

## RÉSUMÉ

### **Immigration, mondialisation et diversité culturelle : comment gérer les défis ?**

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*L'objectif de la présente étude est d'abord de documenter la diversité culturelle issue de l'immigration pour ensuite examiner les effets de la diversité à travers les réponses apportées aux nouveaux défis de l'immigration. La première partie du texte analyse une série de données sur les flux migratoires internationaux et la composition de ces flux. Les changements depuis les années 1965 sont particulièrement documentés. L'évolution des politiques migratoires dans le monde est également abordée. La deuxième partie du texte analyse les réponses politiques aux nouvelles tendances migratoires, réponses à la fois sur le plan international et national. Sur le plan international, la question de la gestion mondiale des migrations à travers les initiatives multilatérales est évaluée de façon critique. Les réponses au niveau national visent essentiellement à confronter les approches préconisant l'accommodement raisonnable à celles favorables à la tolérance zéro. En conclusion, nous tentons de spéculer sur les tendances politiques en matière de migrations internationales.*

## **Immigration, Globalization and Cultural Diversity: New Challenges for the 21st Century**

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### **Introduction**

The Human Rights of Migrants resolution of the UN Commission on Human Rights discussed at its sixty-first session in Geneva (14 March – 22 April 2005)

strongly condemns the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants, the stereotypes often applied to them and the resulting stigmatization...

The issue of stigmatization is certainly at the heart of the current preoccupation in almost all countries of the world experiencing increasing ethnic and cultural diversity. What exactly does the term ‘stigmatization’ mean? First and foremost, stigmatization is directly linked to discrimination and racism, as illustrated in the above resolution. In everyday life however, stigmatization also often refers to a vaguer, more culturally-oriented, domain such as what is considered as “new” practices by host societies: for example the wearing of veils by Muslim women (France, Quebec) or the turban by Sikhs (Canada, England) or references to God in the Pledge of Allegiance (USA) or the debate about Sukkoth Jews (Canada) or finally family mediation by religious courts (Ontario). We shall return to some of these

examples later, but it is already clear that the question of “managing” difference is not simple and extends beyond the simple dimension of discrimination.

A first introductory remark concerns the widely-used term ‘management’ in discussing cultural differences. This term has a strong technocratic and bureaucratic bent and it implies that cultural differences are necessarily ‘managed’ by states, thus a top-down approach. In reality, several groups within civil society are equally involved in this management, whether they are human rights associations and/or non-governmental organizations involved in immigration questions (a bottom-up approach). Thus, the term ‘management’ should include both approaches as part of the same dynamic. Having said this, in the present article, the focus will be placed on the responses of governments and the courts of justice to cultural diversity.

Secondly, it must be acknowledged that cultural diversity is not a new phenomenon. All regions of the world have always had to face religious, linguistic, and ethnic differences introduced by invasions, massive migrations, or forced or planned territorial annexations. Thus the nineteenth and early twentieth centuries were witness to a number of major changes in population composition (Chaliand, Jan and Rageau, 1994). The emergence of nation-states and nationalist movements both in Europe and the former colonies of Asia and Africa produced an important number of conflicts between minority and majority groups (Yacoub, 1998: 52-53). This article will not discuss what are usually labelled ‘old minorities’ (Rallu, Courbage and Piché, 1997), not because the management of these conflicts is unimportant, as witnessed by the numerous conflicts still occurring today in the Balkans or in Central Africa (Diekoff, 2000), but because we would like to concentrate on the challenges brought about by the ‘new minorities’ due to immigration.

Two important characteristics of present-day diversity are noteworthy : (1) it is constantly increasing virtually everywhere in the world since World War II, and (2) it puts in contact various groups that do not demand any kind of autonomy (be it territorial, political, institutional, etc) but who nevertheless fight against discrimination and for the respect of cultural differences. The responses to these new claims are not uniform from one country to

another and reflect in fact the diversity of historical experiences with respect to immigration.

The objective of the present article is twofold. We shall first look at some empirical evidence that documents cultural diversity due to immigration. Then we shall examine the effects of this diversity through an analysis of the responses to the new challenges brought about by immigration. Two responses will be privileged here: the political response (how governments attempt to manage this diversity), and the legal response (how the courts interpret laws and charters of rights).

