Out of Sight, Out of Mind: The Role of the Body in Canada's Multicultural Religious Identity

by

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Abstract

"Out of Sight, Out of Mind: The Role of the Body in Canada's Multicultural Religious Identity" examines the role of the body in contemporary conflicts of religious dress in public spaces in Canada. Utilizing policies, policy proposals, and legal precedents that regulate the religious body, I argue the physical religious body resides in a liminal space between the inclusive ideals of multicultural policy and the exclusionary policies of an overtly secular public sphere. Particular definitions of secularism and liberalism shape the construction of public life and civic spaces, and these specific understandings produce public space that is seemingly inhospitable to certain embodied religious expressions. The religious body complicates the assumed separation of religion and state, which understands religion to be an element of private, not public life. I argue that policies which seek to limit the religious body in public or civic spaces work to create an "ideal" secular citizen.

Acknowledgements

I started my oral defense of this thesis by quoting John Donne, who famously wrote “no man is an island entirely of his own,” and joked that few people know that he wrote those words while finishing a thesis. While that was purely comedic conjecture on my part, it is fitting to begin with this sentiment again as there are many people who have contributed in their own ways to the process and eventual completion of this project. Thinking and writing are not solitary acts, and both have been greatly enriched by my teachers, mentors, and colleagues at the Universities of Winnipeg and Manitoba.

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Chapter 1

Multiculturalism in Canada

CONSTITUTION ACT, 1982

PART I
CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

GUARANTEE OF RIGHTS AND FREEDOMS

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

FUNDAMENTAL FREEDOMS

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;
(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(*c*) freedom of peaceful assembly; and
(*d*) freedom of association.[1]

1985: K.S. Bhinder challenges the Canadian National Railway policy that requires all employees to wear hard hats. As a Sikh man who wears a turban, Bhinder argues that the requirement that he remove his turban in order to wear a hard hat to comply with company policy is an affront to his religious freedom.[2] 2008: a Muslim woman known to the media only as N.S. is ordered to remove her face veil, worn for religious reasons during testimony in court. This decision is appealed all the way to the Supreme Court of Canada. A split decision on the

[1] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, http://laws-lois.justice.gc.ca/.

[2] *K.S. Bhinder v CN* [1985] 2 SCR 561, https://scc-csc.lexum.com/.

issue is rendered.[3] 2013: the Parti Québécois formally announces Bill 60, colloquially titled "The Québec Charter of Rights and Freedoms." The most controversial component of the bill requires employees of state institutions to remove all "conspicuous religious signs and symbols from their person."[4]

What is the role of the body in contemporary conflicts surrounding religious freedom in Canada? As the aforementioned examples illustrate, the physical religious body resides in a liminal space between the inclusive ideals of multicultural policy and the exclusionary policies of an overtly secular public sphere. Freedom of religion is a fundamental freedom protected by the *Canadian Charter of Rights and Freedoms* in section 2 (a).[5] In addition, the Canadian Charter ensures that religion cannot be used as a means of discrimination: "(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."[6] Though this provision does not necessarily provide equal status to all religious groups or religious institutions, it does ensure that religious affiliation is not a source of discrimination. As such, how does policy or precedent that restricts individual religious expression in specific spaces arise? Who gets to define what counts as "religion" and by extension "religious expression?" This thesis works to illuminate the ideological conditions necessary for such restrictive policy, and examines the role of the body in contemporary conflicts of freedom of religion in Canada. I

[3] *R. v. N.S.,* 2012 SCC 72, [2012] 3 S.C.R. 726, https://scc-csc.lexum.com/.

[4] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," *Québec National Assembly* 1st Reading November 7, 2013, 40th Legislature 1st Session, 2013, http://www.assnat.qc.ca/.

[5] *Canadian Charter of Rights and Freedoms*, s. 2 (a).

[6] Ibid., s. 15.

argue that the embodied nature of many religious practices make the liberal ideal of translation into "secular" or "neutral" language—an assumed requirement to enter the public sphere,[7] — impossible, as the body cannot be neutralized as such without stripping the embodied element of religious adherence. I contend that policies that place restrictions on the body have appeared in Canada, a multicultural liberal democracy, as a result of very specific understandings of the nature of the "secular" public sphere and the place of "religion" in modern society that operates from a continued binary opposition of "the secular" and "the religious."

The issue of visible religious difference arises in Canada, in part, due to the multicultural nature of Canadian society. In Canada multiculturalism is a sociological fact, a national ideology, as well as national policy.

> As a sociological fact, multiculturalism refers to the presence of people from diverse racial and ethnic backgrounds. Ideologically, multiculturalism consists of a relatively coherent set of ideas and ideals pertaining to the celebration of Canada's cultural diversity. At the policy level, multiculturalism refers to the management of diversity through formal initiatives in the federal, provincial, territorial and municipal domains.[8]

As Michael Dewing articulates above, multiculturalism is primarily a term used to denote national responses to "difference," where this response ranges from "celebration of" to "management of" difference. However the flexibility in the usage and meaning of multiculturalism is problematic in so far as certain elements of difference are celebrated, while

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[7] John Rawls, *Justice as Fairness* (Cambridge: Belknap Press, 2004). John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64, no. 3 (1997): 765-807, doi:10.2307/1600311. Craig Calhoun, "Secularism, Citizenship, and the Public Sphere," in *Rethinking Secularism*, eds. Craig Calhoun, Mark Juergensmeyer, and Jonathan VanAntwerpen (Oxford: Oxford University Press, 2011), 78.

[8] It is precisely this polyvalence of meanings that complicates the discourse of multiculturalism insofar as the sociological reality and government policy can arguably be at odds. Thus the two categories of multiculturalism—the sociological and the political—create an interesting situation in which one must ask if policy was put in place *as a response* to the multicultural social situation at hand, or if the multicultural social situation at hand was *made possible because* such policy was already in place. Michael Dewing, "Canadian Multiculturalism," *Background Papers* (Library of Parliament, Parliamentary Information and Research Service: Ottawa, 2013), 1, http://www.parl.gc.ca/.

others are "managed," though all responses, regardless of the attitude towards difference, fall under the category of a "multicultural response." The backdrop for the conflicts of embodied religion examined in this project is Canada's sociological reality of multiculturalism and subsequent multicultural policy. Therefore it is worthwhile to locate the term "multiculturalism" in its historical setting to track the progress and transformation of the normative meaning of the term. This is useful to understand what the concept of multiculturalism has accomplished in Canada in both the past and present, and to help clarify the social or political gain in employing this concept.

"Multiculturalism" entered public discourses in the late 1960's in both Australia and Canada s when both nations began to expand immigration policy to include racial or ethnic groups that had previously not been permitted access.[9] "Multiculturalism" was thus a term used to denote a particular response to racial and ethnic difference in both social practice and official policy. Pierre Anctil notes, "not until 1967 was a system introduced in Canada that selected immigrants based on their skills and aptitudes and did not, at least outwardly, take into account the national origin, colour, or religious beliefs for those aspiring to become Canadian."[10] "Multicultural" was, at the time, directly used in conjunction with "society" to articulate a new kind of sociopolitical reality in both nations: the previous racial qualifications for immigration were no longer the standard.[11] From the beginning of its usage, multiculturalism was a racialized concept. The term was not initially used to denote ethnic, cultural, or religious difference in a

[9] Ali Rattansi, *Multiculturalism: A Very Short Introduction* (Oxford: Oxford University Press, 2011), 7.

