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### The politics of voluntary and involuntary identities: are Muslims in Britain an ethnic, racial or religious minority?

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# The politics of voluntary and involuntary identities: are Muslims in Britain an ethnic, racial or religious minority?

**NASAR MEER**

**ABSTRACT** The denial that racism operates against Muslims *qua* Muslims has permeated public and media discourse of late. Intellectuals, commentators and legislators from across the political spectrum have explicitly rationalized this position by distinguishing involuntary racial identities from voluntary religious identities. Meer explores the nature of Muslim identity *vis-à-vis* the involuntary and voluntary dichotomy before examining the consequences of recognizing some 'racial' identities in anti-discrimination formulas while ignoring others. This is followed by a short case study of some of the 'commonsense' arguments about race and religion that surrounded the proposed incitement to religious hatred legislation in Britain. The findings suggest that Muslims in Britain are disadvantaged by the operation of a 'normative grammar' of race that materially (in terms of legal instruments) and discursively (in terms of public and media comment) treats their racialization with less seriousness than it does that of other minorities.

**KEYWORDS** anti-discrimination legislation, anti-Muslim prejudice, discrimination, ethnicity, Islam, Islamophobia, Muslims, race, Racial and Religious Hatred Act, racialization, religion

## Voluntary and involuntary sources of (Muslim) identity

It requires no great insight to suggest that a white/black dualist conception of race has, for a long time, provided the predominant paradigm for the study of ethnic minorities in Britain.<sup>1</sup> It is equally uncontroversial to note how it is through this conception of race as an involuntary identity that legal

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1 While it would be easy to state at the beginning that the *idea* of race is being used under 'erasure' (*à la* Jacques Derrida) or rejected outright in the manner preferred by Robert Miles, it will instead be argued that, since all categories including ethnicity, age, gender and class are unstable and contested, and subject to potential reification and

and public policy frameworks aimed at addressing racial discrimination have been formulated and implemented.<sup>2</sup> Indeed, it is now over thirty years since the introduction of a third Race Relations Act (RRA 1976) cemented the state sponsorship of 'racial equality' by consolidating earlier, weaker legislative instruments (RRA 1965 and RRA 1968). Alongside its broad remit spanning public and private institutions, the recognition of *indirect* discrimination and the later imposition of a statutory public duty to promote good 'race relations', it also created the Commission for Racial Equality (CRE) to assist individual complainants and monitor the implementation of the act.<sup>3</sup> In these ways the RRA and its later amendments institutionalized some genuinely progressive notions on the basis of which racially structured inequalities could begin to be redressed.

Since then, however, the statutory formulation of race and racism has not developed sufficiently to assist groups subject to cultural as well as biological racism.<sup>4</sup> This was evident throughout the chorus of revulsion

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essentialism, the implication of 'race' as 'real' is dismissed at the outset. It should instead be understood as a social construction that nevertheless serves as a potential vehicle for subjective and attributed identifications. See Jacques Derrida, *Of Grammatology*, trans. from the French by Gayatri Chakravorty Spivak (London: John Hopkins University Press 1976) and Robert Miles, *Racism* (London: Routledge 1989). Instead of offering a post-race account (see Paul Gilroy, *Between Camps: Nations, Cultures and the Allure of Race* (London: Routledge 2004), and Brett St Louis, 'Post-race/post politics? Activist-intellectualism and the reification of race', *Ethnic and Racial Studies*, vol. 25, no. 4, 2002, 652–75), this article will argue for a widening of racial equality agendas to include those affected by the *social reality* of racism. For a trailblazing perspective on the British context, see Tariq Modood, 'Political blackness and British Asians', *Sociology*, vol. 28, no. 4, 1994, 859–76.

2 John Solomos, *Race and Racism in Britain* (Basingstoke: Palgrave Macmillan 2003); Adrian Favell, *Philosophies of Integration: Immigration and the Idea of Citizenship in Britain and France* (Basingstoke: Palgrave Macmillan 2001).

3 Anthony Lester, 'From legislation to integration: twenty years of the Race Relations Act', in Tessa Blackstone, Bhikhu Parekh and Peter Sanders (eds), *Race Relations in Britain: A Developing Agenda* (London: Routledge 1998).

4 For example, it has been argued that newer racisms do not solely rely on biological sign systems and hierarchy, but are often 'coded' in a language of cultural dysfunction and pathology (Miles, *Racism*, 84–7). Thus, while biological racism may lead to the development of cultural racism, it has been argued that it may be possible for the latter to stand alone and, in some cases, replace the former; see Tariq Modood, "'Difference", cultural racism and anti-racism', in Pnina Werbner and Tariq Modood (eds), *Debating Cultural Hybridity: Multi-Cultural Identities and the Politics of Anti-Racism* (London: Zed Books 1997), 155. According to this view, some groups, including Muslims, can face additional hostility made up of 'an oppositional hegemonic bloc which includes intellectual elites as well as "real" violent racists' (Pnina Werbner, 'Islamophobia: incitement to religious hatred—legislating for a new fear?', *Anthropology Today*, vol. 21, no. 1, 2005, 6). See also Nasar Meer, "'Get off your knees!" Print media, public intellectuals and Muslims in Britain', *Journalism Studies*, vol. 7 no. 1, 2006, 35–59, and Nasar Meer and Tehseen Noorani, 'A comparison of anti-Semitism and anti-Muslim sentiment in Britain', forthcoming.

directed at the legislation proposed in 2005 to deal with an iniquitous hierarchy of protected minorities (created through the application of the RRA in case law). This legislation concerned the lack of existing provision to deter and to address the racial and religious hatred directed towards Muslims in Britain or its incitement. The key objection to this legislation was based on the dichotomy between racial and religious identities: since the former are involuntary or 'natural', it argued, they are deserving of protection, while the latter, being voluntarily held, are therefore undeserving of protection.

This article contends that such a dichotomy is empirically unsustainable and belies the socially contingent operation of race and racism. It argues for the rejection of a 'normative grammar' of race,<sup>5</sup> so as to recognize that legal categories of race and ethnicity should neither be accepted as the natural order of things nor should they foreclose deviations that emerge out of social contingencies. This is particularly pertinent in periods of Muslim racialization, and suggests that a coherent argument can be made for Muslim inclusion under existing provisions in the race relations legislation.