### **Immigration and Diversity: The Facts**

The last decade has seen a multiplication of statements concerning the rapid expansion of migratory flows. Certain titles of recent books lead one to believe that we live in a very exceptional era with respect to international migration: *The Age of Migration* (Castles and Miller, 1998), *Worlds in Motion* (Massey et al, 1998), and *The Turbulence of Migration* (Papastergiadis, 2000) to mention only a few. It is not easy to precisely measure population movements in the world today. Migration statistics most often come from information on the place of birth of enumerated people. What do these statistics say? Globally there are some 175 million persons that are living outside their country of birth, which represents a mere three percent of the world population. This would indicate that, in short, there are very few migrants in the world (World Bank, 2002). Certainly it can be argued that three percent is not a very high figure and thus there is no reason to be preoccupied. However, preoccupations concerning international migration issues are omnipresent and as such demonstrate that the political agenda is not uniquely a matter of numbers, as witnessed by numerous radical discourses of the extreme right who do not hesitate to blame immigration as the source of several evils. A recent book even goes predicts the death of the West due to pervasive immigration (Buchanan, 2002). The political importance of immigration goes beyond its purely statistical significance, at least at the world level.

Furthermore, if the world is divided in two blocks, the developed and developing, as is often done (see Table 1), it can be observed that there was effectively a rather important increase in the proportion of persons in developed countries who were born

abroad. This proportion went from 3.1% in 1965 to 4.5% in 1990 and 8.7% in 2000. It is thus in the countries of the “North” where the biggest international migratory movements are concentrated. To be more precise, it is in North America first and then in Europe where the most important increases in immigrant populations are located. In the countries of the “South”, the proportion of persons born abroad has decreased since 1965, going from 1.9% to 1.5% (Table 1). This seems to confirm the acceleration of South-North migration and that actual preoccupations with immigration are especially apparent in North America and Europe.

Table 1 *International migration (foreign-born):  
in percent of the population of the region*

<b>Region</b>	<b>1965</b>	<b>1975</b>	<b>1985</b>	<b>1990</b>	<b>2000</b>
Total – World	2.3	2.1	2.2	2.3	2.9
Developed countries	3.1	3.5	4.1	4.5	8.7
Developing countries	1.9	1.6	1.6	1.6	1.5
Africa	2.5	2.7	2.3	2.5	2.1
Asia	1.7	1.3	1.4	1.4	1.4
Latin America and Caribbean	2.4	1.8	1.6	1.7	1.1
North America	6.0	6.3	7.8	8.6	13.0
Europe (+ Ex-URSS)	2.2	2.7	3.0	3.2	7.7
Oceania	14.4	15.6	16.9	17.8	19.1

*Sources:* Hania Zlotnik. 1998. “International Migration 1965-96: An Overview” *Population and Development Review*. 24:3, pp. 429-68; and United Nations. 2003. *International Migration 2002*.

Over and above the increase in migratory movements themselves, it is the origin of the groups of immigrants that has changed considerably since the 1960s. Indeed, if we take the example of traditional immigration countries (United States, Canada, and Australia), statistics clearly show a reversal in trends with origins of immigrants. Be it in North America or in Europe, international migrations from developing countries have gradually dominated migratory movements, transforming in an important way the ethnic and racial composition of these countries (Kuijsten, 1994; Massey et al., 1998; Piché, 2004). Western countries have

become gradually conscious of their multiethnic and multicultural character, often at the occasion of virulent public debates on the necessity (or not) of stopping all immigration. But at the same time, multi-ethnicity was already omnipresent, indeed unavoidable, and demanded political and social responses to the numerous challenges created by this “new immigration”. For countries like the United States, Canada, and Australia, whose history is intimately linked to massive immigration, multiculturalism has always been the subject of policy debates. To the contrary, for many countries of Western Europe, it has only been recently that they have been forced to examine the relationship between ethnic diversity, national identity, and citizenship and consider multicultural policies (Castles, 1993; Bauböck and Rundell, 1998).

What about the probable future of migration policies in this context? Indeed on a purely demographic level, with the drop in fertility rates below replacement level virtually everywhere in the developed world, immigration constitutes today the most important source of population growth and in the very near future will constitute the only mechanism to slow population decline. The example of Quebec is rather representative of what may happen in the majority of developed countries. In Quebec the role of natural increase in population (births minus deaths) in overall growth has continuously diminished since the 1950s. Projections suggest that in several years from now, it is immigration that will take over. Evidently hypotheses about migration inherent in these projections remain consistent with what happens today and will not therefore prevent a decrease, but at best will slow it, unless the levels of immigration increase considerably, which is not obvious at the present moment.

