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The Ties That Bind: Multiculturalism and Secularism Reconsidered

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The article examines contemporary controversies over the rights of Muslim women to wear various forms of the veil, in both France and the United Kingdom and argues that despite their apparent differences as political ideologies, both multiculturalism and secularism are deployed as techniques to govern difference. It traces a common philosophical lineage of these two ideologies, and their shared genealogical relationship to the subject of Enlightenment and post-Enlightenment thought. Drawing on Marx and Hegel, it argues that at the core of secularism and multiculturalism there lies the germ of a subject and law formed through a concept of culture that was to a great degree indivisible from religion. While secularism ostensibly decouples culture from religion to produce a common political culture, and multiculturalism purports to accommodate a diverse range of cultural and religious practices, both fail to accommodate difference that stretches the bounds of a citizen-subject defined according to Anglo-European norms of culture, which implicitly includes Christianity.

I. INTRODUCTION

> The campaign [by the Vatican to define the Christian tradition as critical to the very constitution of Europe] plays upon the sense of a traditional Christian territorial unity threatened by a growing Islamic minority and secular depreciation of the spiritual dimension of culture.[1]

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1 W.E. Connolly, *Capitalism and Christianity, American Style* (2008) 29.

On 28 July 2008, the latest instalment of the legal contest between the rights of young women to manifest their religious faith through their dress (in this case, a five millimetre-thick metal bangle, called a *kara* in Punjabi) and the ability of the state to prohibit such expression was settled. Mr. Justice Silber of the High Court found that Sarika Watkins-Singh had suffered indirect discrimination on the grounds of race when Aberdare Girls' School in Wales first segregated Sarika from the other students, and then suspended her from school for refusing to remove her *kara*, one of the five symbols of faith observed by Sikhs. In the eyes of the school authorities, her refusal to remove her *kara* violated the school's no-jewellery policy.[2]

The five millimetre-thick *kara* was deemed to be a reasonable expression of religious and racial difference. As we will see, other expressions of religious difference such as the *jilbab*, or *hijab* have created political tempests on both sides of the English Channel (among other places), and have been found by state authorities to be an unreasonable, unacceptable expression of difference. Under English and Welsh law, Sikhs are considered to be a racial group, unlike Muslim communities.[3] The legal distinction between race and religion and the process by which communities come to be perceived as racial versus religious ones are interesting inventions, but not the main focus of this article. The relatively recent recognition in the United Kingdom of religion as a ground upon which discrimination claims can be made, and the definition of Muslim communities as *religious* rather than *racial* communities arguably sets them apart from other minority, racialized subjects (such as Jews or Sikhs), with regards to how they have been legally interpellated. Along with this, the current climate of Islamophobia has seemingly produced new assemblages of race, religion, and culture that present challenges to both Muslim minority communities and the dominant political subjectivity of the nation state.

Yet – are these new assemblages? The conflicts over the ability of Muslim girls and women to freely veil themselves in different forms can be (and has been) articulated in various idioms that recall long-standing political questions over how the nation state ought to manage racial and religious difference: as a conflict of individual religious rights versus the interests of the broader community or nation state; as an expression of difference that breaches the limit of tolerance of minority practices; or alternately, as the violation of an ethos (or state principle) of secularism. Some scholars have characterized the 'politics of the veil' as an instance of the rigid application

2 *Watkins-Singh, R (on the application of)* v. *The Governing Body of Aberdare Girls' High School & Rhondda Cynon Taf Unitary Authority* [2008] EWHC 1865 (Admin) (29 July 2008).

3 Sikhs are considered to be a racial group under British law, as established in the judgment *Mandla* v. *Dowell Lee* [1983] 2 A.C. 548. In *Watkins-Singh,* the judge accepted the claim that Watkins-Singh had suffered discrimination as a Sikh on both religious and racial grounds (paras. 35 and 36).

of binary distinctions between religious and political, sacred and secular, or public and private domains.

Vakulenko, for instance, argues that the European Court of Human Rights has failed to recognize the intersectional nature of the phenomenon of veiling (as a practice that encapsulates expressions of gender and religious identity) on the basis that the Court asserts that religion must be separated from the public sphere in order to protect sex equality.[4] A rigid division of public/private is enforced, with the headscarf being relegated to the private sphere of religious faith. In the cases she analyses, Vakulenko rightly points to the assumption of the Court that the headscarf is a purely religious symbol, thereby failing to allow any of the social, structural or familial dimensions of veiling to enter the legal framework. Motha argues that the conflict over the rights of women to veil in various ways reflects the positing of a distinction between autonomy and heteronomy[5] (borrowing Nancy's articulation of this problematic), or piety and polity. Motha critiques this distinction and argues that the '*affect* of community' is at the basis of the tension between religion and democracy; in other words, the allegedly autonomous subject of politics is shaped, motivated, and sustained by her affective attachments to heteronomous contingencies of religion, class, race, and culture.[6] As Nancy puts it:

> [the] general idea … of the State as a place of tolerance remains inferior or even foreign to what is rightfully expected of the political: namely, the taking up of a force of affect inherent in being-with.[7]

This article is a modest contribution to this ongoing critique of the putative opposition between the secular and the sacred, or in the idiom employed here, political and religious consciousness. What is at stake here is the 'force of affect' deployed in the effort to shore up a unitary political subjectivity of the nation state, at the expense of ways of being that are perceived as threatening this unity. The desire to protect the political values of the nation state, including secularism and more ambivalently, the tolerance for multicultural difference, relies upon and re-enforces a false opposition between political (culture) and religious faith. In this article, I explore how both secularism and multiculturalism rely on a political subjectivity for which culture (and here I mean political culture) and religious faith are imbricated with one another.

4 A. Vakulenko, '"Islamic Headscarves" and the European Convention on Human Rights: An Intersectional Perspective' (2007) 16(2) *Social and Legal Studies* 183–99, at 191.

5 Nancy writes: 'So either politics is conceived as the effectivity of autonomy (personal as well as collective), or politics and religion together are represented as heteronomous, and autonomy consists in freeing oneself from them': J.-L. Nancy, 'Church, State, Resistance' in (2007) 34 *J. of Law and Society*, 3–13, at 7.

6 S. Motha, 'Veiled Women and the *Affect* of Religion on Democracy' (2007) 34 *J. of Law and Society* 139–62, at 154.

7 Nancy, op. cit., n. 5, p. 10

However, it is not only the tension between political culture and religious faith that is of interest to me, but the tension between the doctrines of multiculturalism and secularism. The controversies over the rights of Muslim women to wear the veil in both France and the United Kingdom have brought into stark relief the principle of *laïcité* and the ethos of multiculturalism, the two prevailing doctrines governing the political landscapes of these nation states respectively. Of course, *laïcité* holds the status of a prime constitutional principle in France, whereas multiculturalism has suffered a much more contested and partial adoption as a political ethos and social policy in the United Kingdom. While in France, the presence of this sign of Muslim feminine difference was perceived as a threat to secularism, it was multiculturalism in the United Kingdom that was seen as having allowed the tolerance of difference to go too far. Secularism needed to be defended in the face of what looked like the threat of an American-style multiculturalism, and this need to defend the dominant and historical values of the nation state bore a striking resemblance to the criticisms of multiculturalism in the context of the United Kingdom. Despite their apparent differences, secularism and multiculturalism were both challenged by the visible presence of a Muslim feminine difference during the headscarf debates in France, and the spate of legal cases involving the rights of British Muslim women to wear various forms of the veil in the school classroom.[8]

What these debates reveal is how, despite the very different appearances of multiculturalism and secularism, they perform the same labour; that is, I argue that both reproduce and hold in place a unitary, sovereign political subjectivity. Despite their ostensible differences as political ideologies, both multiculturalism and secularism are deployed as techniques to govern difference. This difference is at once cultural, religious, gendered, and mired in the history of colonial encounters that shaped the emergent political consciousness of the subject of Enlightenment Europe. Differences that challenge the boundaries of the sovereign political subject are perceived as a threat to be contained and managed.

