Formalizing Secularism as a Regime of Restrictions and Protections: The Case of Quebec (Canada) and Geneva (Switzerland)

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Abstract

In 2019, the province of Quebec and the canton of Geneva passed bills establishing their states as "secular." While each law is, to a certain extent, context specific, both present noteworthy similarities. First, neutrality (the cornerstone of *laïcité*) is articulated around two elements: (1) restrictions that affect the religious practices of public servants belonging to minority religions and (2) protections for Christian symbols constructed as "cultural." The article questions the implications for inclusive citizenship of formalizing regulatory regimes that differentiate between "religion" and "culture." Second, a comparative lens enables an analysis of how, through whom, and why similar regimes of regulation travel from one area of the world to another. The article argues for the importance of considering transnational influences when analyzing the regulation of religion to better (1) understand why particular models of secularism gain traction and (2) capture power dynamics structuring these processes of traction.

Keywords: Religion, culture, laïcité, neutrality.

Résumé

En 2019, la province de Québec et le canton de Genève ont adopté des projets de loi afin d'établir leurs États comme étant « laïcs ». Bien que les deux lois soient, dans une certaine mesure, propres au contexte particulier de ces deux régions, elles présentent des similitudes notables. Premièrement, la neutralité (la pierre angulaire de la laïcité) s'articule autour de deux éléments : (1) des restrictions qui touchent les pratiques religieuses des fonctionnaires appartenant à des religions minoritaires et (2) des protections pour les symboles chrétiens construits comme « culturels ». À la lumière de ces deux éléments, cet article s'interroge sur l'impact que ces régimes réglementaires, qui différencient la « religion » de la « culture », ont sur un mode de citoyenneté inclusif. Deuxièmement, une optique comparative est utilisée pour analyser comment, par qui et pourquoi des régimes de réglementation similaires

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vont circuler d'une région du monde à une autre. En dernier lieu, l'article défend l'importance de prendre en compte les influences transnationales dans l'analyse de la réglementation de la religion afin de mieux (1) comprendre pourquoi certains modèles de laïcité gagnent du terrain et (2) saisir les dynamiques de pouvoir qui structurent ces processus de traction.

Mots clés: Québec, Genève (Suisse), laïcité, religion, culture.

Introduction

In 2019, a referendum was launched in the Canton of Geneva over a law on the *laïcité* of the state (Loi sur la laïcité de l'Etat (LLE), 2018) approved one year earlier by the Grand Conseil (Assembly of the Canton).[1] One of the main objectives of the law was to ensure that religion be separated from the state. One way of doing that was to require public servants to be "neutral," which the law translated into a prohibition on wearing visible religious signs. It is this particular restriction, along with other articles of the law, that led citizens to challenge the law through referendum. However, the referendum ultimately validated the law with 55.1 percent of the vote in favour. A particularly striking feature of this referendum campaign is the poster developed by supporters of the LLE, which featured a black eagle holding golden keys over the word "YES." The black eagle and golden keys are the symbols of Geneva, found on the Geneva flag and its coat of arms.[2] This coat of arms appeared in the fifteenth century and represents the union between the Holy Roman Empire and the bishop of Geneva. The keys are actually a reference to those of the Holy Church given to the apostle St. Peter by Jesus.[3] The fact that the poster draws on this image symbolizing the union of church and state for a law that promotes the separation of religion and state reveals important contradictions. While it likely indicates that many citizens do not know or identify with this original symbolism, it is also an excellent example of how Christian signs have become "neutral," "invisible," and woven through the fabric of western society. Some argue they have become part of the "heritage" of those societies, which makes them stand in stark contrast to the "religiosity" and "visibility" of minority religious signs.

These contradictions are found in a number of laws and policies around *laïcité* today. This article seeks to look more closely at two of these laws, passed in 2019: the LLE in Geneva (Switzerland) and Bill 21 in Quebec (Canada). This comparison makes several contributions to the existing literature on secularism and the governance of religion.

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1 Because of the direct democracy principle in Switzerland, any laws passed at the federal or cantonal level can be challenged by citizens. In Geneva, citizens have forty days after the passing of a law to collect signatures from citizens for a cantonal referendum. The number of signatures has to represent 2 percent of the number of voters in the canton. Referendums are possible at the federal, cantonal, and communal levels in Switzerland. For more information, see: "Démocratie, Le système politique suisse," *Confédération, des cantons et des communes* https://www.ch.ch/fr/democratie/.

2 The poster is visible on the blog "Laïcité confortée et précisée à Genève," *Mediapart,* 1 May 2020, https://blogs.mediapart.fr/cuenod/blog/281119/laicite-confortee-et-precisee-geneve.

3 For more information see: https://genevois.org/User1/Geneve%20historique.htm.

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First, it reveals how both laws enable the emergence of a *laïcité* structured around (i) a regime of restrictions targeting generally visible minority religions and (ii) a regime of protections, where dominant forms of Christianity are constructed as "heritage" and can escape this regulatory gaze. Scholars have looked at how current laws on *laïcité* impact religious minorities, and in particular Muslim women (e.g., Barras 2014; Scott 2007; Bakht 2020; Jahangeer 2020), and other works have looked at how courts and policymakers have been using a discourse of culture to protect Christianity (e.g., Beaman 2021). However, this review of the Swiss and Quebec laws reveals how these two dynamics are deeply interrelated and work in tandem in legislative efforts to codify *laïcité*.

Second, this comparative lens reveals the similarities in the arguments put forth by proponents of these laws in Geneva and in Quebec, whereby *laïcité*'s regime of restrictions is constructed as a preventive tool to shield these societies from a crisis of diversity affecting other jurisdictions. Analyzing this argument is particularly noteworthy since it has not been the subject of much scholarly attention. So far, researchers have focused on a number of other arguments used to justify restrictions, including those related to the promotion of gender equality (e.g., Scott 2007; Selby 2014), living together (Beaman 2016), and "proper" integration (Bakht 2020).