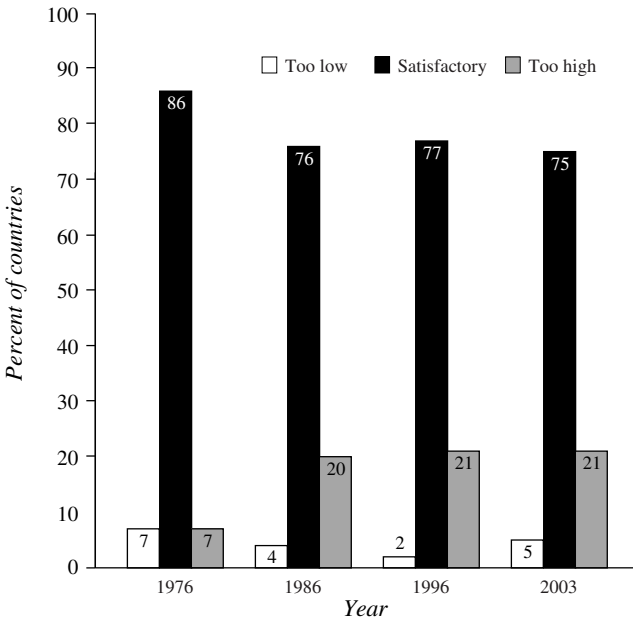
But pressures for increased immigration are not just demographic, they are also economic. Indeed fertility decline inevitably leads to population aging, a well-known phenomenon today (Légaré, 2004). The effects of aging affect the costs of health and retirement programs. For example, we estimate in Quebec that for a person retired in 1941, there were ten workers; today the ratio retired/worker is three and in 2041 (one hundred years later) there will barely be one worker for each retired person (Légaré, 2003: 189).

A third source of pressure for greater circulation of persons comes from the accelerated process of 'globalization.' Current laws governing international migration were essentially developed during the twentieth century and are based on the premise of national sovereignty and security. Migration policies aim thus to satisfy national needs, be they economic (demand for labour) or social and cultural (maintenance of social cohesion). Furthermore, the legal system regarding refugees, put in place at the end of World War II, constitutes a well-known exception to the rule of national sovereignty since the signatories of the Geneva Convention accepted the transfer of some of their powers to an international body, notably the UNHCR. Although since the 1990s there are several signs that the liberal approach adopted in the 1950s is being undermined by more and more restrictive refugee policies, it must be recognized that some portion of migration rights is governed at a multinational level. This national security-based approach is still dominant today. Nonetheless in the context of globalization and regionalization of borders, it appears that nation-states are decreasingly able to manage migratory flows and increasingly willing to discuss migration issues in an international frame (Simmons and Piché, 2002; Pellerin, 2004). Finally, globalization is not just economic as new communication technologies considerably increase the circulation of ideas, which results in the development of a rights approach to migration in a global context, illustrated by the recently emergence of 'global human rights' language (Weiner, 1997). Finally, the thesis of globalization includes two fundamental consequences from the point of view of future international migration. On the one hand, rules regarding the circulation movement of persons will increasingly be drawn in a multilateral framework of international cooperation (Hollifield, 1998). On the other hand, it is logical to think that the free circulation of capital, products and services will be accompanied by a greater pressure for the freer circulation of people (as incidentally is already the case within the European Union).

It could be expected that faced with these internal (demographic and economic) and external (globalization) pressures, developed countries' migration policies would become more open and right granting. However a recent compilation by the United Nations shows restrictive tendencies in national migration policies

since 1976. For example in 1976, 86% of world governments found the level of immigration in their country satisfactory and only 7% found it too high (Figure 1). In 2003 the level of satisfaction decreased to 75% whereas the “too high” category increased to 21%. Similar trends characterize the position of governments regarding immigration policies: in 1976, 86% of governments stated that their policy aimed to maintain current levels and only 7% were thinking of decreasing them (Figure 2). In 2003 the proportion of governments aiming to reduce immigration reached 34%. This tendency is certainly in contradiction with the above-mentioned pressures and may be temporary. But for the moment we can only notice this unfavourable turn against migration, reinforced no doubt by the events of 11 September 2001.

