Islamophobia and anti-discrimination laws: ethno-religion as a legal category in the UK and Australia

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Abstract: Can a Muslim victim of discrimination on the grounds of religion obtain reparation? Though Islamophobia has been recognized as a specific discriminatory practice in the European Union and Australia, present legislations often do not recognize or recognize very restrictively, discrimination on the grounds of religion. And Muslim victims often cannot use anti-discrimination laws on the grounds of race and ethnicity as Islam is not recognized as an 'ethno-religion'. The paper examines issues related to anti-Muslim discrimination in the European Union and Australia, including present efforts to enlarge anti-discrimination legal provisions.

The emergence of Islamophobia as a specific form of racism against recently established Muslim minorities in Australia and the European Union has exposed the inadequacies of anti-discrimination legislation in many of the countries in question. Many of these inadequacies are rooted in the Western history, and evolving understandings, of racism which the law mirrors, albeit at its usual stately pace. Thus, legal understandings of racism, derived from different moments in Western evolving conception of 'race', might or might not include discrimination and harassment on the grounds of religion. To complicate things even further, some states legislations sought to strike a compromise whereby race is defined to include 'ethno-religious origin'. This latter category evolved to take into account the long and unglorious Western history of antisemitism, and is accordingly, strictly understood to refer to cases where the boundaries of ethnicity coincide with religious boundaries. As a result, anomalies and contradictions abound in anti-discrimination laws, leading to ridiculously unjust but perfectly legal decisions whereby, for a complaint against similar offences when there is not specific legislation against religious discrimination per se, a Jew can obtain reparation while a Muslim cannot. Such disparities have created protests which have been variously received. The European Union for example is on its way to redress the situation with new anti-discrimination provisions on the grounds of religion in regard of employment and equal opportunity, superseding national legislations, to come into effect this year[1]. In Australia however, the situation can be confusing. Australia recognises religious freedom and even the nature of Islamophobia as a racist phenomenon. However, there is no federal *Religious Freedom Act* and discrimination and vilification on the ground of religion and belief is a state matter. Thus, South Australia has no anti-discrimination provisions on the grounds of religion and New South Wales' anti-discrimination laws exclusively concern ethno-religious groups, narrowly defined. Only Queensland and Victoria have recently (2001) extended anti-discrimination laws to cover religious vilification, and this gave rise to rather heated debates and opposition (see below).

Nowhere else is there a comprehensive religious discrimination law similar to that existing for racial/ethnic discrimination. This is not surprising as there are a number of difficulties inherent to legislating on religious discrimination, and especially religious vilification[2], difficulties that are dealt with, occasionally with a system of *ad hoc* exemptions. Nonetheless, religious differences often give rise to racist discrimination, especially in the contemporary context of international migration when certain religious differences acquire *visibility*. As the experiences of Muslims in the West show, this leads to specific forms of racism such as Islamophobia.

In this paper I want to discuss the intertwining of racist and religious discrimination in reference to the current phenomenon of Islamophobia and reflect on existing anti-discrimination legislations on the grounds of religion.

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[1] This new legislation is not however a comprehensive religious discrimination law similar to that existing for racial/ethnic discrimination. For example it does not include provisions regarding incitement to religious hatred.

[2] For example, religious schools have a legitimate right to give preferment to teachers belonging to their own denomination, free speech and tolerance must be enforced while respecting religious sensitivities.

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Reflecting a Western history of racism:

In this section, I show how definitions of racism, as evidenced by international legal and quasi-legal documents reflect a history and understandings of racial prejudices, rooted in the history of Western colonialism and Western antisemitism[3].

Recognising evolving definitions

The United Nations have evolved a number of instruments (Treaties, Conventions, Protocols and so on) pertaining to human rights and aimed at preventing discrimination against person or persons since the first *Declaration of Human Rights* in 1948. Definitions of human rights have evolved and a global human rights movement linking activists, scholars, NGOs have actively been involved in the elaboration of ever more specific human rights and ever more accurate definitions of discrimination. With regard of religious discrimination, the *International Covenant on Civil and Political Rights (1966)*, prohibits more specifically religious discrimination while the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, adopted in 1981, provides a comprehensive list of rights regarding freedom of thought, conscience and religion. Finally, the 1989 *Vienna Concluding Document* contains provisions similar to the 1948, 1966 and 1981 documents, urging respect for religious differences, especially among various faith communities.

Similarly, the definition of what constitutes racism and discrimination has evolved. The understanding of racism has moved from a definition of 'prejudice based on (now disqualified biological notions of) race' to a recognition of various forms of racism as 1) an individual's discriminatory attitudes and behaviours (*individual racism*), 2) as policies and practices of organizations, which directly or indirectly operate to sustain the advantages of peoples of certain "social races" (*institutional racism*) and 3) as a value system which is embedded in society and supports and allows discriminatory actions based on perceptions of racial difference, cultural superiority and inferiority (*cultural racism*). Such evolving definitions are legitimated by, and in turn legitimate, the progressive refinement of UN documents and recommendations on racial discrimination. These refinements in turn are reflected in evolving anti-discrimination legislations.