These claims are not novel;[9] critiques have been rendered of the totalizing and 'always-already' quality of the recognition of cultural and religious

8 See discussion of *R (on the Application of Begum)* v. *Head Teacher and Governors of Denbigh High School* [2006] 2 All E.R. 487 and *Mrs. Azmi* v. *Kirklees Metropolitan Borough Council* UKEAT/0009/07/MA) below.

9 Indeed, Asad argues that 'the idea that a successful modern nation-state rests on a dominant culture that encodes shared values is now commonplace.' T. Asad, 'Trying to Understand French Secularism' in *Political Theologies: Public Religions in a Post-Secular World*, eds. H. De Vries and L.E. Sullivan (2006) at 495. This very formulation and an enquiry into the genealogy of this concept of 'culture' is the focus of this article.

difference that occurs under the banner of multiculturalism.[10] And recently, a growing body of work on political theology has critiqued the formations of secularism and explored the legacies of the Christian character of the development of secularism as a political ideology and doctrine.[11] Critiques of contemporary forms of both secularism and multiculturalism point to the ways in which they presuppose a particular kind of political subjectivity: the autonomous, rational, individual sovereign subject who, in the case of multiculturalism, is tempered by her inclusion in a cultural or linguistic community necessary to her psychic survival. Despite this important qualification, critics of multiculturalism have pointed to the ways in which the positive emphasis on difference within a politics of multiculturalism has many limits; specifically, the limit of tolerating any difference that is viewed as challenging the Anglo-European cultural and racial norms of political sovereignty. Based on the critiques rendered of both secularism and multiculturalism we can surmise that they act in similar ways; as I explore below, they work to capture difference that is 'other' to the dominant culture and religion, and sublimate it within the larger whole, the dominant national identity.

In this article, I explore how multiculturalism and secularism share a common philosophical lineage. Secularism emerges as a political doctrine in the eighteenth and nineteenth centuries, and multiculturalism is a twentieth-century derivation of the early nineteenth-century political philosophy of

10 The 'always-already' quality of multicultural recognition refers to the idea that the only racial, cultural, or religious difference that is cognizable within a multicultural framework is that which is always already circumscribed by a unitary sovereign subjectivity. For instance, critiquing multicultural policies and practices in the United Kingdom, Nira Yuval-Davis problematizes both the production of ethnic categorizations within racist discourses, and the related and prevailing tendency to judge the cultural practices of 'Other' communities according to Anglo-European norms. N. Yuval-Davis, 'Ethnicity, Gender Relations and Multiculturalism' in *Debating Cultural Hybridity*, eds. P. Werbner and T. Modood (1997) 193–209. Other critiques of multiculturalism emphasize the commodifying tendencies of multiculturalism; see A.Y. Davis, 'Gender, Class and Multiculturalism: Rethinking "Race" Politics' in *Mapping Multiculturalism*, eds. A.F. Gordon and C. Newfield (1996); and P. Gilroy, 'Joined-up Politics and Postcolonial Melancholia' in *Recognition and Difference: Politics, Identity, Multiculture*, eds. S. Lash and M. Featherstone (2002). Bannerji critiques the absence of any accounting for relations of power and argues that politics, identity, and history 'lead to or accompany the technological development and deployment' of multiculturalism as a technique of governance of the state apparatus. H. Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender* (2000).

11 Taylor illuminates the emergence of secularism out of 'Latin Christendom' or the 'West'; he gives a philosophical account of the historical development of secularism as it emerges out of Christian systems of belief and western philosophical precepts (C. Taylor, *The Age of Secularism* (2007). For a critical account of how secular liberal democracy retains structures and forms embedded in Christian belief, see T. Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (1993).

Hegel.[12] The tie that binds these contemporary political doctrines to each other is their genealogical relationship to the subject of Enlightenment and post-Enlightenment thought. Secularism, which is explored through Marx's critique of the transition from feudalism to secular liberal democracy, retains a concept of subjectivity that is coloured by a (Christian) religious consciousness. Multiculturalism, derived from Hegel's political philosophy of recognition, similarly remains tethered to a subject whose consciousness is formed in relation to a Universal (or *Spirit*, for Hegel), one of the hallmarks of Christian belief.[13]

By looking to late eighteenth- and early nineteenth-century philosophy, in this case, the work of Hegel, we can begin to see how at the core of secularism and multiculturalism there lies the germ of a subject and law formed through a concept of culture that was to a great degree indivisible from religion. While secularism ostensibly decouples culture from religion to produce a common *political* culture (based on language, shared values, and the like), the subject at its core cannot so easily shed its inheritance. Multiculturalism purports to accommodate a diverse range of cultural and religious practices and traditions. However, it cannot accommodate difference that stretches the bounds of the fundamental contours (or structure) of the citizen-subject, defined according to Anglo-European norms of culture,

12 In Britain, the roots of contemporary forms of tolerance of religious, cultural, and racial difference could also be understood to derive from a Lockean conception of tolerance (or toleration). Locke's seventeenth-century doctrine of toleration, a response to religious wars between Catholic and Protestants (among other Christian sects) and strife between Jews and Christians, emphasized the need for respect of private religious belief as a matter of individual conscience (J. Locke, *Essays: including Four Letters on Toleration, Some Thoughts Concerning Education, and The Value of Money* (1883) 4–20). His concept of tolerance was firmly (and explicitly) based on Christian precepts, and privileged the 'moral autonomy of the individual [who sits] at the heart of liberal tolerance discourse' (W. Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (2006) 31–8). Unlike contemporary doctrines of multiculturalism, which emphasize the importance of public and political recognition of the value of religious, cultural, or other beliefs and community attachments, the liberal doctrine of tolerance insists on a strict divide between the private sphere of religious belief and the juridical-political sphere which ought to be completely bereft of religiously prescribed laws. Contemporary practices of multiculturalism are thus considered in this paper as deriving from the communitarian philosophy of Charles Taylor, based on Hegel's philosophy of recognition. While consideration of whether the 'retreat of multiculturalism' (A. Phillips, *Multiculturalism without Culture* (2007)) signals a return to tolerance as a more primary disciplinary strategy (Brown, id.) in the governance of difference is a very valuable line of enquiry, it is not pursued in this article.

13 For the purposes of the present analysis, generalizations are made about Christianity despite its heterogeneity. For instance, the tensions and differences between a Protestant adherence to an immanent deity, and Catholicism's loyalty to a supranational religious structure are significant in the development of the nation state. For a nuanced account of the differences between various forms of Christian belief and practice in the context of the emergence of secularism, see Taylor, op. cit., n. 11.

which implicitly includes Christianity, as well as a racial norm of whiteness.[14]

The unitary sovereign subjectivity produced by both discourses finds contemporary expression in the 'people' of the nation state. The recent emphasis on Britishness and British values illustrates the desire to cement a unified, and unitary national subject, which is intended to supercede all other differences in 'identity'.[15] The sovereign people of the nation, or the *Volk*, to draw on language from the era of German Romanticism, lies at the heart of secularism and multiculturalism; both are formed through a theological 'logic' that mediates differences in order to preserve a transcendent ideal, although, with the emergence of modernity, this is no longer a divine transcendent, but the immanent sovereign subject of a universal humanity. The critique of the putative 'universality' of this sovereign subject is by now well-worn, and will not be repeated here. Rather, the article will reveal how multiculturalism and secularism share the same conceit. Despite their attempts to create 'shared' values and common ideas in pluralistic societies, multiculturalism and secularism (the latter being a value that is supposed to be a 'shared' value itself) fail to disrupt a unitary sovereign subjectivity and continually reproduce a particular kind of political and legal subject. Forms of religious and cultural expression that do not comport with this vision of political subjectivity are received as a threatening force, which must be contained or banned in the defence of the sovereign subject.