[10] Pierre Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," in *Religion, Culture and the State*, eds. Howard Adelman and Pierre Anctil (Toronto: University of Toronto Press, 2011), 19.

[11] Rattansi, *Multiculturalism: A Very Short Introduction,* 8.

given society or nation per se, as the focus was race and the integration or assimilation of racial difference into any given 'multicultural' society.

The term's use shifted in the 1980s and 1990s and "multiculturalism" was understood globally to refer to "policies by central states and local authorities that have been put in place to manage and govern the new multi-ethnicity created by non-white immigrant populations."[12] Simultaneously, the term "multicultural" was also used "descriptively to refer to societies that are multi-*ethnic*."[13] This broadened the definition of "multicultural" from just signifying different racial groups in one geographic era to include difference in ethnicity and culture as well. "Multicultural" and "multiculturalism" are, however, not one and the same as the descriptive "multicultural" is not necessarily legislated or controlled, but rather a facet of social life; while "multiculturalism" is the legislated political response to the facet of social life that comes from multiple racial, ethnic and cultural populations in a shared space. This is an important distinction to make at the outset because the social reality of, and official policy of "multiculturalism" do not always align. The reality of difference does not require legislated support of that difference, but legislation promoting and encouraging cooperation between diverse groups may enhance the social reality for minority groups. Will Kymlicka argues even when a country is "multicultural," and thus has legislated multicultural policy in place, there are still varying degrees of "multiculturalism" that address minority-majority relations.[14] Multicultural policies incorporate two basic principles: first, that admission criteria to the

[12] Rattansi, *Multiculturalism: A Very Short Introduction,* 12.

[13] Ibid. (emphasis mine).

[14] Quoted in Rattansi, *Multiculturalism: A Very Short Introduction,* 15-6. However, it should be noted that while Kymlicka sets up this framework for conceptualizing multiculturalism, he has also argued that "the state unavoidably promotes certain cultural identities, and thereby disadvantages others" regardless of the level of multicultural policy in place at the legislative level. Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), 108.

country is race-neutral and second; that in their new country immigrants can retain and express ethnic identities. From these two basic principles, Kymlicka and his co-authors derive eight multiculturalist policies of which any combination can be adopted and implemented.[15] Adopting six of the eight policies indicates a "strong" adoption of multiculturalism. Canada and Australia are the only two countries to have been given a "strong" grade by Kymlicka et al.[16] In Kymlicka et al.'s construction policy four ties the issue of dress to multiculturalism, as it states: "Exemptions from dress codes, such as allowing Sikhs to wear turbans instead of helmets or school caps, and exemptions from laws banning Sunday tradition, and so forth." The exemption from dress code is a one key element of multicultural society. Thus the imposition of "secular dress codes," such as Bill 60, could be argued to be a violation of this multicultural policy, and ultimately at odds with the ideals of multiculturalism.

In Canada federal multicultural policy is argued to have evolved through three developmental phases: "the incipient stage (pre-1971), the formative period (1971–1981), and institutionalization (1982 to the present)."[17] As Canada was the first country to announce official multicultural policy in 1971, "The Canadian Multiculturalism Policy," multiculturalism quickly

[15] The eight principles are as follows: 1) Constitution, legislative, or parliamentary affirmation of multiculturalism at the central and/or regional and municipal levels. 2) The adoption of multiculturalism in the school curriculum. 3) The inclusion of ethnic minority representation and sensitivity in the mandate of public media or media licensing. 4) Exemptions from dress codes, such as allowing Sikhs to wear turbans instead of helmets or school caps, and exemptions from laws banning Sunday tradition, and so forth. 5) Allowing dual citizenship. 6) The funding of ethnic group organizations to support cultural activities. 7) The funding of bilingual education or mother-tongue instruction. 8) Affirmative action for disadvantaged groups. Keith Banting, Will Kymlicka, Richard Johnston and Stuart Soroka,"Do Multiculturalism Policies Erode the Welfare State? An Empirical Analysis," in *Multiculturalism and the Welfare State: Recognition and Redistribution in Advanced Democracies,* eds. Keith Banting and Will Kymlicka (Oxford: Oxford University Press, 2006), 56-7.

[16] Banting, Kymlicka, Johnston and Soroka,"Do Multiculturalism Policies Erode the Welfare State? An Empirical Analysis," 58.

[17] Dewing, "Canadian Multiculturalism," 2.

became a constitutive element of Canadian society and Canada's global identity.[18] In adopting such policy, "Canada affirmed the value and dignity of all Canadian citizens regardless of their racial or ethnic origins, their language, or their religious affiliation."[19] While this was only official policy, and not yet law, the particular elements of life that were protected under the umbrella of multiculturalism were not just race or ethnicity, as differences in "language and religious affiliation" were affirmed under this policy. In 1988 this commitment to diversity in Canadian society was passed into law as the *Canadian Multiculturalism Act.*[20] Though the Act itself does not reference religion, the preamble states:

> AND WHEREAS the Government of Canada recognizes the diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada.[21]

This statement, along with the provision of religious freedom, freedom of expression and conscious outlined in the *Canadian Charter of Rights and Freedoms*, is integral to understanding the significance of the conflicts of religion in Canada. *The Canadian Multiculturalism Act's* preamble sets religion as something that is a) a fundamental characteristic of Canadian society and b) something that will be "diverse." Further, religion is mentioned three times in the preamble as an important characteristic of Canadian society. Thus one can argue that in accordance with the preamble, one can expect religion to manifest in a plethora of ways in

[18] While this is the first instance of official multicultural policy, religious toleration in Canada dates back to 1760 in the "British Articles of Capitulation and the Fourth Article of the Definitive Treaty of Peace." Richard Day, *Multiculturalism and the History of Canadian Diversity* (Toronto: Toronto University Press, 2000), 106.

[19] Citizen and Immigration Canada, "Canadian Multiculturalism: An Inclusive Citizenship," (Government of Canada, October 19, 2012), http://www.cic.gc.ca/.

[20] Dewing, "Canadian Multiculturalism," 2-5.

[21] *Canadian Multiculturalism Act,* RSC 1985, c 24 (4th Supp), http://laws-lois.justice.gc.ca/.

Canadian society, but moreover that these diverse manifestations are *fundamental* to the character of Canadian society.

The Canadian Multiculturalism Act establishes "multiculturalism" as an institutionalized practice in Canada. The government thus becomes the guarantor of what fits under the umbrella of "multi" and which elements of diverse cultures are to be supported and encouraged.[22] Therefore, dissemination of such discourses as a point of national pride works not only to bind together groups with potentially incompatible worldviews, but moreover ensures that the government maintains control of difference within its borders. It is then useful to ask: difference according to whose criteria and for what purposes?