The phenomena of related intolerance(s)

Thus, racism has become generally recognised as a cluster of related phenomena including "racial discrimination, xenophobia, antisemitism and related intolerance". The recognition of antisemitism as a specific form of racism is rooted in a long European history of antisemitism which culminated in the Holocaust events though it is only at the *World Human Rights Conference in Vienna* in 1993 that

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[3] Please note: I am not saying that racism is a purely Western phenomenon. On the contrary I would argue, had I the space, that racism against 'Others' is one of the most widely shared characteristic of human cultures. What I am saying is that the forms that racism took in the West have conditioned, and still condition present international legal understandings of (racial) discrimination which are at the root of the legal incongruities which this paper explores.

antisemitism has been included as a form of racial discrimination together with any form of discrimination against Muslims[4]. Generally speaking, it is because of this long Western history that antisemitism is included in various racial discrimination laws under the category of ethno-religious prejudice. This is the case for the *Australian Racial Discrimination Act* of 1975, the NSW Anti Discrimination Act 1977[5], the United Kingdom's *1976 Race Relations Act* and *1998 Human Rights Act*.

Antisemitism and the case of ethno-religion:

There are two general points to be made about these special provisions against antisemitism based on an understanding of Judaism as an ethno-religion. The first concerns the status of antisemitism as "a unique and separate form of racism" (Dr G. Weisskirchen, Co-Chairman of the Inter Parliamentary Forum on Confronting and Combating Anti Semitism in the OSCE Region, 10/12/02). And the second concerns ethno-religion as a legal category.

On antisemitism as a unique and separate case of racism:

Antisemitism is a term coined in the 1870s by Wilhelm Marr to distinguish between old-time Jews hatred and modern, political, ethnic or racial opposition to the Jews. It soon became extended to all types of Jew-hatred in a distinctly anachronistic way which, moreover, seems to forget that Jews cannot, by any stretch of the term, be called a race at all and not even an ethnic group[6]. However, during even this shortened history, antisemitism has been defined in a variety of ways. The endurance of Jew-hatred and antisemitism beyond the various causes and theories proposed by scholars has become for some a major justification for viewing antisemitism as an exceptional phenomenon which cannot be explained by theories of racism alone[7]. For many contemporary Jewish militants against antisemitism,

> "modern antisemitism is not religious discrimination and to define
>
> it as such misses the central point that for the modern anti-Semite the issue
>
> was not one of belief but of blood... In other words, Jewishness was a
>
> matter of ancestry"

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[4] As a result of the Vienna Conference, in 1993, the Human Rights Commission in Geneva added anti-semitism to the forms of discrimination to be reported in its annual report on racism:
"The Commission requests the special rapporteur to examine according to his mandate incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, anti-semitism, and related intolerance as well as governmental measures to overcome them…" (http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0azn0)

[5] Interestingly, the Sydney Anglican synod opposed a proposal to include religion as a ground of prohibited discrimination during the 1993 review of the Anti Discrimination Act 1977 on the grounds that (1) the concept of 'ethno-religion' was not defined and (2) "the protections to enable the quotations of biblical principles particularly in relation to the practice of homosexuality were not sufficiently entrenched" (http://www.sydney.anglican.asn.au/synod/synod93/stancom.htm)

[6] This is why purists insist that it should written 'antisemite', as the hyphen would indicate an hatred directed toward 'Semites' a group that necessarily included Arabs as well (see Shmuel Almog, "What's in a Hyphen?" http://sicsa.huji.ac.il/hyphen.htm).

[7] See Manuel Prutschi, "Antisemitism, Islamophobia and Anti-Arabism: The False Link" http://www.cjc.ca/ptemplate.php?action=issues&item=10&Type=1.

On the other hand nor is it a matter of ordinary racism because (1) as mentioned earlier, Jews cannot be called a race or even an ethnic group and (2) yet Jew-hatred as "systematic, systemic bigotry or hatred against a collectivity…is the oldest and most enduring form of hatred… over 2 millennia" (ibid); in other words a form of hatred much beyond other, historical forms of racism.

It is this exceptionalism that I presume the law hoped to capture in its reference to 'ethno-religion'[8] which is used but rarely defined in the legislations mentioned above in NSW, Australia and the U.K. However, this merely replaces the question of the links between racism and antisemitism, by the problem of what can qualify as an 'ethno-religion' in law.

Ethno-religion as a legal category:

This is the problem I encountered recently when, as a specialist in both ethnic relations and Muslim migrations in the West, I was commissioned to provide expert advice on the question whether Muslims can be covered by NSW anti-discrimination laws. Perusing UK case-studies, I quickly discovered that, though one can often use the existing anti-discrimination 'ethno-religion' provision to argue that in Western countries, discrimination against Muslims often amounts to 'indirect racial discrimination', the outcome for such argumentation is by no means guaranteed. A lot therefore seems to ride on the interpretation of ethno-religion as a legal category[9] and this particular conundrum is a direct heritage of the specific history of Western racism and anti-Semitism.