Finally, this comparison shows the importance of adopting a transnational lens to study models of religious governance, in particular to shed light on how understandings of *laïcité* gain traction and circulate beyond national boundaries. While research has addressed how French ideas on secularism resonate in Quebec and vice versa (e.g., Koussens 2018; Koussens and Amiraux 2015; Amiraux and Gaudreault-DesBiens 2016), little has been written on how ideas travel within a wider francophone space. This focus invites us to pay particular attention to who is able to intervene in debates and give authority to particular readings of *laïcité,* and who remains silent and excluded. While this article looks only briefly at the circulation of ideas between Geneva and Quebec, it encourages others to more systematically explore this aspect. Ultimately, I argue that being attentive to presences and silences in debates on the relationship between state and religion is of the utmost importance, as it directly reveals the deep power asymmetries that structure the manufacturing of regimes of religious governance.

Section I opens the discussion by explaining the relevance of the Geneva–Quebec comparison, and reviewing the more specific methods that inform the arguments in this article. Section II provides background on both legislative projects. Section III delves into the comparison of the two laws and the debates that preceded them. In so doing, it first pays particular attention to how these legislative projects successfully put in place a regime of restriction for minority religions justified through preventive arguments. The circulation of these arguments in Geneva and Quebec is facilitated by the presence of particular voices and the erasure of others. Finally, section III explores how these laws also deploy a regime of protection, whereby Christian signs and practices associated with heritage are located outside the "religious."

I. Geneva and Quebec: A Fruitful Comparison

This article draws on a discourse analysis of the written transcripts of parliamentary consultations that preceded the passing of the LLE in Geneva and Bill 21 in Quebec

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to capture the arguments used to justify and authorize particular readings of *laïcité*. This comparison is particularly interesting as it constitutes an under-explored area of study. Indeed, despite the noteworthy parallels between Switzerland and Canada, in particular regarding their federal structures, comparative research on how these states regulate religion remains scarce. It is relevant to note, for example, that the federal structure gives particular power to cantons and provinces. For instance, Article 72 of the Swiss Federal Constitution stipulates that cantons are responsible for setting the terms of the relationship between church and state.[4] At the same time, Article 15 protects the right to religious freedom and conscience for all Swiss citizens.[5] The 2019 LLE passed by the canton of Geneva and the legal challenges regarding aspects of this law must be understood within this constitutional framework.

In Canada, the adoption of the *Canadian Charter of Rights and Freedoms* in 1982 led to the official constitutional recognition of the right to "freedom of conscience and religion" (Article 2) (Jukier and Woehrling 2010, 160). Yet, unlike Switzerland, Canada's constitution does not clearly outline either the relationship between religions and the state or which level of government ought to regulate this relationship. The contours of this relationship have been delimited partly through court decisions (Lavoie 2016, 341). Over the last decade, successive Quebec governments have also felt a need to clarify this relationship in the province through legislation, including in 2019 through Bill 21: an *Act respecting the laicity of the state*. Thus, both cases speak to the power (including limits of this power) of provincial and cantonal governments over the regulation of religion. It is also important to note that this comparison has become more salient given that both Geneva and Quebec decided to inscribe *laicité* into law in 2019.[6] As Koussens and Lavoie elegantly stress, these types of legal formalization give credence to *laïcité*: they anchor it not only in law but also in "public consciousness" (2018, 120).

II. Background on the *Laïcité* Law

1. Geneva's Law on the Laïcité of the State (LLE)

1.1 Genesis of the LLE

The LLE was first adopted in April 2018 by the Grand Conseil (the Assembly of the Canton). Its adoption was then challenged through referendum, given that a few articles of the law, including the one prohibiting public servants from wearing visible religious signs, were the topic of serious public debate (see Mayer 2019 for

[4] I am using the expression "church and state" in reference to the wording used in the Constitution.

[5] Switzerland has twenty-six cantons that have their own Constitutions. The Federal Constitution delineates the divisions of power. It is available online: "Federal Constitution," *The Federal Assembly — The Swiss Parliament*, https://www.parlament.ch/en/über-das-parlament/how-does-the-swiss-parliament-work/Rules-governing-parliamentary-procedures/federal-constitution

[6] While this article looks at how *laïcité* was inscribed into two specific laws passed in 2019, it is relevant to note that in both cases *laïcité* was also inscribed into essentially overarching pieces of legislation. In Geneva, the *laïcité* of the state was established by article 3 of its new Constitution in 2012, and the LLE was designed to flesh out this article. In Québec, one of the results of Bill 21 was to inscribe the *laïcité* of the state in its *Charter of Human Rights and Freedoms*, which has a quasi-constitutional status.

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more information on this). While the *LLE* ended up being accepted on February 10, 2019, some of its articles are still currently the subject of court challenges.[7]

The separation of church and state in Geneva had already been partially established in 1907, when the canton put an end to the funding of the main churches.[8] Despite the 1907 law, a new law was introduced in 1945 authorizing the cantonal government to collect voluntary taxes for the three main churches in Geneva: the national Protestant Church, the Roman Catholic Church, and the national Catholic Church. *Laïcité* was not mentioned in the 1907 and 1945 laws, which institutionalized the relationship between religion and state. This changed in 2012 with the adoption of the canton's new constitution, whose Article 3 establishes the parameters of *laïcité* in Geneva. The LLE was drafted and passed precisely to flesh out this article and articulate its application.

1.2 Content of the LLE

In many ways, the LLE is a complex and broad piece of legislation. Article 1 outlines the aims of the law:

> a) to protect freedom of conscience, belief and non-belief, b) preserve religious peace [*paix religieuse*]; c) establish the appropriate framework for the relations between the authorities and religious organizations. [translated by the author]

Laïcité is defined in Article 2.1 as a "principle of neutrality of state in religious affairs" [translated by the author]. Article 3 fleshes out this state neutrality. Particularly interesting is article 3.3, which prohibits elected officials from wearing visible religious signs when exercising their function and when sitting in the cantonal assembly or in municipal meetings. Article 3.5 is also noteworthy for its restriction on public servants wearing external visible religious signs (*signes extérieurs*) when they are in contact with the public.