In everyday language the terms 'Islam' and 'Muslim' are used in ways that assume that they have been operationalized and that we intuitively understand what they mean. Olivier Roy questions these assumptions by turning to some first principles in his account *Globalised Islam: 'Who do we call Muslim? A mosque-goer, the child of Muslim parents, somebody with a specific ethnic background . . . What is Islam? A set of beliefs based on a revealed book, a culture linked to historical civilisation?'*<sup>6</sup> Since a robust account of Islamic history, civilization and comparative ethnic relations is beyond the scope of this article, and categorical definitions are neither sought nor, it will be argued, a reflection of how Muslims view themselves or Islam, a more relevant exposition might begin by asking whether we can distinguish 'Islam' (as the name of a religion) from 'Muslim' (as a noun referring to people). Such a distinction might facilitate the principled operation of human rights and anti-discrimination legislation in distinguishing the right to religious freedom and the right to non-discrimination. For example, while the former (exemplified by provisions such as Article 9 of the European Convention of Human Rights) is concerned with the right to practise Islam in accordance with religious belief, the latter might be concerned with how discrimination against Muslims picks out individuals on the basis of discernible characteristics, attributes to them an alleged group tendency, or emphasizes those features that are used to stigmatize or that reflect pejorative or negative assumptions based on the individual's real or perceived membership of that group.

5 David Tyrer, "'Fact" as MacGuffin: Islamophobia, "race" and Muslim identities', *Ethnic and Racial Studies*, forthcoming.

6 Olivier Roy, *Globalised Islam: The Search for the New Ummah*, trans. from the French and revd (London: Hurst and Co. 2004), 21.

It is argued here that we should adopt an approach that is more flexible and that draws on factual evidence while, at the same time, giving weight to the self-perception of individuals—including their identification with groups—as to their own sources of identity. Such an approach might allow us to explore the social contingencies of a Muslim identity, and its salience and interaction with other sources of identity to the extent, for example, that the relationship between Islam and a Muslim identity might be analogous to the relationship between one's sex and one's gendered identity.<sup>7</sup> That is, one may be biologically female or male in a narrow sense, but one may be a woman or a man in multiple, overlapping or discontinuous ways. This requires some explanation, particularly since one's sex reflects something that emerges on a continuum and can be either—or both—internally defined or externally ascribed. This analogy allows a range of factors other than religion, such as ethnicity, race, gender, sexuality and agnosticism, to shape Muslim identities. To interrogate these distinctions, we could begin by looking at some obvious sources of that identity.

### **Is Muslim identity scriptural or quasi-ethnic?**

Muslim doctrinal subscription to shahada—the belief that there is only one God and that Muhammad is the Messenger—is often cited in support of the view that, because Islam is a religion, Muslim identity must necessarily be derived from that religion in some linear, prescriptive fashion.<sup>8</sup> An interesting contestation of the straightforwardness of this position can be found in the work of the Muslim feminist Katherine Bullock. Bullock argues that, although 'linguistically' a 'Muslim' is

7 It should be stressed that this distinction is problematic, but is adopted as a heuristic device to develop this particular point. For example, in her landmark *Gender Trouble*, Judith Butler argues that any coherence achieved within categories of sex, gender and sexuality in fact reflects a culturally constructed mirage of coherence that is achieved through the repetition of what she calls 'stylised acts'. She argues that, in their repetition, these acts establish the appearance of what she describes as an essential or ontological 'core' gender. This leads Butler to consider one's 'sex'—along with one's 'gender' and 'sexuality'—as 'performative'; since this challenges biological accounts of sexual binaries, it is recognized that Butler would both support and problematize the above analogy. While she may support it by agreeing with the contested nature of 'gender', she might also problematize it by rejecting 'sex' as something given, rather than produced. See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London and New York: Routledge 1990).

8 Richard Dawkins, *The God Delusion* (London: Bantam 2006); A. C. Grayling, 'Religions don't deserve special treatment', *Guardian (Comment Is Free online)*, 19 October 2006, [http://commentisfree.guardian.co.uk/ac\\_grayling/2006/10/acgrayling.html](http://commentisfree.guardian.co.uk/ac_grayling/2006/10/acgrayling.html) (viewed 12 September 2007); Polly Toynbee, 'My right to offend a fool', *Guardian*, 10 June 2005; Joan Smith, 'Why should I be jailed for attacking religion?', *Independent*, 8 December 2004.

someone who submits to the will of God, this clarifies little since the question then becomes to what exactly are Muslims submitting. 'To traditional practice? To unambiguous, or ambiguous text? To certain scholars' interpretations of text?'<sup>9</sup> Her answers look to the Qu'ran but take us beyond the popular conception that the existence of Muslim identity is *only* possible when it is enacted behaviourally in correspondence with the five doctrinal pillars.<sup>10</sup> She notes, for example, that the companions of the Prophet Muhammad, scholars of *tafsir* (Quranic commentary) and the *fuqaha* (experts in Islamic law) have always disagreed over the meaning of verses in the Qu'ran, which is why 'no one interpretation has been held to be authoritative'.<sup>11</sup> Any interpretation adopted would necessarily be 'guided by the rules of Arabic grammar, the spirit of Islam, and the example of the Prophet'.<sup>12</sup> All of which suggests that, where the common and defining factor is a reference to Islamic scriptures, their contested nature permits enormous scope for imagining and re-imagining what a Muslim identity would entail.

Bullock is undoubtedly correct to emphasize the situational nature of interpreting what Islamic scripture requires of Muslim identity. She continues in this vein when she turns to the Sunna, an account of 'what the Prophet said, did, and observed others doing but did not comment on', believed to be preserved in the Hadith (the sayings of the Prophet) and, in particular, in the Sira (biographies of the Prophet). Crucially, because the Hadith are subject to interpretative controversies, were written after the death of the Prophet and are variously classified as 'authentic, good, weak, and fabricated', Bullock argues that 'what Islam requires' has recognized other sources beyond the Qu'ran and Sunna. These have included 'juristic consensus, local customs ... analogical reasoning, considerations of the public good, and so on'.<sup>13</sup>

From Bullock we can extract two key implications. The first is that, no less than any other text, the Qu'ran offers guidance that is interpreted and applied by human agents. This means that different accounts of scripturally informed Muslim identities can exist without necessarily invalidating each other. The second is that Muslim identity has not existed in a social and political vacuum in Britain, but has instead been shaped in dialogue with its context.

Both of these points are illustrated in the research studies carried out by Yunus Samad and Jessica Jacobson on the consumption and conservation of

9 Katherine Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes* (London: International Institute of Islamic Thought 2002), 154.

10 Comprising the beliefs, values, rights and duties of shahada (articles of faith), salat (daily prayer), zakat (charity), sawm (fasting during Ramadan) and hajj (pilgrimage to Mecca).