However, the term 'ethno-religion' is a recognised category in the social sciences, and its usage in this field, I thought, could provide some useful ways to deal with the legal problem.

What is an 'ethno-religion'?

The links between ethnicity, culture and religion:

The term 'ethnicity' is of relatively recent usage and appeared in the 1950s in the English language. It is first recorded in a dictionary in the Oxford English Dictionary of 1953 as a derivative of the older and more commonly used adjective 'ethnic'. 'Ethnic' had consistently been used to refer to _other_ groups of people who share common cultural or biological characteristics, and who live and act in concert. It implies a dichotomy between non-ethnic 'us' and ethnic 'others'.

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[8] I have been unable to ascertain the first use of the term 'ethno-religion', though I can assert that this term is not listed in the usual dictionaries (I have consulted the extended Oxford, the Webster and the Cambridge Dictionaries in addition to various specialised dictionaries.

[9] It is not defined in law except "ethno-religious groups such as Jews'.

Though the key term in the field is that of 'ethnic group' or 'ethnic community', there is considerable debate on its stipulative definition – i.e. the necessary traits that all ethnic groups must share to be defined as such- (Hutchinson & Smith, 1996:5-6[10]).

Initially, scholars insisted on the importance of 'primordial ties' stressing an understanding of ethnic communities as immemorial, persisting units linked by descent. This view, however, has been largely abandoned as unable to deal with contemporary social changes, in particular the formation of new identities following the increase of global migration flows. The establishment of de facto multicultural societies in Western countries promoted debate in the new field of 'ethnic studies'. Since 1981, such debates have increasingly focused on 'new racism' and 'new ethnicities' (Hall 1992[11]). In particular, contemporary analyses have come to stress the socio-political and cultural aspects of 'ethnic consciousnesses', whereby a group of people draw on a common 'ethnic identity' to distinguish themselves from other minority groups and from a majority (usually left undefined in ethnic terms).

Ethnic identity has a number of dimensions: social, cultural, symbolic, political and emotional (collective memory & allegiance to community). Religion is one aspect of ethnic identity which influences most, if not all, of these dimensions. But the relationship between ethnicity and religion have been conceptualised in a variety of ways. Religion can be an element of ethnicity (Smith 1992[12]), or in a context where religious differences constitute the distinctive difference between majority and minority, then religious difference becomes **the** constitutive element of the ethnicity of the minority. Goldman (2000[13]) describes the contextual nature of ethnic definitions:

> "Ethnic groups may be identified by language (Brass 1991, Fishman 1980…) by kinship and ancestry (Grossby 1994, Herberg 1989...), by place of birth of the individuals or the ancestors of individuals (Goldscheider 1995), by *religious affiliation* (Goldscheiber 1995…) and by other appropriate ethno-cultural characteristics that may be *unique to the context in which the ethnic group exists*… The characteristics that define ethnic minorities may vary from one group to the next and from one context to the next." (Goldman 2000)

Definitions and the importance of context:

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[10] Hutchinson, John & Anthony D. Smith (eds.) 1996 *Ethnicity*, Oxford, New York: Oxford University Press

[11] Hall, Stuart 1992 'The New Ethnicities', in J. Donald and A. Rattansi (eds.) *Race, Culture and Difference*, London: Sage, pp. 256-8.

[12] Smith, Anthony D. 1992 'Chosen Peoples: why ethnic groups survive', *Ethnic and Racial Studies*, 15(3): 440-9.

[13] Goldmann, Gustave 2000 'Defining and observing minorities: An objective assessment', *IAOS Conference "Statistics, Development and Human Rights"*, Montreux, Switzerland, 4-8 September.

This contextual dimension plays an even greater role in the concept of ethno-religion which occurs regularly in the literature. Though it may seem a priori more specific, this concept is nonetheless not used in a consistent way in the literature. It can refer to:

1. a specific ethnic group with its own unique religion (like the Sikhs or the Ba'hais).

2. an ethnic minority with a religious specificity in a given country, though this religion is also adhered to by other people elsewhere. For example, Punjani (2002[14]) uses ethno-religious to distinguish Hazara from Pashtuns in Afghanistan because the former tend to adhere to Shi'a Islam while the latter are mostly Sunni Muslims. In Western countries, the Jews are often recognised as *the* archetypical ethno-religious minority on this basis as is expressed in the anti discrimination legislation in NSW, Australia and the UK). However, the state of Israel recognises ethnic, cultural and racial differences between Jews and even accepts as Jews those converted by liberal Rabbis (note: many more Orthodox Jews do not accept conversions, more on the Jews as an ethno-religious group below). In other words, for Israel, Jews are not a racial or an ethnic group (see below).

3. an overall label for a religious minority itself divided between different ethnic groups. For example, Ali[15] distinguishes in a study of European Muslims, between the Muslim community as an 'ethno-religious group' which exists as an emerging community with its own voice and identity, and the various Muslim ethnic groups within it.

