

Challenging The French Exception: 'Islam' and *Laïcité*

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This article examines the validity of claims to a 'French exception' regarding immigration and normalisation policies for France's growing North African population. While many laud France's efforts to cultivate citizenship based on a notion of French civic neutrality, a prodigious amount of scholarship claims, to the contrary, that the French state prejudicially supports the breach of Human Rights and limits on pluralism by removing what it sees as 'ostentatious' religious symbols in the public sphere that are claimed to pose a security threat to France's internal stability. The Headscarf Affair is utilised to illustrate the untenable demands of 'ideal citizenship' that the French exception attempts to cultivate, namely one that requires the divesting of previously held cultural and religious beliefs and values in favour of adopting a French historical narrative that includes, among other things, a favorable view of the 'colonizing mission' of North African states during the French colonial period.

Introduction

The claim to a putative 'French exception' (Godin and Chafer, 2005) is attributed to the state's ability to cultivate a common identity for its citizens *qua* citizens in an effort to retain its historical values and cultural heritage in the face of globalization, and under pressure felt elsewhere in Europe to institute immigration policies that practice greater minority recognition. Whereas in Europe, labour movements have generally been succeeded by a pluralisation of society, this has not been the experience for France's North African immigrant population (Molokotos Liederman, 2000: 367). Instead, French non-recognition of minority or community status (McGoldrick, 2006: 48) under the banner of state 'neutrality' eschews any debate on assimilation and integration whatever. Yet insofar as minority communities - especially the *banlieus* - are increasingly vociferous over citizenship rights, greater social justice, equal economic opportunities and recognition (the November riots of 2005 were predominantly socio-political, not religious, protests), like other European states France is struggling to find equilibrium in a balancing act to limit religious and cultural expression without limiting individual or Human Rights. Replacing the Catholic Church as 'Other,' 'Islam' has become the new focal point for the state secular policy in France, much like it has become the byword for security threats in the West generally.

Due to the fact that minority recognition is anathema to the French "founding myth" or historical narrative (Benhold, 2005: 3), citizen identity is made to conform to a civic personality that is implemented by the state that demands the *laïcisation* of its immigrant minorities in order to attain a desired "Frenchness," while simultaneously persisting to identify this group as 'Islam' and therefore 'Other.' The

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French state thus recognises Islam but not the personal beliefs or historical narratives of those who constitute it as an analytical category. As such, this article argues that French secularism and *laïcité* are incoherent in application to France's North African Muslim individuals and communities. 'Islam'¹ is unduly imposed on a variegated population as a monolithic religio-cultural identity, civilization or system (Filali-Ansari, 2003: 197). Instead of state neutrality, then, "Is 'Islam' compatible with *laïcité*?" is the litmus test by which citizenry is accorded. The following demonstrates how the historical developments of *laïcité* maintain the incompatibility of Islam with the ideals of French citizenry and, as a result, why the French exception results in the breach of Human Rights in the name of state security that is used to justify the ban on religious garb, most notably the headscarf. A subsidiary thesis suggests that France's immigration and state secular policy may be an exception in Europe, yet across Europe – and including France – Islam qua 'Islam' remains the ostensible 'exception.' Indeed, while the myth of 'Islam' (Halliday, 1995) as 'Other' pervades much of Western literature generally, an alarmist cry is endemic to Europe in particular in the 'West's Last Chance' to prevent the "Nightmare Scenario" of 'Islamification' (Blankley, 2005).

'Islam' and Uncharted Terrain within the French Exception

In order to achieve recognition as an ideal citizen, one must share in France's historical narrative and the ideals embodied in the tripartite Republic motto: *liberté, égalité, and fraternité*. Sharing in France's historical narrative entails forgoing components of individual identity derived from cultural traditions and values outside of France. Producing an ideal French citizen requires the *laïcisation* of a docile subject, a *tabula rasa*, who will conform to an ideally French reading of neutrality in the public sphere, among other things. Even if the overhaul of identity were feasible (which it is not) the stigmatization of certain minorities under the category 'Islam' sustains the distinction between the ideal and the 'Other.' In this way, as elucidated below, France legitimates its own breach of Human Rights, and denies democratic pluralism within its borders, by instituting a nuanced requirement of citizenship cultivation.

