

*On the Ethics and Religious Culture Program*

**Report from Expert Witness**

**Douglas Farrow**

**re: Loyola High School et John Zucchi c. Michelle Courchesne, en sa qualité de ministre de l'Éducation, du Loisir et du Sport**

**Cour supérieure, district de Montréal, N° 500-17-045278-085**

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*The case was heard before L'honorable Gérard Dugré, j.c.s., from 8-12 June 2009, with testimony from Prof. Farrow on 9-10 June. The present (unofficial) document does not include illustrative material from the appendix.*

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*Report from Douglas Farrow respecting Loyola High School's and John Zucchi's demand for exemption from the requirements of the ERC curriculum*

12 December 2008

*Introduction*

In this report I intend to make four closely related points: first, that the Ethics and Religious Culture (ERC) program represents a significant transfer of power from civil society to the state; second, that its ambitious goals belie any claim to neutrality; third, that the ERC program is intended to provide formation (i.e., to cultivate a world view and a way of thinking and acting consistent with that world view) and not merely information, and that the formation it hopes to provide is at points incompatible with a Catholic formation; fourth, that the imposition of this curriculum (with its mandatory pedagogy) on Catholic schools constitutes, from the perspective of the Catholic Church, a breach of fundamental rights as well as a defeat for certain of the program's own objectives in recognizing diversity.

Little of this should be controversial, since there are reliable sources available with which to substantiate these claims. My primary sources will include the Proulx report (though it will be assumed that the history and background of the ERC program are familiar to the Court), documents from the Ministry web site, ERC materials, and official Catholic documents; secondary sources will include various statements and commentaries (with special attention to the analysis of Georges Leroux). The following outline will be employed:

1. The ERC "revolution"
2. Can a revolution be neutral?
3. Education as formation: compatibilities and incompatibilities
4. Imposition of the ERC program as a threat to religious liberty

It may be allowed that variations can be found, whether in Ministry documents or in Church documents, respecting some of the points at issue; but this does not, in my judgment, undermine the conclusions or prevent the informed observer from acknowledging that the imposition of the program on Catholic schools raises fundamental questions about the civil liberties and freedoms recognized in section 2a of the *Canadian Charter of Rights and Freedoms* and in sections 3 and 41 of the Québec charter.

**1. The ERC "revolution"**

ERC is a very ambitious program. Professor Leroux is the foremost philosopher and apologist for the program, and we may safely follow his lead in describing it. He claims that it is the "only truly novel" program in the recent reform of public education. Indeed, he insists that "no one can truly gauge the magnitude of change under way"

and that “someone looking in from the outside on the transformation in progress could say we are preparing a sort of revolution.”<sup>1</sup>

The revolution in question can only be understood by recognizing that ERC is designed to fill a void, or rather two related voids, one moral and the other religious. The first void is created in part by the lamentable fact (if fact it is) that “literary culture is no longer the vector for the moralization of youth, and even less so for their introduction to thought.”<sup>2</sup> The second void is generated by the end of confessional education in the schools and, more generally, by what Leroux calls “a deconfessionalized society.”

To deconfessionalize means to interrupt and even to disenfranchise. It means to break

with the structure of religious denominations and faith, in order to gain access in school, as everywhere else in the public sphere, to a non-denominational, secular space. That break cannot erase the past, but it also cannot help being a true interruption. Public schools will no longer be the setting for any confessionality whatsoever, and we must take the full measure of the break with the past. But this non-denominational space is nonetheless not destined to become empty, a space whose neutrality would require complete indifference to everything moral, spiritual and religious. The positive aspect of this movement must now challenge us more than the impact of the break in communities of believers, which are called on, for their part, to face the challenge of reconstruction of denominational transmission in their own institutions.<sup>3</sup>

In other words, it now falls to the state rather than to the churches and synagogues, etc., to take the lead in equipping our youth to deal with “the considerable issues, both moral and religious, facing the contemporary world.” The ERC program “does not intend to leave empty the place for the religious and the symbolic, but to fill it another way. It also assumes, as resolutely as possible, responsibility for the education of all young people to face the moral issues of these times.”<sup>4</sup>

This is indeed a revolution. If the state (or the Ministry on behalf of the state) is to assume responsibility for equipping young people to face the moral issues of our times, it will have to assume responsibility also for determining what those issues are and how they should be presented. If it does not intend to leave empty the place of the religious and the symbolic in the schools, it will have to decide how and with what that space should be filled. What was once the task of the family and of the religious community – which formerly worked in cooperation with the schools as per the original wording of Article 41 of the *Québec Charter of Rights and Freedoms* – has now become the task of the

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<sup>1</sup> “The latest addition to the reform of elementary and secondary education, the Ethics and Religious Culture program, is also the only truly novel one” (Georges Leroux, “Ethics and Religious Culture,” p. 3; see also his more expansive treatment of the program in *Éthique, culture religieuse, dialogue*).

<sup>2</sup> Leroux, “Ethics and Religious Culture,” p. 17. Loyola, however, remains dedicated to literary culture.

<sup>3</sup> *Ibid.*, p. 5

<sup>4</sup> *Ibid.*, p. 3.

state. Otherwise put, the revolution transfers to the state some of the most fundamental responsibilities of civil society.<sup>5</sup>

That might not be Professor Leroux's preferred way of putting it. Still, when he insists that "Québec's choice is radical and absolutely unprecedented," he points to just such a transfer. Québec will not adopt either the communitarian model followed in many other states or the republican model adopted by France. The former leaves schools – even public schools – free to craft moral and religious education in a manner consonant with the communities in which the schools are found; the latter eschews formal education in those subjects and entrusts the schools only with the task of studying the kind of literature that is capable of raising some of their fundamental concerns. Québec's choice is for a new model that puts moral and religious education in the schools wholly into the hands of the Ministry; that is, of the state or its agents.

Some argue that this choice was itself made in a revolutionary way, when Article 41 was summarily altered without public consultation.<sup>6</sup> In any case, there is general agreement that its effects will be revolutionary. The religious and moral formation of the youth of Québec will not be neglected but transformed – transformed by the state's assumption of responsibility for it, and so also of the right to shape the vision that guides and governs it.

## 2. Can a revolution be neutral?

"The need to secularize public schools in order to respect each person's human rights," says one Ministry document, "did not mean that the schools no longer had to deal with the students' spiritual development... To educate is, first and foremost, to train human beings."<sup>7</sup>

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<sup>5</sup> Either that or it identifies civil society *with* the state, rather than with the nexus of voluntary associations and activities that are normally built on the foundations of the family, the religious communities, and the marketplace. There is an enormous body of literature on what constitutes civil society and on its relation to the state, but there appears to be a serious erosion of the distinction in ERC-related literature. If Leroux is right that "society is the guardian of spiritual and religious knowledge" (ibid. 9f.), the question must be pressed as to what society is and how its duty is fulfilled. That is too large a question to tackle here, but it may at least be asked whether we are to assume that "society" speaks now primarily with the voice of government commissions and Ministry officials.