The common philosophical lineage of the two concepts also helps to explain why and how these seemingly very different approaches to the constitution of a liberal democratic polity are in conversation with each other and, further, seem to slip into one another fairly easily. For instance, we can examine the ways in which the discourse of secularism has been utilized within the current debates in the United Kingdom over the desirability of multiculturalism as a set of government policies and more broadly, as a political ethos. In other words, contestations over the 'tolerance' of religious-cultural difference (tolerance that is understood as the result of multicultural policies) has at times been articulated through the discourse of secularism. The wearing of the veil by Muslim women, for instance, has been framed as a practice to be banned or limited in certain public spaces on the basis that

14 The racial norm of 'whiteness' is complicated by the long history of anti-Semitism in the United Kingdom. For a rich analysis of the construction of Jewish identity in English case law, see D. Herman, 'An Unfortunate Coincidence: Jews and Jewishness in Twentieth-century English Judicial Discourse' (2006) 33 *J. of Law and Society* 277–301. Herman analyses the ways in which the representation of Jewish litigants in judicial discourse is bound up with the construction of Englishness. In this article, I focus on the relationship between culture and religion and the subjectivities they produce, but do not discuss the racial dimension of these formations.

15 For instance, see the Green Paper, *The Governance of Britain* (2007; Cm. 7170) paras. 194–7, at <www.official-documents.gov.uk/document/cm71/7170/7170.pdf>.

tolerance of this religious difference has 'gone too far', violating a secular political ethos that seeks to contain some expressions of religious difference to a private sphere.[16] It is only very recently that journalists, politicians, and others have proclaimed the United Kingdom as an explicitly Christian nation with a Christian heritage in the context of these debates.[17]

In the context of French secularism, multiculturalism and the image of uncontainable religious-cultural difference spilling into the public sphere has posited multiculturalism as a danger to be avoided at any cost. Multiculturalism in this context plays the role of secularism's opposing force, something that further defines the uniqueness of *laïcité* in distinction from other democratic polities. In both cases, multiculturalism and secularism operate in tandem, providing each other with an opposing force that holds the relation between the two in precarious tension with each other.

Multiculturalism attempts to intervene in a liberal conception of the subject as autonomous and atomistic, emphasizing the communitarian dimensions of identity and being.[18] However, despite its fascination with plurality and difference, I argue that secularism and multiculturalism broadly share the same political and philosophical logic, and this accounts, to some degree, for the reinscription of the notion of the unitary, sovereign subject of

16 For a fascinating study of the concept of tolerance see Brown, op. cit., n. 12, p. 84. Brown presents a genealogy of the concept, illuminating how tolerance, as a technique of governmentality, is deployed in response to contemporary deficits in the legitimacy of states and, in particular, the state's diminished capacity to embody universal representation.

17 See, for instance, the parliamentary debate held on 5 December 2007, on the future of Christianity in Britain. Many MPs spoke of the need to celebrate and protect the Christian heritage of Britain, see <www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm071205/halltext/71205h0002.htm>.

18 Multiculturalism, as a political ideal and a set of practices, has developed differently in different jurisdictions, and has changed tenor at different historical moments. Despite these differences, the main issues of concern remain consistent: what is the best political and normative framework for dealing with differences in cultural and religious beliefs between a plurality of communities? How is balance to be achieved between the integration and the assimilation of minority communities into dominant juridical, political, and social institutions? Evidently, these concerns assume the existence, legitimacy, and relevance of categories of race, ethnicity, culture, and religious belief to the quality of citizenship enjoyed by individuals and communities. (As noted in n. 7, these aspects of multiculturalism have been the subject of much critique.) In the United Kingdom context, scholars have taken various positions in relation to the value and operability of multiculturalism; for instance, Anne Phillips argues for a multiculturalism that resists reified or fixed concepts of culture in order to retain the ability to judge particular practices on normative grounds, and to retain a feminist commitment to equality (Phillips, op. cit., n. 12). The approach taken to multiculturalism in this article is rooted entirely in the work of Charles Taylor, who elaborated the concept of multiculturalism as a way of achieving the political recognition of cultural difference, a social, political and moral good that in his view, is vital for liberal, pluralist democracies (Taylor, op. cit., n. 11), see discussion at pp. 319–20.

a modern, universal humanity within discourses of multiculturalism and secularism. The similarities in both of these political doctrines will be explored below by an examination of the headscarf debates in the United Kingdom and France. The referent points that define what is tolerable within secular or multicultural spaces lie in the lineaments of a concept of culture thoroughly imbricated with Christian belief, which is explored in Part III of the article.

II. CONTEXTS: *LA VOILE*, THE VEIL, AND POLITICAL CONFLICT

In 2006, Jack Straw expressed the discomfort that he experiences when meeting with his Muslim female constituents who wear the veil (with their faces covered), and stated that he was in the habit of asking women to remove their veils in his office.[19] He further stated that women should not wear veils that cover their face. Characterizing the veil as 'a visible statement of separation and of difference', he said that, above all, his discomfort lay in the fact that the veil, in his view, prevented him from having a truly 'face-to-face' encounter with his constituent.[20] Prefiguring *The Governance of Britain*, published in July 2007,[21] Jack Straw's comments reflected anxiety about the issue of social cohesion and the perceived need for common British values.

Jack Straw's comments, however, comprised only one piece of a growing scene of discontent about the tolerance of difference having gone too far. Legal challenges involving the right of Muslim girls and women to wear various forms of the veil in education contexts, government and non-governmental policy statements, and media accounts of political and social contestations over cultural and religious difference were also emerging at this time. As explored below, the legal contestations over the rights of individual girls and women to wear (various forms of) the veil have invariably been articulated as a contest between the religious freedom of individuals, and the objectives of social cohesion, security, equality, tolerance, and multiculturalism. The aim of the analysis of the cases discussed is not to provide an exhaustive overview of this area of the law but, rather, to illustrate how the assertion of particular manifestations of Muslim, feminine religious difference have been rearticulated by the courts as an unreasonable demand that oversteps the bounds of what is tolerable, acceptable, and permissible in the educational context.

19 He first made the comments in his weekly column in a newspaper in his Blackburn constituency, which was followed by radio interviews in which he reiterated his comments, see <http://news.bbc.co.uk/1/hi/uk_politics/5413470.stm>.

20 id.

21 Green Paper, op. cit., n. 15.

In two legal cases, *Begum* v. *Denbigh High School* and *R (X) by her Father and Litigation Friend* v. *Y. School*,[22] the rights to veil (in the first case, by wearing the *jilbab*, and in the latter case, the *niqab*) were proscribed by school policies. In *Begum* and *X.* v. *Y.*, the claimants argued that the school authorities had unjustifiably limited their rights under Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the 'Convention') and had excluded them from school. Begum alleged that her right had been interfered with because the school had not allowed her to attend school if she wore a *jilbab*, as it violated the school's uniform policy. Affirming Lord Nicholls's judgment in *R (Williamson)* v. *Secretary of State for Education and Employment*, Lord Bingham found that while the Article 9 right is of fundamental importance in a pluralistic, multicultural society, the right to manifest religious belief is a qualified right.[23] The threshold for establishing interference with the Article 9 right is not that accommodation of the right need be 'impossible' for an infringement to be made out. However, in this case, Begum had the option of attending two other schools in the area (although it was argued these were more distant than Denbigh High School), and the school has gone to great lengths to inform parents of its uniform policy,[24] and thus, the majority found that no interference had occurred.

While Lords Bingham, Hoffman, and Scott found that her right had not been infringed, Lord Nicholls[25] and Baroness Hale found that her right had been interfered with but that this interference was justifiable under Article 9(2). The majority did consider whether, if there had been an infringement, it was justifiable. Relying on the Grand Chamber of the Strasbourg Court's judgment in *Sahin*, Lord Bingham recognized:

> [T]he need in some situations to restrict freedom to manifest religious belief; the value of religious harmony and tolerance between opposing or competing groups and of pluralism and broadmindedness; the need for compromise and balance; the role of the state in deciding what is necessary to protect the rights and freedoms of others; the variation of practice and tradition among member states; and the permissibility in some contexts of restricting the wearing of religious dress.[26]

22 *Begum* v. *Denbigh High School* [2006] 2 All E.R. 487; *R (X) by her Father and Litigation Friend* v. *Y School* [2007] E.L.R. 278; a third case, *Mrs. Azmi* v. *Kirklees Metropolitan Borough Council* (UKEAT/0009/07/MAA), an employment case involving the right of the claimant to wear the *niqab,* is discussed in n. 44 below.