If we accept the argument that the modern subject "finds its political home in the notion of citizenship, its economic home in the notion of consumerism, and its kinship home in the notion of race," and that these are thus the sites where the modern individual is "continually recreated," then multiculturalism, where present, becomes an integral component to the creation of identity as it directly influences two of the three aforementioned sites: politics and kinship.[23] Moreover, if the state is involved in institutionalizing multiculturalism, the state becomes the central force in the creation of individuals. Here we can see Michel Foucault's concept of *governmentalité* at play where "certain types of subjects and specific types of social relations"

[22] Winifred Sullivan has pointed out "the government itself defines the realm in which religious freedom is allowed to operate, making that freedom paradoxically subject to the edict of the state." Here we can find similarities with the claims of what elements of culture are permissible, and where and when discussing the concept of legislated multiculturalism. Quoted in William Arnal and Russell McCutcheon, *The Sacred is the Profane: The Political Nature of "Religion*" (Oxford: Oxford University Press, 2012), 109.

[23] Arnal and McCutcheon, *The Sacred is the Profane*, 15. The ramifications of multiculturalism on the economy while not discussed at length here is an avenue for future research as religious attire, ritual, and practice can be bought and sold in a multiplicity of sites.

are permissible, encouraged and created through institutional force.[24] One can begin to deduce the dynamics of power that are present at every slight variation of the term, as it is only within a discourse of power that "integration" or "assimilation" are made possible because it is allowed (and perhaps encouraged) by those in positions of political power.[25]

There are many social and political reasons to support and sustain the discourse of "multiculturalism" in Canada. A central feature of the motivation, support, and dissemination of the ideology of multiculturalism resides in maintaining power and control. For the state, supporting "difference" means that it still controls what exactly that "difference" entails as it has the power to both creates and measure "difference." With a concept like multiculturalism that has so many facets, power is crucial. To support racial, or ethnic difference is potentially distinct from supporting *religious* difference especially if religion is conceptualized, as it often is in modernity, as a private, internalized, or "individuated interest."[26] The state has the appearance of supporting a liberal society in which differences are celebrated, but it is primarily specific manifestations of "difference," that work in the state's favor, that are recognized as constitutive elements of multiculturalism, and thus the elements of social life that should be protected and celebrated. For instance, language (beyond official policies of bilingualism) is not a primary feature of cultural or ethnic diversity that is protected in a multicultural society. For the state, language is necessary tool to maintain control. This is to say that the state must conduct business in an official language. The implication of this for official multicultural policy is that language beyond French and English cannot be a primary feature of difference that is supported and

[24] Arnal and McCutcheon, *The Sacred is the Profane*, 15.

[25] While the term has a polyvalent meaning in contemporary usage, it is also not uniformly received. In contemporary Canadian society there are those who support multicultural policy as a defining feature of Canadian identity, while others argue that it is one element that is "destroying the country," Phil Ryan, *Multiculti*phobia (Toronto: University of Toronto Press, 2010), 5-6.

[26] Arnal and McCutcheon, *The Sacred is the Profane*, 144, 60.

protected through official legislation. Thus, other elements of social life take primacy in the determination of official multicultural policy. However, in states where there is more than one official language, language becomes a source of tension.[27] This tension is apparent in Canada where both English and French are official languages, but the majority of national state business occurs in English. In Québec, however, the majority of provincial business occurs in French, unlike the majority of other provinces that conduct their provincial business predominantly in English. Language is a key feature of policies of interculturalism, and as such, the move in Québec to a model of interculturalism rather than multiculturalism marks a critical difference in the aspects of social life that are key in Queébec. Québec's iteration of interculturalism is defined by Gerard Bouchard and Charles Taylor as follows:

> a) institutes French as the common language of intercultural relations; b) cultivates a pluralistic orientation that is highly sensitive to the protection of rights; c) preserves the creative tension between diversity and the continuity of the French-speaking core and the social link; d) places special emphasis on integration; and e) advocates interaction.[28]

As will be discussed below in Chapter Three, this distinction in Québec's approach to difference stems both from Québec's history in Canada and its distinct linguistic and cultural heritage that set it apart from the majority of English-speaking provinces. In Québec, "interculturalism acknowledges the pluralist character of the province while encouraging *convergence* with the French Canadian majority, which remains the frame of reference in delineating the symbolic boundaries of citizenship in the province."[29]

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[27] Rogers Brubaker, "Language, Religion and the Politics of Difference," *Nations and Nationalism* 19 no. 1 (2013): 1–20, doi:10.1111/j.1469-8129.2012.00562.x.

[28] Gérard Bouchard and Charles Taylor, *Building the Future: A Time for Reconciliation, Abridged Report* (Québec City: Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles, 2008), 42.

[29] Jean-François Dupré, "Intercultural Citizenship, Civic Nationalism, and Nation Building in Québec: From Common Public Language to *Laïcité*," *Studies in Ethnicity and Nationalism* 12 (2012), 228, doi:10.1111/j.1754-9469.2011.01132.x.

The kinds of difference that are protected and supported under multicultural policy are decided by the state. One ramification of multicultural policy is that it sells the illusion of freedom to citizens. Arnal and McCutcheon posit:

> The state as conceived by modernity serves the purpose of creating a framework in which the *individuals* who are imagined to constitute the state (i.e. citizens) are best poised to pursue and create *their own* meanings to be free from the aggression of others so that they may seek and realize whatever it is they may regard to be their own particular selfish self interest… liberalism *par excellence*.[30]

Therefore the state that articulates a multicultural attitude towards its citizens through both ideology and policy embodies the "liberal state" that allows the individual "freedom" to act as she wishes within the constraints of the socio-legal framework that the state enforces. However, the state does not *require* citizens to embody or enact any specific or particular ideological system (at least theoretically not *overtly* or *coercively* in a liberal democracy[31]), save for the ideals of the liberal democratic state (i.e. freedom for all) as this particular form of secular state "deliberately dissociates itself from certain aspects of social identity," notably that of religious identity.[32]

The state also has practical motivations for supporting the discourse of multiculturalism. The state that imbues multicultural principles arguably does so in an effort to create some element of "universal" or national cohesion that can translate to national identity. National identity is often discussed in terms of "core values," which describe what it is that defines the uniqueness of "who we are as a nation."[33] If practical interests motivate the act of differentiating, then it is these same practical interests that motivate the state to distinguish itself as unique

[30] Arnal and McCutcheon, *The Sacred is the Profane*, 59.

[31] Bill 60 troubles this, however, as the state mandates certain practices *not* be allowed in certain spaces in this proposed policy.

[32] Arnal and McCutcheon, *The Sacred is the Profane*, 110.

[33] Rattansi, *Multiculturalism: A Very Short Introduction,* 120.

through its citizens.[34] However, a distinct articulation of nationhood is theoretically beneficial to both state and citizen, as the nation provides a source of collective identity that allows space for individuated particularities. The state requires citizens to identify as citizens; nationalism works to motivate citizens to identify as part of the whole, even though they are ethnically, racially, culturally or religiously individuated it is their political affiliation that unifies them.[35]

The Canadian Charter of Rights and Freedoms, The Multiculturalism Act, and *The Canadian Citizenship Act* provide the basis for one's rights as a citizen in Canada. Moreover, these laws enumerate the right of Canadians to the freedom of religious expression and, further, that diversity in this religious expression is fundamental to Canadian society. This right to religious freedom extends to all that make Canada their home: "6. A citizen, whether or not born in Canada, is entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities to which a person who is a citizen under paragraph 3(1)(*a*)[36] is entitled or subject and has a like status to that of such person."[37] Any conflict of religion can ultimately be measured against the legal status of religion in the *Canadian Charter of Rights and Freedoms*. However, the notwithstanding clause in the *Charter* (which state that "33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision

[34] Arnal and McCutcheon, *The Sacred is the Profane*, 115.