4. a minority religion with specific characteristics. Champion (1999[16]) defines ethno-religion as a minority religion which has a 'holistic' dimension in which community prevails over the individual (the latter cannot leave his or her community).

5. a minority religion with encompassing cultural dimensions, contrasting with majority practices. The Harvard Encyclopaedia of American Ethnic Group defines the Mormons as an ethno-religious group because they have (a) a distinctive vocabulary, (b) shared history, (c) unique theological belief, (d) definite in-group boundaries and (e) a strong sense of peoplehood. Yet, the Mormons have a proselyting religion which accepts converts from a variety of backgrounds.

This is not an exhaustive list, but what these various definitions of ethno-religious do is to point to the fluidity of the concept. Experts in the field may accept or dispute the particular relevance of any of these definitions for a particular study because the definition of ethno-religious is understood to be contextual, i.e. dependent on the particular context in which it is employed, as it is understood to refer to the significant difference between the minority and majority in question.

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[14] Punjani, Shahid 2002 *'How Ethno-religious Identity Influences the Living Conditions of Hazara and Pashtun Refugees in Peshawar, Pakistan'*, paper presented in the Department of Urban Studies and Planning, MIT, Cambridge, MA, August 2002.
[15] Ali, Nasreen *Muslim Voices in the European Union: UK. Phase One Report'*, http://cgem.unn.ac.uk/eumuslim/volume5/uk1.htm, accessed 16/11/02.
[16] Champion, Francoise 1999 'The diversity of religious pluralism', *MOST Journal on Multicultural Societies*, 1(2), http://www.unesco.org/most/v1n2cha.htm .

A further argument for the contextual dependence of definitions of ethnic identity, and ethno-religious identity in particular can be found in the recognition of ethnic differences among Jews by the state of Israel. As mentioned above, the category of ethno-religious group in law was created to cope with anti-Semitism as a special form of racism. The grounds for this are that Jews are a distinct people who cultivate *a myth of ethnic election* (Smith op. cit.) -they think of themselves as a 'chosen people'- and police group boundaries (one is born a Jew from a Jewish mother, and consequently marriage within the group is recommended). It is therefore interesting to note that the right of Aliyah ('return to Israel') is open to converts to Judaism. Section 4B of the Law of Return (Amendment No 2) 5730-1970[17] explicitly states:

> "For the purposes of this Law, "Jew" means a person who was born of
> a Jewish mother or has become converted to Judaism…"

If anybody can become recognized as a Jew upon conversion, then the boundaries of the group are purely religious in nature.

Furthermore the Israeli state recognizes ethnic and cultural differences among its Jewish population. There are state-promoted multicultural festivals including ethnic Israeli Jews of many different cultural backgrounds, special integration programs concerning in particular Sephardi (from the Middle-East) and Falasha (from Ethiopia) Jews. Indeed inter-ethnic tensions between Ashkenazi and Sephardi Jews have long been recognised (Swirski 1995[18]). The recent arrival of a sizeable minority of Russian Jews have further complicated the ethnic situation as has the emergence of political parties organized along ethnic Jewish lines in the Knesset such as Shas ('Oriental' Jews), Yisrael B'Aliyah and Yisrael Beitenu (Russian Jews), see Peled 2000[19] and Peters & Kook 1999[20].

If the Jews, the archetypical ethno-religious group, are not in fact considered so by the state of Israel (one needs not be born a Jew, ethnic, cultural and racial differences between different groups of Jewish Israeli are recognised), then one can safely assert that what counts as 'ethno-religious difference' is dependent on context and functions as a marker of belonging for specific religious minorities, when religion constitutes *the* difference between those and the majority.

Contemporary politics of identity, and the 'ethnicisation'' of differences

In the contemporary world, a resurgence of ethnic consciousness means that people, who, in a particular socio-political context, are distinguishable from all other groups by varying common elements, can forge from those an ethnic identity which serves to represent them in the public sphere.

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[17] *Law of Return 5710-1950*, http://www.mfa.gov.il/mfa/go.asp?MFAH00kp0
[18] Swirski, Barbara 1995 *Inequality among Jews in Israel*, Tel-Aviv: Adva Center.
[19] Peled, Yoav 2000 '*Progressive Struggle Under Religious Guise? The Shas Party in Israel'*, paper presented at the conference of the Australasian Political Studies Association, Canberra, October 4-6, 2000.
[20] Peters, Joel & Becky Kook 1999 New Government, New Agenda for Israel, Columbia International Affairs Online, August 1999, http://www.ciaonet.org/pbei/riia/pej01.html.

Like old wine in new bottles, this emerging 'ethnic identity' makes use of both old cultural traits and new markers (defined in the new context of 'us' versus 'them' situation) to engage emotions and command ethnic allegiance over issues relevant to their situation. Such ethnic identifications have various degrees of depth and do not preclude other identifications in different contexts. For example, a Turkish migrant in Australia will identify as Turkish first in particular situation (say a football match), but in others will foreground his Muslim identity (a religious festival). The latter religious identity will become more habitually foregrounded (1) the more often Muslims of diverse origins interact in their new Australian context, (2) if they need to organise nationally to obtain recognition for specific needs and (3) if they find themselves objects of similar discrimination because of their common faith as this creates new group boundaries ('us versus them') along a religious axis. The progressive emergence of a new ethnic category 'Muslim Australians' would become unavoidable if these conditions obtain for a length of time.