23 *R (Williamson)* v. *Secretary of State for Education and Employment* [2005] All E.R. 1, cited in *Begum,* id., para. 20.

24 *Begum,* id., paras. 24–5.

25 *Sahin* v. *Turkey* (2005) 19 BHRC 590. Lord Nicholls was not entirely convinced that the inconvenience of attending another school was so *de minimus* as to not infringe Begum's Article 9 right; however, he felt that even if there was an infringement of her right, it was justifiable.

26 *Begum*, op. cit., n. 22, para. 32.

The restriction on Begum's right to wear the *jilbab* was viewed by Lord Bingham as acceptable because the Article 9 right is not only non-absolute, but because such restrictions are necessary in order to preserve pluralism and broadmindedness, among other things. The objective of social cohesion in a pluralistic environment became a cogent reason for restricting Begum's right to express her religious difference, because the mode of her expression (the *jilbab*) was seen to exceed what is reasonable, or moderate. Denbigh High School had a high proportion of Muslim students, about 79 per cent at the time of the appeal.[27] At stake was not the protection of religious harmony and social cohesion between Muslim students and non-Muslim students (as we might expect), but cohesion within the Muslim student population. Thus moderate, mainstream, and reasonable Muslim behaviour needed to be protected from what was perceived as the threat of Muslim extremism – represented by the desire of one fourteen-year-old girl to wear the *jilbab*.

A similar conclusion was reached by the court in *X* v. *Y*, where 'social pressure' on other girls to wear the *niqab*, if the claimant were to have been successful, was one of the primary reasons for justifying an interference with the claimant's Article 9 right.[28] Counsel for the claimant argued that there was 'no evidence that any group was pressurised to follow [the] example' of the claimant's three elder sisters who had worn the *niqab* between 1995 and 2004 at the same school. However, Justice Silber found that there is a difference between a situation in a school where the *niqab* is worn by a couple of individuals and there is no explicit policy regarding it, and the situation where 'it is expressly stated that *niqab* can be worn' which would have been the case if the claimant had been successful.[29] He found that the headteacher's fears of girls feeling pressured to wear the *niqab* if an explicit policy were in place were well founded, and that with the smallest margin of appreciation it would be, drawing on the words of Lord Bingham in *Begum*, 'irresponsible of any court lacking the experience, background and detailed knowledge of the head teacher' to overrule him or her on this issue.[30]

In the judgments of Lord Bingham and Lord Hoffman in *Begum*, the binary between the rational autonomous agent versus the unreasonable or irrational religious subject makes an appearance. Throughout the majority judgments in *Begum*, the Court points to the many attempts at accommodation that the school made to ensure its uniform policy satisfied the requirement of modest dress for Muslim girls, and emphasizes that the head teacher, who is also Muslim, had consulted the appropriate – that is, moderate and mainstream – Muslim authorities.[31] In considering whether the respondent was excluded from the school, Lord Bingham reiterates the

27 id., para. 3.
28 *X* v. *Y,* op. cit., n. 22*,* para. 70.
29 id*.,* para. 91.
30 id., paras. 33–4.
31 *Begum,* op. cit., n. 22, paras. 7, 13, 15, 18, 33, and 34.

words of the trial judge (with whose decision he ultimately agrees) who found that:

> [the] Respondent had a *choice*, either of returning to school wearing the school uniform or of refusing to wear the school uniform *knowing that if she did so refuse the school was unlikely to allow her to attend*.[32]

Lord Hoffman, in considering whether her right was infringed, finds that it was not, because 'there was nothing to stop her from going to a school where her religion did not require a *jilbab* or where she was allowed to wear one'.[33] Here, Begum is understood as a rational agent who had the power or agency to choose the school uniform that was based on a rational policy, or the ability to simply attend another school. The notion that Begum's decision to wear the veil may have derived from a desire that could not easily be categorized within the confines of a rational choice versus irrational, affective behaviour dichotomy meant that her desire fell outside of the bounds of legal intelligibility and thus, recognition.

Baroness Hale's minority judgment was quite distinct from the above analysis. She concurred with Lord Nicholls that Shabina Begum's Article 9 right was infringed, and that the infringement was justified. She held that the uniform policy had the legitimate aim of protecting the rights and freedoms of others, and that it was proportionate to this objective on the following bases: that choices made by adolescents cannot be assumed to be 'the product of a fully developed individual autonomy';[34] and the task of social cohesion that a school is charged with necessitates the adoption of a uniform dress code.[35]

Baroness Hale accepts the figure of the autonomous, rational agent who in 'freely choosing to adopt a way of life for herself' ought not to be criticized or prevented from exercising her choice.[36] She explicitly rejects the 'western feminists' who see the veil as a symbol of gender oppression.[37] However, unlike the rational choice made by a woman to veil or wear the *jilbab*, Baroness Hale finds that she cannot assume Begum's choice was made with a fully developed individual autonomy because of her age.[38] This emphasis on the particular position of adolescents is also related to the specific context of the school, which Baroness Hale distinguishes from the broader context of society in general. In schools, the objectives of community and social cohesion are assisted by a uniform dress code, which can 'smooth over ethnic, religious, and social divisions'.[39] In this case, Baroness Hale con-

32 id., para. 37, my emphasis.
33 id., para. 50.
34 id., para. 93.
35 id., para. 97.
36 id., para. 96.
37 id.
38 id., para. 93.
39 id., para. 97.

cluded that the school had reached an appropriate balance between allowing for cultural and religious diversity (by allowing students to wear the *shalwar kameez*, for instance), and social cohesion.

The objective of maintaining social cohesion was also of prime importance in *X* v. *Y*. The court largely adopted the reasoning of Baroness Hale in *Begum* on this point. Along with social cohesion and equality amongst students, Justice Silber also cited security risks as a legitimate objective of the school's policy to not allow the claimant to wear the *niqab*. The *niqab* can be justifiably prohibited on the basis that it might be used as vehicle for terror. Justice Silber stated that the claimant, X, had presented a case that:

> assumed that conditions in the world had stood still, while the evidence of the head teacher showed that matters had moved on, with a greater number of Muslim girls at the school and increased concern for security.[40]

Silber J. refused to accept the submission by counsel for the claimant that the actual risk of someone disguising themselves in a *niqab* was minimal, deferring instead to the head teacher who 'knows what the risks are in her town and in her school and above all at the present time why matters might be different from what they were a few years ago'.[41]

The security risk that the *niqab* poses was discussed as a part of the justification analysis under Article 9(2). However, before embarking on the analysis of Article 9(2), Justice Silber found that X's right under Article 9(1) had not been infringed, largely on the same basis as Lords Bingham, Hoffman, and Scott in *Begum*; that the claimant had the ability and choice to simply go to another school if she wanted to wear the *niqab*.[42] As discussed above, the right under Article 9 is not an absolute right, and the rational actor has the right to exercise this right, just not wherever they please.