[35] Arnal and McCutcheon are quite critical of the idea of citizenship, however, arguing that "just because we find people to self identify as citizens all over the world does not mean that there is a necessary, evolutionary, competent basis to citizenship for the nation states." Further "the very precise mode of social membership signaled by the concept of citizen is only as recent as the rise of the nation state, which is one of the many ways in which human beings have organized social life." Ibid., 98.

[36] 3. (1) which reads: "Subject to this Act, a person is a citizen if (*a*) the person was born in Canada after February 14, 1977."

[37] *Citizenship Act* (R.S.C., 1985, c. C-29), http://laws-lois.justice.gc.ca/.

included in section 2 or sections 7 to 15"[38]) ultimately legally allows one's freedom of religion to be overturned, should Parliament or provincial legislature find just cause for doing so.[39] This provision in the *Charter* has yet to be used to limit religious freedom. However, during her provincial campaign in 2014, the then-leader of the Parti Québécois Pauline Marois stated that she would invoke the notwithstanding clause to protect the restrictions on religious dress proposed in Bill 60 were she elected.[40] In order to invoke the notwithstanding clause, Kathleen Mahoney, a law professor at the University of Calgary said, "They [the Parti Québécois] are going to have to expressly say that they are overriding freedom of expression, freedom of religion and equality rights. It acts, in a way, to force the provincial government to admit exactly what they are doing, so they can no longer deny that religious rights are being violated."[41] Though it has not been used to this effect, the notwithstanding clause is an important element of Canadian legislation to note as there is the possibility to legally restrict religious freedom in Canada. Religion is presented in official Canadian legislation as a constitutive element of Canadian society, however, the reality for religious individuals, especially those who embody their religious commitment through visible signs and symbols, may tell a different story.

The history of multiculturalism in Canada indicates a progression from understanding diverse society only in terms of race to a more nuanced understanding of cultural, ethnic, religious, as well as racial difference. Gary Miedema argues that in Canada public religion is

[38] *Canadian Charter of Rights and Freedoms*.

[39] The notwithstanding clause can be used to override any fundamental freedom listed in section 2. David Johansen, Philip Rosen, "The Notwithstanding Clause," *Background Papers* (Library of Parliament, Parliamentary Information and Research Service: Ottawa, 2008, Reviewed 2012), 1, http://www.parl.gc.ca/.

[40] Rhéal Séguin and Daniel LeBlanc, "PQ vows to use Charter protection for religious ban," *The Globe and Mail*, March 31 2014, http://www.theglobeandmail.com/. See also CBC News, "Notwithstanding clause would be used to pass secular charter," *CBC News*, March 31, 2014, http://www.cbc.ca/.

[41] Séguin and LeBlanc, "PQ vows to use Charter protection for religious ban."

diversifying, not disappearing, and I would argue the institutional and social support of multiculturalism in Canada is a contributing factor.[42] If "difference" is a key component to Canadian culture, then the multiplicity of ways religiosity manifests itself ought to fit under the multicultural umbrella. However as this thesis works to establish, though religious pluralism is supported both legally and ideologically in Canada, the response to religious pluralism in practice is perhaps more nuanced.

Brief Outline of Chapters

Having outlined the legal backdrop against which these conflicts of religious dress arise, I would like to provide a short outline of the subsequent chapters and how they aid in examining conflicts of embodied religion in Canada. The second chapter, "Patterns in Policy and Procedures," is a close reading of a selection of policies, policy proposals, and legal precedents that regulate the religious body at both the provincial and federal levels. Provincial and federal legislative records were surveyed, identifying policy or proposed policy in which specific attire is either required or prohibited in public contexts.[43] The analysis provided outlines particular elements that are deemed unacceptable or requisite, and whether or not these regulations apply to specific situations or circumstances.[44] This data set forms the basis for subsequent conclusions about the role of the body in conflicts over religion in the public sphere in Canada. Legislation that fits the criteria outlined above, at the time of submission of this thesis, has been proposed in Québec, as well as at the Federal level. In Québec, a progression of bills have been proposed

[42] Gary R. Miedema, *For Canada's Stake: Public Religion, Centennial Celebrations, And the Re-making of Canada in the 1960s* (Montreal: McGill-Queen's University Press, 2005), 4.

[43] Medical policy is excluded from examination, as the space allotted in this project does not allow for a systematic analysis of all potential areas where religion and public policy interact.

[44] When rationale for such policy is provided it is also included in the analysis.

which seek to regulate where and what can be worn to varying degrees, culminating with the proposal of Bill 60 in late 2013. By far the most restrictive, Bill 60 proposed that government employees would be prohibited from wearing "conspicuous religious symbols" and released an infographic depicting what would be im/permissible. The bill's full title, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests" provides the rationale for such an amendment to the *Québec Charter of Human Rights and Freedoms*: the removal of assumed religious symbols from government employees would align with the values of Québec, ensure religious neutrality, and promote gender equality.

Another key example examined in this chapter is the niqab ban during citizenship ceremonies implemented in late 2011 and upheld until February 2015.[45] The rationale for such a policy, provided by the Federal Immigration Minister at the time, Jason Kenney, was twofold: first, the niqab was a cultural tradition, and second, it was said to infringe on women's rights.[46]

This chapter provides a detailed reading of documented attempts to regulate religious dress, and establishes that there are policies that sought to, or that currently, place restrictions on the body. These restrictions typically prohibit attire that is defined as religious and primarily only impose this restriction in civic contexts.[47] This chapter follows established methods in critical

[45] Though the policy has been overturned, this decision has been challenged by the current Federal government, which is currently tabling legislation to ban face coverings at citizenship ceremonies. Janyce McGregor, "Niqab ban returns as Conservative bill planned for Parliament's final days," *CBC New*s, June 10, 2015, http://www.cbc.ca/. See also Terry Milewski, "Turbans OK at security checks, but not niqabs at citizenship oath: Tim Uppal," *CBC News,* June 19, 2015, http://www.cbc.ca/.

[46] Laura Payton, "Face veils banned for citizenship oaths," *CBC News,* December 12, 2011, http://www.cbc.ca/. However, this ban was successfully challenged by Ontario resident Zunera Ishaq (2014-15) and this challenge and subsequent response by the Federal government will be part of the analysis of this policy.

[47] In the examples examined in this chapter, religious attire is only banned within the context of government-related ceremonies or practices, services, or employment.

discourse analysis where the objective is to "address practical political and social concerns"[48] to create a specific data set for analysis.

Chapter Three, "Understanding the Foundations: Liberalism & Secularism in Canada," addresses some of the ideological structures that produce the regulatory contexts outlined in Chapter Two. I argue that particular definitions of secularism and liberalism shape the construction of public life and civic spaces in the case studies examined, and that it is these specific understandings that produce public spaces that are seemingly inhospitable to certain kinds of religious expression. Liberalism is understood in terms of a particular approach to negative freedom, which emphasizes "freedom from" religion, according to which public, or civic space, must be free from religion in order for it to be an unobstructed, liberal space.[49] Similarly, secularism is narrowly defined in terms of a secular/religious dyad, a definition that necessitates the removal of religion from public life if the public is to maintain its secular structure. In such conceptions, however, secularism is erroneously understood as oppositional to religion, implying a secular society must be free of any kind of religious intrusion.[50] I demonstrate that this understanding of secularism comes from the modern prioritization of the strict separation of church and state.[51] This chapter works with modern theories of secularism,

[48] Alison Lee and Emi Otsuji, "Critical Discourse and the Problem of Methodology," in *Critical Discourse Analysis: An Interdisciplinary Perspective*, eds. Thao Lê, Quynh Lê and Megan Short (New York: Nova Science Publishers, 2009), 66-69.