Article 5 of the LLE allows religious organizations other than the three main churches to collect funds through taxes on a voluntary basis. It also clearly delimits which religious organizations can benefit from this service (Article 5.6). Article 7 stipulates that the government, in the case of serious infringements on public order, can temporarily restrict the wearing of visible religious signs in the public domain, including in schools and universities. It also notes that a person's face must be visible in "public administration, public establishments or establishments under public subsidy and in courtrooms" [translated by the author]. One final relevant point is article 8.4, which protects heritage (*protection du patrimoine*).

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[7] By May 2019, six appeals had been presented to the Geneva court of Justice (see Lugon 2019). As a result of one of them, in November 2019, the Constitutional Chamber of the Geneva Court of Justice cancelled the article of the law that prohibited elected politicians from wearing visible religious signs when exercising their function. The court explains that these individuals are not representing the state but society and should not be subject to the neutrality principle (Chambre Constitutionnelle, 2019; see also Hartmann 2019).

[8] This law was known as the *Loi de suppression du budget des cultes*. Before 1907, the state funded the national Protestant Church and the Catholic Christian Church (see Mayer 2019; Lescaze 2015, and Zuber 2008).

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2. *Quebec's Bill 21*

2.1 Genesis of Bill 21

To understand how Bill 21 came into being, we need to consider the debates in the province over the regulation of religion that have been ongoing for more than a decade. A notable moment occurred in 2007, when the provincial Liberal government, in response to a series of controversies,[9] appointed historian Gérard Bouchard and political philosopher Charles Taylor to lead a commission that would conduct provincial consultations on reasonable accommodation practices (see Bouchard and Taylor 2008, 17).

Along the lines of the work of a number of scholars (e.g., Baubérot 2008, Lefebvre 1998; Milot 2005, 2008; Laborde 2005), the final report of the commission notes that there are multiple models of secularism derived from different weight being accorded among four principles: state neutrality, the separation of church and state, the moral equality of persons, and freedom of conscience and religion (Bouchard and Taylor 2008, 135). The report positions itself against a rigid form of secularism that would give more weight to the principle of neutrality over the others (Jukier and Woehrling 2010, 158; see also Koussens 2016, 277 on this type of secularism). It instead invites Quebec to adopt an "open" secularism, which, the commissioners argue, fits best with the socio-political history of the province: "In this model, state neutrality towards religion and the separation of church and state are not seen as ends in themselves, but rather as the means to achieving the fundamental objectives of respect for religion and moral equality and freedom of conscience and religion" (Jukier and Woehrling 2010, 158).

The report also recommends that public servants who have coercive power be prohibited from wearing religious signs (i.e., judges, Crown prosecutors, police officers, prison guards, and the president and vice president of the National Assembly) (Bouchard and Taylor 2008, 272). While it stresses that neutrality of public servants should first and foremost be evaluated through the actions of public servants (ibid., 150), some positions with high power of coercion (such as those mentioned above) were thought to "strikingly exemplify State neutrality" and ought therefore be subject to a ban (ibid., 151).[10]

The release of the Bouchard-Taylor report was followed by a number of attempts to legislate on reasonable accommodation and/or the neutrality of the

[9] These included the Supreme Court's Multani decision (*Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006) and the Herouxville town charter (see Montpetit 2017 on this charter).

[10] Charles Taylor distanced himself from this proposal. In the course of the National Assembly's consultations on Bill 21, Taylor explained that when he initially supported the prohibition for some state officials, it was clear in his mind that it ought not to be extended to individuals who do not have highly coercive power. However, this recommendation was nevertheless used in Bill 60 (2013), and again in Bill 21, to legitimize extending the prohibition to other public servants. In this way, the initial recommendation has now become a means to exclude citizens from holding jobs in the public sector. For him, this is against the spirit of the Bouchard-Taylor report. He also noted that proposals that focus on these prohibitions create a societal climate of hatred and exclusion, which he was not conscious of at the time of writing the report (Consultations, 7 May 2019, 40).

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state (i.e., Bill 94 in 2011; Bill 60 in 2013; Bill 62 in 2017; Bill 21 in 2019).[11] These all involved, to differing degrees, the prohibition of some type of religious apparel. Bill 21, the fourth legislative iteration on this topic, is an initiative of the Coalition Avenir Québec (CAQ), a political party voted into provincial power in 2018. This bill draws in many ways on the four principles already outlined in the Bouchard-Taylor's report to define the broad strokes of *laïcité*. Yet in this piece of legislation, neutrality becomes an "end in itself,"[12] which was not how it was conceived in Bouchard and Taylor's open secularism model. Moreover, to legitimize the fact that the bill restricts public servants in a position of authority from wearing religious signs, a number of invitees during the consultations recalled the report's recommendation to prohibit signs worn by public servants with coercive power. Yet, by using the notion of "authority" to evaluate who should be subject to these restrictions, Bill 21 extends the prohibition to a much wider range of public servants than what had been initially foreseen in 2008 (see Chapter 2 of the law).

Another difference from previous attempts to conceptualize relationships between state and religion in Quebec is the effort to shield the law's model of secularism from judicial review.[13] Articles 33 and 34 of Bill 21 provide for the legislation to operate notwithstanding its infringement of certain rights under the *Canadian Charter of Rights and Freedom* and Quebec's *Charter of Human Rights and Freedoms*. These provisions were included for a number of reasons. One of them is that politicians wanted this legislative project to avoid the fate of Bill 62 (2017), the only other bill on the topic that was passed but which was stalled by judicial processes (Lau 2017).