Freedom of religion and consciousness are protected in France under national and international agreements. Within France, the dialectical relationship between the Roman Catholic Church and the state is central to the judicial development of *laïcité*. Not until at least the 1960s did the dialectic turn to North African immigrants, at which time the construction and perceptions of *laïcité* shifted in opposition from the Church to Islam. Muslims are sizeable representatives of France's population, (though this is not to say that Muslim ('Islam') is a monolithic bloc). At present there are between five and ten million Muslims in France, comprising one fifth of France and Europe's largest Muslim population. Three quarters of France's immigrant population are North African - from Algeria, Tunisia or Morocco - though half of French Muslims

¹ Throughout this article I refer to both 'Islam' and Islam. While the latter is used in a generic sense to denote the beliefs and practices of Muslims, thus recognizing the diversity of interpretations within the religion generally, 'Islam' is used in its symbolic pejorative form to connote the generalized myths of historical enmity that emanates predominantly from within the Christian 'West,' and exacerbated significantly after the Iranian Revolution. Following the Berlin Wall 'Islam' replaced communism as the West's nefarious 'Other' and is now, more than ever, associated with Islamic fundamentalism and terrorism. (See Halliday, 1995.)

were born in France (Feki, 2007: 757).

A brief history of *laïcité*

Until an edict of toleration was issued in 1787 that recognised non-Catholics, France's subjects and clergy were under compulsory allegiance to the Roman Catholic Church. The Edict of Nantes (1598) had once granted the Huguenots, a Protestant sect, the ability to practice religion without interference following the devastation wrought by France's War of Religions (1562 – 1598). It was revoked, however, under the edict of Fontainebleau (1685), which sought to convert, yet ultimately purged, the Protestant population of France. The theory of the divine right of kings still held considerable sway until the eighteenth century, and the King's duty to uphold the word of God conferred upon him religious, and thence political, legitimacy. Like nearly all of Europe's nations at the time, France maintained an official religion and a staunch intolerance to extraneous religious influences. Thus, despite the 1787 edict, the Catholic Church retained its right as sole practitioner of religion in the public sphere until after the Revolution.

The principles of the French secular republic date back to the 1789 Revolution and the Declaration of the Rights of Man. In addition to granting free and equal rights to all (Article 1) and endowing sovereignty to the nation (Article 3), Article 17 of the Declaration states "No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order" (Murphey, 2008). On 24 December of 1789 the Assembly decreed that "non-Catholics may vote and are eligible [to the Assembly] ... qualified for all civil and military types of employment, just as all other citizens" (Bauberot, 1999: 97). The latter was implicitly addressed to Protestant minorities; not until the Constitution was adopted in September of 1791 were natural and civil rights of freedom to practice the form of religion of one's choice extended to Jews. Henceforth, religious institutions were engaged in a virtual contract with the state, and the monarchy was divested of its official religious affiliation to the Catholic Church. Following further dissent from the King shortly thereafter, religious foundations were removed from the Republic altogether in September of 1792. The 1795 Constitution finally shattered the King's divine right, bequeathing state authority to the people alone.

Subsequently, the state withdrew from funding religious activities, and in 1881 primary education was declared "secular, free of charge and compulsory" through the Jules Ferry education laws (Henley, 2003). The 1905 abolishment of the *Concordat*² formally truncated the dominance of religious institutions from influence or lobby over the public sphere. The first two articles of the 1905 law read: (1) "The Republic ensures freedom of conscience. It guarantees the free exercise of religions," and (2) "It neither recognizes nor subsidises any religion" (Laborde, 2005: 308). In 1946, under the Fourth Republic, Charles de Gaulle guaranteed freedom of religion, declaring France an 'indivisible, secular, *laïque*, democratic and social republic' that was later consigned to the constitution of the Fifth Republic (1958-present), which ensured 'equality before the law of all citizens, with no distinction made on the basis of origin, race or religion.' The 1958 law is considered the "core of 'difference blind liberalism,'" which accords to each individual "a

² The *Concordat* of 1801 was an agreement struck between Napoleon Bonaparte and Pope Pious VII that re-established the Roman Catholic Church as the majority Church in France.

uniform set of rights regardless of her culture, identity or beliefs” (Laborde, 2005: 312). Following decolonization and the first wave of immigration to Europe, the Vatican II Council remitted its ambitions to forge a confessional state and finally accepted religious pluralism in 1964.

A change in dialectics from Church to ‘Islam’

It is important that the 1958 law and the creation of the Fifth Republic are placed within the context of the precursory Algerian war for independence (1954-1962), the crisis of Algiers (1958) and its subsequent independence (1962), as well as the Era of Independence during which France’s colonies attained the right to self-determination (for the most part occurring in the 60s). The laws enacted in the 1880s and 1905, and the rights enshrined in the first two articles of the 1946 and 1958 constitutions, respectively, make up the juridical nature of *laïcité*. Indeed, the 1958 laws were respected within the framework of *laïcité* that was established in 1905 (Brown, 2002). Precluding the first wave of mass immigration, then, the juridical foundations for *laïcité* were constructed in sole opposition to the Catholic Church as the state sought the emancipation of the public sphere from the Church during the Third Republic (1870 – 1940).