[49] Isaiah Berlin, *Four Essays on Liberty* (London: Oxford University Press 1969).

[50] The "subtraction theory of secularism" briefly, argues the rise of science in modern society necessitates the subtraction of religion from society. Though widely shown to be an unsubstantial account of modern society, the subtraction theory is still the normative understanding of secularism tends towards. Charles Taylor, *A Secular Age* (Cambridge: Belknap Press, 2007).

[51] Jonathan Fox, "Separation of Religion and State and Secularism in Theory and in Practice," *Religion, State and Society* 39, no. 4 (2011): 384-401, doi:10.1080/09637494.2011.621675. Roger O'Toole, "Religion in Canada: Its Development and Contemporary Situation," in *Religion and Canadian Society: Traditions, Transitions, and Innovations,* ed. Lori Beaman (Toronto: Canadian Scholars' Press, 2006), 7-

primarily utilizing the works of Talal Asad, Craig Calhoun, Jose Casanova, and Charles Taylor to problematize this simple subtraction theory of secular society, which I argue provides the conditions necessary for policies like Bill 60 to come to fruition in a liberal democratic society.

As many of the regulatory contexts produced by legislation or precedent appear in Québec, this chapter also briefly outlines the history of religion in Québec, specifically the significant role the Catholic Church played in Québec public life and political structure up until the early 1960s. I contend that part of the current aversion to public displays of religion in certain areas of Québec is a result of this historical relationship which motivates the drive by various political parties in Québec to make the state and all state services as "secular" as possible.[52]

Chapter Four, "Embodiment, Identity and the State," contributes to the work of the place of the body in theories of the public sphere. I argue that the religious body complicates the assumed separation of religion and state, which understands religion to be an element of private, not public life. I also argue that policies which seek to limit the religious body in public or civic spaces work to create an "ideal" secular citizen. The legislative examples examined here are notable because the issue that arises from these conflicts is not just the place of religion in the public sphere, but specifically embodied religion in the public sphere. Since tension is located in publicly embodied religion, the physical body adorned with "religious" symbols is the site where secular narratives are contested.[53] However, it is this same individual body that is free and

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21. *Rethinking Church, State, and Modernity: Canada between Europe and America*, edited by David Lyon, and Marguerite Van Die (Toronto: University of Toronto Press, 2000).

[52] Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," 30.

[53] Kyle Conway, "Quebec's Bill 94: What's 'Reasonable'? What's 'Accommodation'? And What's the Meaning of the Muslim Veil?" *American Review of Canadian Studies* 42, no. 2 (June 2012): 195–209, doi:10.1080/02722011.2012.679150. Meena Sharify-Funk, "Governing the Face Veil: Quebec's Bill 94 and the Transnational Politics of Women's Identity," *International Journal of Canadian Studies / Revue internationale d'études canadiennes* 43 (2011): 135- 163, doi:10.7202/1009458ar.

liberated to be adorned as the agent enacts rights that a liberal society, like Canada, protects. Utilizing conflicts of embodied religion, this chapter problematizes the assumed separation of life into public and private spheres, in which the public sphere is understood to be secular, and, *post hoc ergo propter hoc,* religion must be relegated to the private sphere.

The concluding chapter, "Freedom of Religion and the Politics of Fear," brings together the concepts outlined in chapters one through four and outlines the current situation of the unresolved conflicts examined in Chapter Two. The role that the politics of fear play in these conflicts is addressed and the extent and scope of the *Canadian Charter of Rights and Freedoms*' provision of freedom of religion is briefly considered. This chapter seeks to problematize the idea that freedom of religion, freedom of expression and freedom of conscience solely protect verbal acts[54]

[54] Michelle D. Byng, "Symbolically Muslim: Media, Hijab, and the West," *Critical Sociology* 36, no.1 (2010): 109-129, doi: 10.1177/0896920509347143. Though Byng's study is American in scope, his conclusion that post 9/11 discourse surrounding Muslim identity, and in particular Muslim women's choice to veil or not, created in the West a "common sense" that Muslim women would not willingly veil in public. Margaret Ogilvie,"And Then There Was One: Freedom of Religion in Canada – the Incredible shrinking Concept," *Ecclesiastical Law Journal* 10 no. 2 (2008): 197-204, doi:10.1017/S0956618X08001191.

Chapter 2

Patterns in Policies and Procedures

> We do not allow people to cover their faces during citizenship ceremonies. Why would Canadians, contrary to our own values, embrace a practice at that time that is not transparent, that is not open and frankly is rooted in a culture that is anti-women.[1]
>
> - Prime Minister Stephen Harper

> The Canadian conception of equal religious citizenship is founded on recognition that religious belief and affiliation are fundamental aspects of one's identity, closely connected to cultural membership, and often pervade all aspects of a believer's life. Consistent with our commitments to multiculturalism, we do not ask people to abandon signs of their faith in public—whether at school, at work, or when participating in public institutions. We believe in the their right to be equally and simultaneously members of multiple communities of faith and political affiliation.[2]
>
> - Bruce Ryder

In late 2013 Bill 60 was introduced in Québec. Commonly referred to as the "Québec Charter of Values," Bill 60 contained a controversial component that required employees of public institutions to refrain from wearing any kind of "overtly religious" dress while at work.[3] After the introduction of Bill 60, I was interested to see if similar legislation regulating religious dress had appeared elsewhere in Canada. Recent scholarship suggests that bills that would limit niqab- and burqa-wearing women (like Bill 94 proposed in Québec in 2010) have "not emerged

[1] Cited in Steven Chase, "Niqabs 'rooted in a culture that is anti-women, Harper says," *The Globe and Mail*, March 11, 2015, http://www.theglobeandmail.com/.

[2] Bruce Ryder, "The Canadian Conception of Equal Religious Citizenship," in *Law and Religious Pluralism in Canada,* ed. Richard Moon (Vancouver: University of British Columbia Press, 2008), 107.

[3] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 5.

in other provinces [outside of Québec], but on the federal level."[4] This research, conducted by Jennifer Selby, attends specifically to Muslim women and the regulation of veiling practices in Québec. However, Selby's observations hold true if we consider the broader regulation of religious dress in Canada. In Canada legislation that limits religious dress in public spaces has only appeared in Québec, however none of these bills have been successfully passed into law.[5] Regulation of religious dress in Canada has also appeared on the federal level. At the federal level, the regulation of particular religious attire was applicable during citizenship ceremonies between 2011 and early 2015, though it was not official legislation but a policy outlined in an operation manual.[6] Many individual case studies indicate that there is no blanket policy that regulates religious dress, as the outcomes of requests for religious accommodation vary. However, when issues of security or identification arise in conflict with religious dress, in most cases, the individual will be required to remove the attire. However, in many of the individual case studies examined, the women who were asked to unveil were not opposed to proving their identity to a female officer if the issue with the veil was that one's identity could not be verified.[7] This project looks at instances where religious individuals are required to remove elements of

[4] Jennifer Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in France and Québec," *Studies in Religion/Sciences Religieuses* 43, no. 3 (2014): 439-466, doi:10.1177/0008429814526150.