2.2 Content of Bill 21

While Bill 21 is less comprehensive than the Geneva law, it has a similar goal: to carve *laïcité* into law. Its reading of *laïcité* also has many parallels to the Swiss law. Bill 21, like the Geneva law, starts in Chapter 1 by defining *laïcité*. Interestingly, the English version of the bill does not translate *laïcité* as secularism, which would be the standard usage, but rather introduces "laicity." This wording, as both Dabby (2020) and Selby (forthcoming) argue, seems to be a way of positioning Quebec's *laïcité* closer to the French model than to models of secularism implemented in the rest of Canada and North America.[14]

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[11] Only Bill 62 and Bill 21 were passed into law.

[12] This expression is used in reference to the quote by Jukier and Woehrling cited above.

[13] The law cannot be contested on grounds based on section 2 and 7 to 15 of the Canadian Charter and 1 to 38 of the Québec Charter. Nonetheless, it is important to note that this clause has not stopped court challenges outside of these grounds (see Dabby 2020).

[14] While the term "laicity" had been used by scholars, it had not been used, to my knowledge, in a law before. Baubérot is one of the scholars that introduced this word and, with other scholars (Baubérot, Blancarte, and Milot 2005), used it in the International Declaration of Laicity (2005). The meaning given to laicity in this Declaration is rather different from how it has been conceived in Bill 21. In the declaration, laicity is defined as the harmonization between three principles of similar weight: "respect for the fundamental right to free speech and worship individually or within a group; separation of the State and the Institutions from religious and political beliefs; non-discrimination (direct or indirect) towards human beings" (Article 4) (in Baubérot 2008, 23). Moreover, one of the aims of the Declaration is to show that this term can be widely adopted in the world seeking to dissociate it from French exceptionalism (see article 7).

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Article 6 prohibits public servants who are deemed to be in a position of authority from wearing religious signs. Part of the reasoning for this prohibition is that these individuals represent the state and therefore have a duty of neutrality. Like the Swiss law,[15] Bill 21 implements neutrality in practice through restrictions. While the Bouchard-Taylor report highlighted the importance of the *actions* of public servants in measuring neutrality, the key indicator in this new law becomes their *physical appearance*.

Chapter 3 (articles 7 to 10) of the law stipulates that public servants should deliver services with their faces uncovered. This article is similar to Article 7 of the LLE, with the exception that Bill 21 distinguishes between individuals offering a service (who are required to have their face uncovered) and individuals receiving a service (who could be required to uncover for security or identification purposes [article 8]). Article 17 includes a section that notes that this law does not affect the "toponomy" (the name of places) and does not require that public institutions "remove or alter an immovable or movable property adorning an immovable [i.e., building]." Similar to the LLE, this provision, despite its rather convoluted language, ensures that the Christian "heritage" of the state's public institutions is not targeted by the law. Finally, articles 33 and 34 invoke the notwithstanding clauses.

III. Comparing Bill 21 and the LLE

1. A Regime of Restrictions: The "Urgency" of Passing a Preventive Law

To understand both legislative proposals, it is important to first locate them in their political and historical contexts. For instance, the fact that one of the articles of the LLE recognizes religious organizations so that they can benefit from a taxation service is a direct consequence of historical religion and state relations.[16] Switzerland also has decision-making tools available that differ from the Quebec context. I am referring in particular to direct democracy,[17] including the use of the referendum, which is central to Swiss democracy. Thus, the fact that the LLE was approved by referendum is noteworthy because it gave it popular legitimacy.[18] While the referendum was used in this case at the cantonal level, it is also available at the

[15] There are two main differences, however, between Bill 21 and the LLE. First, Bill 21 applies this prohibition to selected public servants in positions of authority, whereas the Geneva law applies the ban to employees in *contact* with the public (authority is not part of the equation). The other difference is that the LLE speaks of external religious signs, whereas Bill 21 applies a blanket ban on religious signs.

[16] Kuru (2007) discusses the importance of considering history to understand the shape of models of religious governance.

[17] Voting plays a central role in Switzerland. Swiss citizens are asked to vote approximately four times a year on an average of 15 different issues. Swiss citizens also have the possibility to voice their concerns through popular initiatives, and referendums. For more information on direct democracy see: "Direct Democracy" *Discover Switzerland* https://www.eda.admin.ch/aboutswitzerland/en/home/politik/uebersicht/direkte-demokratie.html

[18] It is still noteworthy that the LLE was approved at 55.1 percent, which means that an important number of voters did not support the law, including its proposed understanding of *laïcité* and state neutrality. These voices tend to remain less audible in debates and consultations than voices in the "Yes" camp. This is an invitation to think more critically about how a term whose definition is initially disputed becomes constructed as an undisputed truth, especially once it is codified into law.

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federal level for any initiative that requires modifying the Swiss constitution. Perhaps the most famous referendum related to federal regulation of religion took place in 2009,[19] when Swiss citizens voted to ban the construction of minarets (57.4 percent of the population voted in favour of that ban).[20] According to Baycan Herzog and Gianni (2019, 2), the referendum for the minaret ban and its results indicate some of the problems with direct democracy. They stress how Muslims during the referendum campaign were unable to participate equally in public debates because their legitimacy as political actors was questioned (ibid.). While direct democracy is integral to the narrative of how Switzerland imagines itself, Baycan Herzog and Gianni (2019) also remind us of its role in perpetuating the exclusivities that structure this imagined community: "[it] perform[s] and reiterat [es] the symbolic exclusion of some groups from common belonging—e.g., the Jews in 1891, foreigners in the sixties and seventies, refugees, and now Muslims (Vatter 2011)" (Baycan Herzog and Gianni 2019, 12).