Laïcité was informed by and predicated upon French secularism and later inculcated in the ideals of French citizenship (*liberté, égalité, and fraternité*) through ‘neutral’ civic education. Yet while the expectations that constitute a secular subjectivity conducive to *laïcité* remain grounded in the church/state dialectic, *laïcité* as a French national political doctrine has and continues to be conceived in large part to the dialectic between France and ‘Islam.’ Therefore, to join the ‘imagined community’ (Anderson, 1991) today requires French Muslims either to forget the formative experiences drawn from their past or to tacitly acquiesce to the connotations loaded in the current understanding of ‘Islam’ - those remnant of colonial times - that require the acceptance of colonialism as a ‘civilizing project’ (Schaebler, 2004: 3-29).

Growing concerns over the politico-religious force of ‘Islam’ has led to a shift from the ‘militant *laïcité*’ catered to the dialectic between state and church to a ‘management *laïcité*’ that presides over civil society to ensure that contemporary interpretations of ‘neutrality’ in the public space are maintained in line with the French national ethos. Jean-Paul Willaime aptly calls this the ‘secularization of *laïcité*’ in which *laïcité* “no longer functions as an alternative system to religion, but rather as a regulating principle for the pluralism of both religious and non-religious convictions existing in civil society” (Willaime, 2004: 375). To combat encroaching religious pluralism and the ensuing ‘secularization of *laïcité*,’ France has been forced to ‘flex its old muscle’ to support and instill a primacy of the tailored kind of state allegiance sought, leading the French state to suppress undesired religious expression and representation in order to prevent the loss or dilution of what is understood as authentically French. Willaime characterises this as,

intolerance of anyone who has chosen to live differently in the name of a religious ideal and educate their children accordingly. In France... the tolerance of non-conformity weakens as soon as the religious dimension is present. (Willaime, 2004: 379)

The increasing demographic of Muslims has been equated to an increasing prevalence of ‘Islam’ in the public realm, the latter of which has entailed an especial shift in the sociological study of religion in

France, in which attention is now turned to the study of “symbolic mediation, examining their influence on both social bonds and the formation of individuals as active subjects” (Williaime, 2004: 375). ‘Management *laïcité*’ is an indication of this shift in dialectics. The French state thus exerts efforts to rid the public sphere of what are seen as pernicious (or ‘ostentatious’) influences that militate against both the state’s efforts to control religious symbols within civil society, and to cultivate a common identity among ideal French citizens.

Recent studies on *laïcité* that have qualified aspects of the policies that hinder or contravene France’s commitment to individual and Human Rights deserve attention. Cecile Laborde divides *laïcité* into three ‘strands:’ state neutrality, individual autonomy, and civic loyalty. According to Laborde, all three strands are rooted in France’s historical juridical developments. State neutrality and individual autonomy are taken to be consistent with mainstream ‘Anglo-American’ liberal thought today. Civic loyalty, however, is amenable to liberal scrutiny for privileging ‘*catholaïcité*,’ a tendentious feature of *laïcité* in which “one cannot be *laïque* in France unless one accepts an important part of our national-republican heritage” (Laborde, 2003: 170). The activity of cultivating this particular civic loyalty becomes something of *Catholaïcité*–cum-*fraternité*:

On this view, *laïcité* calls not so much for a neutral state respectful of religious difference, nor for a perfectionist state committed to the promotion of individual autonomy, but rather, for a communitarian state fostering a civic sense of loyalty to a particular historical community... Historically, [civic loyalty] underlaid the republican ambition to substitute for traditional Catholic-inspired sociability a new civic bond, which would unite citizens in common love of the secular republic... Abstract citizenship must be complemented with allegiance to a republican public culture, which proved the motivational anchorage essential to the legitimacy and stability of a liberal society. (Laborde, 2003: 170)

Therefore, while seeking autonomy from the Catholic Church as a religious institution, civic loyalty also embodied a French Catholic secularity: at the time that separation of Church and state was achieved, the majority Catholic population of France was dissenting against the supremacy of the Catholic Church over the public and political domains. Yet insofar as the social imaginary³ was heavily constructed by way of French Catholicism, French Catholic secularity was imbued with these beliefs and values that transferred into the notion and expression of civic loyalty, though perhaps not always explicitly so in the public sphere. Thus, even ‘neutrality’ is conjured by way of this Catholic secularity. As Oliver Roy suggests, secularization occurred under a particular social context that gave way to *laïcité*:

³ The Canadian philosopher Charles Taylor uses the term ‘social imaginary’ as “the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.” Among other things, the social imaginary “is that common understanding that makes possible common practices and a widely shared sense of legitimacy.” (Taylor, 2004; 2007, pp 171 – 176.) Thus the Catholic secularity of France differs from the secular experience of other states of the same or different religion in that there are multiple secularisms. With reference to French Catholic secularism, then, there is in one sense an oppositional stance against the church as an institution at the time under discussion. On the other, however, the deeply historically embedded Catholic Church had a formative effect on how the majority of the French people conceived morality and social values.