[5] Both Bill 94 and Bill 60 are examples of this. Bill 94, "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions," *Québec National Assembly Proceedings* 1st Reading March 24, 2010, 39th Legislature 1st Session, 2010. http://www.assnat.qc.ca/. Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests."

[6] It should be noted that at the time of submission a Federal Court Judge has ruled that the policy requiring religious individuals who were full-face coverings to remove them for the ceremony violates the Canadian *Citizenship Act*. Mark Gollom, "Niqab controversy: Judge struck down ban without referring to charter," *CBC News*, March, 16 2015, http://www.cbc.ca/.

[7] Douglas Quan, "Zunera Ishaq on why she fought to wear a niqab during citizenship ceremony: 'A personal attack on me and Muslim women," *The National Post*, February 16, 2015, http://news.nationalpost.com/.

religious dress specifically, or where religious dress is implicitly or explicitly regulated. Removal of other religious practices from public spaces, such as prayer in school or government ceremonies, are not within the scope of this project, though a systematic examination of the legislation of religious practices is an avenue for substantial future research.[8] This chapter outlines the proposed policies that sought to regulate religious dress, and briefly considers current cases in which religious dress is regulated in civic contexts, focusing on citizenship ceremonies, voting, and testimony in court. These case studies provide the data from which to draw conclusions about the nature of the body in religious identity in contemporary Canada.

Bill 60 and Its Predecessor(s)

Regulation of religious dress has historically been decided on a case-to-case basis. Considered a landmark case of accommodation of religious dress, *K.S. Bhinder v Canadian National Railway* appeared before the Supreme Court of Canada in 1985.[9] At the time the Canadian National Railway required employees to wear a hard hat. As a Sikh man who wore a turban, Bhinder argued that this company policy did not accommodate his religious beliefs. Bhinder's challenge of the CNR policy was unsuccessful. However, in 1990, the decision was overturned due to new precedent set by the *Central Alberta Dairy Pool v Alberta Human Rights Commission* ruling. In the case of Central Alberta Dairy Pool the Supreme Court ruled that the *Bhinder v Canadian National Railway* was incorrect in applying the BFOQ test[10] to a case of

[8] Bill S-7, "Zero Tolerance for Barbaric Cultural Practices Act" is one example where both religious and cultural practices would be heavily regulated. Bill S-7 "Zero Tolerance for Barbaric Cultural Practices Act," *Canadian Parliament* 1st Reading November 5, 2014, 41st Parliament 2nd Session, 2014, http://www.parl.gc.ca/.

[9] *K.S. Bhinder v CN* [1985] 2 SCR 561.

[10] The "bona fide occupational qualification" is a work requirement necessary to the normal performance of the job.

"adverse effect discrimination." Stating: "where a rule has an adverse discriminatory effect, the appropriate response is to uphold the rule in its general application and consider whether the employer could have accommodated the employee adversely affected without undue hardship."[11] From this decision accommodation is set as legal precedent in Canada. The majority of subsequent cases of accommodation of religious dress have used this precedent and ruled in favor of the religious individual, allowing religious dress within the contested place or practice.[12]

Blanket policies that have been successful—which is to say they have been successfully passed into law—that either allow or require the removal of religious dress or symbols are not found at the provincial level. In Québec, however, there has been a progression of bills proposed to the Québec National Assembly that if passed, would regulate the freedom of Muslim women to wear full-face coverings while receiving government services (Bill 94), or regulate the freedom of religious individuals to wear "conspicuous religious symbols" while working in public institutions (Bill 60). Bill 60 is significantly more restrictive and explicit with respect to religious dress, as it states that "conspicuous *religious* symbols" are not permissible under the proposed bill.[13] Bill 94 does not name the niqab or burka explicitly, but states "a personnel member of the Administration or an institution and a person to whom services are being provided by the Administration or the institution *show their face* during the delivery of services

[11] *Central Alberta Dairy Pool v. Alberta* (Human Rights Commission), [1990] 2 S.C.R. 489, http://scc-csc.lexum.com/.

[12] Notable cases include the 1995 decision by the Supreme Court to uphold the exemption from wearing the Mountie Hat while on duty for Sikh men, allowing them to wear a turban instead, and the 2006 *Multani V. Commission scolaire Marguerite-Bourgeoys* decision which ruled that Sikh children could wear a *kirpan* (small ceremonial dagger) to school. Similarly, in 2013 the ban on turbans in youth soccer was reversed in Québec allowing the boys to play while wearing turbans. *Grant v. Canada* (Attorney General) (T.D.), [1995] 1 F.C. 158, http://reports.fja.gc.ca/. *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6, https://scc-csc.lexum.com/. CBC News, "Quebec Soccer Federation reverses turban ban," *CBC News*, June 15, 2013, http://www.cbc.ca.

[13] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 6 (emphasis mine).

is a general practice."[14] What follows is a detailed examination of the language of both Bill 94 and Bill 60, and Supreme Court cases where religious dress in public ceremony is contested.[15]

Bill 94

The issue of requests for religious accommodation in Québec peaked in 2010 with a very publicized case of an accommodation request made by a woman who refused to remove her niqab during CEGEP French languages classes. The instructors argued that during presentations students' faces needed to be visible to aid in correction of pronunciation and ensure it was the correct student giving the presentation. Ms. Ahmad, an immigrant from Egypt, filed a complaint with the Human Rights Commission against CEGEP de St. Laurent over the ultimatum she received from the program: in order to continue taking classes she would be required to take off her niqab during class. Her refusal was met with removal from the program.[16] The request for accommodation—keeping the veil on during presentation in a class with both males and females, or presenting without the veil to a female only audience—was labeled an unreasonable request for accommodation.[17] Bill 94 was an indirect response to this case insofar as the bill attempted to define what a "reasonable request for accommodation" might look like within Québec public services and spaces.

[14] Bill 94, "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions," section 6 (emphasis mine).

[15] Both Bill 60 and Bill 94 had a significant number of briefs submitted by the public, 69 and 66 respectively. The contents of the briefs are considered within the scope of this project, but they are not examined as thoroughly as the bills since the briefs represent the opinions of both individuals and organizations and thus their contents do not necessarily provide an accurate representation of public sentiment or position on the legislation. It should also be noted that many of these briefs are submitted only in French and that any translation is my own.

[16] CBC News, "6 Niqab legal controversies in Canada," *CBC News* December 20, 2012, http://www.cbc.ca/. Omar El Akkad, "Woman shocked by portrayal as hard-line Islamist," *The Globe and Mail,* March 15, 2010, http://www.theglobeandmail.com/.

[17] CBC News, Quebec to address niqab issue," *CBC News* March 3, 2010, http://www.cbc.ca/.