Without taking issue with the definition and parameters of the Article 9 right as it has been developed by the European Court of Human Rights, the Grand Chamber, and the English and Welsh courts, I do want to underline how the approach taken in *Begum* and *X* v. *Y* appears to sidestep the question of pluralism and diversity. Rather than contemplating how expressions of religious, cultural difference such as the *jilbab* or *niqab* might indeed enhance pluralism and diversity, they find these particular manifestations of religious difference to be *too* different, or perhaps, as Justice Silber states in *Watkins-Singh*, 'extremely visible and very ostentatious'.[43] In order to preserve pluralism, this visible difference must be contained. The pluralism being defended is shaped more by its cohesiveness – its presupposed unity – than by a plasticity that would allow for religious, cultural difference to

40 *X v. Y,* para. 8.
41 id., para. 98.
42 id., para. 38.
43 *Watkins-Singh* v. *Governing Body of Aberdare Girls' High School* [2008] E.L.R. 561, para. 7.

thrive. The most pointed contrast is Justice Silber's judgment in *Watkins-Singh*, where the religious symbol of the *kara* is distinguished from the *niqab* and *jilbab* on the basis that it is a much less visible sign of difference. The bounds of what is acceptable religious-cultural expression appear to be based on visible difference.[44]

In my view, these cases, along with the Green Paper and Jack Straw's comments discussed above, reflect anxiety about the bounds of tolerance being stretched too far. In these cases, there is an explicit desire to protect social harmony and pluralism from religious extremism, which the *jilbab* and *niqab* have come to represent in the social imaginary. Culture, race, and religion are all at play here, but the United Kingdom is seen as a defender of difference for those 'reasonable' Muslims who fit within the limits of British tolerance. Shabina Begum and X's assertions of a right to manifest their religious belief are constructed as unreasonable demands, a threat that represents something much larger (Muslim extremism), that needs to be guarded against.[45] This boundary of tolerance and the equation of some

44 In *X* v. *Y*, the Court goes on at length to stress the importance of face to face contact in the educational context. The possibility that the significance of the visibility of the face to communication might be culturally specific or at least culturally determined does not seem to enter the framework of analysis at all; despite the fact that the three elder sisters of X all gave witness statements stating that they had suffered no impairment at all by covering their faces, and had all done well at school (*X.* v. *Y,* op. cit., n. 22, para. 86). A related case, that of *Azmi*, entailed the rejection of Mrs. Azmi's claim of direct discrimination, and in the alternative, indirection discrimination, by the Employment Appeals Tribunal. Azmi, a teaching assistant for children aged 10–13, was prohibited from wearing the *niqab* in the classroom when teaching. She did not object to removing the covering from her face in front of pupils, but did not want to remove it in the presence of male teachers. The EAT held that there was no direct discrimination because anyone would have been asked to remove the face covering, regardless of their reason for wearing it in the first instance. There was no indirect discrimination because the objective of the restriction imposed on Mrs. Azmi – the most optimum (clear and effective) communication with students – was legitimate and the imposition proportionate to that objective (*Azmi,* op. cit., n. 22, para. 74). It is interesting that very shortly after the release of the EAT's ruling, the Department for Education and Skills released guidelines making it clear that schools have the right to limit the right of a student to 'manifest one's religion or beliefs' so long as the interference with the right is justified on the grounds specified under the Human Rights Act 1998. In the Appendix, the Guidelines specifically state that appropriate dress for young Muslim women does not necessitate the wearing of the *niqab* (Department for Education and Skills, 'Guidance to Schools on School Uniform Related Policies', 20 March 2007, s. 1.7. See: <www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1468&external=no&menu=3>.

45 On the argument about claims for basic civil and political rights as being seen by majoritarian communities as unreasonable, see J. Goldberg-Hiller, '"Subjectivity is a Citizen": Representation, Recognition, and the Deconstruction of Civil Rights' in *Studies in Law, Politics and Society Vol. 28*, eds. A. Sarat and P. Ewick (2003), and T. Modood, A. Triandafyllidou, and R. Zapata-Barrero, *Multiculturalism, Muslims and Citizenship: a European Approach* (2006). It is interesting that Jonathan Goldberg-Hiller has made this argument in the context of lesbian and gay struggles for the right

practices with religious extremism reached a climax with a lecture delivered by the Archbishop of Canterbury, Rowan Williams, on 7 February 2008. For several days, mainstream news coverage on the stoning of women in Saudi Arabia, and other gruesome punishments meted out elsewhere, lent steam to the hysteria that the recognition of any type of Sharia law would signal a victory for Muslim religious extremism embodied by the likes of al-Qaeda. In fact, the Archbishop had advocated the importance of recognizing religious law in a predominantly 'secular social environment'.[46]

In the United Kingdom, the boundaries of tolerance of cultural, religious, and racial difference reflect and define the character of British nationalism. The controversies over the rights of girls and women to wear various forms of the veil in educational contexts, along with the proposed recognition of limited Sharia arbitration tribunals, sparked a renewed desire to define common British values. The anxiety and fear that created a general equivalence between any expressions of a Muslim identity and terrorism and religious extremism led to a tightening of the limit of acceptable difference; difference was tolerable only in so far as it was palatable to the majoritarian British sensibility. This sensibility, of course, is underwritten by racial, religious, and gendered formations that emerged with a modernity deeply rooted in the colonial encounter. Difference is fine, as long it exists as a *differentiated unity*, with the unitary whole being disciplined into shape by a sovereign juridical order which itself emerges out of a Christian political heritage.

While the United Kingdom was desperately trying to reinscribe the limits of its tolerance for cultural and religious difference, debates over the rights of young women and girls to wear a headscarf in public schools were in full bloom across the Channel. On 15 March 2004, the French government passed a law banning students from wearing 'conspicuous signs' of religious affiliation in public schools.[47] Joan Scott argues that this law was directed at Muslim girls wearing headscarves, as the inclusion of Jewish boys in skullcaps and Sikh boys in turbans[48] was merely intended to pre-empt claims of discrimination.

to same-sex marriage in Hawaii, and Tariq Modood has pointed out how in Europe there is a widespread perception that Muslim communities are making 'politically exceptional, culturally unreasonable or theologically alien demands' upon their states.

46 <www.archbishopofcanterbury.org/1575>.

47 The definition of 'conspicuous' reads as follows (in J. Scott, *The Politics of the Veil* (2007) 1):

> The clothing and religious signs prohibited are conspicuous signs such as a large cross, a veil, or a skullcap. Not regarded as signs indicating religious affiliation are discreet signs, which can be, for example, medallions, small crosses, stars of David, hands of Fatima, or small Korans.

48 For a deeply insightful analysis of the application made by French Sikhs to exempt themselves from the ban on the basis that the turban was a cultural rather than a religious sign, a claim that was ultimately rejected by the National Assembly, see Asad, op. cit., n. 9, p. 501.

The decision taken by the government in 2004 was the conclusion to debates about the headscarf (or *foulard* in French, *hijab* in Arabic, which as Scott discusses, was quickly transmuted into a debate that employed the more ambiguous term the 'veil', or *la voile*), which had emerged in three separate surges in 1989, 1994, and 2003.[49] It is not my intention to cover this recent history here, but rather, to point to certain aspects of how the contest was framed and articulated. The rights of a very small minority of Muslim girls to wear the *hijab* were pitted against the sacrosanct principle of secularism. Similar to the situation in the United Kingdom, the *hijab* came to represent a threat from which the nation state had to be defended. The *hijab* in this context, however, did not only represent the threat of Muslim religious extremism, but within the imaginary of French secularism, represented a specifically Muslim threat of contamination of the public sphere with religion, thereby undermining one of the fundamental principles of French nationalism. Bowen notes that by 2004, the threat to *laïcité* had been identified as a specifically Muslim one, in the media and in public opinion.[50] The tone in newspaper editorials, for instance, had shifted to one of 'regret over missed opportunities plus alarm at rising dangers'; only five years previously, major historians of *laïcité* had agreed that the principle had prevailed and that the remaining challenge was integration of France's Arab minorities.[51]

Unlike in the United Kingdom, the debate over the rights of Muslim girls to wear the veil did not reveal any prevarication about where the line of tolerance of religious-cultural difference ought to be drawn, leading to the perceived need to embark on a quest to reinvent common national values. In France, the doctrine of secularism was posited as fundamental to the unitary identity of the nation state and constitutes, in part, its very sovereignty. However, the fervour with which the headscarf debates unfolded in France gives the impression that *laïcité* has been an incontestable part of French republicanism for centuries. While McGoldrick points out that the term *laïcité* was used as early as 1871 in the context of debates on the religious neutrality of public schools, it is only with the 1905 Law that secularism, as the separation of the church and state, became enshrined in law.[52] While the process of secularization began with the Revolution, the principle of *laïcité* was ratified by the Assembly in 1905 (even though the word itself does not appear in that text).[53] Bowen points out that the principle of French secularism is an ongoing project, with the headscarf debates the most recent