Whereas French *laïcité* was instituted by political choices, secularization in contrast arose from cultural processes that were not decreed, which poses the problem of the relation between explicit religion (dogma and prescriptions) and the internalization of a religious vision of the world in the form of culture.

“We can assume,” continues Roy, “*that there can be no laïcité unless secularization has come first...*” (Roy, 2007: 66, italics inserted). Secularization demands French secularization *par excellence* (hence Willaime’s ‘secularization of *laïcité*’).

A striking feature of Laborde’s qualification is that liberal democracies abound make civil society a defining feature of public culture. Many liberal democracies construct a national identity without denying representative portions of their societies a voice in civil society to participate in the formation of public culture. A politico-cultural system of this type is known as multiculturalism, though numerous other liberal democracies that do not promote multiculturalism *per se* also permit the recognition of minorities. Within France, however, multiculturalism would compromise the project of inculcation and identification with the features of ideal Frenchness. Thus, despite France’s marked ethnic and religious diversity, multiculturalism is forgone for the monoculturalism that stands as the grail of French exceptionalism (Jennings, 2000: 575).

Interestingly, Laborde’s justification is not the French exception but rather the untenable posture of a nation willing to integrate immigrants yet unwilling to acknowledge and include their respective historical narratives. Fadela Amara thus rightly notes that “some critics question whether the French are not attempting to enshrine this secular principle into a notion of exceptionalism, rather than accepting to negotiate a place for Islam as the second religion of France” (Amara, 2006: 20). Of course, according to the French state, to recognise Islam as the second state religion is tantamount to a violation of state neutrality. As suggested below, in shifting the peril to ‘Islam’ instead of reformulating *laïcité*, the exacerbation of current socio-economic, political, and religio-cultural tensions remains likely. Clearly, for those for whom France’s colonial ‘civilizing project’ was less ‘civilizing’ than it was illegitimately coercive, adopting France’s historical narrative *in toto* is highly problematic. That much is not going to change – especially for those generations that live with a collective memory of a native homeland: the recent protest and subsequent repeal of Article IV that sought to teach the ‘positive values’ of French colonialism in the school system as a ‘civilizing mission’ attests to this demur (Flynn, 2005).

Laborde’s assertion of civic loyalty, at the heart of the French exception, is a radical doctrine for a Western democracy that invites justifiable criticism. One reading explains that the ‘rhetoric of universalism and republicanism are ideological cover-ups for the ethnico-religious representation of the Arab-Muslim as the absolute Other’ (Gafaiti, 2003: 210). The concern is that *laïcité*, framed through colonial enterprise, is legitimised through “the political authority and moral superiority of laicism” that is exclusionary as such:

French colonial representations of Algerian Muslims as nonsecular, uncivilised, and disorderly contributed to the establishment of French civilization as modern, democratic, and laic... Up to the present, being a French supporter of laicism has generally meant *not* being

Muslim, at least not openly and publicly (Hurd, 2008: 58).

Talal Asad similarly notes that, unlike Europe's indigenous Christian populations, Muslim immigrants cannot claim a certain 'Europeanness' dating back to the formative periods of European history and the vicissitudes that accompanied the Roman Empire, Christianity, the Enlightenment, industrialization, etc.; *they* are thus confined to a non-European status. "It is because these historical moments have not influenced Muslim immigrant experience," he argues, "that *they are not whose home is Europe*." (Asad, 2003: 166).

Muslims, as members of the abstract category "humans," can be assimilated or (as some recent theorists have put it) "translated" into global ("European") civilization once they have divested themselves of what many of them regard (mistakenly) as essential to themselves. (Asad, 2003: 169).

Since French identity, citizenship, and practices cannot be 'de-essentialised,' the process of secularization that France requires as a prerequisite to *laïcité* is absent in the kind of 'the secular' or secularity privy to or attainable by many North African Muslims. Similar to Hurd's assessment of *laïcité*, Asad proffers that European identity was, and still is, defined in *purposive* opposition to 'Islam:'

The idea of European identity... concerns *exclusions* and the desire that those excluded recognise what is included in the name one has chosen for oneself. The discourse of European identity is a symptom of anxieties about non-Europeans... For both liberals and the extreme right the representation of "Europe" takes the form of a narrative, one of whose effects is to exclude Islam. (Asad, 2003; 175)

These post-colonial readings point to the identity politics that distinguish between the ideally 'French' from 'Islam' as 'Other' where, by constituting national identity in opposition to 'Islam,' the French state validates its claims as a protectorate and maintains a distinction between the French civilised, and those still *civilizing*. Such arguments are not only radical, but they are overtly racial, too; reminiscent of bygone times of Western prescriptions of progress for non-Western states and peoples.