Much recent scholarship in ethnic studies has focused on such politics of ethnic identity as unprecedented movements of population force interactions between people of various origins. The goals have been to ascertain the conditions of emergence for ethnic identities ('ethnicisation') and how those influence public debates and other social issues. Moreover the rapid evolution of global communications has further complicated these issues as global events impact on local perceptions. Thus, many scholars have documented the effects of the Gulf War on local perceptions and self-perceptions of Australian Muslims (Hage 2002[21]). Not surprisingly they have generally found that discrimination against Muslims, in the wake of the Gulf War led to a strengthening of bonds within the Australian Muslim community and a corresponding predominance of the religious factor in their group consciousness. In other words, Australian Muslims are pushed to identify more as the 'Muslim Others' of the Australian majority. These are precisely the kind of conditions leading to the ethnicisation of differences. Such an ethnicisation of a 'Muslim difference' can be shown to occur, though not in a uniform way in many Western countries where Muslims account now for a sizable minority.

The rise of Islamophobia

The ethnicisation of Islam in other Western countries

Most Western countries have recently acquired Muslim minorities. Some European countries have been receiving migrants of various Muslim origins since the 1950s: England, France and Germany in particular. Muslim immigration has been more recent in other countries such as the USA and Canada. In all of these countries, albeit in different ways and at different speeds, the Muslim population has been undergoing a process of ethnicisation insofar as it slowly evolves into a 'Muslim minority', sharply distinguished from the rest of the population (the 'us' versus 'them' phenomenon) with its own 'voice'. Much of this process of ethnicisation has been attributed by the literature to 2 trends: the desire

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[21] Hage, Ghassan (ed.) 2002 *Arab-Australians Today*, Melbourne University Press.

of a settling population for institutional accommodation of their needs (establishment of mosques, schools, provision of halal meat and the like) and the need for a concerted response to escalating Islamophobia.

The first trend is well documented: see for example Waugh & Dennis' *The shaping of a Islamic American discourse* (1998)[22], and Al Sayyad and Castells' *Muslim Europe or Euro-Islam* (2002)[23] as well as numerous countries studies on the elaboration of Western Islam(s) (Al Sayyad and Castells for example have a section called "How does Islam in France differ from Islam in Europe?"). Studies cite the creation of national organisations coordinating Muslim practice and representing Muslim interests, and analyse the emergence of a 'Muslim voice' in national affairs (Noormohamed 2000[24]; Modood 2000[25], Vertovec 2002[26]). Numerous organisations, magazines, websites, radio and TV programs participate in this elaboration of distinct national Muslim 'voices'.

The second trend (growing Islamophobia) is paradoxically linked to the first as Vertovec recognises. He shows how Islamophobia rises in Britain "alongside advances in Muslim recognition though a kind of linked or circular operation" (Vertovec, op. cit.:32). Moreover the more Islamophobia rises, the more Muslim organise against it and inevitably, the more prominent the emerging 'Muslim community', and the more Islamophobic tendencies may amplify. World events have played a role in making Muslim minorities in the West appear suspicious to members of the majorities. So entrenched has this phenomenon become in the last 10 years or so, that the European Monitoring Centre on Racism and Xenophobia (http://eumc.eu.int/) has been monitoring racist incidents and public and political attitudes in all EU member states. It has produced a number of reports documenting the rise of Islamophobia[27] generally understood to be racism against Muslim populations akin to anti-Semitism:

> "Islamophobia has fed racist hostility against people of Middle Eastern,
> Arab and South Asian origin and has in turn be bolstered by racial
> prejudice and xenophobia" (Rudiger 2001)[28].

> "The term Islamophobia refers to unfounded hostility towards Islam. It
> refers also to the practical consequences of such hostility in unfair
> discrimination against Muslim individuals and communities, and to the

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[22] Waugh, Earle & Frederick Dennis (eds.) 1998 *The shaping of an American Islamic discourse*, The University of South Florida Press.

[23] Al Sayyad, Nezzar & Manuel Castells (Eds) 2002 *Muslim Europe or Euro-Islam: politics, culture and citizenship in the age of globalization*, Lexington.

[24] Noormohamed, Talib 2000 *America's Islam: the consequences of Muslim political engagement*, paper presented at the 18th Congress of the International Association for the History of Religions, 5-12 August 2000, Durban

[25] Modood, Tariq 2000 The place of Muslims in British Secular Multiculturalism in Al Sayyad, Castells & Michalak (Eds) *Islam and the changing identity of Europe*, University Press of America/Lexington Books.

[26] Vertovec, Steven 2002 'Islamophobia and Muslim recognition in Britain,' in Yvonne Haddad (ed.) *Muslims in the West: From Sojourners to Citizens*, New York: Oxford University Press, pp. 19-35.