49 Scott, op. cit, n. 47, p. 22.
50 J.R. Bowen, *Why the French Don't Like Headscarves: Islam, the state and public space* (2007) 31.
51 id.
52 D. McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (2006) 36.
53 Bowen, op. cit., n. 50, p. 28.

episode in its development and defence. The political ethos or spirit underlying *laïcité* can be better understood as a more contemporary manifestation of French Republicanism that reflects an emphasis on the coming together of individuals whose social bonds are based on the notion of the individual citizen who has 'abstracted him/herself' from particular cultural traditions.[54]

In her book, *Politics of the Veil*, Joan W. Scott poses the question of how this small article of clothing, worn by a vast minority of Muslim girls and women, could incite such a furore in France. She traces the *affaires des foulards* through the lineaments of French colonialism in Algeria, implicating the racial and gender formations of this era in her contemporary understanding of the controversy. The legacy of colonialism and the persistence of racism towards French Arabs and Arab immigrants in France, along with the particular ways in which sexuality and gender were configured through this colonial encounter, converge in the debates over the veil. What is at stake, then, in the veil controversy is the defence of a particular political subjectivity – the French citizen – that was shaped and formed through a violent colonial encounter with Arabs (and Arab Muslims) in Algeria and beyond.[55]

> Beyond the equation of veils with terrorism was the refusal to acknowledge that, for some of these girls at least, there was a different notion of personhood being articulated, one they had chosen themselves. In the end the law insisted that only one notion was possible – the unencumbered, autonomous individual; another model was inconceivable. Indeed, only such individuals were thought to be capable of exercising choice … Banning headscarves in public schools made the point clearly that only one notion of personhood was possible if Muslims were to be accepted as fully French.[56]

With a recent remaking of *laïcité* to include sex equality,[57] the veil became the symbol of gender oppression that reflected an inherent patriarchy of the Muslim community and was something that needed to be stamped out as it violated the secular norms of the French polity. Here we see the underlying racism of the headscarf controversy masked by the overarching concern regarding secularism. The ways in which race, gender, and sexuality were imbricated in the desire of the majority to ban the headscarf reveal the contours of the proper, acceptable subject of citizenship. As noted in the above quotation from Scott, this national identity was a unitary one, with no space for practices of the self that stretched the bounds of the autonomous individual encumbered by 'culture', 'race', or for that matter, a sexuality that

54 id., pp. 14–15.
55 For a discussion of the socio-economic and political status of Muslim communities in France see McGoldrick, op. cit., n. 52, pp. 47–61.
56 Scott, op. cit., n. 47, p. 135.
57 id., pp. 109, 117.

could not fit itself within the confines of a French conception of femininity.[58]

For present purposes, this article emphasizes the unitary nature of this national sovereignty. Scott, along with others, have pointed out that France as a constitutionally 'indivisible, secular, democratic and social republic' is, of course, rife with contradictions.[59] The unitary or indivisible secular nation state is thoroughly embedded in compromises with the Catholic faith. But the contradictions in the actual operation of *laïcité* are not my main concern. Rather, it is the composition of this indivisible, unitary sovereignty: this unitary sovereign subject that sees itself as neutral, but emerges out of a Christian political and moral ethos of love and tolerance; this unitary sovereign subject that sees itself as opposing pluralism.

Many scholars have revealed the Christian origins of secularism as a political doctrine, and it is not my intention to restate that critique.[60] The aim here is to locate secularism and multiculturalism as emerging out of this same political and philosophical lineage, in order to demonstrate how, despite multiculturalism's fascination with difference, it, like secularism, continually reinscribes a concept of the sovereign subject that is not only autonomous, independent, and rational, but is encumbered by a cultural-religious identity that is revealed in moments of being challenged by other, non-Christian modes of being. The implications for our understanding of multiculturalism and secularism are as follows: whereas multiculturalism aims to recognize cultural and religious 'difference', and secularism purports

58 id., pp. 151–74. Judith Butler, in *Undoing Gender* (2004), has explored how the proscription of the right of gay and lesbian couples to adopt children, one aspect of the 'pacts of civil solidarity' by which same-sex relationships were granted legal recognition by the French state, reflected the desire to shore up a unified political subjectivity of the nation state that re-entrenched cultural norms of 'racial purity and domination'. She writes:

> [O]ne can see a conversion between the arguments in France that rail against the threat to 'culture' posed by the prospect of legally allied gay people having children … and those arguments concerning issues of immigration, of what Europe is. This last concern raises the question, implicitly and explicitly, of what is truly French, the basis of its culture, which becomes, through an imperial logic, the basis of culture itself, its universal and invariable conditions. The debates center not only on the questions of what culture is and who should be admitted but also on how the subjects of culture should be reproduced (p. 110).

59 The most obvious being state support for religious schools, in place since 1958, along with the state observance of Christian holidays but not Muslim or Jewish ones. Scott writes, in relation to a minister's opposition to the proposed inclusion of other holidays in the school calendar: 'For him, the Christian holidays don't violate the principle of secularism – proof to critics of "laïcité" that it is not universal at all but is, rather, intimately bound up with the dominant Catholic religious culture of the nation' (Scott, op. cit., n. 47, pp. 100–1).

60 On this point, see T. Asad, *Formations of the Secular: Christianity, Islam, Modernity* (2003); Taylor, op. cit., n. 12; and S. Mahmood, 'Secularism, Hermeneutics, Empire: The Politics of Islamic Reformation' (2006) 18 *Public Culture* 323–47.

to decouple religion from the public sphere, both are held hostage to a concept of subjectivity that is prefigured by a Christian cultural-religious heritage that determines what is acceptable difference and, in the latter case, which exceptions to the norms of *laïcité* are tolerable. This power to decide on the tolerable exceptions to the dominant cultural-religious norms is 'a measure of sovereign power'.[61] Wendy Brown argues that tolerance is deployed 'as a technique for re-legitimating liberal universalism and restoring the notion of the culturally unified nation at a moment when both are faltering'.[62] The notion of tolerance (among others, such as love or passion[63]) performs the labour of determining the bounds of the sovereign subjectivity in both cases, particularly in moments when the unitary sovereign nation is perceived as being in jeopardy.

III. THE COMMON LINEAGE OF THE SECULAR AND MULTICULTURAL SUBJECT OF LAW AND POLITICS

Charles Taylor's theory of multiculturalism is informed by a particular account of the modern self.[64] The modern self emerges in the transition from a feudal order, in which recognition was based on social hierarchies and class status, to a social and political order based on the equality of every human being. The contemporary concept of secularism emerges in the nineteenth century as a means of mediating the transition from a hierarchical, feudal society that also incorporated notions of a divine source of authority, to a universal and transcendent ideal of humanity through which citizenship could be defined.[65] Secularism is the transcendent mediation that deals with *difference*; differences of class, race, gender, and significantly, religion in

61 Asad, id., p. 505.

62 Brown, op. cit., n. 12, p. 94.

63 Asad explains how secular passion, posited as the 'public expression of "objective principle" rather than "subjective belief" ' fits the criterion of Positivist philosophy, as opposed to passion as an element of religious affect which is seen as disturbing, 'the cause of much instability, intolerance, and unhappiness' (Asad, op. cit, n. 9, p. 515).