<sup>6</sup> The gutting of Article 41 on 15 June 2005, after only twelve hours of *consultations particulières* and without a recorded vote – by any standards a mockery of the Charter's integrity – was noticed by too few; but see e.g. Spencer Boudreau *et al.*, "Losing Faith in Education," *Montreal Gazette*, 20 November 2005. Article 41 no longer speaks of a right *d'exiger que, dans les établissements d'enseignement publics, leurs enfants reçoivent un enseignement religieux ou moral conforme à leurs convictions dans le cadre des programmes prévus par la loi*. It now reads: *Les parents ou les personnes qui en tiennent lieu ont le droit d'assurer l'éducation religieuse et morale de leurs enfants conformément à leurs convictions, dans le respect des droits de leurs enfants et de l'intérêt de ceux-ci*. See further n. 48.

<sup>7</sup> *The Spiritual Development of Students*, p. 45. We must pass over the contentious question as to whether "the need to secularize public schools" can properly claim support from human-rights principles; we will come in due course to the more immediately germane question as to whether the imposition of the ERC program itself violates such principles where schools like Loyola are concerned.

This ambitious goal – to effect, so far as schooling is able, the spiritual formation of human beings – explains the determination to combine religious and ethical instruction in the ERC program: “Seeking to assume responsibility for the transmission of norms – and that means not limiting ourselves to the transmission of basic knowledge such as language, mathematics and science – we decided to fill the gap left by deconfessionalization, not with one project, but with two concomitant projects for the transmission of norms.”<sup>8</sup>

There was, as Professor Leroux admits, some considerable internal resistance to this decision, doubtless because the linking of ethics and religion makes it unambiguously clear that the object of the ERC remains the transmission of norms. The program is not intended merely to *inform* students about religion, but in the context of informing them about religion to help form and shape them both as human beings and as citizens.

The new program, in other words, is not revolutionary because it eschews the transmission of norms, but because it continues, even under the conditions of deconfessionalization, to embrace and insist upon the transmission of norms. It is revolutionary because it assumes that burden and does not shy from carrying it, though it handles it very differently than did confessional education: “We believe that moral and religious knowledge must be explicitly transmitted, not suppressed, and we believe that transmission must reflect the pluralism of our culture.”<sup>9</sup>

This credo of the ERC revolution raises very important questions. How can the ERC program achieve the transmission of norms in a manner that reflects in an unbiased way the variety of religious and ethical commitments that can be found in contemporary Québec society? How far, in other words, can the ERC revolution hope to achieve or maintain neutrality in matters of religion and ethics if it really wants to form and not merely to inform human beings? And does it really intend neutrality?

Here we should observe that there is an unresolved tension at the heart of the program, generated by the assumption, on the one hand, that deconfessionalization belongs to the pursuit of a neutral secular space and by the commitment, on the other hand, to a robust educational philosophy that recognizes the importance of human formation through the transmission of norms.<sup>10</sup> This tension did not exist before “deconfessionalization” and it is vital that we grasp it.

In order to do so we must consider more closely the ERC’s underlying philosophy, which Leroux has identified under the revealing rubric of *normative pluralism*: “The first reason that we, the Government and all those who have supported it, judged that it is

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<sup>8</sup> Leroux, “Ethics and Religious Culture,” p. 6

<sup>9</sup> *Ibid.*, p. 13

<sup>10</sup> In Leroux’s own words: “on the one hand, a determination to gather for transmission the normative heritage, both moral and religious, of Québec history, a heritage of great riches; on the other, the political determination to make the pluralist social and cultural experience a success in a non-religious, secular framework” (p. 14).

necessary, even essential, to draw up the course of ethics and religious culture, is normative pluralism. It is essential that diversified experience, both on the moral and the religious level, be valued in its diversity.”<sup>11</sup>

Philosophically, pluralism indicates a refusal to accept a single organizing idea or basic principle. Politically, it is closely related to multiculturalism, which denies that public policy should favour the dominant culture. But pluralism does have a normative aspect. Put positively (as by Harvard’s Pluralism Project) it is “the engagement that creates a common society” from the cultural and religious diversity we see all around us. Put negatively (as by Avigail Eisenberg) pluralism guarantees “that no one principle, ideal, or way of life can dominate.”<sup>12</sup> To speak of *normative* pluralism is presumably to emphasize, in the present context, that valuing diverse moral and religious practices or perspectives is to become the norm.

This presents us with something of a conundrum: Pluralism may celebrate the fact that different ethnic and religious or cultural groups bump up against each other in the public sphere. It may celebrate the multicultural reality of a country with a high rate of immigration from diverse places. There is no conundrum there; nor does one need to be a pluralist in order to join the celebration. But if pluralism – as a political philosophy or educational strategy, not as a cultural landscape – is to guarantee the engagement that creates a common society, and if indeed it is to do so by policing the engagement in an attempt to see that no one principle or ideal dominates, what then are we to make of pluralism itself? Is its very normativity not in fact its self-contradiction?

This conundrum appeared already with the Proulx report, which champions moral and religious diversity in just such a way as to demand ideological conformity. “We never weary of admiring the intelligence of the report’s analysis of the challenges of pluralism,” remarks Leroux,<sup>13</sup> but his response is far from universal. In a forty-page analysis of the report, Peter Lauwers (now a justice of the Superior Court of Ontario) astutely observes: “It is no small irony that it trumpets pluralism in Québec’s society but then prescribes uniformity in public education as the appropriate antidote.”<sup>14</sup>

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<sup>11</sup> As quoted by Jean Morse-Chevrier, “*Gare au pluralisme normatif*” (*Le Devoir*, 4 June 2007), from an address by Prof. Leroux to the *Fédération des établissements de l’enseignement privé* on 3 May 2007. The ERC philosophy is more commonly described, whether positively or pejoratively, as “secularism” or “relativistic secularism,” but that description is too imprecise to be of much use. It does, however, appear in the manuals, where it is acknowledged as a world view in competition with religious world views such as that of Catholicism.

<sup>12</sup> The Pluralism Project at Harvard University can be found at [www.pluralism.org](http://www.pluralism.org). The Eisenberg quotation is taken from a review of David Miller and Michael Walzer, eds., *Pluralism, Justice and Equality* (Oxford 1995), in *American Political Science Review*, 90.3, 1996, p. 636. Cf. the Proulx report’s advocacy of “egalitarian neutrality” (p. 79).

<sup>13</sup> “Ethics and Religious Culture,” p. 17

<sup>14</sup> “The Proulx Report and Educational Changes in Québec,” p. 2. Lauwers adds: “The Report is a brilliant piece of propaganda for its own policy prescription. It wraps itself in the cloak of human rights but it is really aimed at social homogenization.”

It is worth noting that pluralism (as a philosophy or strategy) was one category employed in a threefold typology developed in the field of religious studies by Alan Race in the early 1980s. Its counterparts were exclusivism and inclusivism. One of the leading exponents of that typology, Professor Gavin D'Costa, has since acknowledged its faulty logic and renounced it on the very sensible grounds that the pluralist himself "is surely, and can only be, an exclusivist," because the pluralist is just as determined as anyone else to present his view as the right one and to see it prevail.<sup>15</sup>

In the present case, if I understand it properly, what is at issue is whether the pluralist philosophy, and its pedagogical correlatives, should prevail by force of law. That is, whether it should be imposed upon those who do not share it or think it sound; and whether the hegemony of pluralism, backed by government fiat, should extend even into the realm of religious schools. I will say more about that in the final section. All that needs to be said here is that its imposition cannot be justified in the name of some putative "neutrality" that is characteristic of pluralism. Pluralism is not neutral, nor, as we shall see, is the ERC program that has taken pluralism as its foundation.<sup>16</sup>

From the beginning the ERC revolution was inspired by a passionate commitment to normative pluralism. Its proponents have not been neutral about normative pluralism, in other words, nor should we expect them to be. (It would be an odd revolution if it were produced by the uncommitted!) But is normative pluralism really, as they claim, neutral in its approach to religion? Of course not. That is one reason why people *are* passionate about it, whether they be for it or against it. Normative pluralism is neutral towards religion only in the sense that it has made itself the *norma normans* to which all religions, including Catholicism, must submit.