Even if this discussion of the relationship between national belonging and direct democracy is specific to Switzerland, the argument over who can participate in debates on legislative projects is one that resonates on both sides of the Atlantic and that explains how particular readings of *laïcité* gain traction. In fact, I contend that while *laïcité* laws in Quebec and in Switzerland have discriminatory impact on Muslim women, the consultations and debates prior to the passing of these laws are equally problematic (see Mahrouse 2010 and Jahangeer 2020 on this point for the Quebec case). This is because, similar to the situation Baycan Herzog and Gianni describe during the Swiss minaret campaign, the consultations and debates exemplify how minorities, and in particular a number of Muslim citizens, are unable to participate in (re)shaping how we live together. Thus, despite important contextual differences, the two bills and the respective deliberative context that led to their passing carry similarities worth exploring.

One of the first similarities is the presence of preventive arguments in parliamentary discussions on these laws. These work to construct Quebec and Geneva as "distinct" societies that have not yet been touched by the chaos of diversity disrupting other western societies. This chaos, which is the result of increasing religious diversity and especially migration from Muslim countries, is looming and will end up affecting these two societies if they do not act. This is well articulated in the following quotes from consultations prior to the passing of both laws:

> The relative calm that characterizes the current situation in Geneva does not, at the same time, make our canton insensible to the chaos that has hit neighbouring western societies throughout Europe […] The instability of the last twenty years requires us to legislate on *laïcité.* (Secrétariat du Grand Conseil, Rapport de la majorité, Geneva 2018, 515–17, translated by the author)

[19] Most recently, in March 2021, 51.2 percent of Swiss voters accepted through federal referendum to ban the wearing of the burqa and niqab in public spaces. Similar to the ban on minarets, this referendum is symbolic, as it is estimated that no more than thirty women wear the niqab in Switzerland (Al Jazeera 2021).

[20] It is worth noting that at that time the country had a total of four minarets.

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> Mme Robitaille: […] What is your answer to this school board that says, "There are veiled women, but, here [*chez nous*], there is no problem"?
>
> M. Rocher (Guy): I would say it might be true now, but a law project like this one is for the future. (Consultations, Québec, Guy Rocher, 14 May 2019, 16, translated by the author)

It becomes evident in the excerpts from the consultations that these legislative proposals are about having a framework in place to avoid a future crisis. In both contexts, stakeholders stress the importance of passing these laws now, while the climate is still relatively calm. It is interesting to link Guy Rocher's quote, cited above, to the more detailed arguments he makes in his consultation. His parliamentary intervention points clearly to how the past shapes his own understanding of this potential future crisis. Rocher, who is a well-known Quebecois sociologist, was also a member in the 1960s of the Parent Commission that made important recommendations for the deconfessionalization of schools in Quebec.[21] His reflections are informed by this life experience, whereby he witnessed the domination of the Catholic Church and fought to achieve disestablishment through the implementation of state neutrality. In his intervention, Rocher worries that Islam's presence, if not properly regulated, could lead to a situation similar to the one he experienced prior to the Quiet Revolution, where it would dominate public life and institutions. He is particularly concerned by the visibility of Islam, which he compares in his intervention with the visibility of Catholicism in the past. Interestingly, in describing this potential threat and comparing it with the situation of Quebec with Catholicism, there is little acknowledgment of the very different colonial, historical, political and sociological positions of Catholicism as a religious institution and Islam as a minority religion in Quebec today. It is also noteworthy that there is no mention in his testimony of the continued presence of Catholic symbols that mark the urban landscape in Quebec. This is most likely an indication of how this presence has become (in)visible for some. In other words, for Rocher, it is Islam that is visible today, and it is this visibility that needs to be tamed to avoid a return of past problems (Consultations, 14 May 2019, 10).

The contexts of France and anglophone countries (the United Kingdom and anglophone Canada) are also used as examples in both debates to give shape to this preventive trope. While France passed similar laws in 2004 and 2010 and while the understanding of *laïcité* conveyed in these laws has often been constructed as a model to follow, a number of stakeholders still noted that it did so in a climate that was already problematic.[22] It was thus reasoned that these laws had less of a calming effect than they could have had (see, e.g., Secrétariat du Grand Conseil, Geneva 2018, 28, 33, 70, 71, 122; and Consultations, Québec, 7 May 2019, 40; 9 May 2019, 35). On the other hand, the anglophone world did not legislate, and the situation in these societies indicates potential problems, including a lack of social cohesion, that

[21] For more on Rocher's intellectual and public life see Macdonald 2018.

[22] In fact, the French commissions that preceded the passing of the 2004 and 2010 laws were put in place to analyze problems that were thought to already exist. In Switzerland and in Quebec, discussions point to the fact that while there might be some challenges, there is no existing, systematic problem.

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Quebec and Geneva *could* face (e.g., Secrétariat du Grand Conseil 2018, 46, 55, 88, 109–111,116, 117, 157, 472; and Consultations, Québec, 9 May 2019, 35; 16 May 2019, 40). In a sense, as Pierre Bosset, former director of research of the Quebec Commission on Human Rights,[23] notes in his intervention, the principle of precaution is used to limit fundamental rights of citizens (Consultations, Québec, 15 May 2019, 43).

To put it differently, arguments made to justify passing laws (i.e., Bill 21 and the LLE) associate *laïcité* with a neutrality that requires restricting public servants from wearing religious signs. Inscribing this type of *laïcité* into law is seen as a tool to prevent diversity from becoming "unmanageable." Like Rocher, several stakeholders associate this potential "unmanageability" with the "growing" presence of Islam. The conclusion of Geneva's report notes that "the bill is a necessary instrument today to calmly prevent extremist temptations and a rise of fanaticism, fundamentalism, proselytism and communitarianism [*communautarisme*] […]" (Secrétariat du Grand Conseil, Geneva 2018, 517, translated by the author). This conclusion does not explicitly link "fanaticism," "fundamentalism," and "communitarianism" with Islam; however, in the consultations preceding the law, a number of the examples used by participants to illustrate these concepts and potential problems with diversity are related to Islam, including the fact that demographic data shows that this religion will grow in the canton (ibid., 90, 279).