Yet globalization and the intermixing of cultures and religions necessarily facilitate a political concern over the place of religion, a phenomenon unbeknownst to the nation-state just a few decades ago. Increasing ideological, political, and religious conflicts and identities are acted out on the nation's stage where *laïcité* becomes

a way for the state to impose a double *definition of limits*: limits to acceptable ideological conflict, based on a certain institution of consensus or of "civil peace" (but always privileging certain interests or social forces), and limits to the translation of religious beliefs into political positions, based on a certain institution of "truth" (which plays a greater or lesser role in official scientific proposals and the principles or argumentative, "communicative" morality) (Balibar, 2004: 356).

Ascribing moral, political, and ideological motives to the construction of an ideal citizen does not free the framers from scrutiny, particularly for those measures supporting anti-Muslim racism. Liz Fekete examines the apparatuses of European security following September 11th 2001 and finds that France's integration policies have "become an adjunct to anti-terrorist law" in which French security measures in Islamic suburbs have 'effectively militarised French housing estates' (Fekete, 2004: 3). Discriminatory practices and anti-Islamic xenophobia perpetuate the prejudicing of French Muslims as backwards, and fosters

a climate in which politicians and the media can attack multiculturalism as the cover behind which reactionary cultural practices flourish; according to them, it is liberalism that, by treating different cultures as of equal merit, endorses religious fundamentalism (Fekete, 2004: 3, 19).

Fekete's critique speaks directly to Laborde's argument in that the latter attempts to place the onus of misunderstanding on 'Anglo-American' liberalism. Yet as clarified above, Anglo-American liberalism cannot be used as a cover for the deficiencies in French state policy: the exertion of France's rigid monoculturalism cannot be justified or defended with reference to the dangers of liberal multiculturalism. The contradiction is inherent to the French exception, shrouded in anti-terrorism raiment - not to liberal doctrine. As one interlocutor aptly put it, "the solution is not to compromise equality in one area [human rights] to improve it in another [social inclusion]" (Letsas, 2005). *Laïcité* is far from a coherent doctrine, and the extent to which it has levied criticisms on Human Rights, identity politics, and illegitimate social, cultural, and political domination attests to the need for a more inclusive opportunity for minority recognition, religious and cultural expression. Of course, as suggested above, *laïcité* must accommodate for a multiplicity of secular experiences before France's immigrant populations can be admitted as ideal citizens into the French republic. Shifting the blame to 'Islam' rather than to *laïcité* delays the proactive social and political measures necessary to obviate the social and economic roots that incite riots and prejudicing. Formative components of one's identity include, for many, being Muslim and North African, and grounding one's historical narrative in a country of origin is not a privilege, but a right. The French path to ideal citizenship therefore demands too much. It is untenable to expect that persons can leave one identity for the company of another - and this is what "*catholaïcité*" demands bar none.

Yet this is not to say that the desire to retain aspects of former identities signifies fixed or mutable categories of identity, either. In fact, studies conducted on French Muslim immigrant attitudes towards integration policies differ widely across the spectrum, from a yearning to leave former historical narratives behind for the all-or-nothing assimilation into France's monoculture, to demands to express oneself and practice the religion of one's choice freely. Indeed, while the assessment and evaluation of France's secular state policies emanating from Muslims in France are as diverse as their respective practices and levels of observance in Islam, it is noteworthy that a representative portion of French Muslims, despite whether they agree or disagree with the state policy, argue against the requirements of *laïcité* by reference

to a Western lexicon of rights and equalities, sometimes even evoking utilitarian arguments in framing a politico-philosophical response (Killian, 2003).

The Headscarf Affair: a security threat?

The headscarf affair establishes the larger parameters within which 'Islam' is sustained as 'Other' by giving license to the French state to quash religious expression and freedom of consciousness. Limiting religious expression has required prioritising presumptive concerns of state stability over individual rights because freedom of consciousness allowed alternative historical narratives a presence in the public eye that were cause for security concern. Instead of allowing for an ideal citizen to happen to be a headscarf-wearing Muslim, 'Islam' obstructs one's recognition as an ideal citizen. Banishing 'Islam' from the classroom, France is further able to reject and/or suppress vestiges of Muslim identities, old and new. As such, the expression of these individual's differences and prerogatives that should be protected by individual rights are instead perpetually and categorically anathematised.