11 Bullock, *Rethinking Muslim Women and the Veil*, 154.

12 Ibid.

13 Ibid.

Islam in Britain.<sup>14</sup> They found that, among young people, there has been a shift away from the oral traditions that continue to regulate the lives of the older generation that arrived as migrants. Samad, in particular, points to a de-emphasizing of (although not a complete break with) *biraderi* or regional identifications. This runs parallel to the turn towards Muslim identities that negate older sectarianisms, even as they encounter new ones in Britain. One outcome among young people of Pakistani ethnic origin is a process whereby identification with Pakistan—or a region of Pakistan—becomes less significant while ‘Muslim’, as an identity, becomes more prominent.

The increasing significance of Islam as an identity marker increases with the decline of interest in the region of origin. The development is not necessarily coterminous with an increase in religiosity [since] Muslim identity which is articulated by the youth is hybrid in character.<sup>15</sup>

What is being argued here is that, rather than being scripturally informed, we can view Muslim identity as a quasi-ethnic sociological formation. ‘Quasi’—denoting something similar but not the same as—because ethnic and religious boundaries continue to intersect and are rarely clearly demarcated.<sup>16</sup> Furthermore, the sorts of mobilizations undertaken by Muslims *qua* Muslims, for example, in favour of faith schools,<sup>17</sup> or against Islamophobia,<sup>18</sup> mirror the types of mobilizations initiated by ethnic minority groups.

Compared to a purely theological category, this sociological one might be preferred as a less exclusive, and more valid, way of operationalizing Muslim identity since it includes opportunities for self-definition (formally, for example, on the Census or ‘ethnic’ monitoring forms,<sup>19</sup> or informally in public and media discourse). Equally, it can facilitate one’s description of oneself as ‘Muslim’ and take into account the multiple (overlapping or synthesized) and subjective elements that are independent of—or intertwined with—objective behaviour that is congruent with religious practice.

14 Yunus Samad, ‘Media and Muslim identity: intersections of generation and gender’, *Innovation*, vol. 11, no. 4, 1998, 425–38; Jessica Jacobson, *Islam in Transition: Religion and Identity among British Pakistani Youth* (London: Routledge 1998).

15 Samad, ‘Media and Muslim identity’, 437.

16 Tariq Modood, Richard Berthoud, Jane Lakey, James Nazroo, Patten Smith, Satnam Virdee and Sharon Beishon, *Ethnic Minorities in Britain: Diversity and Disadvantage: The Fourth National Survey of Ethnic Minorities* (London: Policy Studies Institute 1997), 337.

17 Nasar Meer, ‘Muslim schools in Britain: challenging mobilisations or logical developments?’, *Asia Pacific Journal of Education*, vol. 27, no. 1, 2007, 55–71.

18 Meer and Noorani, ‘A comparison of anti-Semitism and anti-Muslim sentiment in Britain’; Nasar Meer, ‘Less equal than others’, *Index on Censorship*, vol. 36, no. 2, 2007, 114–16; Meer, ‘“Get off your knees!”’.

19 Peter Aspinall, ‘Should a question on “religion” be asked on the 2001 British Census? A public policy case in favour’, *Social Policy & Administration*, vol. 34, no. 5, 2000, 584–600.

This instantiates the pragmatic possibilities that the various emphases and ‘de-emphases’ confer upon the bearers of such identifications, including the recognition that the element of choice is not a total one. By this I mean that, although one may imagine a Muslim identity in different ways, when one is born into a Muslim family, one becomes Muslim. This is not to impose an identity or a way of being on to people who may choose to deny passively or reject actively their Muslim identity because, consistent with the right of self-dissociation, the rejection of Muslim identification or adoption of a different self-definition should be recognized where a claim upon it is made. *What is being argued is that, when a Muslim identity is mobilized, it should not be dismissed because it is an identity of personal choice, but rather understood as a mode of classification according to the particular kinds of claims Muslims make for themselves, albeit in different and potentially contradictory ways.* This means that, just as we do not reject the possibility of self-dissociation, so we must recognize that there are various forms of self-association. As an argument this certainly has its critics, and the following statement from the Shadow Home Secretary David Davis MP conveys the flavour of the most frequent objections:

Government rightly sought to criminalise people who attempted to stir up hatred on the grounds of race, because race is not something that someone chooses. It is who they are—it is their very person. An attack on race is an attack on the individual. Religious belief is quite different—it is something that someone chooses or, indeed, chooses to opt out of.<sup>20</sup>

Contrast this, for example, with Tariq Modood’s view that the element of choice has ‘more to do with social structure [than] religion qua religion’,<sup>21</sup> since, in the tradition of W. E. B. Du Bois,<sup>22</sup> the identity we are assigned can be a powerful force in shaping our own self-concept. Accordingly, while our self-consciousness is subjective it does not free us from the impact of what others say and do. This seems particularly true for British Muslims in the current climate of acute objectification and attention, which makes the issue

20 Hansard (HC), col. 686, 21 June 2005. A view shared by the Labour backbencher Bob Marshall-Andrews: ‘The difficulty is that there is a profound difference between race and gender and religion. Our race and our gender are what we are and should be protected. Our religion is what we choose to believe. It is a system of beliefs, fundamentally and quite properly held. It seems to many here and out there that there is, in truth, very little distinction between one’s religion and one’s politics’ (Hansard (HC), col. 676, 21 June 2005).

21 Tariq Modood, *Multicultural Politics: Racism, Ethnicity and Muslims in Britain* (Edinburgh: Edinburgh University Press 2005), 16.

22 Nasar Meer, ‘Lifting the veil on the Hegelian Du Bois: towards a normative construct of “double consciousness”’, in Nasar Meer and Simon Weaver (eds), *Connections 4* (Bristol: Department of Sociology, University of Bristol 2004).



of choosing Muslim identities much less straightforward. As Gary Younge has observed:

We have a choice about which identities to give the floor to; but at specific moments they may also choose us. Where Muslim identity in the west is concerned, that moment is now. . . . singled out for particular interrogation in the west, Muslims have been asked to commit to patriotism, peace at home, war abroad, modernity, secularism, integration, anti-sexism, anti-homophobia, tolerance and monogamy . . . . But Muslims are not being asked to sign up to them because they are good or bad in themselves, but as a pre-condition for belonging in the west at all. . . . No other established community is having its right to live here challenged in a comparable way.<sup>23</sup>

What is most revealing in the contrast between Davis's and Younge's comments is the way in which the former adopts a 'normative grammar' of race, while the latter points to its constructedness and malleability. That is, while the former views race as an involuntary category of birth ('. . . race is not something that someone chooses. It is who they are—it is their very person'), the latter sees it as an externally imposed narrative that contributes to an identity that 'at specific moments . . . may also choose us'. On the one hand, any formulation needs to enable sufficient agency to allow Muslims to self-define; on the other hand, the term 'Muslim' is used as a way of categorizing certain agents, and creating social formations and definitions over which agents do not have control. As such, legal definitions that reify race cannot take this complexity into account, and the difference between these two positions neatly captures the rationale for legislative redress protecting involuntary identities, while simultaneously indicating why Muslims have historically been omitted from such protection.