[27] Allen, Christopher & Jorgen Nielsen 2002 *Summary Report on Islamophobia in the EU after 11 September 2001*, European Monitoring Centre on Racism and Xenophobia, Vienna, May 2002.

[28] Rudiger, Anja 2001 'Crisis or more of the same?', Connections, Autumn 2001, http://www.cre.gov.uk/publs/connections/conn_01au_crisis.html.

exclusion of Muslims from mainstream political and social affairs.... The word 'Islamophobia' has been coined because there is a new reality which needs naming – anti-Muslim prejudice…"

(An extract from *Islamophobia: A Challenge for Us All*, compiled and published by the <u>Runnymede Trust</u> in 1997)[29]

Moreover, for many, Islamophobia is a phenomenon akin to anti-Semitism. Thus, the Runnymede Trust, in its pioneering work on Islamophobia (1997) writes that:

"The word 'Islamophobia' has been coined because there is a new reality which needs naming – anti-Muslim prejudice has grown so considerably and so rapidly in recent years that a new item in the vocabulary is needed so that it can be identified and acted against. In a similar way there was a time in European history when a new word, anti-Semitism, was needed and coined to highlight the growing dangers of anti-Jewish hostility."

(The Nature of Islamophobia, www.runnymedetrust.org/meb/islamophobia/nature.html)

Indeed, once it became accepted (in the European Union) that Islamophobia is a phenomena akin to anti-Semitism, the definition of racial discrimination was enlarged to include discrimination on religious grounds and the changes were incorporated in the *European Convention on Human Rights*. There is no doubt that these developments were a result of concern over Islamophobia (see for example the work of the <u>Commission for Racial Equality</u> in the United Kingdom - <u>http://www.cre.gov.uk</u> , as well as the work of the <u>European Monitoring Centre on Racism and Xenophobia</u> – <u>http://eumc.eu.in/</u>.) Appropriate legislation was drafted in the *Amsterdam Treaty* (1997) due to come into effect in 2003. As mentioned above however, this new legislation does not offer a comprehensive religious discrimination law similar to that existing for racial/ethnic discrimination even though its purpose is to outlaw discrimination on religious grounds (Article 13 of the Amsterdam Treaty):

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[29] *Islamophobia: A Challenge for Us All*, compiled and published by the Runnymede Trust in 1997, http://www.runnymedetrust.org/meb/islamophobia/nature.html.

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The ethnicisation of Islam in Australia:

An often similar situation prevails in Australia. The Muslim population of Australia is relatively small and of various origins. However Muslims in Australia "…inevitably had to negotiate their 'Muslimness' within the wider social, legal and political environment" (Humphrey 2001)[30]. Humphrey argues that the negotiation of Muslimness in multicultural societies in general, and Australia in particular, simplifies and homogenises Muslim culture and identity, producing 'Muslim others'. Multicultural politics produce an ethnicised Muslim identity "as a shared immigrant experience and as a representational identity' (p.35). This process has led to the establishment of national Muslim institutions and organisations aiming to promote "the unity of an Australian Muslim identity" Nehaban 1999)[31]. Such institutions comprise, among others, the <u>Australian Federation of Islamic Communities</u>, the <u>Muslim Women's National Network of Australia</u>, the <u>Federation of Australian Muslim Students and Youth</u>, the <u>Australian Multicultural Eid Festival and Fair</u> and the <u>Muslim Community Cooperative Australia</u>. Such associations are active in organising seminars, conferences and various activities conducted mostly in the English language, and inviting Muslim scholars and academics increasingly from America, Canada and the United Kingdom. Though some specific ethnic institutions continue to hold influence among migrants, they are increasingly eclipsed by larger umbrella religiously oriented organisations of the type described above.

Not only is the Muslim Australian minority in the process of finding its voice and establishing its identity along an ethnic model, but such process is being sped up, as elsewhere in the West by a current wave of Islamophobia in Australian society. Various incidents (mosque burning for example, attacks on women wearing the hijab) have been documented but Islamophobia is particularly worrying in the national media (radio, TV, written press). A number of newspapers and magazines articles have taken Islamophobia in Australia as their topic, and some punctual studies have been undertaken (Hage, op. cit.). But there has been, to my knowledge, no independent large scale survey on Islamophobia in Australia, though it certainly would be timely, though there is no doubt that Islamophobia is on the rise in Australia and has sped up a process of ethnicisation of the Muslim Australian community.

Islamophobia and anti-discrimination laws: what is the problem?

Two possible paths to combat Islamophobia

So far, there are two paths to combat discrimination based on religion. The first is:

1) to include religion among the grounds covered by anti-discrimination laws. This is the path that the European Union decided on in the 1997 Treaty of Amsterdam.

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[30] Humphrey, Michael 2001 'An Australian Islam? Religion in the multicultural city', in Abdullah Saeed & Shahram Akbarzadeh (eds.) *Muslim communities in Australia*, Sydney: University of New South Wales Press, pp. 33-52.