In both contexts, Orientalist and Islamophobic tropes are woven through parliamentary consultations and used to maintain an "elevated level of alert" (Amiraux 2016, 44). To borrow Valérie Amiraux's metaphor, these tropes work like gossip,[24] and while they are not necessarily backed by facts, they gain authority and traction. Thus, gossiping leads to an essentialization of concepts that are disconnected from their initial meaning and that act as truths hard to dislodge (see Amiraux and Koussens 2019, 61 on this). The interaction between Sol Zanetti, a politician from Québec Solidaire, and Julie Latour, a Quebec lawyer for the organization Juristes pour la laïcité et la neutralité religieuse de l'État (Lawyers for *laïcité* and state neutrality), exemplifies how this gossip works. In that exchange, *laïcité*, in particular the restrictions it will put on visible religious signs, is constructed as a potential tool to limit and prevent "honour crimes" (Consultations, Québec, 9 May 2019, 12, translated by the author). Thus, the image implicitly circulating, here, is one that associates religious signs—that is, the headscarf and the niqab—with a long list of crimes, such as "honour crimes," female genital mutilation, and forced marriage.[25] Regulating their presence in public life, more precisely regulating the bodies of Muslim women, is understood as *the* necessary preventive

[23] Bosset wrote a number of opinions for the Commission on reasonable accommodation and religion (e.g., Bosset 2007) and was also one of the expert-members of the consultative committee to the Bouchard-Taylor Commission.

[24] Gossip is defined by Amiraux and Koussens (2019, 50) as a "practice that consists of speaking among people who know each other about someone who is not present and that privileges the circulation of representations rather than knowledge based on facts [savoir ancrés]" (translated by the author).

[25] These associations are far from new and have been studied by many (e.g., Said 1979; Abu-Lughod 2013).

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step to calm these anxieties. This governance becomes essential to ensure the preservation of both Geneva's founding value of "religious peace"[26] and Quebec's distinct way of "living together" (see Beaman 2016 and Barras, Selby, and Beaman 2018 on this).

In brief, the deployment of preventive *laïcité* legitimizes a regime of restrictions. To do so, it is articulated around multiple erasures. The complexities and power dynamics of the socio-political and historical situations of Quebec and Geneva, as well as of countries with which these societies are compared (e.g., France and the United Kingdom), are rendered invisible. Likewise, the complexities of religion, in particular Islam, as lived in specific contexts, are ineligible. *Laïcité* is de-historicized, stripped of its multiple layers and meanings. It is defined in terms of neutrality[27] and becomes the precautionary tool *par excellence* against a crisis of diversity.

2. *A Regime of Restriction: Presences and Erasures*

Amiraux (2016, 45) explains that gossip works by giving a voice to certain actors (those who are gossiping about others) and keeping the subjects of this gossip voiceless. This is visible in the Quebec and Geneva projects, as minorities wearing visible religious signs—in particular women wearing headscarves, who are the ones most affected by these laws—were either not heard, during consultations in Geneva, or heard only very rarely, in the case of Quebec. In fact, oral consultations for Bill 21 and the LLE were by invitation only.[28] While Quebec MPs mentioned that discussions around *who* to invite were held with all political factions in the National Assembly (Consultations, Jolin-Barrette, 8 May 2019, 35), lack of representativeness was noted by a few invitees, such as the Coalition Inclusion Quebec, on the last day of consultations[29]:

> We are disappointed that there were not more people invited to participate in consultations, in particular the religious minorities who will be affected by the bill if it is adopted. The coalition held its own popular consultations this past Monday, when we heard twenty-six individuals and organizations, the majority of which represented different religious groups in Québec. They testified to the very tangible effect that Bill 21 will have on their lives. […] All these groups and individuals have perspectives and concerns that deserve to be heard. (Consultations, 16 May 2019, 9, translated by the author)

[26] The notion of religious peace is important in the context of Geneva given the different tensions and schisms between Protestants and Catholics that mark the history of the canton. The idea of the "neutrality" of the state became important at the beginning of the twentieth century, enabling, among other things, this religious peace. For more on this history, see Zuber 2008.

[27] Neutrality undergoes a similar essentialization process as it becomes a shorthand for physical, bodily neutrality (see Amiraux et Koussens 2019, 65, and Koussens and Lavoie 2018).

[28] In Quebec, all citizens and groups could still submit a written report to the National Assembly, but oral consultations were on an invitation-only basis. Some organisations, such as the Islamic Center of Quebec, asked to intervene orally in front of the Assembly but were not invited (Consultations, Laouni, 8 May 2019, 35)

[29] Samira Laouni also pointed to this lack of representativity in her intervention (Consultations, 8 May 2019, 35).

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This question of lack of representativeness speaks directly to concerns about deliberative democratic processes. While this problem is more explicit when participation in consultations is restricted, it also transpires when processes seek to be open to everyone. Herzog Baycan and Gianni reminded us of this earlier in their analysis of referendum campaigns in Switzerland. Likewise, Mahrouse points to how citizen forums organized by the Bouchard-Taylor Commission in 2007 and 2008 ended up reproducing subtle forms of racial hierarchies given that debates were driven by white Quebecers in those spaces and that minorities were put in a position where they had to respond to the fears of this majority (2010, 89).[30] It is therefore important when considering how a certain type of *laïcité* gains traction to consider who *is* and who *is not* given the cultural, social and political capital to participate in debates and discussions and, more generally, *how* a discussion gets curated, including who shapes the broad challenges that need to be tackled. In our current case, this means thinking about how preventive *laïcité* comes into being through the prioritizing of certain voices and the silencing of others.