### **Muslims and anti-discrimination legislation**

Anti-discrimination and equal opportunities legislation has taken a largely gradualist approach in Britain. It has used group-specific instruments to outlaw discrimination based on race and ethnicity, gender, disability, age, sexual orientation and so forth, while encouraging the monitoring of institutional under-representation among such groups, moderated through legal precedent and introduced sequentially according to the political climate of the day.<sup>24</sup> Simultaneously, case law has cumulatively established precedents

23 Gary Younge, 'We can choose our identity, but sometimes it also chooses us', *Guardian*, 21 January 2005.

24 Judith Squires offers a useful catalogue of the development of anti-discrimination legislation in Britain: 'The Labour governments of the 1970s introduced a range of equality laws designed to remedy group discrimination (in preparation for joining the

in the application of race relations legislation to prevent discrimination against some religious minorities, namely Sikhs and Jews,<sup>25</sup> but this has not been extended to Muslim minorities because they have not been recognized as an ethnic or racial grouping within the application of the law.

In a somewhat tautological fashion, the RRA conceives of racial and ethnic groups as follows: 'Racial groups are groups defined by racial grounds i.e. race, colour, nationality (including citizenship) or ethnic or national origins. All racial groups are protected from unlawful racial discrimination under the RRA.'<sup>26</sup> In its application the courts have tried to operationalize an understanding of ethnic origin that functions as a wider concept than race, and, in the case of *Mandla v. Dowell Lee* (1983), the House of Lords set out several such characteristics of ethnic groups. These included:

- (1) a long shared history, of which the group is conscious as distinguishing it from other groups ... (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance ... (3) either a common geographical origin, or descent from a small number of common ancestors ...<sup>27</sup>

The latter is one of the main criteria for identifying group membership, including 'perceived' group membership. These criteria emerged from Lord

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European Economic Community): The Equal Pay Act 1970, the Sex Discrimination Act 1975 (SDA), the Race Relations Act 1976 and the Fair Employment (Northern Ireland) Act 1976. Article 119 of the Treaty of Rome (signed by the UK in 1973) also established the principle of equal pay. The Equal Opportunities Commission (EOC) and Commission for Racial Equality (CRE) were established to uphold these laws. The Disability Discrimination Act was introduced in 1995 and the Disability Rights Commission established in 2000. The Race Relations (Amendment) Act 2000 amended the 1976 Act (fulfilling recommendation 11 of the Stephen Lawrence Inquiry report) and The Race Relations Act 1976 (Amendment) Regulations 2003 implements the EC Article 13 Race Directive' (Judith Squires, 'Equality and New Labour?', *Soundings: A Journal of Politics and Culture*, vol. 27, 2004, 75).

25 For Sikhs, see *Panesar v. Nestle Co. Ltd* [1980] IRLR 64; *Mandla v. Dowell Lee* [1983] 2 AC 548; *Singh v. British Rail Engineering Ltd* [1986] ICR 22; and *Dhanjal v. British Steel plc* [1994] unreported; for Jews, see *Seide v. Gillette Industries Ltd* [1980] IRLR 427; and *Morgan v. CSC & British Library* [1990] DCLD 6 19177/89.

26 See 'Racial group' in the Commission for Racial Equality's 'Glossary', available on the CRE website at [www.cre.gov.uk/duty/grr/glossary.html#r](http://www.cre.gov.uk/duty/grr/glossary.html#r) (viewed 12 September 2007).

27 *Mandla v. Dowell Lee* [1983], House of Lords transcript available at [www.hrcr.org/safrica/equality/Mandla\\_DowellLee.htm](http://www.hrcr.org/safrica/equality/Mandla_DowellLee.htm) (viewed 12 September 2007). There were also four other, arguably more minor, criteria, including: '(4) a common language, not necessarily peculiar to the group (5) a common literature peculiar to the group (6) a common religion different from that of neighbouring groups or from the general community surrounding it (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups.'

Fraser's ruling in favour of Sikh inclusion under the RRA, which, though well known, is worth quoting at length:

It is obvious that Sikhs, like anyone else, 'can' refrain from wearing a turban . . . The word 'can' is used with many shades of meaning. In the context of s 1(1)(b)(i) of the 1976 Act it must, in my opinion, have been intended by Parliament to be read not as meaning 'can physically', so as to indicate a theoretical possibility, but as meaning 'can in practice' or 'can consistently with the customs and cultural conditions of the racial group'. . . . Accordingly I am of opinion that the 'no turban' rule was not one with which the appellant could, in the relevant sense, comply. . . . I recognize that 'ethnic' conveys a flavour of race but it cannot . . . have been used in the 1976 Act as in a strict racial or biological sense. For one thing it would be absurd to assume that Parliament can have intended that membership of a particular racial group should depend on scientific proof that a person possessed the relevant distinctive biological characteristics . . . it is clear that parliament must have used the word in some more popular sense.<sup>28</sup>

With his emphasis on the use of race in some 'popular sense', Fraser's adjudication led the *Liverpool Law Review* to conclude that 'a major consequence of the judgment is the protection which will be afforded to other groups. For example, Muslims will be a racial group for the purposes of the Act.'<sup>29</sup> That this prediction has not been realized in the twenty-five years since points to a number of factors in the conception of racism *vis-à-vis* Muslims that have informed an active denial to legislative recourse, making 'it clear that direct discrimination against Muslims (as opposed to, say, Pakistanis) is not unlawful'.<sup>30</sup>

For example, in the case of *Nyazi v. Ryman's Ltd*,<sup>31</sup> the industrial tribunal settled in favour of the employer after it held that 'Muslims include people of many nations and colours, who speak many languages and whose only common denominator is religion and religious culture'.<sup>32</sup> The decisive rationale common to this and further rulings is that Muslim heterogeneity disqualifies them from inclusion as an ethnic or racial

28 Ibid.

29 M. Jefferson, 'Turban or not turban', *Liverpool Law Review*, vol. 1, no. 5, 1983, 75–90 (83).

30 Modood, *Multicultural Politics*, 215n2. It is worth noting that, while the EU Directive on Employment Regulations (Religion or Belief) contained within Article 13 of the Treaty of Amsterdam now provides some protection for direct discrimination in work, it remains woefully short of the broad protections across all sectors of society provided by the RRA. It also lacks a statutory positive duty and is further weakened by the fact that there is no legal aid available to those seeking redress. In all these ways, it is thoroughly inferior to the RRA.

