

# THE PARADOXES OF REASONABLE ACCOMMODATION

Julius Grey

For Julius Grey, one of Quebec's key experts in the field of civic liberties and human rights, individual freedom and effective integration of immigrants are the two fundamental reasons why accommodation is desirable in an open society such as Canada. Yet there are also some instances when accommodation is not desirable — for example, when it ends up victimizing innocent members of a group, such as in the case of blood transfusions for children, or when it ghettoizes a whole group, through the creation of separate schools, hospitals, or courts. “The word ‘reasonable’ when it precedes ‘accommodation’ is not a meaningless term of art,” says Grey. “Rather, it is a prism through which all accommodation must be seen and judged.”

Selon Julius Grey, l'un des principaux experts en matière de libertés civiques et de droits de la personne au Québec, la liberté individuelle et la pleine intégration des immigrants sont deux raisons fondamentales justifiant les accommodements dans une société ouverte comme le Canada. Des accommodements sont toutefois indésirables dans certaines situations, s'ils risquent par exemple de faire des victimes innocentes au sein d'un groupe, comme c'est le cas du refus des transfusions sanguines pour les enfants, ou d'isoler des groupes entiers en créant des écoles, hôpitaux ou tribunaux distincts. « Le mot “raisonnable” précédé du mot “accommodement” n'a rien d'un terme abstrait, avance l'auteur. C'est plutôt un prisme à travers lequel envisager et juger chaque accommodement. »



**I**n *Murder in the Cathedral*, T.S. Eliot commented on the “worst temptation of them all, to do the right thing for the wrong reason.” It seems that many Canadian advocates of reasonable accommodation want to do precisely that, the right thing for the wrong reasons. Its opponents, on the other hand, often want to do the wrong thing for right reasons.

Many calls for accommodation come from the proponents of muddled political correctness — the friends of multiculturalism, diversity and communitarianism. For them, the existence of permanent ethnic and religious groups and of collective rights attached to them is a public good. Reasonable accommodation is one of the ways of maintaining differences and the negotiation of the degree of accommodation is, in the nature of things, the domain of the lobbies. This model of Canada is what Joe Clark meant when he said that Canada is a “community of communities.”

The opponents of accommodation, especially in Quebec, are often inspired by French republicanism, by notions of secularism, of equality and of integration of newcomers as equals into our society. They abhor the idea that civil society should become a permanent negotiating session between powerful lobbies.

The difficulty is that while the republicans have a more attractive goal, a sensible amount of accommodation in fact helps achieve it. By adopting republican ideals and some mildly communitarian solutions, we would get the best of both worlds.

**I**t is the thesis of this essay that reasonable accommodation is desirable for two reasons — individual freedom and effective integration of immigrants.

In a democratic society, individual freedom is surely one of the fundamental values. Telling a person what to wear, how to decorate their homes, what to eat and when to celebrate holidays is an unnecessary interference with personal liberty.

Moreover, it is important for society as a whole to provide the accommodation rather than for the lobbies to become the instrument, because the lobbies tend to limit the freedom of their members far more than the Canadian or the Quebec state, or than any of the institutions operated by society as a whole. Determined to survive as identifiable entities, the lobbies are forced to encourage conformism with respect to culture, marriage and religion. If accommodation is accorded or denied

through the courts, each individual is free to determine his or her own cultural or religious identity.

In the *Amselem* case, which allowed orthodox Jews to construct *succas* on their balconies, despite condominium rules to the contrary, the Supreme Court specifically denied any legal pertinence to accepted dogmas of the Jewish religion and insisted on the individual faith and conscience of those who requested accommodation. This was a crucial and liberating moment in Canadian law, when the individual notion of accommodation was enshrined as the only one except, perhaps, in the sphere of aboriginal law, where collective rights have long been recognized.