This submission, if the revolution succeeds, will have its consequences for the next generation. "Our children will be better than us," says Leroux, because they will be "more open to religious and moral diversity and more committed to normative pluralism. They will believe that it is preferable to be plural [diverse] than

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<sup>15</sup> "The Impossibility of a Pluralist View of Religions," *Religious Studies* 32.2, 1996, p. 232. Exclusivism holds that only one religion or revelation is true. Inclusivism holds that, though one religion is definitively true, its truth may be found elsewhere in fragmentary forms. Pluralism holds "that all the major religions have true revelations in part, while no single revelation or religion can claim final and definitive truth." Thus in pluralism "all religions are viewed as more or less equally true" – or, we may add, false. But D'Costa (223ff.) argues that pluralism "must always logically be a form of exclusivism and that nothing called pluralism really exists." For the "transcendental agnosticism" found in pluralism also entails a set of truth claims that are as such exclusivist, and of course the same may be said of inclusivism. The typology is not merely faulty, then, but "deceptive and misleading." Putting the word "normative" in front of "pluralism," as Leroux does, only highlights the exclusivist character of the enterprise.

<sup>16</sup> Perhaps this is the place to observe that one should be careful not to equivocate with the word "pluralism." Pluralism in the sense of "increasing diversity" (a putative social phenomenon) and pluralism in the sense of "more open to diversity" (a supposedly unifying philosophy) are not the same thing, nor does the latter follow from the former as a self-evident good. Put "fragmentation," say, for "diversity" in these quoted phrases and the slipperiness of the language and logic becomes evident. (The underlying confusion can be seen, e.g., in the opening paragraph of the *Introduction to the Ethics and Religious Culture Program*, Update May 2008, p. 1.)

homogeneous.”<sup>17</sup> They will, however, be entirely homogeneous in at least one sense – they will all be normative pluralists!

Seen in this light, normative pluralism is about suppressing diversity, not supporting it. It tends to monoculturalism, not multiculturalism or even “interculturalism.”<sup>18</sup> It is more Rousseauvian than Rawlsian, more statist than democratic.<sup>19</sup> It has a place for any religious culture that cedes to the state final authority over religious culture, and no place for any that does not. A revealing footnote in the main ERC consultation document actually indicates that the purpose of the program is to “allow Québec students to develop a religious culture *consistent with ministerial orientations*.”<sup>20</sup>

Can this commitment to normative pluralism as the necessary foundation or prerequisite for the study of religion and ethics fail to bias the presentation of Catholic religion and morals? Must it not operate as a lens that filters rather than as a mirror that reflects? Can it possibly incorporate the transmission of Catholic norms into its own normative intentions without somehow distorting or falsifying the former?<sup>21</sup> Does it not, after all, see itself as a substitute for the traditional Catholic procedures and norms?

The tension at the heart of the program, to put it another way, is the tension between a program that retains the historic Catholic mandate to provide a robust education and a program that nevertheless jettisons certain basic Catholic ideas about what a robust education should look like. This may or may not be a good thing – society should be free to argue about that, in school and out – but it is hardly a neutral thing, and it would be disingenuous to present it as such in hopes of justifying its imposition on Catholics.

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<sup>17</sup> See again Morse-Chevrier, op. cit. (translation hers); cf. D. Farrow, “Rebuilding Babel in Québec City?” (*Catholic Insight*, March 2008), p. 23.

<sup>18</sup> That is the preferred term in Québec, as this passage illustrates: “Democratic nations are displaying greater respect for diversity and are adopting methods of managing coexistence based on an ideal of intercultural harmonization. This ideal is permeating national cultures through an array of procedures and at different paces. Our investigation reveals that in Québec harmonization measures are now part of the day-to-day life of public institutions such as health establishments, schools and universities” (Gérard Bouchard and Charles Taylor, *Building the Future*, p. 23). What is at issue here is whether the “harmonization measures” that constitute the ERC program actually do respect diversity or whether, in rejecting runaway multiculturalism, they tend to a state-enforced monoculture.

<sup>19</sup> When Leroux says that the program should “be placed safely away from political influence,” what he means is: “from the sole requirements of the majority” (“Ethics and Religious Culture,” p. 25). On Rousseau, see further chapter 9 in Farrow, ed., *Recognizing Religion in a Secular Society*.

<sup>20</sup> “Consultation on the Draft *Ethics and Religious Culture Program*,” p. 32, n. 22 (emphasis added). That said, the Committee is still trying to make clear what it means by “religious culture.” In the July 2007 Brief (p. 7) it offers a rather garbled definition, the main point of which seems to be that the program is “cultural” because it is not confessional. Among other things this begs the question as to what is meant when religions themselves are said either to be cultures or to contribute to culture.

<sup>21</sup> There is ample evidence in the manuals not only of distortion but of a bias that comes close to mockery, if not vilification. I have appended a couple of examples.

### 3. Education as formation: compatibilities and incompatibilities

“To educate is, first and foremost, to train human beings.” Or, as Vatican II put it: “True education is directed towards the formation of the human person in view of his final end and the good of that society to which he belongs and in the duties of which he will, as an adult, have a share.”<sup>22</sup>

But what is a human being? No answer to this can be neutral when it rises to the level of moral and religious discourse. Catholic schools exist because the Catholic Church believes that shaping the humanity of its own youth, and of others who wish to participate in the process, is its right and responsibility. The Catholic Church, however, has some quite specific ideas about what a human being is, and therefore about what a proper education in religion and ethics is.

Catholic ideas about education are thus partly consonant with those that appear to guide the ERC program, and partly dissonant. They support the two main objectives of the ERC program, namely, “the recognition of others and the pursuit of the common good.”<sup>23</sup> They support the notion that education should aim at the development of mature independent judgment, as the Second Vatican Council asserted.<sup>24</sup> They support the search for moral principles, for a better understanding of Québec’s religious heritage, and for awareness of the main features of a broad range of world religions. They confirm and do not contradict the Committee’s “opinion that giving students opportunities to develop an integrative perspective on traditions different from their own is necessary for a true recognition of others and an informed understanding of religion.” They raise no quibble respecting the three competencies.<sup>25</sup> However, they call for a different approach, a different pedagogy, and for attention to other and still higher objectives.

The reason for that is simple: Catholics believe in God. They do not approach education as if the human person did not have God as his or her final end. They do not understand the secular as a space, or rather a time (secular derives from *saeculum*), in which God is not to be considered or in which belief in God somehow does not matter, or in which one belief is just as good as another. If Catholics are committed in principle

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<sup>22</sup> *Gravissimum educationis* §1

<sup>23</sup> *Introduction to the Ethics and Religious Culture Program*, p. 2. The three aims of the Québec Education Program – “the construction of identity, the construction of world-view, and empowerment” – stand in a similar relation to a Catholic philosophy of education, and to Loyola’s own mission statement. The latter indicates that the school aims to help its students “explore their religious experiences in an environment where Catholic doctrine and values are understood, cherished and fostered; form sound moral judgment and a firm will to act according to it; and develop a fraternal respect for people of differing creeds and cultures.”