Given the state's utilization of immigrant populations during times of need, the French exception is nothing less than duplicitous. Before the first major wave of immigration that began with labor movements in the late 60s and early 70s, North Africans received little accommodation within the French state. The deficit of recognition doubtless corresponds to a deficit in freedom and independence during which time North African states were made subservient to the French colonial regime. Perhaps the first considerate act of recognition granted to France's non-autochthonous population occurred during the Second World War, when mobilization "brought national and local authorities to reconsider the exclusion of North Africans, potential soldiers, from social assistance in the metropole" (Lewis, 2007: 214). Yet this consideration should not be conceived of as considerate for the North Africans, but rather as considerable for French interests, since "North Africans gained access to the rights of French citizens not so much because of the claims they could make on the French state but because France, unilaterally, made claims on them" (ibid). Likewise, during the economic boom in the 60s the first major wave of immigration accompanied the sizeable entry of illegal workers into French labour markets, only 'regularised *ex post facto* where they compensated for work shortages' (Hargreaves, 1995: 21).

Following the 1973 Oil Crisis, France suspended immigration only perfunctorily. A 1974 edict encouraged repatriation and was ostensibly aimed at those from the Maghreb⁴ but ultimately advantaged many Spanish and Portuguese, facilitating a return to their places of origin. The 1974 suspension left many stranded and without documentation, but after the succession of the Left to power in 1981 the new government granted amnesty to illegal immigrants, resulting in over 130 000 cases of regularisation (Hargreaves, 1995: 20). The 80s saw the politicisation of immigration in France, with North African communities taking center stage in dialogue over citizenship and minority recognition (Derderian, 2004: 1). The Headscarf Affair in 1989 made North Africans' plights in France known throughout the (Western)

⁴ The Maghreb, derived from the Arabic word for 'west' or 'time or place of sunset,' is the North (west) region of Africa including Mauritania, Western Sahara, Morocco, Algeria, Tunisia, and Libya.

world. Nonetheless, workplace discrimination (Vourc'h et. al., 1999: 75 – 91), the institutionalization of racism (see Manhig, 2004: 23), and educational programming that “reproduces social inequality and culturally assimilates outer-city youths of immigration and color in particularly detrimental ways,” (Keaton, 2006: 127) persist.

Within France, the headscarf affair has had a profound impact on state-and-Islam relations such that the relationship between the state and its Muslim immigrants can be broken down into two pre- and post-Headscarf Affair periods (Laurence and Vaisse, 2006: 138). After 1974, France was unsure of the future of its demographics. Toleration and accommodation thus characterise this first period. Once France had accepted the onus to integrate ‘Islam’ (1974 to the present),

the government used domestication and incorporation as instruments to target and transform the transnational characteristics of Muslim populations... Rather than simply tolerate the existence of Islam *in* France, the government has made it a policy goal to create an Islam *of* France (Laurence and Vaisse, 2006: 138).

Hence, the creation of the government-led French Council of the Muslim Religion (CFMC) in 2003, a body of French Muslim representatives that comprised aggregate Muslim groups and organizations. Apart from “protecting France and its Islamic community from religious radicalism imported abroad,” (Heneghan, 2005) however, little consensus on any one particular issue is ever derived. Divisiveness continues to characterise what was meant to be a unified Muslim voice in France, and a formative force of identity for the conception of the Islam *of* France. One of the most intriguing aspects of the Headscarf Affair is that the veil or *hijab* is conceived in such a multiplicity of ways that to emplace upon it one signifying characteristic is to overlook the diversity in religiosity and culture within the Muslim religion in France. However conceived, though, what is clear is that its effects are indubitably deleterious. As the French philosopher Alain Badiou has put it, “there is no good headscarf:”

[the] hijab must be banned; it is a sign of male power (the father or eldest brother) over the young girls or women. So, we'll banish the women who obstinately wear it. Basically put: these girls or women are oppressed. Hence, they shall be punished. It's a little like saying: “*This woman has been raped: throw her in jail.*” ... Or contrariwise: it is they who freely want to wear that damned headscarf, those rebels, those brats! Hence, they shall be punished... Either it's the father and eldest brother, and “*feministly*” the hijab must be torn off, or it's the girl herself standing by her belief, and “*laically*” it must be torn off. There is no good headscarf (Badiou, 2004).

