

CASE STUDY:

Switzerland's Minaret Debate

Liberal democracies are supposed to balance the will of the majority with the rights of minorities. At first blush, it would seem that the only thing needed to make this balance work is a sense of human decency. However, sometimes things don't work out this way, and the majority demands that the freedoms of minorities are unreasonably limited. Such is the case with the controversy over minarets that broke out in Switzerland in 2005.

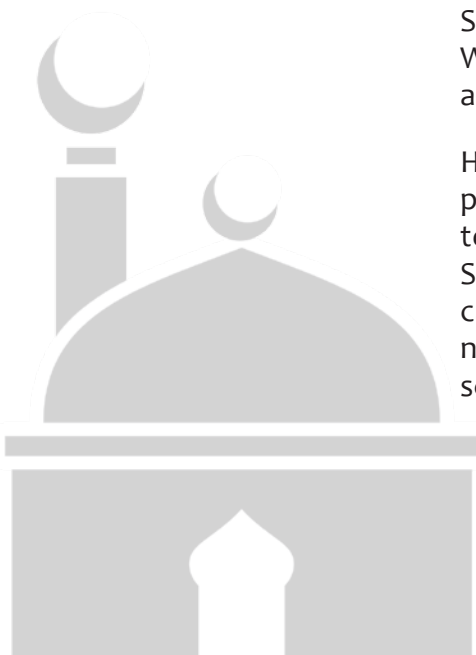
Minarets are towers on mosques, somewhat similar to church steeples. In Arabic, minaret means beacon. They point towards heaven, as a reminder of Allah. While minarets have had varied uses throughout history, from watchtowers to ventilation systems to signposts for travellers, today minarets are used to issue calls to prayer for Muslims. These calls are either directly issued by a muezzin (a person appointed by the mosque) who climbs the tower, or through a loudspeaker mounted on the tower. Morgan Freeman has described the Muslim call for prayer as "one of the most haunting and beautiful sounds in the world."

The Origin of the Swiss Minaret Dispute

A Turkish cultural association in Wangen bei Olten, a Swiss community of about 5,000 people, applied for a construction permit to add a minaret to their mosque. Some nearby residents objected, with 400 people signing a petition against the minaret. The municipality refused to grant the permit. The dispute ended up in Switzerland's Federal Supreme Court.

Switzerland's Federal Supreme Court ruled in favour of the mosque. With the go-ahead from the Supreme Court, the Turkish cultural association went ahead and built their minaret.

However, not everybody was happy with the court's decision. Several politicians and civic groups decided to use the tools of democracy to push for a nationwide referendum on minarets in general. In Switzerland, if 100,000 signatures are collected, a referendum can be held. Minaret opponents collected 115,000 signatures. A nationwide referendum on whether or not to ban minarets was scheduled for November 2009.



The Referendum Campaign

The campaign to ban minarets was largely led by right-leaning politicians. While the debate was ostensibly a dispute about architecture, in reality the proposed ban was meant to send a message about religion in Switzerland. According to the BBC, “supporters of a ban claimed that allowing minarets would represent the growth of an ideology and a legal system—Sharia law—which are incompatible with Swiss democracy.”

Muslims and their supporters felt that the campaign against minarets was discriminating against religious beliefs. The Vatican agreed, stating that a ban would be an “infringement of religious freedom.” Even the Swiss government was against a ban, pointing out that it was violating religious freedom, contradictory to the federal constitution, ineffective against extremism, and an obstacle to peace between religions and to Muslim integration.

For a referendum question to pass into law in Switzerland, the initiative must win a majority of votes, and win in a majority of Switzerland’s 26 cantons (provinces). The result of the minaret referendum was 57.5% in favour of the ban, and 42.5% opposed to the ban. Voter turnout was 53.75%. As well, the initiative received the majority of votes in all but four cantons. Because the referendum cleared both hurdles, the Swiss government was required to accept the result of the vote. The constitution was changed. The Swiss constitution now reads “Freedom of religion and conscience is guaranteed.... The construction of Minarets is prohibited.” The contradiction between these two clauses in the Swiss constitution is obvious.