<sup>24</sup> *Dignitatis humanae* §8 is the *locus classicus*.

<sup>25</sup> *Viz.*, “carries out thorough reflection on ethical questions; demonstrates an informed understanding of the phenomenon of religion; engages in dialogue with a view to contributing to community life” (July 2007 Brief, p. 5; cf. p. 7f.).

to the recognition of others, the first and foremost thing to be recognized in the other is the fact that this other is a creature of God's, loved by God. If they are committed in principle to pursuit of the common good, the first and foremost thing to be said about that good is that (if it really is good) it leads ultimately to God, the source of all good. When Catholics speak of human autonomy, they do not set this autonomy over against the law of God or the law of nature as made by God; they speak of it rather as a function of the image of God.<sup>26</sup>

Some of the things that are said about the ERC's "open and secular" program cannot be said, then, of a Catholic approach to moral and religious education. It is falsely claimed of the former that "it does not espouse any particular set of beliefs or moral references,"<sup>27</sup> but of the latter the opposite may be said. It is open not because it espouses nothing in particular, but because in its own particularity it is capable of recognizing the particularity of the other. It is not, and does not intend to be, institutionally neutral.<sup>28</sup> It does intend to encourage teachers and parents "to accompany students on a spiritual quest," and "to present the history of doctrines and religions," and various other things that are formally eschewed by the ERC program. It intends to examine both its own and other world views critically, but *not* to maintain distance from its own world view and convictions – as if that were either possible or desirable.<sup>29</sup> It does not impose, but it does propose. It guides and models. If it didn't, it wouldn't be Catholic.

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<sup>26</sup> See *The Characteristics of Jesuit Education* §§23-25; cf. §33: "Students, teachers, and all members of the educational community are encouraged to build a solidarity with others that transcends race, culture or religion. In a Jesuit school, good manners are expected; the atmosphere is one in which all can live and work together in understanding and love, with respect for all men and women as children of God."

<sup>27</sup> Preamble (Update May 2008). What then are we to make of claims such as the following? "All indications are that we are not born human, but become human. Humanity is a work in progress and not a mere fact, is a set of values to be promoted, acquired and developed, values rooted in the dignity of the person, as recognized in the Charters and disclosed in the great religious and secular philosophies of this world. The dignity referred to here is 'acknowledged in others and in ourselves, rather than an object of formal study, since human dignity is based on who we are and not on our usefulness, accomplishments, skills, riches or talents.'" (*Secular Schools in Québec*, p. 36, quoting *A New Approach to Religious Education in School*, 11f.) Examples of such programmatic – one might almost say dogmatic – statements, replete with presuppositions and implications for religion and ethics, are readily multiplied. At the other end of the spectrum, it is all too easy to find such obviously rudderless statements as: "The Torah, the Bible, the sweat lodge, the minaret, Puja, Christmas, the icon, the Buddhist temple and certain street names referring to saints are all forms of religious expression" (*Introduction*, p. 36). One even finds rudderlessness *as* a dogma, or rather as an anti-dogma questioning the objective existence of good and evil, inherent dignity, etc. See, for example, the introduction by Daniel Gougeon, appended below.

<sup>28</sup> See *Secular Schools in Québec*, 30ff. We have already rejected the naïve notion that "schools simply became neutral following the removal of all provisions pertaining to the rights of Catholics and Protestants from the Act," but in any case this can hardly apply to a Catholic school.

<sup>29</sup> Cf. *Introduction to the Ethics and Religious Culture Program*, p. 12. What some refer to as "the 'crisis of transmission' within modernity" (Heythrop Institute, *On the Way to Life*, p. 28) is linked to false understandings of secularity (see *ibid.*, 13ff.; cf. *Recognizing Religion in a Secular Society*, chapters 6 and 9, and Charles Taylor, *A Secular Age*). "Transmission requires not only successful discursive and conceptual structures but also social and institutional structures and traditions" (p. 29).

Catholicism “takes diversity into account,” as the ERC program also wants to do. It is certainly not against diversity. Its trinitarian theology and its account of creation provide a solid foundation for respect for the many and not merely for the one, for the different and not merely for the same. That is one reason why societies shaped by the Church have generally welcomed immigrants, and why the Church itself is arguably the best global illustration of diversity in unity and unity in diversity. The Church is a partner in dialogue at an astonishing number of borders and intersections in the modern world, as it was in the mediaeval world. Studies of its schools have shown that this characteristic stands out.<sup>30</sup> But its approach both to dialogue and to education is different from that of the Ministry’s normative pluralists, who wish to impose a program that (they say) proposes nothing.

According to canon law, “since true education must strive for complete formation of the human person that looks to his or her final end as well as to the common good of societies, children and youth are to be nurtured in such a way that they are able to develop their physical, moral, and intellectual talents harmoniously, acquire a more perfect sense of responsibility and right use of freedom, and are formed to participate actively in social life.”<sup>31</sup> The appeal to a final end – the only part of this that the ERC has dropped – is decisive. “It is clear,” says the Church, “that the school has to review its entire programme of formation, both its content *and the methods used*, in the light of that vision of the reality from which it draws its inspiration and on which it depends. Either implicit or explicit reference to a determined attitude to life (*Weltanschauung*) is unavoidable in education because it comes into every decision that is made.”<sup>32</sup>

With this in mind, we may expand just a little on a few of the differences that must be respected if a Catholic school is to be authentically Catholic in the formation it offers.

First, the Catholic school is fully committed to the view that human dignity lies in human ends, not merely in human autonomy (which enables human beings willingly and rationally to seek their proper ends). In its moral and religious education, then, it cannot be content to examine the ways in which different societies and different groups within society articulate their values and norms, or arrange their religious symbols, or

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<sup>30</sup> See Anthony Bryk *et al.*, *Catholic Schools and the Common Good*, which demonstrates that Catholic schools have an exemplary record of bringing together students of diverse backgrounds (racially, culturally, economically, intellectually, etc.) *and* of enabling them to achieve a community of learning and a culture of respect that are the envy of most public school systems. See further n. 58.

<sup>31</sup> Canon 795

<sup>32</sup> *The Catholic School* §28f. (emphasis mine). See §§28-37 for a fuller understanding of how the pedagogy and the content of a Catholic education must be distinguished from that indicated in the 2008 Preamble and Introduction, equivalence in the matters indicated notwithstanding. There is a shared goal – “It must never be forgotten that the purpose of instruction at school is education, that is, the development of man from within, freeing him from that conditioning which would prevent him from becoming a fully integrated human being” (§29) – but a different understanding of how that goal is reached and of what is attained when it is reached: “If, like every other school, the Catholic school has as its aim the critical communication of human culture and the total formation of the individual, it works towards this goal guided by its Christian vision of reality ‘through which our cultural heritage acquires its special place in the total vocational life of man’” (§36).

handle the motifs of “tolerance, justice, human ambivalence [and] the future of humanity.”<sup>33</sup> All of this it will want to do, but not at the expense of asking students, at the very heart of their ethical reflection, to contemplate the right ordering of ends; or of asking them, at the heart of their religious education, to think about God as the End of ends.