With regard to those who are given a voice, Amiraux and Koussens (2019, 66) posit that their level of expertise (e.g., whether they are scholars or concerned citizens) often plays no role in the authority they are given. Amiraux and Koussens call these types of individuals "couriers" [*passeurs*] who "do not limit themselves to transmitting an idea […] They have, at the same time, talents in translation and resources (social, political and cultural capital) allowing them to circulate from one national space to another, from one media arena to another, until they are considered such 'experts' that they can exercise a real media leadership on these questions" (2019, 63, translated by the author). Taking a closer look at who intervenes in the Quebec and Geneva consultations enables us to see that quite a bit of space is given to individuals who present themselves as "experts" on *laïcité,* and who often identify as being members of secular, humanist and/or atheist associations.[31] A number of these "experts" are women of Muslim background, who, in some cases, also lived part of their lives in Muslim-majority countries, and draw on this past life experience to give shape to this moral panic.[32] Scholars have written on these particular actors, noting that it is precisely their "insider" experiences, and especially the fact that they were able to "emancipate" themselves from their former life, that gives their voices credence (e.g., Ahmad 2009; Abu Lughod 2013)

[30] Jahangeer discusses the racism and orientalism lodged in debates on Bill 60 in Quebec, whereby "native testimonies" of women who had formerly lived in Muslim countries grounded in dominant orientalist understandings of Islam (e.g., where Muslim women are described as imperiled) were given more space in debates than other experiences (2020, 124–33).

[31] In Switzerland the associations consulted were the following: Culture religieuse et humaniste à l'école laïque, Cercle liberté de conscience et laïcité, Coordination laïque Genevoise, and Libre Pensée Genève. In Quebec, the associations that participated to the oral consultations were the following: Collectif citoyen pour l'égalité et la laïcité, Association québécoise des Nord-Africains pour la laïcité, Les Juristes pour la laïcité et la neutralité religieuse de l'état, Mouvement laïque québécois, and Rassemblement pour la laïcité.

[32] In Geneva: Djemila Benhabib and Fabienne Alfandari. In Quebec: Leila Lesbet, Djemila Benhabib, Nadia El Mabrouk, Leila Bensalem, and Fatima Houda-Pepin.

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As an example of these couriers, we can turn to the Quebec-based essayist Djemila Benhabib,[33] who intervened in both contexts. In the Swiss context, Benhabib presented herself as a rapporteur of the situation in Quebec and in Canada. In her intervention, she describes recent "drifts" in Canada, particularly in the use of reasonable accommodation. These drifts reminded her of Islamists' threats she personally experienced in her native Algeria (see Barras 2018, on this). Her lived experience legitimizes the importance of legalizing a preventive *laïcité* in Geneva. In her intervention in Quebec, Benhabib adopts a similar posture as a transnational "expert." On several occasions she mentions her travels to other countries that have passed legislation on *laïcité,* including Switzerland, and her discussions with international intellectuals (mainly French ones) to stress the global importance of institutionalizing *laïcité* (Djemila Benhabib, Québec, 7 May 2019, 17). On both sides of the Atlantic, she makes the case for approaching *laïcité* as *the* transnational response to transnational problems (or potential problems) (Secrétariat du Grand Conseil, Geneva 2018, 108–123).

Benhabib is just one courier, among many, who has—and is given—power to circulate "knowledge" about different contexts[34] in order to curate a discourse around *laïcité* adapted to the specific characteristics of a society. Regardless of whether these couriers physically travel from one location to another, what is particularly noteworthy is their ability to draw selectively on situations that are happening elsewhere to craft compelling stories. In fact, given the many parallels between the arguments and shorthand used in the Geneva and Quebec cases, it would be worth further exploring the role played by a francophone transnational space in facilitating and authorizing this circulation. This inquiry could help better delineate the boundaries of that space, including whether geographical boundaries are relevant. To do this, scholars could consider looking more specifically at where couriers intervene (e.g., media, social media, intellectual circles, political debates, etc.), as well as the forms these interventions take. Analyzing who these couriers are (including their sociological profile), whether they are members of particular organizations, with whom they network and who funds their work could also provide insights into the power structures that enable them to navigate in that transnational space—and, more generally, that enable this space to exist and be influential.

3. *A Regime of Protection: Preserving Our "Heritage"*

In both these projects and in the consultations that preceded the passing of those laws, signs and religious practices considered part of the Christian heritage of these societies are understood as being exempt from the scrutiny of *laïcité*. Beaman

[33] Benhabib is currently an employee of the Centre d'action laïque (Center for secular action) in Belgium: https://www.laicite.be/le-cal/le-centre-d-action-laique/lequipe-du-cal/.

[34] Whether this knowledge is accurate is often irrelevant. For example, in her oral intervention on Bill 21, Benhabib points out that Belgium has already imposed a prohibition of religious signs for teachers (7 May 2019, 13). In fact, aside from a 2011 law that forbids the covering of one's face in public, there is no other legislative text in Belgium that prohibits the wearing of religious signs (see Delgrange 2019 for more information).

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(2013; 2020; 2021) has argued that the act of labelling these signs as part of "our culture" and "our heritage" blurs the boundaries between the secular and the religious. When constructed as cultural or as part of society's heritage, these signs and practices enter the realm of the secular and are not seen as infringing on *laïcité* and its principle of state neutrality. Of course, this "turn to culture," as Beaman (2013, 103) and others (Selby, Barras, and Beaman 2018; Zubrzycki 2016) have argued, represents deep power asymmetries, where some practices are protected (e.g., Christian ones) and others are not. Beaman (2013, 103) also notes the importance of considering what this emphasis on preserving Christian heritage means in a context where religious diversity is growing and where there is a "decreased commitment to organized religion." Is this emphasis also a way to give a renewed importance to institutional relics and practices that would otherwise disappear—to create, in other words, a semblance of "dominant" cultural cohesiveness?