(In)security as ‘ostentatious’ symbols

The Headscarf Affair began in 1989 when three girls were refused access to a classroom in the city of Creil in northern France for donning *hijabs*. Shortly after their expulsion, other cases in France made the headlines. What soon became a national controversy prompted the Ministry of Education and the Council of State to intervene. A *circulaire* was issued on 10 September 1994, explaining that ‘ostentatious’ symbols could not be worn in the classroom, a statement that amounted in practice to permitting the *hijab*

only insofar as it did not cause 'security concerns,' however conceived. This judgment, however, was not legally binding. Thus in October of 2003 when two more girls were excluded from their Aubervilliers high school for wearing *hijabs* the old vitriol was revived. The then President, Jacques Chirac, decided to establish a commission, later dubbed the Stasi Commission, to determine the extent of the role of "religious symbols" vis-à-vis *laïcité*. The March 2004 law later proscribed the wearing of any "ostentatious" religious symbols and was met with indignant reprisal from representatives across the political and religious spectrums.

Statistics supporting the ban can, in some ways, be conceived of as democratic, signaling that a majority of citizens lent support for state action. A study in January of 2004 showed that 46% of interviewees understood the most fundamental aspect of *laïcité* to be "the freedom for every man and woman to choose their religion," of which 57% of interviewees viewed "ostentatious" symbols as "a threat for national unity" (Weill, 2006: 64). Opinion polls show that a majority of French citizens favor the ban (Benhold, 2005: 3), and in March of 2008 The Teaching League filed a petition entitled "Protect the Republic's secularism." The petition has already been endorsed by over 100 000 signatures (Lantier, 2008). For those well versed in democratic theory, however, these figures bespeak nothing of a tyranny of the majority.

The debate surrounding the *hijab*, now imbricated in law, is of fascination to philosophers, sociologists, political theorists and journalists alike as a case study for democracy, national identity, individual and Human Rights and, *inter alia*, social and political integration and/or assimilation. The very symbolism of the *hijab* provokes an eclectic variety of explanations, ranging from women's oppression (Gagnon, 2003) to emancipation, the latter interpreting the wearing of the *hijab* as a tactical design by teenagers who wish to appear to honour their parents while in fact defecting from authority in order to choose destinies of their own makings (Werbner, 2007: 179). Despite the fact that the "meaning of veiling... is now so loaded with higher-order symbolic elaborations as to emit ambiguously a range of contradictory messages" (Werbner, 2007: 162) stigmatizing Islam (as 'Islam') is doubtless the guiding *raison d'état* behind the Headscarf Affair. The sheer scope of the Affair, in opposition to one sizable ethnic group and amounting to charges of violations of freedom of religion and consciousness, attests to the prejudicial motivation for this state's actions.

It is interesting to note that since the French state does not recognise minorities the headscarf is overemphasised as a religious symbol, imposing 'Islam' on an 'ostentatious' article of clothing, and deeming it a threat to public order. Yet instead of violating collective rights, the ban has resulted in the obstruction of individual freedoms. Apart from the disturbances in classroom order, the fears are abundant. Without purging extraneous religious influences the 'Islam of France' will not be compatible with "Frenchness." What if citizens of France do not accept the historical narrative, the 'civilizing mission' (*mission civilatrice*) that brought enlightenment to North Africans who were, after all, later granted asylum and entry into the French heritage? Or worse still, the 'Islam of France' may inhabit fundamentalist or Islamic, radical or militant propensities. Yet if radicalism is at issue, then why palliate these undertones through clothing restrictions rather than eradicating the cause? In fact, the French state actively deports

'preachers of hate' and 'controversial' clerics (Randall, 2005: 4). Underneath it all, then, what the violation amounts to is a limitation on expressing oneself because the *hijab* is purposively interpreted as a religious or proselytizing, rather than a cultural or edifying, medium.

The question under issue: '*does banning the hijab from the classroom constitute a breach of international law?*' is difficult to answer with a simple 'yes' or 'no' response. At base, as Dominick McGoldrick notes, "International law has no function in a religious and culturally diverse world" (McGoldrick, 2006: 22). Thus far, claims to a breach of freedom of conscience and freedom of religion have sided favourably with the ban on headscarves. As noted above, Freedom of Religion is guaranteed under the 1905, 1946 and 1958 Constitutions. In addition, Article 18 of the international Convention of Civil and political rights under the United Nations (ICCPR) states that

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching (Brownlie, 1995: 284).

Article 9 of the European Convention on Human Rights (ECHR) states that

Everyone has the right to freedom of thought, conscience and religion; this includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance (Brownlie, 1995: 332).