Second, the Catholic school is fully committed to the view that reason, to be and remain reasonable in its highest pursuits, requires faith and the community of faith as its guide and support.<sup>34</sup> ERC literature, for its part, shows traces of a facile and frankly indefensible dichotomy between faith and reason, which plays into its tendency to regard the selection of ethical principles and the making of religious commitments chiefly as a form of self-expression or self-definition. This issue obviously goes to the core of curricular and pedagogical differences, since Catholicism admits no such dichotomy and therefore regards both ethics and religion as something more than personal or corporate self-expression.<sup>35</sup>

Third, the Catholic school does not set its “obligation to the present” over against its obligation to the past.<sup>36</sup> Unlike the new ERC school, it continues to see in its faithfulness to its heritage the most important gift it can make to society today. It believes in transmission not merely so that Québécois, in pondering their present or their future, will have some recollection of their past, but because *what* is transmitted is regarded as essential for the present and the future – just as essential as it was in and for the past.

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<sup>33</sup> *Introduction to the Ethics and Religious Culture Program*, p. 13

<sup>34</sup> See John Paul II, *Fides et ratio*; cf. *The Characteristics of Jesuit Education* §35: “In all classes, in the climate of the school and most especially in formal classes in religion, every attempt is made to present the possibility of a faith response to God as something truly human and not opposed to reason, as well as to develop those values which are able to resist the secularism of modern life.” The Committee, however, summarily severs any connection between rational reflection on religion and faith-based responses; indeed, it posits “knowledge” and “confession” as contraries (cf. July 2007 Brief, p. 4, n. 4, and p. 7). In her letter of 13 November 2008, the assistant deputy minister, Line Gagné, is certainly right to see this as an important difference between the ERC program and what is done at Loyola in the study of religions. But she is just as certainly wrong to suppose that this difference constitutes a reason to demand that Loyola suspend its unitary approach in favour of the Committee’s dichotomous one. Nor does she take into account the fact that the unitary approach applies, *mutatis mutandis*, to all academic work at Loyola.

<sup>35</sup> “Faith” is a word rarely found in ERC background literature. “Beliefs” occurs not infrequently, usually grouped with “values, norms, convictions,” etc. But it is almost as if the latter, being many and various, lie wholly in the realm of the non-rational rather than the rational. One sometimes gets the impression, in other words, that the goal of the ERC program (the implementation of which “will facilitate the management of religious diversity,” as the July 2007 Brief puts it on p. 20) is to reduce a dangerous Heraclitian flux of conflicting religious and moral commitments to something safe and less threatening, by insisting that it is all a sort of game that can be played without injury so long as there are rational, level-headed referees who intervene the moment anyone’s self-constructed dignity is put at risk by an actual truth-claim. “The objective is not to propose or impose moral rules” (2008 Preamble), or to study philosophy or theology in any serious fashion, but only to learn how to observe appreciatively, without discord, the never-ending play of representations of the divine; that is, of the “authentic” self.

<sup>36</sup> Cf. Leroux, “Ethics and Religious Culture,” p. 15, and *Characteristics of Jesuit Education* §§8f., 141, 145.

Fourth, the Catholic school does not adhere to individualism, either philosophically or pedagogically. It seeks the formation of human beings, and it agrees on “the primacy of the individual over institutions,” as one Committee brief puts it<sup>37</sup> – only it does not understand humans as individuals but as persons in community, because it understands God as triune and personal. Which is to say, it is not stuck in some modern or postmodern paradigm that presents “each student as a unique, autonomous individual” who must, on the one hand, be protected from the influence of his teachers lest his autonomy be stunted; and who, on the other hand, must be taught by those same teachers, their reticence notwithstanding, how to be properly open to “diverse values, beliefs, and cultures.”<sup>38</sup> It is free rather to see itself as “a community whose values are communicated through the interpersonal and sincere relationships of its members,”<sup>39</sup> and as a place where students learn “to form their own judgments in the light of the truth” – a truth that, to be taught, must be lived.<sup>40</sup>

Fifth, the Catholic school does not believe, as the Ministry apparently does, that people should be forced to be free. “By grouping all the students together, rather than dividing them into groups according to their beliefs, and by promoting the development of

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<sup>37</sup> *Secular Schools in Québec*, p. 22 – a particularly confused passage, it has to be said, against which compare *On the Way to Life*, p. 16f.; cf. also *Catechism of the Catholic Church* §1912.

<sup>38</sup> *Introduction to the Ethics and Religious Culture Program*, which on p. 12 says: “Thus, to ensure against influencing students in developing their point of view, teachers abstain from sharing theirs,” and on p. 13: “Teachers thus foster openness to diverse values, beliefs and cultures.” For evidence that the manuals themselves intend to influence students in developing a point of view, one might look, for example, at the discussion of abortion in Bertrand and DuBois. Not only is Henry Morgentaler set alongside the likes of Martin Luther King and Gandhi as an important role model (*Dialogues*, p. 69), the potted history of the issue on p. 127f. is clearly slanted towards the *prochoix* position, all the emphasis being placed on the unsanitary conditions faced by some women (78,000 annually) during the abortion and none at all on the decidedly unhealthy conditions faced by every foetus (50 million annually) that finds itself the object of this “operation.” The same must be said of the summary of the arguments of the respective sides, the whole being inexcusably tendentious. Whether a responsible ethics teacher in a Catholic school would be more outraged by the moral incompetence or the procedural incompetence is difficult to say; in any case, the bias is such that no Catholic teacher could reasonably be expected to utilize this material without offering clarifications that must amount to very pointed objections.

<sup>39</sup> *The Catholic School* §32; cf. *Characteristics of Jesuit Education* §34: “Since every program in the schools can be a means to discover God, all teachers share a responsibility for the religious dimension of the school... Religious and spiritual formation is integral to Jesuit education; it is not added to, or separate from the educational process.”

<sup>40</sup> The dialectic of *Dignitatis humanae* §8 is lacking in the ERC program. Benjamin Berger’s concluding observations in “Law’s Religion” also cast light on the thinking behind the latter: “We protect autonomy because we privilege the individual; equally, the individual is valued because he is the source of choice, which is understood as the expression of freedom and autonomy. From these intimately interrelated aspects of law’s rendering of religion, the jurisprudence leads us naturally to the third aspect of law’s understanding of religion – that religion is a private matter. Once religion is centred on the individual and his or her personal choices and expressions of autonomy, the constitutional legal imagination is led to assign religion to the realm of the private. The relationship works equally in the opposite direction. Not an independently legitimate component of public decision-making, religion falls on the private side of law’s conceptual divide. Once so designated, religion is bound not by reason, but by preference, is therefore a matter of choice and, as such, an expression of the autonomous individual.” But the Catholic Church, naturally, does not regard religion in that way, just as it does not regard the person in that way.

attitudes of tolerance, respect and openness, we are preparing them to live in a pluralist and democratic society.”<sup>41</sup> Or as Professor Leroux puts it: “We agree to give young people the freedom that results from the knowledge of traditions – their own and those of all others – and that is what we have chosen to do by providing that education in a normative framework.”<sup>42</sup> The latter statement is more acceptable to a Catholic way of thinking, but in the *normative* lies a problem: a problem respecting the conflict of norms just outlined; a problem, therefore, respecting religious liberty.

#### 4. Imposition of the ERC program as a threat to religious liberty

The right to educate one’s offspring in a manner consonant with one’s beliefs is regarded by the Catholic Church as an indispensable element of religious freedom. This right, as the Church understands it, goes beyond the right of parents to teach their own children at home or of religious communities to educate their members without government interference. It includes the right to establish schools devoted to a Catholic ethos and world view.