[31] Nehban, Kathy 1999 Australian Muslim Destinies, *International Institute for the Study of Islam in the Modern World* (ISIM), newsletter 2, http://www.isim.nl/newsletter/2/regional/2.html.

> "The Treaty of Amsterdam restates the <u>principle of non-discrimination</u> in stronger terms, adding two new provisions to the EC Treaty.

> **The new Article 13**

> This Article complements Article 12, which prohibits discrimination on grounds of nationality. The new Article enables the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." (http://europa.eu.int/scadplus/leg/en/lvb/a10000.htm)

In addition, Articles 136 and 137 promotes measures to combat exclusion. This legislation is due to be implemented by member states by the 2nd December 2003. At present, few European countries have appropriate legislation on discrimination based on religious grounds. Among those few:

- **Ireland** probably has the more encompassing legislation. The *Equal Status Act* (2000) prohibits types of discrimination, harassment and related behaviour in connection with the provision of services, property and other opportunities on the grounds of religious appurtenance.

- The current anti-discrimination legislation in the **United Kingdom**, does not cover religious appartenance per se (except for **Northern Ireland** where the *Fair Employment* legislation includes religion amongst categories under which it is unlawful to discriminate in respect of employment, further and higher education, the provision of goods, facilities and services, the disposal of, and management of premises). However the *Race Relations Act* (1998) covers discrimination against ethno-religious groups which has been used by the <u>Commission for Racial Equality</u> to argue that religious discrimination **in effect** amounts to **unlawful indirect racial discrimination** against a particular racial group covered by the *Race Relations Act* (see the CRE's pamphlet: *Religious Discrimination: Your rights*, 1996)[32].

- In **Austria,** civil and administrative law contains provisions prohibiting public expressions of prejudice against persons on the ground of religion or creed.

- In **Denmark,** the 1987 Penal Code provide punishments for discrimination and harassment on the grounds of belief (Article 266b, Act 626 of 1987).

- **Finland**'s Penal Code (1995, Section 9) details sentences for discrimination on the grounds of religion

- In **France** the Penal Code (1985, Art. R-624-3, 4, 7) punishes verbal hatred on grounds of religion.

- Discrimination on grounds of religion is also prohibited and punished in **The Netherlands** (Penal Code 1992), **Norway** (Penal Code 1981, Paragraph 135a), **Sweden** (1987) and **Spain** (1995).

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[32] *Religious Discrimination: Your rights* 1996, Commission for Racial Equality.

However even the new legislation does not include clauses designed specifically for religious vilification. There is a deep seated resistance to include religion per se among the grounds covered by anti-discrimination laws, especially when it comes to religious vilification. In Australia, only Queensland (2001 Anti-Discrimination Amendment Act) and Victoria (Racial and Religious Tolerance Act 2001) have religious vilification covered in their anti-discrimination law though South Australia is considering doing so as well in spite of a considerable resistance mounted against including a religious vilification clause in anti-discrimination laws, especially from some Christian quarters:

> "The effect of this new law in Victoria - proclaimed in January this year - quickly became apparent. In March, a Christian group held a seminar on Islam in a Melbourne church. A Christian from Pakistan with expert knowledge of Islam, explained the meaning of Islam's holy books - the Qur'an and the Hadith. Three Muslims attended parts of the seminar and took notes. Their distorted and inaccurate account formed the basis of a formal complaint under the new law by the Islamic Council of Victoria. An article by Andrew Bolt in the Herald Sun (30/5/02, p 19) covers some of the unfair claims against the seminar.
>
> The two men against whom the complaint was made have since spent many hours attempting to prove themselves innocent. If they fail, they risk serious fines. If they succeed, they receive no compensation for their time, effort or legal expenses. In contrast, the Islamic Council of Victoria has nothing to lose - it simply had to make a complaint.
>
> Peter and Jenny Stokes of Salt Shakers in Melbourne say Victorian pastors are now reporting that some people are attending services - not to worship - but to monitor what is said. Are we heading for a state of fear, under "thought police"?"

(http://www.pastornet.net.au/jmm/aasi/aasi0774.htm 18/7/02)

The opposition of such Christians stems from their understanding of religious truth and of their proselyting duty:

> The primary evil in anti racial legislation is that it subjugates Christianity to the principles of a secular philosophy and makes it a criminal offence to tell infidels, Moslems, Hindus, Buddhists and Jews that "salvation is found in no one else, for there is no other name under heaven given to men by which we must be saved". (Acts 4:12)
>
> http://www.reformation.to/persecution.htm

But others object in the name of free speech, and on the liberal Western ground that "religion is a strictly private matter that must be kept out of public and communal life" (Bunting 2001)[33]. For example, Liberty, a UK civil rights organisation, while it supports legislation on religious discrimination, opposes an extension to religious hatred on the grounds that "religion isn't an essential part of an individual's being as skin colour" and that "while you can hide your religious beliefs, you can't do anything about your skin colour." Such statements not only deny the communal dimension of religion, they are also particular hypocritical promising Muslims tolerance as a reward for hiding their religious beliefs.