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The second reason for accommodation is equally important — the integration of immigrants. Accommodating kirpas, kirpans, kerchiefs, turbans, religious holidays and so on allows the individuals in question easy access to public institutions and public employment. This, in turn, integrates them in the mainstream and, in the next generation, most of their children do not require accommodation.

This process is assisted by the fact that accommodation prevents the development of a sense of alienation or, in extreme cases, perception of persecution, which is sometimes evident in isolated minorities, and that the availability of many types of employment promotes economic equality, which is

the most important condition for successful integration.

All of this, of course, points to certain limits as to the type of accommodation that merits the adjective “reasonable.” Most will agree that demands for accommodation should not be too onerous. For instance, individuals should be able to claim a few days for religious observance; society could not cope with a request for 50 days a year. Similarly, one could not permit truly dangerous objects in the name of religion (e.g., a sharpened sword instead of a kirpan).

What has less often been pointed out is that accommodation that ghettoizes groups — for instance by the

creation of separate schools, hospitals, courts — is undesirable. Indeed, a burka or a veil that covers the face, as opposed to a kerchief, is very problematic, because it constitutes a barrier to social integration. It is very surprising that, in their opposition to accommodation, Quebec republicans fixated on the rather innocuous kirpan, and not on the expensive and morally questionable subsidies to private schools.

Another limit on accommodation is the fact that it is not possible to grant accommodation that victimizes innocent members of the group. For instance, our society has wisely refused Jehovah’s Witnesses the right to prohibit blood transfusions for their children. In the *Jones* case, the Supreme Court also refused fundamentalists the

right to shelter their children from the teaching of science.

It follows that the word “reasonable” when it precedes “accommodation” is not a meaningless term of art. Rather, it is a prism through which all accommodation must be seen and judged.

It is becoming increasingly clear that multiculturalism is not only a chimera, but also a dangerous one. No society has ever been successful in the long run unless it integrated its citizens and eliminated barriers to marriage between them.

The word “assimilation,” which is odious when force is used, should be rehabilitated as a description of what happens to citizens of varied origins in an open society. 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.

Of course, assimilation is not a one-way street. The immigrants adopt the language and culture of the majority, but the majority is also modified, and indeed permeated, by the contribution of the immigrants. It is obvious that the waves of immigration of the 20<sup>th</sup> century have left an indelible mark on Canada and on the descendants of the two majority groups of the early 1900s. That is perhaps another reason, a pedagogical one, to permit manifestations of new cultures in our schools and other institutions, since much of what they bring will become part of us.

One more reason to favour accommodation is dictated by humility. We cannot know that our present system or way of life is necessarily the best one or even that it is

permanent. When the good citizens of Hérouxville, firmly opposed to accommodation, decided to draft a code of core Quebec attitudes and beliefs, they put secularism, gender equality and openness to different sexual orientation at the very top of the list. They had forgotten that no more than 50 years ago, within memory of some living citizens, the same Hérouxville would have set up Catholicism, paternal authority and the Christian view of marriage as fundamental values. It is therefore healthy for the process of integration not to be burdened by a dogmatic view of what it means to be a Quebecer or a Canadian and what the signs of successful integration might be.

So long as immigration remains relatively open, the process is a never-ending one. In every generation, all citizens will be enriched by contact with

different ways of life. In each, the children of the immigrants of 20 years earlier will become completely integrated.

To conclude, it is the republican ideal — liberty, equality and fraterni-

ty is a peculiar Canadian paradox that both groups have mistaken their true interest.

It is this writer's hope that the recent spate of decisions favouring

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ty — that calls for reasonable accommodation. If communitarians thought hard about their interests, they would call for separate schools, religious tribunals and the granting of authority to ethnic or religious leaders and not necessarily for accommodation. That, of course, would be anathema to republicans. It

accommodation will produce both greater integration and an increased level of social justice and individual freedom.

*Julius Grey is the Montreal attorney who presented the Amselem case and the Multani (kirpan) case before the Supreme Court of Canada.*

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