31 Employment Appeal Tribunal, 10 May 1988 [unreported].

32 Quoted in Kuljeet S. Dobe and Sukhwinder S. Chhokar, 'Muslims, ethnicity and the law', *International Journal of Discrimination and the Law*, vol. 4, 2000, 369–86 (382).

grouping.<sup>33</sup> This means that the very helpful comments of Lord Fraser, with regards to the 'popular' meaning of race, do not apply. Neither does the idea that an ethnic grouping can be based on attributes of conscious value. Most importantly, it denies the possibility that a racial group might emerge in a social and political context in which it is objectified and degraded through signifying and material practices that interact in the course of the racialization process.<sup>34</sup> This 'normative grammar' of race forecloses deviations that emerge out of social contingencies, and serves to present a hierarchy of involuntary racial identities as though it were some kind of natural order.

At a time when Muslims are subject to heightened public attention and suspicion,<sup>35</sup> such rulings arguably subvert the original purpose of the RRA. This is acutely apparent in the manner in which the definition of racial groups operating in civil anti-discrimination legislation has also been adopted in criminal law through the Public Order Act (POA 1986). The POA introduces the criminal offence of incitement to racial hatred,<sup>36</sup> which outlaws the use of threatening, abusive or insulting words or behaviour with the intention of stirring up racial hatred. Simultaneously, it means that

neither the Race Relations Act (1976) nor the Public Order Act (1986) can be invoked to prevent discrimination or hate speech directed specifically at Muslims. . . . The irony is two-fold in that not only is a large proportion of the 'black' community conferred limited protection by statutes whose express purpose was to provide protection for them, but also they are denied this protection when a crucial part of their identity is the basis of the discrimination (or, as the case may be, incitement).<sup>37</sup>

The inadequacy of the ways in which ethnic and racial groupings are conceived in the British legal context is becoming increasingly apparent.

## Race, religion and incitement

Binary distinctions between race and religion particularly flounder when we recognize that many British Muslims report a higher level of discrimination

33 See *CRE v. Precision Engineering* [1991] COIT 4106/91 and *Malik v. Bertram Personnel Group* [1990] DCLD 7 4343/90.

34 Miles, *Racism*, 75.

35 Meer, "'Get off your knees!"; Meer and Noorani, 'A comparison of anti-Semitism and anti-Muslim sentiment in Britain'.

36 See Section 18 of the POA 1986. Though it is worth noting that it was not introduced to protect minorities *per se* but to maintain public order, to the extent that the offence of incitement to racial hatred 'should continue to be based on considerations of Public Order' (Home Office and Scottish Office, *Review of Public Order Law*, Cmnd 9510 (London: HMSO 1985), para. 65).

37 Kuljeet Dobe, 'Muslims, ethnicity and the law', *Consilio Law Magazine*, 9 November 2000, 1-2.

and abuse when they appear 'conspicuously Muslim' than when they do not.<sup>38</sup> The increase in personal abuse and everyday racism since 9/11 and the London bombings, in which the perceived 'Islamic-ness' of the victims is the central reason for the abuse, regardless of the truth of this presumption (resulting in Sikhs and others with an 'Arab' appearance being attacked for 'looking like Bin Laden'),<sup>39</sup> suggests that racial and religious discrimination are much more interlinked than the current application of civil and criminal legislation allows. That is to say, a 'Muslim' appearance, whether or not the individual is in fact Muslim, can be a site of contempt, and a signifier for all things Muslim or Islamic. Racism therefore vilifies Muslims as its subjects, in addition to degrading Islamic civilization and heritage in the abstract. Yet existing provisions have meant that when a third party (or an entire group) has encouraged an attacker to assault a Muslim on a bus or train because they are wearing a *hijab*, beard, tunic or turban, or walking from a mosque, for example, they cannot be prosecuted in the same way that inciters of racial hatred can be. This stems from a blind spot in the Public Order Act in which only incitement to 'hatred against a group of persons defined by reference to colour, nationality (including citizenship) or ethnic or national origins' is covered.<sup>40</sup>

In the past, this has been played out with regard to the British National Party's (BNP) 2005 general election campaign, a campaign orchestrated to mobilize support against what the party described as 'the Muslim problem'. Similarly, when the London Borough of Merton asked the Crown Prosecution Service (CPS) to prosecute those engaged in anti-Muslim incitement, following the distribution of offensive and threatening material by a BNP member, they were refused on the grounds that Muslims were not a 'racial group' and therefore not covered by the POA 1986. This is despite the same BNP member pleading guilty to distributing similar material and inciting racial hatred against Jewish minorities in the same borough.<sup>41</sup> Indeed, 'the CRE has recounted how in May 2004 it failed to persuade the West Yorkshire police to prosecute the British National Party for distributing a leaflet headed "Islam: Intolerance, Slaughter, Looting, Arson, Molestation of Women"', in an area with existing community tensions.<sup>42</sup>

38 As testimonies to the Commission on British Muslims and Islamophobia (CBMI) bear witness; CBMI, *Islamophobia: Issues, Challenges and Actions* (Stoke on Trent and Sterling, VA: Trentham Books 2004).

39 See the Institute of Race Relations (IRR) news stories recording the 'backlash' against Muslims for seven weeks following 7 July 2005; the final article, 'The racist backlash goes on . . .', 25 August 2005 is available on the IRR website (with links to all previous stories in the series) at [www.irr.org.uk/2005/august/ha000021.html](http://www.irr.org.uk/2005/august/ha000021.html) (viewed 12 September 2007).

40 The definition of 'ethnicity' in Section 17 of the POA is the same one established in the application of RRA legislation.

41 Cf. *R v. DPP ex parte London Borough of Merton* CO/1319/1998.

42 Murad Qureshi, 'Why Britain needs a religious hatred law', *Morning Star*, 21 November 2005.

According to Kuljeet Dobe and Sukhwinder Chhokar, instances such as these ‘undermine even the limited rationale underlying the Public Order Act (1986) [to prevent the outbreak of social disorder]’. This is particularly evident in areas of Muslim concentration in which inciting hatred ‘not only increases crime motivated by the hatred of Muslims, but also of a general violence and disorder [*sic*]’.<sup>43</sup> Indeed, the illegality of the incitement of others to hatred of individuals because of their real or perceived membership of a religious group remains highly ambiguous, and the evidence must meet a disproportionately high threshold before prosecutions can be brought. It is to this issue that we now turn.