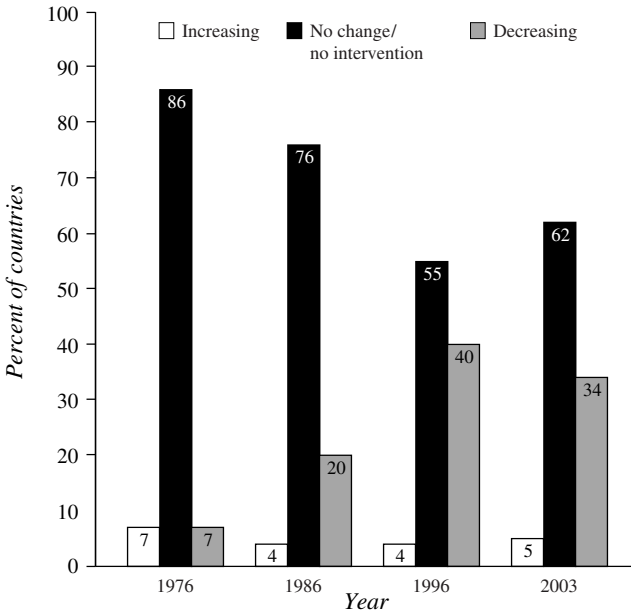
Figure 1 ***Governments’ positions on the levels of immigration: 1976, 1986, 1996 and 2003***



Sources: Hania Zlotnik. 1998. “International Migration 1965-96: An Overview” *Population and Development Review*. 24:3, pp. 429-68; and United Nations. 2003. *International Migration 2002*.



Figure 2 *Immigration policies: 1976, 1986, 1996 and 2003*



Sources: United Nations World Population Policies, 2004, Table 17, p. 43.

Whatever the future with respect to migration policies, it must be recognized that the migration experience of the last forty years has introduced a new socio-political dynamic. States are increasingly multiethnic and multicultural and by consequence face a number of challenges related to the “management” of these differences (Gagnon, Guibernau and Rocher, 2003). We will see that responses are far from uniform.

### **Political Responses**

It is difficult to separate the question of the management of diversity from that of immigration policies. Indeed immigration policy has essentially two facets, one concerning selection (criteria and entrance conditions) and a second concerning integration measures and rights. If during the course of the nineteenth century and a major part of the twentieth century migration policies opted

for an official 'laissez-faire' attitude towards integration, one must recognize that since the 1980s in North America and the 1990s in Europe (especially the countries of the European Union) several countries have developed explicit policies of integration. Political responses to recent immigration tendencies unfolded on two levels: international and national.

### ***Political responses at the international level***

On the international level, labour mobility has become a critical issue given the acceleration of globalization and regional integration (Simmons and Piché, 2002). A very recent study by Pellerin (2004: 6-7) states that since the 1990s there has been a net increase in multilateral initiatives with respect to international migration, initiatives that have a regional scope related market integration. Such initiatives have consequently meant a growing judicial implication in the multilateral discussion and management of international migration.

Examples of multilateral initiatives in the management of international migration show that for the moment they have a restrictive nature and aim to control migration and particularly the traffic of human beings and undocumented migration (Pellerin, 2004: 4). The few existing measures that encourage migration essentially aim to facilitate the circulation of qualified workers in the context of regional integration and in treaties governing commerce and services (Ibid: 12). For the moment, then, the preoccupation of States implicated in multilateral discussions is centered above all on the harmonization of immigration policies in order to strengthen external borders (e.g. construct a European fortress) or to develop a security perimeter between the United States and Canada, particularly after 11 September 2001 (Piché and Djerrahian, 2002).

Conversely multilateral initiatives are hardly or not at all preoccupied with the rights of migrants. One noteworthy exception is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This treaty, adopted during the United Nations' General Assembly in December 1990, constitutes the most important instrument aimed at establishing an international system of protection for migrant workers (de Varennes, 2002: 15). The fact that by 31 January 2003,

only twenty-one states had signed this treaty and that among them none are from the developed countries is a good indication of the reticence of countries to link their prerogatives regarding migration to an international regulation and body that would be restraining.

Given the magnitude of migration movements in the world (immigrants, people claiming refugee status, and migrant workers), promotion of social cohesion and cultural diversity has become part of the agenda in multilateral discussions. An important initiative in this regard, launched by Canada, concerns the international Metropolis project that includes seventeen countries of the North and that provides an international forum for research on, and development of, public policy on migration and diversity. Debates within this international forum are focused on the concepts of shared citizenship, social inclusion, and social cohesion. The basic postulate is that management of diversity increasingly requires explicit public policies that favour social cohesion (Kymlicka, 2003).