The Catholic Church has both law and official teaching on this matter, which can be found in a number of places. The Code of Canon Law includes the following canons:

793 §1. Parents and those who take their place are bound by the obligation and possess the right of educating their offspring. Catholic parents also have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their children, according to local circumstances.

800 §1. The Church has the right to establish and direct schools of any discipline, type, and level.

803 §2. The instruction and education in a Catholic school must be grounded in the principles of Catholic doctrine; teachers are to be outstanding in correct doctrine and integrity of life.<sup>43</sup>

The Pontifical Council on the Family has produced a *Charter of the Rights of the Family*, which includes the following article:

5 c) Parents have the right to ensure that their children are not compelled to attend classes which are not in agreement with their own moral and religious convictions. In particular, sex education is a basic right of the parents and must always be carried out under their close supervision, whether at home or in educational centers chosen and controlled by them.<sup>44</sup>

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<sup>41</sup> 2008 Preamble. This may sound like an exercise in political liberalism, but it is actually an exercise in the authoritarian “comprehensive liberalism” that Rawls rightly resists in the sphere of education, as elsewhere; see *Political Liberalism*, p. 199f.

<sup>42</sup> “Ethics and Religious Culture,” p. 16

<sup>43</sup> See the entire section on Catholic education, canons 793-821.

<sup>44</sup> “Presented by the Holy See to all persons, institutions, and authorities concerned with the mission of the family in today’s world. October 22, 1983.”

The Sacred Congregation for Catholic Education has set out in *The Catholic School* a fuller treatment of the subject that contains, *inter alia*, these affirmations:

[8] In her encounter with differing cultures and with man's progressive achievements, the Church proclaims the faith and reveals "to all ages the transcendent goal which alone gives life its full meaning". She establishes her own schools because she considers them as a privileged means of promoting the formation of the whole man, since the school is a centre in which a specific concept of the world, of man, and of history is developed and conveyed.

[13] The Church upholds the principle of a plurality of school systems in order to safeguard her objectives in the face of cultural pluralism. In other words, she encourages the co-existence and, if possible, the cooperation of diverse educational institutions which will allow young people to be formed by value judgments based on a specific view of the world and to be trained to take an active part in the construction of a community through which the building of society itself is promoted.

[14] Thus, while policies and opportunities differ from place to place, the Catholic school has its place in any national school system. By offering such an alternative the Church wishes to respond to the obvious need for cooperation in a society characterised by cultural pluralism. Moreover, in this way she helps to promote that freedom of teaching which champions and guarantees freedom of conscience and the parental right to choose the school best suited to parents' educational purpose.

[15] Finally, the Church is absolutely convinced that the educational aims of the Catholic school in the world of today perform an essential and unique service for the Church herself. It is, in fact, through the school that she participates in the dialogue of culture with her own positive contribution to the cause of the total formation of man. The absence of the Catholic school would be a great loss for civilisation and for the natural and supernatural destiny of man.

Speaking at Castel Gandolfo on 25 September 2008, Pope Benedict XVI insisted that "the Catholic school is an expression of the right of all citizens to freedom of education, and the corresponding duty of solidarity in the building of civil society" (Zenit). More than a century earlier, Pope Leo XIII, addressing the Manitoba school question in his encyclical, *Affari vos*, argued as follows:

Justice and reason then demand that the school shall supply our scholars not only with a scientific system of instruction but also a body of moral teaching which, as we have said, is in harmony with the principles of their religion, without which, far from being of use, education can be nothing but harmful. From this comes the necessity of having Catholic masters and reading books and text books approved by the Bishops, of being free to regulate the school in a manner which shall be in full accord with the profession of the Catholic faith as well as with all the duties which flow from it. Furthermore, it is the inherent right of a father's position to see in what institutions his children shall be educated, and what masters shall teach them moral precepts. When, therefore, Catholics demand, as it is their duty to demand and work, that the teaching given by schoolmasters shall be in harmony with the religion of their children, they are contending justly. And nothing could be more unjust than to compel them to choose an alternative, or to allow the children to grow up in ignorance or to throw them amid an environment which constitutes a manifest danger for the supreme interests of their souls. These principles of judgment and action which are based upon truth and justice, and which form the safeguards of public as well as private interests, it is unlawful to call in question or in any way to abandon.<sup>45</sup>

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<sup>45</sup> *Affari vos* §6. In *Rerum novarum* §14, Leo argues analogously respecting economic measures that those who set aside "the parent and introduc[e] the providence of the State, act against natural justice, and threaten the very existence of family life."

Thus also Cardinal Ouellet, who, in addressing the Québec school question, has argued that the imposition of the ERC program is an undue burden on the Church in its own responsibility respecting “the transmission of our religious heritage”:

Without considering the primacy of the right of parents and their clearly expressed desire to retain the freedom of choice between confessional and moral teaching, the state is suppressing confessional teaching and imposing an obligatory course of ethics and religious culture in both public and private schools. No European nation has ever adopted such a radical approach, which revolutionizes the convictions and religious freedom of the citizens. This leads to the profound dissatisfaction and sense of powerlessness that many families feel... Will the operation of refocusing the ethical and religious formation of citizens by means of this obligatory course be able to salvage minimal points of reference to ensure a harmonious common life? I doubt it, and I am convinced of the contrary, because this operation is conducted at the expense of the religious freedom of the citizen, especially the freedom of the Catholic majority.<sup>46</sup>

Similarly, albeit in a different tone of voice, the “Statement from the Assembly of Québec Catholic Bishops on the Ethics and Religious Culture Program”:

The Assembly of Québec Catholic Bishops has always expressed its preference for respecting parents’ choices in matters concerning moral and religious education. For this reason, it has favored a system of options between confessional instruction and a non-religious moral instruction. This freedom of choice will disappear once the new program is implemented. In our eyes this represents a loss and we conclude that we must remain very vigilant regarding the fundamental respect of freedom of conscience within the newly created context.<sup>47</sup>

Likewise the “Report of the English Speaking Catholic Council on the Proposed Ethics and Religious Culture Program”:

The treatment of religious rights and freedoms betrays a basic flaw. The project completely screens out the fundamental human rights of parents from religious education. The article on parental rights in the Quebec Charter of Human Rights acknowledges the unique rights of parents to transmit their moral and religious traditions to their children: “Parents,” article 41 states, “have a right to give their children a religious and moral education in keeping with their convictions.”<sup>48</sup>

There can be no doubt, then, that from the perspective of the Catholic Church the imposition of a program the objectives of which are acceptable, but the philosophical

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<sup>46</sup> “Where is Québec going?”

<sup>47</sup> 17 March 2008 ([www.eveques.qc.ca](http://www.eveques.qc.ca))

<sup>48</sup> October 2006, Executive Summary §4. Article 41 was backed by the *International Covenant on Economic, Social and Cultural Rights*, which in article 10.1 states that “the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.” Article 13.3 adds that signatories “undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”

presuppositions and pedagogy of which are unacceptable, constitutes an infringement both of parental freedom of choice and of fundamental religious freedom.

