

FREEDOM OF RELIGION IN CANADA AND FRANCE: IMPLICATIONS FOR CITIZENSHIP AND JUDGMENT

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ABSTRACT

Despite the increasing tendency to relegate religion to the private sphere, the role of religion in public debate remains important and contested. Given the reality that these debates usually results in binding decisions that must be accepted by all groups, this paper engages the idea that perhaps the goal in a pluralistic society should not be to simply garner unanimous agreement or even the greatest consensus possible, but to ensure that decisions be seen by all members of a society as valid, whether or not they accord with individual or collective views.

Arendt's theory of judgment holds that it is the use of the 'enlarged mentality', the consideration of others' perspectives, that allows judgment to be seen as valid by the judging subjects. Nedelsky, in turn, focuses on how this approach to judgment helps us theorize about the optimal role of religiously based argument in the public space. This paper examines what Nedelsky's theory may have to offer in the specific contexts of Canada and France. While these two jurisdictions have much in common, important distinctions emerge with respect to the challenges posed by religious diversity and what is driving the responses to these challenges.

Through a comparative analysis, this paper begins by attempting to delineate the fundamental differences between the approaches of both

countries to freedom of religion and religious diversity. An analysis is then undertaken with respect to the implications for both Canada's and France's capacities to engage a theory of judgment that uses the enlarged mentality to consider religious perspectives

The paper is organized as follows: Firstly the legal systems, general text of the constitutions and how these relate to religion in society is compared; Secondly the model of church and state relationship in both countries is examined; Thirdly, the discussion is situated in the greater context of France's approach generally to the management of diversity; Finally a comparative analysis of the content and delineation of freedom of religion in both jurisdictions is undertaken

The study essentially concludes that France may be neither interested nor capable of including religious perspectives in its deliberations and in that respect the validity attained when the enlarged mentality is used in judgment may not be achievable. While the paper concludes that Nedelsky's judgment may be possible in Canada, the recent example of Muslim personal law (Sharia) in Ontario is used to illustrate that, despite all of the right conditions, political will is crucial if we are to follow through with the politically difficult decisions that follow from them.