### Case study: incitement to religious hatred

After considerable debate, controversy and amendment to the original bill, a criminal offence of incitement to religious hatred was introduced via the Racial and Religious Hatred Act 2006. It came into force at the end of January 2007,<sup>44</sup> and the final wording states:

‘religious hatred’ means hatred against a group of persons defined by reference to religious belief or lack of religious belief. . . . A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.<sup>45</sup>

The government first attempted to introduce a stronger offence in Part 5 of the Anti-terrorism, Crime and Security Bill 2001 but was thwarted by the House of Lords. Another unsuccessful attempt was made in a 2002 private members’ Religious Offences Bill before the proposal was reintroduced in Section 119 and Schedule 10 of the Serious Organised Crime and Police Bill 2004. On each occasion enough opposition was encountered in the House of Lords that the offence was ultimately withdrawn in order to get the rest of the bill passed within the parliamentary session. Eventually, the Labour

43 Dobe and Chhokar, ‘Muslims, ethnicity and the law’, 373.

44 Though it was not adopted in Scotland. Following the findings of the Scottish Cross-Party Working Group on Religious Hatred, which reported that there existed enough provision in Scottish law, particularly in addressing sectarianism, to address incitement to religious hatred. In Section 5.04 it states: ‘Common law in Scotland already covers assaults and abusive, insulting or threatening behaviour. It also allows for religious hatred as an aggravating factor to such offences when considering sentence’; *Tackling Religious Hatred: Report of Cross-Party Working Group on Religious Hatred* (Edinburgh: Stationery Office 2002), available online at [www.scotland.gov.uk/Publications/2002/12/15892/14531](http://www.scotland.gov.uk/Publications/2002/12/15892/14531) (viewed 13 September 2007)

45 Racial and Religious Hatred Act (2006), Chapter 1, Section 29A and 29B, available online at [www.opsi.gov.uk/acts/acts2006/60001-b.htm#sch1](http://www.opsi.gov.uk/acts/acts2006/60001-b.htm#sch1) (viewed 13 September 2007).

Party included in its 2005 general election manifesto the commitment that 'it remains our firm and clear intention to give people of all faiths the same protection against incitement to hatred on the basis of their religion'.<sup>46</sup> As such the proposed bill was always going to have more support from those Labour MPs who supported the party election manifesto than from Labour dissenters.

Each attempt to create this new offence sought to modify the previously mentioned offence of incitement to racial hatred found in Part 111 of the Public Order Act 1986. This offence is based on the one previously adopted in Northern Ireland in the the Public Order (Northern Ireland) Order 1987 Part 111 that has now outlawed incitement to religious hatred for some years.<sup>47</sup> In October 2005 the Lords defeated the government again and modified the bill so as to make the proposed offence much weaker by applying only to 'threatening' words or behaviour, not 'threatening, abusive or insulting' words or behaviour. In addition, and while the original proposals would have applied to situations in which the defendant did not actually intend to stir up religious hatred, the changes meant that the offence would only apply if the prosecution could establish premeditation. When the bill was reintroduced in its original form in January 2006, it was defeated by a single vote following a House of Commons debate that was notable in the degree of misunderstanding it displayed, as is exemplified by the following comment:

[The] reason why some of us are troubled is that we remember when the clamour first arose for the protection of Islam as a religion, in the wake of publication of 'The Satanic Verses' when there were marches, book-burnings and demands for protection. The demand then was for a blasphemy law for Islam, and the demand now is for a blasphemy law for Islam.<sup>48</sup>

These are the words of Labour MP Diane Abbott, a once staunch ant-racist and long-time campaigner on race equality issues. Her incorrect confusion of two rationales (the protection of a belief system as opposed to protection for its adherents from *incitement* to hatred) sets the tone for a host of misconceived argumentation.

46 *The Labour Party 2005 Election Manifesto: The Future for Britain* (London: Labour Party 2005), 111.

47 A more robust instrument exists in the Republic of Ireland as the Prohibition of Incitement to Hatred Act 1989, which prohibits the stirring up of hatred 'against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation'; available on the British and Irish Legal Information Institute website at [www.bailii.org/ie/legis/num\\_act/1989/zza19y1989.1.html](http://www.bailii.org/ie/legis/num_act/1989/zza19y1989.1.html) (viewed 13 September 2007).

48 Hansard (HC), col. 681, 21 June 2005.

The strong opposition that met each incarnation of the bill included coalitions of satirists and liberals, conservatives and Christians, most notably the comedian Rowan Atkinson, the Liberal Democrat peer Lord Anthony Lester, the senior barrister David Pannick QC, the Conservative front bench and the former Archbishop of Canterbury Lord Carey. This unlikely alliance did not escape the notice of the commentator and liberal activist Joan Smith, who commented: 'for once I find myself on the same side as the right-wing columnist Melanie Phillips and Don Horrocks of the Evangelical Alliance!'<sup>49</sup>

Out of the objections that were raised there emerged at least three interdependent lines of argumentation, each in turn overlapping with other objections characterized by the *topoi* discussed in the sections below. There is a disproportionate, though not exclusive, focus here on journalistic commentary, which is taken to be an important barometer of public discourse.<sup>50</sup> This is particularly relevant because this part of the article explores some of the 'commonsense' arguments on race and religion *vis-à-vis* the proposed offence. It is important not to ignore public and media discourse on political topics for, as Adrian Favell and Tariq Modood have argued, academics and policymakers too often 'rely on the unchallenged reproduction of anecdotal facts usually taken from newspapers' that fail to do justice to the complexity of 'hard cases', and encourage a conflation between fact and fiction.<sup>51</sup> In making a broader point about the currency of media discourse, Teun van Dijk supported this view when he stated that 'speakers routinely refer to . . . newspapers as their source (and authority) of knowledge or opinions about ethnic minorities'.<sup>52</sup> Hence, as John Richardson has argued, 'social theories are (re)produced in the social worlds by the news media, influencing audience attitudes, values and beliefs, principally through their reinforcement'.<sup>53</sup>

### *'Race and religion are different phenomena'*

One of the key objections to the proposed legislation is captured in Rowan Atkinson's signature statement made throughout the bill's various incarnations: 'To criticise a person for their race is manifestly irrational and ridiculous but to criticise their religion, that is a right.'<sup>54</sup> This is because:

49 Smith, 'Why should I be jailed for attacking religion?'

50 Meer, "'Get off your knees!'"

51 Adrian Favell and Tariq Modood, 'The philosophy of multiculturalism: the theory and practice of normative political theory', in Alan Finlayson (ed.), *Contemporary Political Thought: A Reader and Guide* (Edinburgh: Edinburgh University Press 2003), 493.