Yet as mentioned above there are legitimate difficulties in legislating on religious discrimination. But, meanwhile, insulting or harassing Muslim women wearing the hijab is not an offence. Yet it is well known that most attacks against Islam in the European Union and Australia have been attacks triggered by visual identifiers most often embodied by Muslim people (hijab, beards, and turbans) but also recognizable targets like mosques and Islamic schools[34]. Overwhelmingly, women in hijab have been the preferred targets, which is not a promising beginning if one is to believe in Western interest in liberating Muslim women. But of course such attacks have little to do with religious conviction. They are, as notes the EUMC report, "Muslimphobic rather than Islamophobic". In other words:

> "… religionism and xenophobia become interwoven… [and] blur the
> boundaries where anti-Islamic and anti-Muslim fear and hatred overlaps
> with the fear and hatred of a euro-centrically perceived enemy 'other'."
> (EUMC, Summary Report on Islamophobia, pp.38-9).

2) The second path would be to recognise this ethnicised nature of Islam in Western countries, to recognise Islamophobia as a form of racism akin to antisemitism and to treat therefore Islam as an ethno-religion *in Western contexts*.

Yet, even though Islamophobia is recognised as a specific racist phenomenon in Australia and the UK, the cases history of NSW and UK anti-discrimination laws show how little possible it is for a Muslim to obtain reparation. For example, among recent cases in NSW were the case of an IT worker threatened with dismissal for praying, *in his own time*, at work; and that of a Muslim inmate unable to obtain food respecting Muslim religious restrictions. So far, courts have dismissed such incidents as not covered by anti-discrimination laws[35]. The main objections have been that Islam covers different cultures, ethnicities, races, nationalities and so could not be defined as an 'ethno-religion'. As I have argue above this interpretation is far too limiting and does not take into account the ethnicisation of Muslim identity in Western countries. And certainly such an interpretation would be supported by an impartial comparison with antisemitism as defined by Wilhelm Marr, which is more than religious

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[33] Buntig, M. 'The new anti-semitism', *The Guardian* 3/12/01.
[34] Summary Report on Islamophobia in the EU after 11 September 2001, EUMC, pp. 35-9. Ghassan Hage, op. cit.
[35] As noted before, similar cases in the UK are usually filed under 'indirect racial discrimination' which of course does not carry the same weight, and moreover subjected to case-by-case interpretation.

hatred (Jews hatred), aimed at the eradication of a people who is yet neither one racial or ethnic group, nor really one culture or one nationality (see above).

Between a rock and a hard place?

Victims of Islamophobia find themselves between a rock (the difficulties inherent in legislating against religious discrimination and vilification) and a hard place (the reluctance to recognize Islam in the West as an ethno-religious category). The former difficulties reflect the uneasy peace between secularism and universalist religions which have naturally problems to deal with "the shocking fact of [religious] ideological pluralism" as illustrated in Christians' opposition to religious vilification laws. Advocates of free speech have legitimate concerns too, notably about the right to discuss and question freely and publicly religious tenets, which is a concern that liberal secular advocates of religious anti-discrimination laws dismiss too lightly when they consider religion as 'an intensely personal issue' of 'free individual religious choice'. The usual way of dealing with these difficulties is to develop a system of protections and exemptions based on what is needed for a religious body to pursue its legitimate goals. No doubt this would require extensive negotiations (see for example the *Salt Shakers Special Report No1A, Racial and Religious Tolerance Bill Discussion Paper*, December 2000).

It would seem a priori simpler to accept Islam within the ranks of ethno-religions within Western countries. This would have the merit to recognise the indisputably racist and xenophobic dimension of Islamophobia. As mentioned before, it is opposed by certain Jewish militants who feel insulted by a comparison with antisemitism, on the grounds of the exceptionalism of the history of Jew hatred in the West especially. Though this argument is valid emotionally in regard of the long history of persecution of the Jews, it is not particularly congruent with Marr's definition of antisemitism as a new, modern, political, ethnic or racial opposition to the Jews. Marr's definition, if you replace 'Jews' by 'Muslims' certainly applies to Islamophobia. But I suspect a more serious obstacle to dealing with the problem under the 'ethno-religious' provision is that, in the long term, it just does not confront the de facto religious pluralism that has become a fact of everyday life in Western societies. Islam with its competing universalist claims has come to stay. We cannot demand that religious citizens should conveniently bracket their religious beliefs when participating in social and political life, whatever their religion. But that does not mean we cannot critically engage with their religiously motivated arguments. Just as we must learn to accept Islam, our Muslim co-citizens must learn to engage with our different beliefs. Learning about the other seems a more promising beginning than verbally assaulting them. And if one is to believe the *Summary Report on Islamophobia in the EU*, people seemed to have done as much of the one as of the other[36]. Both reactions should encourage us in the difficult task of setting up legal guidelines to deal with religious discrimination and vilification.

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[36] The report cited widespread public demand for more information about Islam.