At the time of the referendum, there were four minarets in Switzerland, including the minaret in Wangen bei Olten, which had been built by the time the vote came. Existing minarets were not affected by the constitutional change, and remain in place. However, no new minarets can be built.

Democracy in Action

In western liberal democracies, freedom of religion is guaranteed. Limits to freedom of religion usually only come into play if a religious belief conflicts with a criminal law. In the rare instance where a religious code oversteps a criminal law, the existing criminal law almost always takes precedent.

When viewed through the lens of liberal democracy, Switzerland’s minaret ban is clearly in opposition to liberal principles. It infringes upon freedom of religion, and it ignores the protection of minority rights. In other words, the ban is illiberal.

However, even if Switzerland’s ban on minarets was illiberal, the referendum itself was a legitimate democratic process. The majority said they did not want minarets in their country.

Switzerland’s referendum illustrates that democracy alone cannot always protect minority rights. The rule of the majority can sometimes trample the rights of minorities.

Illiberal Constitutional Change Can't Happen Here?

Unlike Switzerland, Canada's *Constitution Act* and *Charter of Rights and Freedoms* cannot be changed through a referendum. Almost all changes to our constitution can only take place if the proposal is approved by the House of Commons, the Senate, and the legislatures of at least two thirds of the provinces, representing at least half of Canada's

population. This high threshold for change makes constitutional change in Canada difficult.

However, legislatures have the power to temporarily override many sections of the *Charter of Rights and Freedoms*, by using a power called the Notwithstanding Clause. Governments can strip rights for five-year periods, with nothing more than a majority vote in the legislature. Because such power to strip rights is controversial, the Notwithstanding Clause is almost never used in Canada.

Sharia law is the religious law of the Islamic tradition. Its scripture guides many areas of Muslim life, including prayers, marriage and divorce, dietary restrictions, acts of kindness, and punishments for crimes.

Like every religion, the implementation of Islamic scripture varies. And like every religion, there are some harsher interpretations of its scripture. However, millions upon millions of Muslims—especially those living in places like Switzerland and Canada—follow moderate interpretations of Islam, interpretations that emphasise faith, human decency, and kindness.

Unfortunately, a handful of countries use hard-line interpretations of Islamic scripture to justify laws that would never gain acceptance in western liberal democracies. For example, it is possible in some countries to be lashed or stoned for morality offences, such as adultery, gay sex, gambling, drinking, wearing tight clothes, or skipping Friday prayers.

Western liberal democracies like Canada reject such harsh laws and harsh punishments. The courts have affirmed many times—concerning many different faiths—that liberal values take precedent over religious doctrine, when that doctrine is cruel, unusual, or unduly steps on rights and freedoms. In fact, Canada's liberal democratic system of laws and governance is one reason why so many immigrants view Canada as one of the most desirable places in the world to live. Differing groups are free to live their lives as they see fit, so long as they do not step on the rights of others.

Simply put, Canada is a liberal democracy. Sharia law—or any other form of theocratic rule—does not form the basis of Canada's legal system, and is not coming to Canada.



DISCUSS

1. The referendum in Switzerland was a form of direct democracy. However, voter turnout was only 53.75%.
 - a) If only 53.75% of people turned out to vote, can we really know if a true majority of Swiss people supported banning minarets?
 - b) What does the low voter turnout tell us about the importance of learning about issues and getting out to vote?

2. Liberalism asks that people tolerate the things they don't agree with, not just the things they do agree with.
 - a) Was the construction of minarets a violation of liberal values?
 - b) Is banning minarets a reasonable restriction of freedom in a liberal democracy?

3. Public opinion surveys leading up to Switzerland's referendum consistently suggested that the ban would not gain enough votes to win the referendum. The polls did not reflect the outcome.
 - a) Were the pollsters wrong? Or do people sometimes say one thing in public then act differently in the privacy of a voting booth?
 - b) Do you think people in general say one thing in public and another thing in private? If so, why do they act this way?

4. How would you react to this referendum if you were a member of a minority group who lived in Switzerland?

5. Can democracy alone protect individual rights? What does the Swiss referendum tell us about the importance of liberal institutions such as courts and human rights tribunals acting as a check on power?