Both laws have articles that protect this heritage through the language of patrimony. Article 9 of the Swiss law protects the "*patrimoine*" and Article 17 of the Quebec law stipulates that public institutions are not required to "remove or alter an immovable, or movable property adorning an immovable." The tropes in the consultations and the imageries related to these laws also indicate the strong link between representations of Christianity and culture.

In the context of the LLE, this is illustrated, for example, by the poster used by those in favour of the law during the referendum campaign described in the introduction of this article. It also comes out in the debates around that law. One particularly interesting question that was discussed between MPs was whether the ceremony of the swearing in of Geneva MPs, which takes place in Geneva's St. Peter's Cathedral and requires MPs to swear on the bible, would be affected by the law. While this was the subject of debate, MPs chose not to include anything on it in the law. The argument for keeping the ceremony as is was that it was not about religion *per se*, but rather representative of Geneva's identity and history (Secrétariat du Grand Conseil, Geneva, 279).

Discussions in Quebec have similarly touched on questions of whether Quebec's Christian (and predominantly Catholic) heritage should be exempt from the law (see Zubrzycki 2016 on this). The presence of the crucifix in the national assembly was an important topic of discussion. The current Quebec government eventually decided to remove it from the main room of the National Assembly as a result of pressure, recognizing the ambivalence of this symbol. However, it put an end to this debate not by removing it completely but by moving it to another room of the legislature. This physical move seems to resolve the question of ambivalence and allows politicians to construct the crucifix solely as an apolitical symbol of Quebec's heritage—a heritage that, as the Fédération Québécoise des municipalités (Federation of Quebec municipalities) notes, is not "a carrier of religious meaning" (Consultations, 14 May 2019, 25). Thus, the continued presence of the crucifix in the legislature ceases to be questioned, as doing so would directly challenge Quebec's values. These dynamics are reflected in the exchange between MP Jolin-Barrette and the representative of the Mouvement National des Québécois et Québécoises (National movement of Quebeckers):

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> M. Jolin-Barrette: On the question of the crucifix, we tabled a motion [to move] the crucifix from where it is located, the blue salon, to showcase it [*mettre en valeur*] elsewhere in the parliamentary building. […] What are your views on the idea of removing the crucifix?
>
> M. Boucher (Etienne-Alexis): […] What the Assembly did, it sent a loud message to citizens of Québec saying: "Okay, we will move the crucifix" […] but it does not go into a closet; there, we agree, the crucifix must be showcased […] (Consultations, Québec, 7 May 2019, 27, translated by the author)

In other words, while the crucifix has to be moved, it must remain, at the same time, visible because it has to be "showcased."

Not surprisingly, while "heritage" could include religions other than Christianity, most of the discussions, not unlike in Geneva, explicitly linked heritage and Christianity.[35] The Centre consultatif des relations juives et israélienne (CERIJ) (Consultative Centre for Jewish and Israel relations) is the only group consulted by the National Assembly that stressed the plurality of this heritage and recommended modifying the article on heritage to reflect this reality (Consultations, Québec, 7 May 2019, 59). Yet, Article 17 of the law does not explicitly mention this plurality. Here, it is important to refer to Beaman's (2013, 101) comment on religious minorities using the category "heritage" to protect themselves from regulatory zeal. She argues that while religious minorities could potentially use the discourse of culture, doing so might be complicated given that "majorities may be better placed to control the construction of the boundaries and meaning of symbols" (ibid.). These power dynamics are at play in the drafting of Bill 21 as well as in that of the LLE, and they will certainly play a role in understanding how these laws are interpreted and implemented.

Concluding Thoughts

Our comparative study of Bill 21 and the LLE is enlightening for several reasons. It reveals how both laws enable a *laïcité* structured around a regime of restrictions and protections. To enable this, these legislative projects are organized around a series of shorthand. Understandings of state "neutrality" have increasingly become about prohibiting public servants from wearing gear constructed as religious to prevent societal chaos. Likewise, the "heritage" of these same states becomes about protecting Christian relics constructed as cultural. These types of shorthand are setting the parameters of the discourse around *laïcité* and what it should or should not protect. It is becoming what *laïcité* is. In this way, they work to de-historicize and depoliticize this regime of protection and prohibition: a regime which, at its core, is discriminatory. In effect, this regulatory regime is constructed around the idea that neutrality cannot be political because it is applied to "all" public servants "equally," and its imposition after all is about preserving our ability to "live

[35] Dabby (2015, 374) notes how these power asymmetries were also present in the crafting of Bill 60. Also, discussions regarding Bill 21 did not mention Indigenous heritage reproducing a "Christian colonial stance in its call for a 'Quebec Nation'" (Selby, forthcoming).

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together" and maintain "collective peace." Heritage also becomes apolitical because, again, it is about preserving "our values," which are central to who "we" are. Thus, the comparative discussion in this article shows that it is imperative to consider *laïcité* as a regime of both protections and restrictions, as these two aspects work hand in hand.

This article also notes the significance of adopting a transnational angle to study models of religious governance. It draws attention to how a number of similar arguments are used across geographical contexts to justify a particular regime of regulation. In both cases reviewed, preventive arguments are central to making a case for restrictive measures. These arguments gain traction whether or not they are substantiated by empirical evidence. They become a common "truth" that cannot be dislodged, circulating like gossip from one area of the world to another. The transnational lens also reveals the crucial importance of exploring *who* can intervene in debates—that is, *who* can act as couriers. Interestingly, a number of the actors who participated in deliberations around *laïcité* have similar profiles across geographical locations, and some of them intervene in multiple locations. They present themselves as "experts" of *laïcité* and draw on their "knowledge" of what is happening elsewhere to give credence to their arguments. This question of who can intervene raises broader queries around why certain actors have the capital to speak and others simply do not. It is an invitation to consider the limits of our deliberative processes, which are structured around deep power asymmetries and exclusions of voices. This is important given that these deliberative processes are becoming essential tools in the manufacturing of transnational "truths" that legitimize the existence of particular modes of religious governance.

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