Bill 94, "Act to establish guidelines governing accommodation requests within the administration and certain institutions,'' was introduced to the National Assembly on March 24 2010 by Kathleen Weil, the Minister of Justice at the time. "*The purpose of this bill is to establish the conditions under which an accommodation may be made in favour of personnel members of the Administration or certain institutions or in favour of persons to whom services are provided by the Administration or certain institutions.*"[18] The title and explanatory notes provided are perhaps misleading as the conditions for accommodations are emphasized, which implies that accommodation between administrative personnel and the individuals to whom they provide government services to is the primary goal of the bill, when in fact the majority of the bill outlines where individuals must show their face in order to receive services.

Bill 94 is quite short, consisting of only three chapters. Chapter two, "Conditions Related to Accommodation" reads: "(5) An accommodation may only be made if it is reasonable, that is, if it does not impose on the department, body or institution any undue hardship with regard to, among other considerations, related costs or the impact on the proper operation of the department, body or institution or on the rights of others."[19] Accommodation is measured by the imposition of hardship on the granting body in terms of cost, or impact on operations. Thus, anything that does not impose any kind of hardship in these ways is considered "reasonable." It is important to note that this understanding of "reasonable accommodation" favors the group granting the accommodation, not the individual requesting it. Implicit here is the notion that one's individual rights are subject to the impact on the operation of services one will receive.

While religion is not listed specifically as the source of claims for accommodation,

[18] Bill 94, "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions," 2.

[19] Ibid., 4.

chapter two goes on to state, "(6) The practice whereby a personnel member of the Administration or an institution and a person to whom services are being provided by the Administration or the institution show their face during the delivery of services is a general practice." Further, "If an accommodation involves an adaptation of that practice and reasons of security, communication or identification warrant it, the accommodation must be denied."[20] The requirement that individuals "show their face during the delivery of services" does not explicitly reference the practice of veiling in Muslim communities, but as Selby observes, "the parliamentary debates focus on [full-face Muslim veiling practices] almost exclusively."[21] While requests for accommodation for a face-covering can be made, section 6 outlines that security, communication and identification are the primary grounds on which such requests for accommodation will be denied. This not only identifies full-face covering practices as a potential threat, but denotes that those who participate in such practices fall outside "general practice." While it may be the case statistically that the majority of Quebeckers do not wear a full-face covering, this sets up a dichotomy where the general practice becomes not just a majority but also a normative practice, indicting minority practices as falling outside the bounds of that normativity.[22] While these restrictions seem to contradict the Canadian Charter's guarantee of freedom of religion, it is worth noting that at the time Bill 94 was introduced, the Parti Québécois came out against the bill arguing that it did not go far enough in limiting religious dress in public bodies.[23]

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[20] Bill 94, "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions," 5.

[21] Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in France and Québec," 449.

[22] Nafay Choudhury, "Niqab vs. Quebec: Negotiating Minority Rights within Quebec Identity," *Western Journal of Legal Studies* 1, no. 1 (2012): 7, http://ir.lib.uwo.ca/.

[23] It was, however, speculated that Bill 94 would not pass a Constitutional Challenge. CBC, "6 Niqab

Bill 94 details the public service sites that would require full-face visibility in order for individual's to receive service. In addition to all governmental departments and bodies whose personnel are appointed under the Public Service Act, schools, health and social service centers, as well as daycares would require individuals to show their face during the provision of service.[24] Unlike Bill 60, however, this requirement is not an absolute. There is no clause that states that individuals cannot make a request for accommodation in any of these venues, so long as the request does not impose "undue hardship" to the service providers. What is understood to create undue hardship is outlined in vague terms, affording some autonomy to the institutions to determine what a reasonable request for accommodation of a full-face covering looks like on a case-to-case basis. This same autonomy is not afforded to public institutions in Bill 60, where the restrictions are listed and the possibility of accommodating these restricted practices is prohibited.

In the presentation Weil cited an Angus Reid Public Opinion Poll in which "most citizens" (95%) believe that the bill was "completely reasonable."[25] Someone in favor of the bill, might argue that since "security, communication, and identification" are requisite elements of government service, showing one's face is a minimal and reasonable requirement. However, as many noted, it would be primarily Muslim women affected by this shift in policy, and as such the discriminatory nature of the requirement is sexist and furthers Islamophobia through the insinuation that those who engage in veiling practices are a security threat.[26] When Bill 94 was

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legal controversies in Canada."

[24] Found in sections 2 and 3. Bill 94, "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions," 3-4.

[25] Assemblée Nationale Québec, *Journal des de ́bats (Hansard) of the National Assembly* (2011). Angus Reid Public Opinion, "Four-in-Five Canadians Approve of Quebec's Face Veil Legislation," press release, March 2, 2010.

[26] Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in

brought to a vote it was anything but unanimous, but still received a majority vote: 56 for, 29 against, with two abstentions. Despite this majority vote the bill was still in committee as of September 28, 2011 after which there has been little movement. As the Parti Québécois gained a minority government in 2012, their proposal of Bill 60 took the issue of religious dress and symbolism in public bodies further than Bill 94 did while maintaining the requirement for full-face visibility when accessing public services.[27]

Bill 60

Bill 60's content was announced on May 22, 2013 and officially introduced on September 10, 2013 to the Québec National Assembly by Mr. Bernard Drainville, Minister responsible for Democratic Institutions and Active Citizenship. Bill 60's lengthy title, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," indicates the multiple value positions the bill seeks to strengthen: secularism, religious neutrality, and gender equality.

The bill is broken down into twelve chapters. Chapter one, "Religious Neutrality and Secular Nature of Public Bodies," states, "(1) In the pursuit of its mission, a public body must remain neutral in religious matters and reflect the secular nature of the state, while making allowance, if applicable, for the emblematic and toponymic elements of Québec's cultural

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France and Québec." Choudhury, "Niqab vs. Quebec: Negotiating Minority Rights within Quebec Identity." Conway, "Quebec's Bill 94: What's 'Reasonable'? What's 'Accommodation'? And what's the Meaning of the Muslim Veil?" Sharify-Funk, "Governing the Face Veil: Quebec's Bill 94 and the Transnational Politics of Women's Identity."

[27] Antonia Maioni, "How PQ's Pauline Marois might govern Quebec," *The Globe and Mail*, September 5, 2012, http://www.theglobeandmail.com/.

heritage that testify to its history."[28] The obligation to create or maintain secularism, religious neutrality, and equality belongs first and foremost to "public bodies." Here, public bodies are public institutions public persons and the personnel involved.[29] According to this declaration institutions are required to establish these changes and uphold these values, and it is through their personnel that the changes will come into effect. This becomes increasingly clear in chapter two, "Duties and Obligations of Personnel members of Public Bodies," divided into two sections and quoted at length here:

> Division 1: Duties of Neutrality and Reserve in Religious Matters:
>
> (3) In the exercise of their functions, personnel members of public bodies must maintain religious neutrality.
>
> (4) In the exercise of their functions, personnel members of public bodies must exercise reserve with regard to expressing their religious beliefs. [30]

The religious neutrality demanded of personnel members of public bodies in division I is achieved through division II's restriction of religious symbols.

> Division II: Restriction on Wearing Religious Symbols:
>
> (5) In the exercise of their functions, personnel members of public bodies must not wear objects such as headgear, clothing, jewelry or other adornments which, by their conspicuous nature, overtly indicate a religious affiliation.[31]

Section 13 goes on to state that the restrictions listed in sections three to six are "deemed to constitute an integral part of the employment conditions of the persons to whom they apply"[32] making the requirement to "appear secular" an integral part of employment in the public sector, as constructed by the Parti Québécois. This is important to note, because this neutrality through

[28] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 5.