52 Teun van Dijk, 1999, quoted in John E. Richardson, "'Now is the time to put an end to all this'": argumentative discourse theory and "letters to the editor"', *Discourse and Society*, vol. 12, no. 2, 2001, 143–68.

53 Richardson, "'Now is the time to put an end to all this'", 148.

54 Rowan Atkinson, quoted in 'Actor opposes new bill', *Liverpool Daily Post*, 7 December 2004.



There is an obvious difference between the behaviour of racist agitators ... and the activities of satirists and writers who may choose to make comedy or criticism of religious belief, practices or leaders, just as they do with politics. It is one of the reasons why we have free speech.<sup>55</sup>

Quite right, and there is very little to disagree with here. Yet the operating assumption is that it is satire and critique—as opposed to incitement to hatred—that would be prohibited by the proposed instruments. The possibility that those very same ‘racist agitators’ might use religion, as previously discussed, to incite racial hatred entirely escapes Atkinson. A cruder form of this argument is invoked by Joan Smith: ‘Race is a biological fact, and it is wrong to hate people because they belong to a particular ethnic group; religion is a set of ideas, voluntarily adopted, which may or may not be offensive to members of other faiths.’<sup>56</sup> The uncritical acceptance of racial biology and the conflation of ethnicity with race, as constituting members of a family of involuntary identities, are common assumptions, and are shared by the former Conservative MP and political sketchwriter Matthew Parris. He argues:

... with race relations, the intention is to protect individuals, not ideas, from attack. The difficulty here is that (broadly speaking) race defines a human group, rather than an idea, so racial attacks are almost by their very nature hateful towards individuals and therefore easily criminalised. Religion, however, is essentially an idea, not a group.<sup>57</sup>

The view that the legislation was outside of the racial equality tradition was most trenchantly put, however, by Polly Toynbee who reserved the ‘right’ to confront religious minorities on matters of faith because ‘race is something people cannot choose and it defines nothing about them as people. But beliefs are what people choose to identify with ... The two cannot be blurred into one—which is why the word Islamophobia is a nonsense.’<sup>58</sup> Toynbee’s position is based on the distinction between ‘voluntary’ and ‘involuntary’ identities elaborated earlier and, if we consider the following analogy, we can see why it is inherently unjust. Suppose, first, that a Jewish person could ‘pass’ for being non-Jewish; they should then, according to Toynbee’s logic, take up this option in circumstances in which they might be subject to discrimination on the grounds of their real or perceived ‘Jewishness’ so that they are (a) less offensive to others and (b) less

55 Rowan Atkinson, quoted in Maurice Chittenden, ‘Blackadder fights law that could catch out comedians’, *Sunday Times*, 5 December 2004.

56 Smith, ‘Why should I be jailed for attacking religion?’.

57 Matthew Parris, ‘Mockery, calumny and scorn: these are the weapons to fight zealots’, *The Times*, 11 December 2004.

58 Toynbee, ‘My right to offend a fool’.

offended by others. That is, if we argue that people's 'difference' is less deserving of protection if it is in anyway 'changeable', then we are advocating that those subject to discrimination or hostility should choose, where possible, to change their identity in order to avoid discrimination. This, of course, invites the tyranny of the majority and contravenes every liberal conception of individualism, freedom of conscience and expression that Toynbee wants to uphold. And yet such views are openly displayed in her discussion of Muslims, views that include her unrepentant statement that: 'I am an Islamophobe and proud of it.'<sup>59</sup>

### *'Legislation sought by extremists to limit free speech'*

The issue of freedom of expression was raised differently by the barrister Neil Addison in his complaint that 'extremists and fundamentalists will be the ones to use this law, rather than mainstream groups'. For example, 'if a small Muslim group decides to bring a case against a Christian church in England, then everyone who reads about the case will blame all Muslims for it. This kind of action would cause resentment, and divisiveness.'<sup>60</sup> On one level, this is a very reasonable concern for the welfare of an already resented minority. On another level, however, it contributes to the idea that

this new legislation is nothing to do with good race relations. It is solely based on the Government's eagerness to pander to Muslim fundamentalism, whose aggressive mentality treats even the mildest criticism as an outrage . . . No other religious group is demanding any change except the Muslims.<sup>61</sup>

Pandering to a Muslim exceptionality characterized by an aggressive mentality, as described by Leo McKinstry in the *Daily Express*, is offered as a further reason for the proposed legislation, one that transcends the race paradigm with which it 'is nothing to do'. This characterization is stretched further by Toby Young in the *Mail on Sunday* who, invoking the Rushdie Affair, presents the issue as another episode of a continuing narrative of 'fundamentalism':

They've been lobbying for a change in the law to make it illegal to attack the Islamic religion ever since Salmon Rushdie published *The Satanic Verses* in 1988. . . . When it comes to dealing with Muslim fundamentalists, the French, for once, have the right idea. Far from bending over backwards to accommodate these zealots, the French government has insisted that they embrace the secular

59 Polly Toynbee, 'In defence of Islamophobia', *Independent*, 23 October 1997.

60 Neil Addison, quoted in 'Beyond belief', *Lancashire Evening Post*, 22 November 2004.

61 Leo McKinstry, 'Don't sacrifice free speech to appease the Muslim fanatics', *Daily Express*, 22 September 2005.

nature of French society and, to that end, has banned the wearing of headscarves in state schools.<sup>62</sup>

This sort of discourse has been running continuously ever since, conflating issues of difference and exhibiting the 'white fantasy' of an innate right to intervene in and regulate the lives of ethnic Others.<sup>63</sup>

### *'Designed to placate angry Labour Muslims'*

These arguments ran parallel to those that questioned the motives of a government 'terrified of losing the Muslim vote as a result of the Iraq war'.<sup>64</sup> This may well have some truth in it, though it is important to recognize that the offence of incitement to religious hatred was first proposed in the Anti-terrorism, Crime and Security Bill 2001, before the Iraq war. Nevertheless, Michael Burleigh in the *Daily Telegraph* maintains that the proposed offence amounts to

a cynical attempt to claw back Muslim support for New Labour that has been squandered through the war in Iraq. . . . Those claiming to speak for the Muslim community have played to the traditional Left-wing imagination by conjuring up the myth of 'far-Right extremism'. In reality, evidence for 'Islamophobia'—as distinct from a justified fear of radical Islamist terrorism or a desire to protect our freedoms, institutions and values from those who hold them in contempt—is anecdotal and slight.<sup>65</sup>