Another, more ambitious initiative in favour of the promotion of cultural diversity comes from UNESCO, which adopted in November 2001 a Universal Declaration on Cultural Diversity. Three articles are particularly eloquent for our purpose. First article 2 establishes the distinction between cultural diversity and cultural pluralism:

In our increasingly diversified society, it is essential to assure a harmonious interaction between populations and groups possessing plural, varied, and dynamic cultural identities.... Policies of inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society, and peace. Thus defined, cultural pluralism constitutes the political expression of the reality of cultural diversity (...)

Article 4 stipulates that the defense of cultural diversity is an ethical imperative, inseparable from respect of human dignity, and implies a commitment to fundamental human rights. And finally article 10 refers to the necessity of strengthening cooperation and solidarity at the international level in the defense of cultural diversity and creation.

In short, despite the reticence of countries to share the management of international migration and diversity with multilateral bodies, it is clear that for the last ten years managing

international migration exclusively within a state-sovereignty framework has become increasingly inefficient and therefore will be more and more framed within regional and international agreements and treaties (Pellerin, 2004). Some go so far as advocating the necessity of a world management system for international migration (Ghosh, 2000), and even if we are still not there, current economic and institutional pressures are moving in this direction.

### ***Political responses at the national level***

Despite globalization processes and increasing multilateralism with respect to migration, prerogatives related to international migration still remain largely under national jurisdiction. Here we ask how countries today respond to the emergence of increasingly pluralist and multicultural societies. Indeed there is no single answer to this question because there is a large diversity of national approaches to integration policies. Presently and greatly simplifying, two conflicting models of integration exist in the world: the republican model that for all practical purposes denies any pertinence of ethnicity in individuals' relations with the State, and the multicultural model that aims to protect the rights of minorities, especially with respect to racism and discrimination.

There are several ways to examine political responses regarding the management of cultural differences. One revealing approach is to examine the way in which States treat the question of ethnic categories in their official statistics (especially in censuses) because categorization exemplifies relations between minority and majority groups within specific societies. As we will see, there is a great diversity in the political conceptions and uses of official categories designating ethnic groups present in a society.<sup>1</sup>

The links between political discourse and statistical categorizations are present in all societies (Nobles, 2000). However statistical constructions around ethnic categories cover a very large diversity that complicates all attempts at generalization. This is essentially due to historic and social specificities and to diverse processes at the core of racial and/or ethnic stratification: conquests, annexations, redrawing of borders, or migration, all processes that

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<sup>1</sup> The following paragraphs are inspired by Rallu, Piché and Simon, 2004.

have placed certain groups in minority situations, be them former or recent minorities (Striff-Fenart, 1997, p. 3). To simplify, four scenarios seem to summarize the historical and contemporary experiences of ethnic statistics.

The first case (*counting for domination and exclusion*) characterized a good proportion of historical experiences linked to colonization. Although widespread historically, it still remains current in certain newly independent countries. In short, this type of categorization was narrowly associated with the colonial situation and strongly infused with a racist ideology and the issue of superiority/inferiority inherited from imperial domination (Kertzer and Arel, 2000). This approach characterizes all of the regions under colonial rule, especially Africa and Asia but also Eastern Europe. Generally speaking, the idea was to resort to categories reflecting racial and ethnic divisions considered scientifically evident and administratively relevant (Uvin, 2000). Such stratification essentially aims to recognize the rights of dominant groups and exclude the dominated groups from citizenship. It is interesting to note that the 'counting for domination and exclusion' approach was not just developed in colonial situations. As a matter of fact, this approach has long been present in immigration countries like the United States and Canada. For example, in nineteenth and early twentieth century Canada, the racial bias was explicit in immigration policies that aimed to exclude certain groups like Blacks and Asians. It was only in 1960s that these racist criteria were eliminated (Piché, 2003).