64 Taylor's work focuses mainly on recognition in the public sphere and the recognition that occurs between communities: C. Taylor, *Philosophical Arguments* (1995). Taylor takes the dialectic of mutual recognition from Hegel and transposes it into contemporary political and social struggles in the Canadian context, most notably the struggle of the Quebecois for self-determination. Taylor's seminal essay on the issue of recognition and identity formation, 'The Politics of Recognition' (p. 223) emphasizes the centrality of the recognition of identity – as cultural and linguistic distinctiveness – to freedom from oppression and social harms. The mutual recognition of identities by equals is the means of allowing individuals and cultural (linguistic) communities to attain full selfhood, equality, and dignity.

65 Asad, op. cit., n. 60. Asad also notes elsewhere that the separation of the religious and the political does not emerge with modernity but was recognized in medieval Christendom, albeit in a very different form than contemporary concepts of secularism (Asad, op. cit., n. 9, p. 498).

order to have a unified identity. Secularism posits the sovereign, autonomous self in opposition to a self that is constrained by religious belief. And so, freedom in an emergent modernity comes to mean the protection of this sovereign autonomous self opposed to the subject whose source lies in the divine, or whose fate is determined by god or superstition.[66] In this sense, a sovereign state and individual sovereignty are to be protected and defended through the doctrine of secularism.[67]

Freedom is realized through the division between a public realm free of religious faith and a private sphere where individual belief is contained and free from the authority of the state. Contemporary forms of secularism can be understood as one aspect of an emergent modernity in the nineteenth century that relies on and entrenches binary oppositions between public/private, secular/religious, modern/traditional, civilized/uncivilized, or progressive/backward. Another important binary that emerges is the distinction between justified violence and unjustified violence. And this is perhaps the most illuminating aspect of Talal Asad's critique of secularism and the secular. He highlights the fact that political liberalism has a high stake in the notion of the secular, and that the secular, and in general, the 'enlightened' space of liberalism is protected through violence. Violence was essential to the cultivation of enlightenment; this happened historically through colonial and imperial endeavours, and continues in the rhetoric and ideological justifications of the 'war on terror'. Here we can recall Walter Benjamin's critique of the 'spectral mixture' of law-preserving and law-founding violence, both objects of the law's monopoly of violence in a liberal state.[68] In the context of the modern liberal democracy, violence becomes something that is either justifiable as a means to preserving a unitary, sovereign people with their human rights, liberties, and freedoms, or something to be condemned as the product of illiberal, un-democratic regimes and communities.

Of course, a critique of secularism and its function in liberal democracies originates much earlier, in Marx's critique of the recognition of the rights of Jews in Prussia and France. Marx's acute critique of the political theology that lies at the basis of liberal democracy exposes the essentially religious nature of the consciousness of its citizen-subject. Further, his critique of the religious and specifically Christian nature of the liberal democratic state focuses on how the abstract sovereign individual becomes a fundamentally *depoliticized* subjectivity with the abolition of civil society and the end of feudalism, and the transition to liberal democracy in which politicized relations between individuals and classes become diffuse and common to all.[69] But, crucially, it is within this post-feudal, revolutionary political

66 Asad, id. (2003), p. 134.
67 id.
68 W. Benjamin, *One-Way Street and Other Writings* (2000) 140–1.
69 K. Marx, 'On the Jewish Question' in *Early Texts,* tr. D. McLellan (1972) 85–114.

democracy that the *political* character of the individual sovereign person's relationship to the state becomes constituted through notions of freedom and human rights to which materialism and a religious consciousness remain central.[70]

Marx's critique of the materialism to which the universal ideal of the sovereign individual is attached, is very significant in considering the particular subjectivity produced by both multiculturalism and secularism. In today's context, this ideal sovereign, autonomous subject is the consumer-subject who desires to live a lifestyle that comports with free-market economic principles. Critics have pointed to the commodifying tendencies of multiculturalism – that is, that the unitary subject remains in place, slightly modified by his or her capacity to consume multiculture. Cultural practices and traditions, festivals, dance, music, food, and clothing have all been embraced within a multiculturalism that not only tolerates difference but celebrates it in the form of commodification and consumption.[71] And increasingly, some, but not many scholars have also pointed out the commodifying tendencies of the subject produced through secularism. Alain Badiou for instance, writing on the headscarf ban in public schools in France, says:

> We maintain the following quite curious thing: that the law on the headscarf is a pure capitalist law. It prescribes that femininity be *exhibited*. In other words, that the circulation of the feminine body be *exhibited*, that the circulation of the feminine body necessarily comply with the market paradigm.[72]

So we can see a similarity here in the type of subject being produced by both multiculturalism and secularism as the *consumer* citizen-subject who desires a lifestyle consistent with capitalist and free-market ideology.

These insights into the capitalist dimensions of the essentially religious and theological nature of political democracy and its prime subject are, of course, indebted to Marx in no small way. Marx critiqued the nature of political relations that emerged with post-revolutionary liberal democracies, and illuminated how the subject of the liberal, capitalist democracy is one with an essentially religious consciousness. Private property and a capitalist materialism become sacred in the post-feudal world, held in place by liberal rights that posit the protection of private property and religious belief as central to human 'freedom'. With Marx's critique, the most basic premise of secularism, that religious consciousness is and can be kept separate from a public and political sphere, becomes untenable.

In many ways, Marx's critique of the abstract citizenship that idealizes an egoistic, sovereign man is a response to the political theology of Hegel. In

70 id. For the contemporary instantiations of this phenomenon, particularly in the American context, see Connolly, op. cit., n. 1.

71 See text of n. 10 above.

72 A. Badiou, *Polemics* (2006) 103.

Hegel's thought, the tension between religious faith and political culture is an inescapable relation that is primary to the emergence of human consciousness. Religious consciousness and cultural modes of being are inevitably bound to one another in this philosophy of being. Hegel's philosophy of the state and man's relationship to and within the state is very much wrapped up with his notion of revealed religion. The ethical life of the political state unfolds through a dialectical logic with which the revealed religion is thoroughly imbricated. The emergence of self-consciousness is embedded within this familial, political, religious, cultural matrix. However, what I find most interesting about Hegel's theological politics is that Hegel himself troubled the neat and tidy distinctions between religious beliefs and rational thought posited by Enlightenment thinkers.

Hegel troubles the distinctions that secularism comes to rely upon, in a way that foreshadows what some contemporary critics of secularism endeavour to point out. For instance, in the *Phenomenology of Spirit*, Hegel questions the strict separation of religious (and superstitious) belief and Enlightenment precepts. Characteristic of his dialectical logic, he points out that the split between human and divine law produces a fragmented consciousness who eventually learns 'through its own act the contradiction of those powers [the human and divine laws] into which the substance divided itself and their mutual downfall'.[73] This state of consciousness is much like the fragmented and disjointed state that unhappy consciousness finds itself mired in earlier on in the *Phenomenology*. Here, mediation between the particularities of human law and the divine substance takes place through the figure of Christ. It is through the Christian doctrine of reconciliation that the particularities of the individual are reconciled with the Substance (S*pirit)* that is common to all. This is identical to the mediating function that secularism comes to perform. Secularism mediates fragmented differences in order to shore up and cement a unitary sovereign nation state. This is the theological 'reality' that underpins the fantasy of secularism.

Hegel's thought remains within an occidental logic that aspires towards a reconciled universal *Spirit* with the immanent emergence of self-consciousness, and sees *Christ* as being the mediating function between each particular self-consciousness and universal Spirit. Throughout the unfolding of his philosophical system, Hegel sought to expose how types of thought and knowledge that are posited as essentially religious on the one hand, and essentially philosophical on the other, are in fact imbricated within one another. Hegel's fusion of Christianity and theories of subjectivity, nation state, and culture comprises a vision of politics that is thoroughly and explicitly theological in nature, what critics such as Asad illuminate in relation to the realities of how secularism operates. In a sense, Hegel's

73 G.W.F. Hegel, *Phenomenology of Spirit*, tr. A.V. Miller (1977) para. 445.

theologically inspired philosophy is what *secularism* comes to be, although it purports to be something very different. Hegel points to some of the contradictions inherent in the binary logic that secularism will come to rely upon; however, he does this in support of his own political theology. In this way, Hegel's critique of certain elements of Enlightenment thought prefigures the critiques of secularism that follow much later, albeit in order to lay bare his theory of the religious consciousness that lies at the heart of the ethical life of the political state.

