instance. The chance of gaining an exemption is best when the practice is part of a minority religion.

Recently, however, the Supreme Court ruled that Hutterites in Alberta who wish to drive on public roads must, like all other Albertans, have their photo on their driver’s licence, even though the Hutterites say that that requirement contravenes something in their religion.

The president of the British Columbia Civil Liberties Association (BCCLA), one of Canada’s two main civil liberties groups, has criticised that decision as inconsistent with past decisions, including the first two I mentioned above, as well as with the guarantee of religious freedom in the Charter of Rights and Freedoms ([http://www.bccla.org/newsletter/10\\_fall\\_newsletter.pdf](http://www.bccla.org/newsletter/10_fall_newsletter.pdf)).

What an unfortunate position for a civil libertarian to take. One would have thought that a liberty is for all of us, not just for those who claim special status. The correct civil libertarian position is to insist both that the laws apply to all of us equally and that the laws have no business telling us what to do unless serious harm is in the offing.

From a civil liberties perspective, the thing to do is to ask whether school children carrying sheathed knives in their clothing pose a serious risk of harm to their classmates or

others. If they don't, then rules against their carrying knives are illegitimate, and any school child who wants to carry one may, whether for religious reasons or not. If building regulations against structures in common areas are illegitimate when it comes to sukkahs, then they are illegitimate when it comes to whatever a resident wants to construct there. If requiring photos on licences serves no good purpose, then no one need have a picture on his or her licence. If wearing a veil doesn't impede justice, then anyone may wear one.

The point is, we all have our own reasons for wanting to do what we want to do. Taking reasons of religion somehow to be special, to be weightier than other reasons, violates our equality as citizens.

Some of us care passionately about competitive sports. Now suppose that one needs a satellite dish in order to receive one's favourite sports channel but the condominium complex in which one lives has a rule against satellite dishes. One can try to get the rule changed, and if one fails, one can choose between one's condo and sports.

Now suppose instead that one needs that satellite dish in order to receive religious programming. Well, in the end, the Nova Scotia Human Rights Commission found against the complaint that the rule constituted religious discrimination. But it took four years for the commissioners to do so. It's hard to believe the commission would have given the sports fan the time of day.

Why is there, both officially and in everyday life, this deference to religion and religious sensibilities? Deference to religion is bound up, of course, with commitment to multiculturalist accommodation, especially when it comes to minority or exotic religions. As Justice Louise Charron wrote, the argument against Sikh children wearing kirpans is "disrespectful to believers in the Sikh religion and does not take into account Canadian values based on multiculturalism.... If some students consider it unfair that Gurbaj Singh may wear his kirpan to school while they are not allowed to have knives in their possession, it is incumbent on the schools to discharge their obligation to instill [sic] in their students this value that is ... at the very foundation of our democracy."

What needs to be made clear is just how wrong-headed and, indeed, ugly these sentiments are to one who cares about equality and civil liberties. Let's leave aside the fact that it's no business of the government whether we are disrespectful to each other's religions, as well as Justice Charron's call for schools to indoctrinate children. First, we have the looming spectre of government agents quizzing us about our beliefs in order to slot us correctly. Second, religious leaders rarely have any sort of democratic legitimacy, and yet their views are the views the government will seek out as most authentic and defining of the community.

Third, and most importantly, while civil libertarians are concerned about us as individuals, about creating the spaces in which we as individuals (often, of course, as members of groups) can envision and pursue our good, deference to religion is an attitude that takes us first to be members of groups, and it doesn't much care about our political and social equality as individuals.

The stance of the president of the BCCLA amounts to a betrayal of the tradition of liberal equality and civil liberties. A person one would hope would stand against illiberal forms of multiculturalism appears, instead, to be a willing agent of them.