The second scenario (*absence of counting for the sake of national integration*) is associated with the republican perspective for which a country can only have one national identity. Ethnic differences are therefore negated and/or have to disappear thanks to an unavoidable assimilation process. Contrary to the previous case, here countries instead choose not to count the population on ethnic or nationality criteria. Justifications are not all identical but in all cases, ethnicity as a basis of social stratification is denied, either in the name of national integration and nation-building as in a large part of Africa today, or in the name of the republican principle of national unification in almost all Western European countries. In the latter countries, a recent inventory shows that the reason for not including in their census a question on ethnic group is above all a

political, constitutional and legal issue: this is the case notably of France, Germany, Spain, Belgium, Denmark and Italy. For Sweden, Switzerland, and Ireland it seems that this information is not pertinent in as much as there is no social demand for this type of data (Courbage, 1998: 55).<sup>2</sup>

It is interesting to note in this case the double standard of metropolitan practices in the colonies. Thus, France, Great Britain and Belgium that all refused to include questions on cultural and ethnic origin incompatible with their notion of nation-State, did not hesitate to do so in the colonies (Kertzer and Arel, 2000: 10). In the specific case of France, colonization, by creating a system of ethnic classification, constituted a denial of republican universalism (Otayek, 2000: 24-25).

The third scenario (*counting or absence of counting for the sake of mixing*) is less widespread and is associated with both the idea of counting or not counting but for reasons that bear little resemblance to racist or national unification approaches. In this case, it is the mixing of populations which is highly valued. This is the Latin American experience, which differs from the majority of historical experiences already discussed. In this region the fact of racial mixing is recognized in political and ideological debates as a positive value and as such is not considered as a social and political problem. In this ideological context we find two distinct practices. On the one hand, in the majority of countries (for example Venezuela, Colombia, Cuba, Dominican Republic) race and colour categories do not exist in official statistics (Nobles, 2000: 66). On the other hand, and this is the case of Brazil, racial debate is such that praise of mixing insists on harmonious racial relations, and statistical data serve then to measure the “whitening” of the population (Nobles, 2000: 43 and 62).

Finally, the fourth scenario (*counting for positive action purposes*) has appeared recently and implies a total reversal with respect to the racist and discriminatory perspective characterizing the first scenario. If the majority of countries are currently located in the first three scenarios, pressure are increasingly strong

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<sup>2</sup>Other unitary states exist, such as Greece and Turkey, for which, in the name of homogeneity of the nation, there can be no minority groups and by way of consequence there can be no official statistics on these groups (Haug, 1998: 13).

favouring the recognition of minorities and the necessity of ethnic statistics to document discriminatory practices.

Today all ideological constructions around the notions of race and ethnicity are under pressure and questioned. In particular, countries using statistical categories to dominate are attacked by minority rights groups and anti-racist and anti-discriminatory ideologists. If Africa currently seems to escape from this movement (for example Ivory Coast), the recognition of pluralism increasingly imposes new statistical practices. This is particularly true in the case of Eastern Europe where the issue of pluralism has appeared (Blum and Gousseff, 1997; Abramson, 2000; Arel, 2000). Even a country like France, characterized by the absence of ethnic statistics, is confronted with a growing social demand for data that document the modes of integration of specific groups, and particularly with respect to the first and second generations of immigrants (Striff-Fenart, 1997). In this regard, the Council of Europe has given considerable impetus to this approach in expressing the need for reliable statistical data “to favor peaceful intercultural relations and assure the protection of national minorities” (Haug, 1998: 11). Pressures in favour of positive action are also appearing in Latin America, for example in Colombia (Barbary, 2001) and in Brazil (Nobles, 2000) as well as in Asia, for example in China (Courbage, 2002). In short, from a diversity of situations characterizing the past, the world seems to be moving along a more pluralistic and multicultural model that tends to replace ethnic nationalism by a more civic nationalism (Dieckhoff, 2000: 191).

### **Legal Management of Cultural Diversity**

In general the type of management through legal means is strongly dependent on the political responses discussed above. For instance the French republican model rejects all recognition of the rights of certain groups based on ethnic, cultural or religious criteria. This zero-tolerance approach will thus opt for a legislative oriented mode of management of conflicts. The most frequently cited example in the literature is certainly the often virulent debate concerning wearing veils at school. In the name of republican principles and of secularism, the French government finally adopted a regulation forbidding all ostentatious religious symbols. Often the terms of the debate are rather extreme, as exemplified by the use of

expressions such as “the scarf against the republic” (Vianès, 2004: 205) or still the “veil-maniacs” (Ibid: 224) in reference to those who defend the wearing of the veil in public sphere. The issue is not just about laicism but also about women’s right to equality that the Islamic imposition of veils is said to violate.