Professor Leroux, for one, appears to take some account of this. “Communities of believers,” he says, “are called on, for their part, to face the challenge of reconstruction of denominational transmission *in their own institutions*” (emphasis mine). And yet he adds, as if in recognition of the problem at hand: “We can already foresee long debates about reasonable accommodation and even legal challenges under our charters.”<sup>49</sup> Such foresight does not require a prophetic gift, but only a recognition that the new program, if mandatory, does indeed suffer from a basic flaw in its treatment of religious rights and freedoms. To ask a Catholic institution such as Loyola to face the challenge of reconstruction, while at the same time imposing upon it the ERC curriculum, is to ask it to make bricks without straw.

The precise nature and limits of religious rights and freedoms are not altogether settled, of course, which is hardly surprising given that the definition of religion is itself a difficult matter and that the grounds for restricting religious expression are always prudential.<sup>50</sup> But if freedom of religion does not include the right of religious communities to establish their own schools, and in those schools to teach religion and ethics with the breadth and competence prescribed by the Ministry but in a manner consonant with the beliefs of that community, then freedom of religion is an almost meaningless concept. Either that, or the community in question – for reasons good or bad – has been denied freedom of religion.

Moreover, if the right to see that one’s own children are educated in a manner consonant with one’s religious beliefs is denied by the state, then the state has arrogated to itself one of the primary responsibilities and privileges of parenthood. Indeed, it has called into question who or what has primary responsibility for the children – their parents or the state itself. In that case it has turned its back on the *Universal Declaration of Human Rights*, which does not view the family as a creature of the state but as something still more fundamental than the state. The *Universal Declaration* insists that

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<sup>49</sup> Leroux, “Ethics and Religious Culture,” p. 5. The Committee, however, puts forward rather tentatively its view that the ERC program, “in being non-confessional, respects the principle of freedom of conscience and religion” (July 2007 Brief, p. 4, n. 5). It is not explained how being non-confessional is a sufficient condition for the respect in question, or how imposing the non-confessional on confessional schools is in keeping with such respect.

<sup>50</sup> The *Amselem* decision (2004 SCC no. 47) offers this attempt at a definition: “Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to one’s self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.” Its merits notwithstanding, this definition is problematic both because it prioritizes the subjective over the objective and because the term “spiritual,” being undefined, imports vagueness on several levels. Catholicism, for its part, regards religion in the light of the first commandment, as “the duty of offering God genuine worship,” a duty that “concerns man both individually and socially” (*Catechism* §2104). The 1917 *Catholic Encyclopaedia* states that “religion, broadly speaking, means the voluntary subjection of oneself to God,” but is careful to attend both to its subjective and its objective dimensions. That is because it does not share “the characterization of religion as a species of the modern value of autonomous choice” (David Brown, “The Court’s Spectacles,” p. 2).

“the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,” and expressly recognizes that parents “have a prior right to choose the kind of education that shall be given to their children.”<sup>51</sup>

Universal imposition of the ERC program is a serious obstacle to “democracy and parental choice”<sup>52</sup> in Québec. Not only does it deprive parents of their right to choose an authentically Catholic (or Jewish, etc.) education for their children, it fundamentally subverts the democratic process by subjecting all young citizens to a compulsory spiritual formation designed and delivered according to a state-approved ideology.<sup>53</sup>

When the matter is put in this light, it is not at all clear that the ERC model represents, as Leroux maintains, a wholly unprecedented choice. It may differ from what he calls the Republican model of contemporary France, but it bears some resemblance to the high-handed approach of an earlier era in French history and – most ironically – to the failed policies of the British regime in Québec in the period between the Treaty of Paris and the Quebec Act.<sup>54</sup> In its attack on religious liberty it also bears comparison with certain draconian measures adopted in authoritarian states and, lately, in various western jurisdictions from the U.K. to California. To claim that it is unprecedented is to deflect attention from the question that ought to be asked, *viz.*, whether its precedents are ones that Québec should be emulating.<sup>55</sup>

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<sup>51</sup> Article 16, section 3, and article 26, section 3, respectively (cf. the Proulx report, p. 60). Richard Dawkins, for example, or Innaih Nasiretti, seem to regard all religious practice as violating the rights of children and to think that the state has a duty to protect children from the religious indoctrination their parents often provide for them. But children will always be indoctrinated somehow, for better or for worse; to this there is simply no alternative. The real question here is who, in the first instance, has the right to decide for children. If this right passes from parents to the state it does so in contravention of the *Universal Declaration of Human Rights* and as a body blow to a free and diverse society.

<sup>52</sup> These words are drawn from Lucie Pepin’s Senate speech on 25 November 1997, in defence of the amendment of section 93 of the Constitution Act, 1867.

<sup>53</sup> R. J. Neuhaus (“Turning the First Amendment on its Head,” *First Things*, 26 September 2008) observes that the question of religious freedom is above all a question about “the access, indeed the full and unencumbered participation, of men and women, of citizens, who bring their opinions, sentiments, convictions, prejudices, visions, and communal traditions of moral discernment to bear on our public deliberation of how we ought to order our life together in this experiment that aspires toward representative democracy.” When the state assumes excessive control over the process of communicating these traditions to young citizens it also exercises an improper control over public deliberation as such.

<sup>54</sup> See H. Daniel-Rops, *The Church in an Age of Revolution*, 228ff., 354ff.

<sup>55</sup> Both in Europe and in America attempts are being made to restrict religious freedom through laws or regulations in the sphere of education. To some of these measures significant sanctions are attached, evoking memories of unhappier days under communist or fascist regimes. See, e.g., the much discussed Konrad case in Germany, which saw the state – backed by the European Court of Human Rights (18 September 2006) – pit children’s rights against parents’ rights in order to justify the state’s educational monopoly. This is the path taken by the Proulx report, which asks on p. 77, “How can we reconcile parental choice with the fundamental interests of children, when the two differ?”, and insists on p. 82: “To the extent that children have fundamental interests independent of those of their parents, sufficiently to claim they too have rights, it therefore follows that the state is responsible for ensuring that appropriate institutions designed to allow the exercise of rights are created.” The question “To whom do schools belong?” is thus transformed into the question, “To whom do the children belong?” (cf. Farrow, *Nation of Bastards*, 63ff.). But in answer to that the Catholic will insist with Vatican II that “it is the

## Conclusion

We return in conclusion to our point of departure. Professor Leroux speaks of deconfessionalization as a break or rupture with the past, and of a spiritual and ethical void that must be filled by the ERC program. Cardinal Ouellet, however, maintains that there was already a break of a more fundamental kind, of which deconfessionalization and the ERC revolution are themselves symptoms:

The real problem in Quebec is the spiritual vacuum created by a religious and cultural rupture, a substantial loss of memory, leading to a crisis of the family and education, leaving citizens confused, demoralized, prone to instability and relying on transient and superficial values. This spiritual and symbolic void inside Quebec culture disperses its vital energy and creates insecurity, for want of roots in and continuity with the sacramental and evangelical values that have nurtured it since its beginning.<sup>56</sup>

Who really has the measure of the problem – the Church or the champions of the ERC program? That can and should be debated. Should the Ministry take sides in this debate? To some extent that may be unavoidable, though arguably it should be avoided as far as possible. But has the Ministry any right to impose the ERC solution on the Church, by dominating the study of ethics and religion in the Church's own educational institutions? Surely not. The imposition of the new curriculum, which dictates even to private and religious schools how moral and religious issues are to be framed and communicated, is an unreasonable restriction on religious freedom that is in no way justified by the state's proper concern for the maintenance of good order through universal access to a high quality education.