Included in both of these Articles is the right to "manifest" religious belief in private or public. That said, how could France legally violate these rights? As it happens, accompanying the Articles that protect individual rights are those that allow for their derogation. The Statsi Commission Report argued for a restriction of rights where public order is threatened. The Report made reference to *laïcité* as 'liberty of conscience' and 'neutrality of state' allowing for three situations in which freedom of religion can be restricted:

(1) any acts which is a form of pressure, provocation, proselytism, or propaganda; (2) all acts which could endanger the dignity or the liberty of any student or member of the larger school community especially if these acts compromise their health or security; (3) any activity which disrupts the activity of teaching or teachers' educational role, or difficulties brought to bear on the establishment, and formal functioning, of the educational process (Adrian 2006: 106-7).

Thus the French state claims that at least one of these provisions allows for the limitation of religious freedom. It is unclear, however, that the state adequately explains the limitation in terms of restriction. As Melanie Adrian explains,

the state is not arguing for a derogation of a right, but a restriction on the right to manifest religion. The difference is one of procedure and legitimacy. An important procedural

requirement is not necessary for a restriction; however, the legitimacy of the act is questionable. The problem in the French case is that the Report does not divulge which public order guarantee the *hijab* violates, but only vaguely refers to an increasing need for uniformity of decisions regarding the wearing of the *hijab* across France (Adrian, 2006: 107).

The restriction is based on the testimony delivered at the Commission, drawn from over 100 public gatherings and 40 private interviews. The Commission was informed about verbal attacks against women, Muslims and Jews, and ensuing pressures placed on females to wear the veil - a compulsion amounting to 'women's oppression.' For these reasons the Commission sought to prove the threat of disturbance to public order. Adrian argues that such concerns focus more on perceptions of women's roles in society and the treatment of the relationship between those who wear *hijabs*, and those who do not. Without a definition of "public order" it is unclear how the *hijab* encourages any more violence than other prejudices. Indeed, the International Covenant on Civil and Political Rights allows for restrictions on rights only in a "time of public emergency which threatens the life of the nation". Adrian thus rightly concludes that the French state has not provided enough evidence to support claims to "public emergency" (Adrian, 2006: 107).

Although there are numerous other provisions for the right to education, minority and cultural rights that contest the Commission's ruling (McGoldrick, 2006: 237 – 286), Adrian's argument against the vague reference to "public emergency" seems the most simple and compelling for a violation of individual rights. The very absurdity in claiming that the *hijab* threatens "the life of the nation" speaks to the histrionics of the controversy. Without citing the dangers of increasing militant Islamism (for obvious reasons this cannot be done – it is too overtly prejudicial even for France), 'Islam' is imposed on the *hijab* as a religious affect that, in and of itself, constitutes a threat because it provokes people to recognise difference and act on that difference in ways that are purportedly hostile or supposedly liable to result in state insecurity. Imposing 'Islam' on the *hijab* is therefore more nuanced than simply opposing the retention of cultural or religious solidarity. I have always assumed - providing the right avenue and forum for debate, that discussion is accessible, and the timing is appropriate - that recognizing difference and the potential equal worth of all peoples – groups and individuals - is inherently a good thing. Through dialogue about difference, fears and threats are ameliorated by understanding, sympathy and mutual recognition and respect. Common ground in citizenship does not necessitate restricting public symbols or debates to what is common. Obsession over commonalities is, as far as I can tell, what generates fascism, not acceptance or mutual recognition. Human dignity should be celebrated for its difference, not vilified for it.

The purpose of this paper was to draw attention to the assumptions that undergird France's *laïcité* policy and to offer new perspectives on why some of those assumptions are unwarranted. In particular, the primary assumption that secularization and *laïcité* can produce a desired subjectivity conducive to what is conceived of as the 'ideal citizen,' or one who can share completely in France's historical narrative, warrants reevaluation. The teleological goal of French secularism and *laïcité* is the production of an ideal subjectivity that can neither be accepted nor attained by many Muslim French citizens of North African

origin, in large part due to a colonial identity that cannot simply be forgotten or brushed aside, and otherwise simply because to pit one's traditions of culture of origin against the narrative and "founding myth" of the nation-state in which one currently resides is simply undeserved. As far as the French state conceptualises the process that produces the 'ideal citizen,' then, French secularism and *laïcité* are incoherent with French realities. It is one thing to promote monoculturalism and solidarity. It is entirely another to impede self-expressions that amount to multiculturalism (that is, those that do not expressly aim at multiculturalism but that nonetheless gesture towards the notion of more than one culture). Not only does France's monoculturalism limit personal identity, individual and religious freedom, and Human Rights, but French secularism and *laïcité* deny many immigrant individuals, families, and communities the right to project a civic personality of their own makings and participate in the collective conceptualizing of 'the good.' A reevaluation of *laïcité* concurrent with French realities beckons a critical rethink of both the tenability of the notion of an 'ideal citizen' and the merits of the French exception.

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