Conversely the multicultural model, in admitting cultural diversity as a fundamental right, had to develop a more tolerant approach based on the Charters of Rights and Freedoms as well as on equal access programs. Hence, many cultural and religious conflicts find themselves before the courts which were then forced to interpret charters and programs and settle disputes by developing the notion of “reasonable accommodation”. This is the case notably in Canada that we will discuss here in referring to religious markers that have emerged as factors of conflict not only in the school setting (McAndrew, 2002) but also in other public spaces.

What does the notion of reasonable accommodation mean? Firstly, this notion implies the presence of two ‘rights’: one advocated by representatives of the majority host society (e.g. employers, teachers, administrators at public institutions), the other advocated by individuals from a minority group that feel discriminated against. It is up to the court to settle the dispute; reasonable accommodation then means that the right of the minority must be respected as long as it does not constitute an excessive constraint on the institution where this right will be applied. More precisely, reasonable accommodation can be defined in the following way:

It is the obligation to adapt a rule conceived for the majority group in view of responding to specific needs of certain persons or of a group in order that they not be victims of discrimination linked to characteristics that differentiate them from the majority group. This implies making exceptions to general rules or modifying them to meet the needs particular to certain groups or persons, in order to respect their right to equality (Drapeau, 2001: 306, cited by the Counsel of Intercultural Relations, 2004: 50).

Examples of judgments that apply such principles are numerous in Canada. For instance, very recently (30 June 2004) the Supreme Court of Canada ruled in favour of a group of orthodox Jews against the owners of a building that wanted to forbid construction of Sukkoths on the balconies; this ban had already been the object



of an agreement in the lease. This judgment overruled judgments in favour of the owners made by both the Supreme Court and the Court of Appeals of Quebec.

This said, the principle of reasonable accommodation does not apply automatically and mechanically as illustrated by two contradictory judgments on the wearing of turbans. In the first case, a Canadian National employee lost his job because he had refused to comply with the company's security rules requiring the use of hard hats on construction sites. As a matter of fact, the company had stipulated as a condition of employment that all its employees wear a security helmet in a particular work location. Mr. Bhinder, a Sikh employee, refused to comply because his religion forbids him from wearing anything other than a turban. He lost his job because the company refused to make exceptions to the rule and Mr. Bhinder refused to accept another job that did not require a security helmet. In 1981 a tribunal set up by the Commission on Human Rights came to the conclusion that Mr. Bhinder was victim of discrimination and that the employer should take him back and give him wage compensation. On the other hand, the Federal Court of Appeals annulled the tribunal's decision on the basis that work conditions do not constitute a discriminatory act. The case that had started in 1978 with Mr. Bhinder's firing returned to the Supreme Court of Canada. The Court decided that Canadian National did not violate the Canadian Charter of Human Rights when the employer asked Mr. Bhinder to replace his turban with a security helmet or to put the helmet on top of the turban. The Supreme Court of Canada therefore decided that the wearing of the Sikh turban could be forbidden on construction sites. Even if there was a violation of religious freedom, the obligatory wearing of a construction helmet as a public security issue must prevail over the right of the individual (see the judgment of 17 December 1985, "K.S. Bhinder and the Canadian Commission of Human Rights against the National Railroad Company of Canada").

This decision did not prevent five years later, 15 March 1990, the federal government from deciding to allow Sikhs to wear turbans while on duty as Royal Canada Military Police (RCMP) officers. Wearing of a turban was already accepted in Customs and the Army. This decision followed an appeal from the RCMP commissioner, made in April 1989, which asked the government to

modify the police regulation in order to respect the religious beliefs of Canadians of Sikh origin.

Another case of accommodation concerns the kirpan (small knife carried by Sikhs) in the judgment that was given on 17 May 2002 (title: Balvir Singh Multani, as guardian of his minor son Gurbaj Singh Multani (plaintiff) against school commission Marguerite-Bourgeois (defendant)). In this case the young Burbaj Singh Multani who was attending Sainte-Catherine Labouré School in Montreal was forbidden from carrying a kirpan. The judgment in question stipulated that G.S. Multani could go to school with his kirpan on the condition that it was put in a wooden sheath completely wrapped in solid material and always to be worn under his clothes.