In so far as it suppresses debate in and between schools by preventing religious schools from being true to their own charters and mandates, it serves only to undermine educational interests as well. The two main objectives of the program, as we have noted, are "the recognition of others and the pursuit of the common good." These objectives might have been lifted straight out of *Dignitatis humanae* or any number of other Catholic documents, yet the imposition of the program on Catholic schools implies the *non*-recognition of the Catholic voice, which must now be filtered by the Ministry, to the great detriment of its distinctive contribution to the common good.<sup>57</sup>

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parents who have given life to their children," and that parents have therefore "a primary and inalienable duty and right in regard to the education of their children" (*Gravissimum educationis* §5f.). The Proulx report, it may be added, reads like an upside-down version of *Gravissimum educationis*, subverting the latter's goods by reversing the relation between the family and the state. The Comité sur les affaires religieuses has acknowledged, however, as it should, that *parents* "have the prime responsibility for their children's education" (July 2007 Brief, p. 15).

<sup>56</sup> "Reasonable Accommodation and Religious Liberty in Quebec": Cardinal Marc Ouellet's submission to the Bouchard-Taylor Commission, 30 October 2007.

<sup>57</sup> The letter of assistant deputy minister Gagné (13 November) confirms that the Ministry objects to the fact that the Catholic perspective is brought to bear, and that it intends to see that its own "very different" conception of the common good prevails. That Loyola should present the Ministry's view to its students is not enough; it must employ the Ministry's own approach. That Loyola's students should be capable of

The more general goals of the Québec Education Program – namely, “the construction of identity, the construction of world-view and empowerment” – also stand to suffer if Catholics are denied the right to work at these goals in an authentically Catholic way. It is difficult, in fact, to resist the conclusion that the universal imposition of ERC is intended to frustrate the construction of a solid Catholic identity and world view, unless perchance it is intended to frustrate some other identity or world view, with the frustration of the Catholic as collateral damage.

At all events, both past history and present research suggest that non-Catholics, too, will be impacted negatively by a universally mandated ERC program: not only because it has similar implications for their own pursuit of these goals, but because the Catholic loss is already their loss. A public order argument, properly developed, would not justify the suppression of the right to religious freedom that belongs to Catholic families and citizens, and by extension to their schools; on the contrary, it would support the fullest exercise of that right, which has yielded, and continues to yield, positive results for those societies in which it has been respected.<sup>58</sup>

Nor should the right in question be reduced to freedom of conscience, and so to a question of individual autonomy. That is what some urge, thinking to strike a blow for libertarian ideas or, conversely, that a public order argument might then be brought to bear. But such a move falsely conflates the distinct elements of what the *Universal Declaration of Human Rights* speaks of as “the right to freedom of thought, conscience and religion.”<sup>59</sup> This tends in turn to an elision of the communal and public dimensions of this threefold freedom – especially the familial and religious dimensions, which are typically expressed in the formation and choice of educational institutions such as Loyola High School.<sup>60</sup>

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dialogue is not enough; they must engage in dialogue “in the sense contemplated” by the Committee and the Ministry.

<sup>58</sup> Consider, e.g., the findings of West and Wössmann in “‘Every Catholic Child in a Catholic School’: Historical Resistance to State Schooling, Contemporary Private Competition, and Student Achievement Across Countries.” This study, as *The Atlantic* (October 2008) notes, “finds that international Catholic resistance to government-mandated schooling in the 19th century has resulted in higher student performance today – for Catholics and non-Catholics alike. The Catholic hierarchy historically encouraged the development of parochial schools to ensure the moral and religious training of Catholic children. As a result ... countries that had a higher percentage of Catholics in 1900 now have a greater overall number of private schools. Using an international student-assessment survey, and controlling for demographic factors, the authors calculated that countries with more private schools due to a ‘larger historical Catholic share’ in the population did substantially better on achievement tests in all three subjects measured – math, science, and reading – while spending significantly less money per student. The authors argue that Catholic ‘opposition to state education in many contexts engendered private school competition that ultimately spurred student achievement.’” West and Wössmann’s results can be added to those of Bryk *et al.* in *Catholic Schools and the Common Good*.

<sup>59</sup> Article 18

<sup>60</sup> In an interview with *L’Osservatore Romano* (17 March 2008) Mary Ann Glendon points out that the important role of the Catholic Church in the formulation of the *Universal Declaration of Human Rights* is one that some prefer to forget, because it is their objective to disengage rights discourse from the natural law tradition in which it is actually rooted. (See further, e.g., Glendon’s *Traditions in Turmoil*, and Donald

What is particularly insidious about the universal imposition of the ERC program is that it undermines all three constituent freedoms. It does so by purporting to defend the first of them, but in such a way as to seize from parents the primary responsibility for cultivating that freedom,<sup>61</sup> and from the Catholic Church its educational mission. Against this stands the claim of *Dignitatis humanae* that parents “have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive,” and that “the rights of parents are violated if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs.”<sup>62</sup> Against it stands also the claim that “the Catholic school forms part of the saving mission of the Church, especially for education in the faith.”<sup>63</sup> Against it stands indeed Canada’s obligation as spelled out in articles 10 and 13 of the *International Covenant on Economic, Social and Cultural Rights*,<sup>64</sup> and the desire of Québec society to preserve and enhance liberty of thought, liberty of conscience, and liberty in religion.

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Dietrich’s *Human Rights and the Catholic Tradition*; cf. John Witte, *The Reformation of Rights*, p. xi.) Along with this disengagement and forgetfulness, we may add, goes a certain animus against the Church that does not stop short, in some cases, of a willingness to suppress its voice by curtailing its rights and freedoms. While the courts cannot avoid adopting some point of view on the underlying issues (see again Brown, J), neither can they with justice allow such forgetfulness or such animus to prevail.

<sup>61</sup> As the *Catholic Times* reported in December (p. 2), Professor Michel Despland went so far as to suggest in a recent McGill forum (“What is Religion?”, 6-7 November 2008) that “the goal of public education is ‘to release youth from the control of parents.’”

<sup>62</sup> *Dignitatis humanae* §5. In full: “The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the rights of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.” Cf. *Convention on the Rights of the Child*, article 29.2.

<sup>63</sup> *The Catholic School* §9

<sup>64</sup> The Covenant (*supra*, n. 48) was ratified by Canada in 1976.

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*Commentary from the Appendix:\**

Though the ERC curriculum may, according to M. Gougeon's introduction, leave the impression that good and evil have no objective existence, the manuals don't abandon good and evil altogether. Evil, it seems, in at least some of the manuals, is the oppressive Catholic past, while good is the liberated "secular" present. It is difficult to understand how the Ministry could approve such material, or for that matter how it could suppose that a curriculum that leaves students with the impression that good and evil are whatever we choose to make of them is a curriculum that will cultivate respect for human dignity and a more harmonious society. But to demand that Catholic schools themselves become the purveyors of this degrading material - in short, that they insult themselves, at another's bidding, and attack their own beliefs and norms - surely does not befit a civilized democracy or conform to the spirit of the *Canadian Charter of Rights and Freedoms*.

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\* Pages 1-3 of the Appendix are from Gougeon, *Éthique, Tradition et Modernité* - Cahier d'activités; pages 4-7 from Bertrand and DuBois, *Dialogues: Éthique et Culture Religieuse*.