Hegel's thought also illuminates the relationship between religion and culture that lies at the foundation of multiculturalism as a theory of politics and governance. We may currently understand religion and culture as having been treated as analytically and discursively separate within a liberal paradigm. However, the 'culture' of Hegel's phenomenology from which Taylor's theory of multiculturalism is derived is a horizon of becoming that remains firmly entangled with Christian religious belief. What I am interested in exploring here is the way in which the concept of culture as a mode of thought (of the Enlightenment) exists with Christian faith or belief as two aspects of self-consciousness. Whereas multiculturalism has posited culture and cultural difference as its primary objects of concern, the concept of culture from which it derives is firmly tethered to a notion of consciousness for which religious faith is essential. And this religious faith and its reconciliation with the culture of European Enlightenment thought is, of course, as explored below, Christian in its form and content. This has implications for the legal and political subject of multiculturalism: the contemporary limits of acceptance and tolerance in relation to cultural and religious difference are, in my view, being drawn in reference and relation to this philosophical legacy.

In Hegel's *Phenomenology of Spirit*, the concepts of culture and religion evolve along with self-consciousness's own journey towards absolute truth. At the beginning of the second part of the *Phenomenology*, entitled 'Spirit', religion does not yet appear within the world of culture as it ultimately will, in and for itself.[74] Up until this moment, faith has appeared in the forms of a divine law (in the realm of the family) or in Unhappy Consciousness 'as a shape of the insubstantial process of consciousness', that are overcome and subsumed by, in the first instance, the universal form of legal right, and in the latter, self-consciousness that eventually reconciles itself to its being through the mediation of a third being, becoming aware of its unity with the universal.[75] The main point to emphasize is that religion at this moment, in relation to culture, is alienated from actuality but proceeds to go through a process of being reconciled to the world of actuality, and the world of culture, through various stages of alienation and realization.

74 id., para. 528.
75 id., paras. 230–1.

Also at this moment, the concept of culture within the understanding of consciousness (the form of consciousness Hegel is dealing with in this part of the *Phenomenology*) denotes a world that believes itself to be opposed to religious faith. Hegel engages with the Enlightenment and its relation to religious faith as a means of unfolding his philosophy of the subject for whom faith or belief (*Glaube*) is as important to the emergence of the ethical, spiritual being as reasonable, rational thought. Faith and 'insight' (or reason – pure insight that posits itself as opposed to faith) are two aspects of consciousness that cannot be denied nor can they deny each other.[76] These two aspects of pure consciousness share the same ground, although they are initially and mistakenly opposed to each other.

Enlightenment reason and religious faith both employ similar principles in their attacks on each other. Whereas Enlightenment thought misrepresents religious faith as something it is not, faith sees Enlightenment as consisting of empty platitudes, divorced from the reality of faith, and its status as an essential aspect of consciousness itself.[77] Eventually, self-consciousness overcomes this false division between the abstraction of pure self-consciousness (or pure insight, the reason of Enlightenment culture) and faith. The movement of thought (of consciousness) overcomes this antithesis and moves ever closer to the becoming of *Spirit*.[78]

Any attempt to discuss one part of the *Phenomenology* in isolation from the entire text will always seem quite inadequate; and in the section discussed above, religion and culture appear in two very specific forms. Culture denotes the Enlightenment culture that privileged reasoned insight and thought at the expense of blind religious faith. Religion in this moment is not the revealed religion through which *Spirit* finally and ultimately emerges, but religious piety or belief. The main objective of the discussion above is to consider the ways in which the progenitor of the contemporary subject of multiculturalism is a being for whom culture (the Enlightenment culture of reason) and religious faith (of the pious individual) are inextricably intertwined.

Thus, while religion and culture have been kept analytically distinct within a liberal paradigm, in which religious belief and the expression of religious belief are understood as being distinct from cultural practices and linguistic differences,[79] I argue that the concept of multiculturalism is premised on a concept of 'culture' that is very much related to religious *belief*. In the *Begum* and *Azmi* cases explored above, contestations over the acceptability of symbols of religious difference invoke anxiety about the constitution of national British identity, values, and culture. The current conflation of religious and cultural identity is perhaps more a recovery of an

76 id., paras. 538, 549, 563.
77 id., para. 550.
78 id., para. 596.
79 See discussion at pp. 319–20 above; see, also, Phillips, op. cit., n. 12, pp. 58–9.

older understanding of 'culture' and the relationship between religious belief and cultural belonging than something new. Second, the insights gleaned from enquiring into the philosophical lineage of the concept of 'culture' means that contemporary discourses of multiculturalism that focus so heavily on cultural difference cannot in fact escape the same 'theological' quality attributed to secularism by its critics.

Culture, within a Hegelian schema, is a part of a totalizing project that involves religious faith and belief. Culture is not conceived of as discrete sets of practices that vary from collective to collective but, rather, is an embodiment of a way of life and being. Culture, travelling down to us via Taylor, from Hegel, finds its roots in a totalizing and normalizing project beginning in the nineteenth century in industrial liberal societies.[80] Again, pointing to the connection between this aspect of modernity in the nineteenth century, we can turn our attention to the way in which culture was used as a disciplinary technique and force to further European colonial endeavours. The use of 'culture' to justify the use of violence and force on colonial populations seen as lacking in culture or possessing an inferior culture is, of course, something that follows us into contemporary political contexts. The idea, for instance, that some cultural practices of minority groups are 'in conflict' with or 'contradict' the norms and values of *British* society (a claim made by many feminists decrying the problems with multicultural tolerance) points to this older notion of culture as a whole form, a common way of life that reflects an essential and basic unity, or unitary peoples. Multiculturalism does not, in other words, reflect a syncretic, fluid set of practices of different communities that exist in relation to one another and are negotiated. Whereas multiculturalism is intended to be a mode of governance through which a range of cultural differences can be negotiated, the concept of culture from which it derives is tied to Christianity and it is this coupling that defines the sovereign subjectivity at stake in political contestations over the ability of women to express their religious, cultural differences in a variety of ways.

IV. CONCLUSION

In this article, I have explored the common roots of contemporary forms of secularism and multiculturalism. By looking to nineteenth-century philosophical critiques of Enlightenment thought through the work of Hegel and Marx, we see how the subject that emerges with nascent liberal democratic nation-state forms has a consciousness that is religious in nature. Whereas secularism purports to separate religious belief from the political domain, the sovereign subject is thoroughly imbued with a religious consciousness in a quest to conform to and preserve a unitary, sovereign nation

80 Asad, op. cit., n. 11.

state, with its capitalist materialism that elevates the right of private property to a sacred status. In any event, Marx's critique of the post-revolutionary subject of liberal democracy reveals its essentially religious colour.

The article has also explored Hegel's *Phenomenology of Spirit* as a text that dispels the fantasy that contemporary secularism comes to rely upon: that there is a bright-line distinction between the subject of reason, pure thought, and rationality and the affected being of religious faith. Hegel takes apart these distinctions and enfolds them into a dialectical relation of becoming. This political theology, I argue, lies at the basis of contemporary forms of multiculturalism; culture within this philosophical trajectory remains tethered to a religious consciousness as a matter of necessity for this human subject.

This path was taken in order to explore the common or shared trajectories of two political doctrines that appear to be at odds in the way they conceive of and manage difference. Despite this appearance, it is argued that in both the United Kingdom and France, conflicts over the rights of Muslim women and girls to veil in a variety of ways are ultimately in the same vein: the unreasonable demands of the Muslim minority are viewed as a threat to be contained in defence of the unitary, sovereign nation state and its people. Both secularism and multiculturalism are deployed to govern and manage difference that is perceived to violate dominant norms and values, defined in reference to the Christian cultural heritage of the nation state.