Of course, recognizing the political context in which the offence was introduced does not undermine the original argument in the legislation's favour, its legitimacy or the continuing need for it. Indeed, the remaining discrepancy in the level of protection and scope for redress continues to inform Muslim complaints of inequality. Nevertheless, and following Toynbee, Burleigh dismisses Islamophobia as a myth and rationalizes hostility to Muslims on the grounds of self-preservation. He shares the former assessment with Boris Johnson, then editor of the *Spectator* and Conservative MP for Henley. Johnson cites the activist and writer Kenan Malik, who he describes as 'the excellent Asian-British journalist', in refuting that hostility to Muslims 'amounts to a climate of . . . Islamophobia'.<sup>66</sup>

62 Toby Young, 'What's so wrong with offending other people?', *Mail on Sunday*, 12 December 2004.

63 Ghassan Hage, *White Nation: Fantasies of White Supremacy in a Multicultural Society* (Annandale, New South Wales: Pluto Press 1998), 28.

64 McKinstry, 'Don't sacrifice free speech to appease the Muslim fanatics'.

65 Michael Burleigh, 'Religious hatred bill is being used to buy Muslim votes', *Daily Telegraph*, 9 December 2004.

66 Hansard (HC), cols 731–2, 21 June 2006.

The 'excellent Asian-British journalist' Johnson refers to, Kenan Malik, has previously argued that

the Islamic Human Rights Commission monitored just 344 Islamophobic attacks in the 12 months following 9/11—most of which were minor incidents like shoving or spitting. That's 344 too many—but it's hardly a climate of uncontrolled hostility towards Muslims. . . . It's not Islamophobia, but the perception that it blights Muslim lives, that creates anger and resentment. That's why it's dangerous to exaggerate the hatred of Muslims. Even more worrying is the way that the threat of Islamophobia is now being used to stifle criticism of Islam.<sup>67</sup>

Malik is not alone in holding this view and there are several problematic issues that arise in his analysis that may also be evident in other discussions.<sup>68</sup> For example, it is easy to complain that Muslims exaggerate Islamophobia without noting that they are no more likely to do so than others who might exaggerate colour-racism, antisemitism, sexism, ageism, homophobia or many other forms of discrimination. That is, his claim remains a political rather than a comparatively informed empirical one. Second, and more importantly, Malik limits Islamophobia to violent attacks and ignores its discursive character in prejudice, stereotyping, direct and indirect discrimination, exclusion from networks and so on, and the many non-physical ways in which discrimination operates. These are the very forms of discrimination that Britain's race relations architecture has developed historically to prevent and redress. Third, Malik draws on data gathered prior to the events of 7/7: according to the same source (the Islamic Human Rights Commission) and using the same indices, there were reported to be 200 Islamophobic incidents in the first two weeks following the bombings. These included sixty-five incidents of violent physical attacks and criminal damage, and one fatal stabbing in which the victim was accosted by attackers shouting 'Taliban'.<sup>69</sup>

Nevertheless, Johnson and Malik are supported by Simon Heffer of the *Daily Mail* who insists:

67 Kenan Malik, 'Are Muslims hated?', *30 Minutes*, broadcast on Channel 4, 8 January 2005, transcript available online at [www.kenanmalik.com/tv/c4\\_islamophobia.html](http://www.kenanmalik.com/tv/c4_islamophobia.html) (viewed 13 September 2007).

68 Christian Joppke, 'Limits of integration policy: Britain and her Muslims', paper presented at the conference 'Muslims and the state in the post-9/11 West', Middlebury College, Middlebury, VT, 20–1 April 2007; Randell Hansen, 'The Danish cartoon controversy: a defence of literal freedom', *International Migration*, vol. 44, no. 5, 2006, 7–16.

69 'Enormous upsurge in anti-Muslim backlash', Islamic Human Rights Commission press release, 22 July 2005.

The result of this politically correct desire to pander to one small section of society will be that everyone will have their freedoms constrained. Moreover—you can be sure that the law would not lead to the appearance of Muslim extremists in court for attacking the majority religion of Christianity. I cannot see why we should make their religion immune from our intellectual or humorous assault.<sup>70</sup>

Factually inaccurate, given the various prosecutions of Muslim radicals under existing legislation, Heffer's friend-we/enemy-they distinction operates on the understanding that Muslims do not form part of the greater British constituency that shares with 'the majority religion of Christianity' a stake in the national space. It is characteristic of a debate marked by a manifest misunderstanding of the issues, not least the idea that the proposed legislation sought to protect a religion from critique. At times displaying a complete failure to interrogate the socially contingent aspects of racism and identity, much of the commonsense argumentation does in fact display a much more malign characteristic in propagating the myth that Muslims have an enormous amount of influence and power.<sup>71</sup>

## Implications

This article has sought to provide the basis for distinguishing the right to practise Islam in accordance with religious beliefs from the way in which discrimination against Muslims picks out individuals on the basis of discernible characteristics. The latter may involve the attribution to those individuals of an alleged group tendency, or it may emphasize those features that are used to stigmatize or to reflect pejorative or negative assumptions based on his or her real or perceived membership of the group. These conceptual distinctions are critical, especially for the principled operation of anti-discrimination legislation. Literal and prescriptive accounts of Muslim identity do not satisfactorily explain the adoption of Muslim identities as an act of personal choice. Although they are not passive objects of racism, Muslim identities in contemporary Britain are not free of external pressures, objectification and racialization. This means that the *involuntary-race/voluntary-religion* distinction is empirically unsustainable and can only operate by denying the social contingencies of race and racism. This is exemplified in the case of the proposed legislation to establish the offence of incitement to religious hatred. Earlier anti-discrimination formulas have been instrumental in recognizing and protecting identities that are equally unstable, contested or seemingly

70 Simon Heffer, 'This really is beyond a joke!', *Daily Mail*, 11 December 2004.

71 For a historical comparison of this argumentation with that concerning Jewish minorities in Britain at the turn of the century, see Meer and Noorani, 'A comparison of anti-Semitism and anti-Muslim sentiment in Britain'.

dependent upon 'choice', such as categorizations of racial and ethnic minorities generally, including Jewish and Sikh identities. Constructed hierarchies of legitimate or illegitimate difference should not be mistaken as a 'natural order' of things, nor be used to deny Muslims all the protections previously afforded to other minorities.

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