The case of the Islamic veil (hijab) is much more complicated. On 7 September 1994 Emilie Ouimet, a twelve-year old female student was expelled from Louis-Riel School in East Montreal for attending class wearing a hijab (Islamic veil) and wearing a long tunic. The school's dress code did not allow the wearing of a veil (even if other schools allowed it). Controversy followed and a public debate occurred between advocates of zero tolerance and those in favour of compromise. In February 1995, following two complaints concerning the prohibition of veils at school, the Quebec Commission of Human Rights published a report on the wearing of the Islamic scarf at school and at work. In this report the Commission outlines the principles from which judgments will be pronounced. This report gives a judicial opinion (and not a judgment) that affirms that public schools cannot in a general way forbid the wearing of hijab. This prohibition would constitute a discriminatory gesture compromising the right to public education as well as freedom of religion. In May 1995 the Centrale de l'enseignement du Québec (CEQ) formally opposed the wearing of hijab at school. Faced with this opposition, the Federation of School Commissions of Quebec responded by asking that the decision to forbid the veil or not remained in the hands of each school. In May 2003 the Committee of Religious Affairs of the Minister of Public Education published a document promoting tolerance with respect to religious symbols. More recently (26 March 2004), the Counsel of Intercultural Relations also decided in favour of religious

tolerance at school in referring to the obligation of reasonable accommodation.

The debates on the wearing of the veil are revealing of the complexity of these issues. On the one hand, Canada and Quebec have developed a willingness to accommodation that differs radically from a zero tolerance stance. It is in the name of respect for cultural and religious diversity that the rights of young girls to wear a veil to school were justified. However, for one author, a Quebec resident of Egyptian origin, one must avoid falling into political correctness (Geadah 1996: 261). For her, reasonable accommodation is a two-way road and “the right to be different must not result in a difference of rights” (Ibid: 288). For her and many feminists, the wearing of the veil constitutes an affront to the fundamental value of gender equality. This position remains nonetheless mitigated in the sense that it does not advocate zero tolerance but instead discourages the wearing of the veil at school by resorting to an incentive rather than a coercive approach and to the use of persuasion through dialogue (Ibid: 269).

The principle of reasonable accommodation is not problem-free, particularly when two types of laws, those of religious freedom versus that of gender equality, clash. Pushed too far, this principle can result in a model that is increasingly referred to in the literature, that of legal pluralism (Macdonald, 2003). This model explicitly recognizes the capacity of diverse groups (social, psychological, emotional, or virtual) to generate legal rules. Moreover, this approach stipulates that it is the mediation of interests rather than judicial decisions (adjunction of rights) that constitute the optimal mode of legally framing and recognizing social diversity (Ibid: 85). In this context, mediation can take place in several spaces and at local levels; thus legal pluralism stipulates that a plurality of production sites of laws exists rather than a single state judicial site (Ibid: 98). Such a position can result in unacceptable situations for several persons and groups. The most flagrant example is the recent decision (December 2003) to allow family mediation by parallel Islamic tribunals based on sharia in Ontario. The law of Ontario allows this type of settlement as long as they are negotiated with the assistance of an arbitrator and in a voluntary manner by the two parties. It must be emphasized that the rulings of these courts must respect the Canadian Charter of Rights

and Freedom. One can imagine the uproar provoked by this decision, not only among groups of women but of all groups concerned with the right to gender equality.<sup>3</sup>

## Conclusion

We must recognize in concluding that the question of social and cultural diversity is — and will be for a long time still — one of the heated topics of debate. The outcome of the debate is far from obvious. On the one hand, signs of openness are evident: immigration is increasingly discussed in a global multilateral context and in a positive perspective, the fight for rights of migrants and against racism and discrimination also has a global dimension, the idea of greater freedom in migration movements gains momentum, the ideology of multiculturalism increasingly replaces that of assimilation, and finally the management of cultural diversity increasingly rests on the side of respect rather than rejection. But at the same time, the extreme right's anti-immigration movements are gaining strength, as much in America and in Europe and migration policies become increasingly selective, a consequence of which only the rich in capital, either financial or human, are allowed to circulate freely in the world.

If it is difficult at present to predict the future direction of migration policies and management of cultural diversity, it can be argued that with the process of globalization under way developed societies will have to increasingly open their doors and allow greater movement of persons.

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<sup>3</sup>For more information concerning the international campaign against the sharia court in Canada, see the following website: [www.nosharia.com](http://www.nosharia.com).

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