[29] A list of the public bodies is included in Schedule I of the Bill 60, which can be found here in Appendix A.

[30] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 5.

[31] Ibid.

[32] Ibid., 7.

negation is a clear indication of what secularism and religious neutrality should literally "look like" through the regulation of the physical bodies of citizens. The restrictions outlined in section five present an argument for the visual aspects of secularism, as it requires the removal of all objects that "overtly indicate a religious affiliation." Bill 60 advances a material form of secularization, troubling the dominant understanding of secularism as primarily an ideological position or societal structure or framework.

Institutional "public bodies" (i.e. institutions) are the only sites where this legislation would be in effect. Nonetheless, these restrictions shape the literal bodies that make up or populate Québec's public institutions, dictating how citizens should appear when they both provides and/or receives public services. Interestingly, "secularism" and "religious neutrality" as conceptualized here can only be achieved when all conspicuous signs of religion are removed. However, it is not clear how the absence of religion equates to religious neutrality, especially since the idea of "neutrality" traditionally suggests impartiality or objectivity, not exclusion and elimination.[33] As the end of section five states, it is the "conspicuous nature" of the headgear, clothing, jewelry or adornments of religious individuals that "overtly indicate a religious affiliation." The rationale appears to be that "conspicuous" indication of an individual's religious affiliation somehow prohibits the public body from appearing neutral and that any display of religious affiliation is inappropriate when carrying out services on behalf of the state. This logic would seem to imply that what one wears somehow influences or leads one's behavior, which is a tenuous position to take. This specific prohibition of objects which indicate religious affiliation arguably privileges orthodoxic religions, where a private or internal faith or belief is central, and disadvantages religious traditions characterized by orthopraxic elements such as headgear,

[33] Elizabeth Shakman-Hurd, *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2008), 5, 37.

clothing or other physical markers. This restriction also relies on a normative public understanding of what "religion" looks like, and specifically what kind of "headgear, clothing, jewelry or adornments" are "religious."[34] As the author of the bill, the Parti Québécois becomes the guarantor of what gets to "count" as religious, as they are the ones that initially delineate the practices that are dis/allowed. However, the legislation raises the issue of normative conceptions of religion. If individuals wear articles of clothing not traditionally associated with a prevalent religious institution, community or belief system, and these articles, symbols, or objects are not read as religious by the general public, are they allowed to continue to wear the religious attire? Further, if this legislation were to pass it is not clear who would continue to define which "conspicuous symbols" overtly signify a religious commitment. This raises the question, is it *only* the practices outlined in the initial presentation of the bill that will be disallowed or can additional practices be added to this list?

The Parti Québécois circulated an info graphic illustrating examples of what would and would not be permissible under the bill,[35] however, the info graphic was meant to address concerns around what constituted a "conspicuous" symbol (as opposed to less conspicuous ones). To my knowledge, questions of how religious headgear, clothing, jewelry or adornments would be identified was not a key issue in the public discussions surrounding the bill. This is perhaps an indication that the idea of banning religious dress in any form was such an affront to the ideals of religious freedom upheld in the *Canadian Charter of Rights and Freedoms*, that the reality of what a ban like this would look like procedurally was not discussed at length.

Sections four and five of Bill 60 explicitly prohibit expression of religious beliefs or

[34] See Talal Asad, *Genealogies of Religion* (Maryland: John Hopkins University Press, 1993), 17-8 for extended discussion on reading symbols and analyzing practice.

[35] The infographic can be referenced here in Appendix B.

physical indication of religious affiliation. Sections six and seven do not explicitly prohibit any particular religious practice or attire, but do, however, disproportionally affect a segment of the Muslim community. Sections six and seven fall under chapter three, "Obligation to Have Face Uncovered," which reads:

> (6) Personnel members of public bodies must exercise their functions with their face uncovered, unless they have to cover their face in particular because of their working conditions or because of occupational or task-related requirements.
> (7) Persons must ordinarily have their face uncovered when receiving services from personnel members of public bodies.[36]

Bill 60's third chapter shows remarkable similarities with Bill 94 as outlined above, insofar as the Muslim practices of veiling are not named explicitly, but the regulation states that individuals must have their faces uncovered while working in a public institution or when "receiving services from personnel members of public bodies."[37] That a whole chapter in Bill 60 is devoted to outlining the obligation to have one's face uncovered while performing or receiving services from public bodies—especially directly following sections which outline the prohibition of overt expressions of religious affiliation—suggests that there are certain practices that can be defined as both religious *and* cultural, which the legislation is seeking to remove from public spaces.[38] For example, if a woman were to argue she wears a full-face veil for cultural reasons, she ostensibly would not be asked to removed it under Bill 60's section five prohibition of religious symbols, but rather under the requirement for uncovered faces outlined in sections six and seven.

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[36] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 6.

[37] Ibid.

[38] Interestingly, the infographic distributed by the Parti Québécois outlining conspicuous religious symbols did not include any attire or symbols utilized as part of Aboriginal spiritual practice. One could argue that the strong connection between culture and spirituality within Aboriginal tradition makes it difficult to draw a line, but it is precisely this tension that Bill 60 produces as some individuals categorize practices as both/and cultural and religious or either/or cultural or religious. Whether or not these distinctions can be legislated, and whether or not they should be, are two questions this thesis engages.

One of Bill 60's stated objectives is to affirm equality between men and women. One could argue that prohibiting *all* "conspicuous" religious symbols works towards greater gender equality as it is bans practices that both men and women engage in, whereas Bill 94 only bans practices traditionally engaged in by women. Some argue the practice of veiling among Muslim women is symbolic of "patriarchal religious control," and therefore ensuring that women are "freed" from this practice has been argued as an instrumental step towards ensuring gender equality.[39] The contradiction, however, is that policies like Bill 60 and Bill 94 limit the Muslim woman's ability to choose what she wears and sets conditions for her participation in public institutions, and in doing so, the state becomes a similar source of patriarchal control. Choice is limited for both men and women within the structure of Bill 60 as no one is allowed to choose how, and if, they embody religious commitment.

The restrictions and prohibitions outlined in sections three through seven are clarified in the explanatory notes as some of the ways individuals perform their "duty to remain neutral and exercise reserve in religious matters by among others things."[40] The bill does provide exceptions to the prohibition of wearing "religious objects that overtly indicate a religious affiliation."[41] Section 11 states that the restriction on wearing religious symbols and duty of neutrality and reservation with respect to religious expression does "not apply to personnel members who provide spiritual care and guidance services in a centre operated by a public institution," namely hospitals, medical care facilities, and social service sites. In this same section, persons who provide "instruction of a religious nature, spiritual care or guidance services in a university-level

[39] Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in France and Québec," 451.

[40] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 2.

[41] Ibid., (explanatory notes), 2.

educational institution or vocational college are exempted from the restrictions.[42] The municipalities governed by the Cree Villages and the Naskapi Village Act or the Act respecting Northern villages and the Kativik Regional Government are named as exceptions to the restrictions on religious dress and the duty of religious neutrality.[43] These are the only exceptions to the "regulations of neutrality" cited in sections three through six.

The title of the bill indicates that while religious neutrality, secularity, and gender equality are paramount, the bill will also provide a "framework for accommodation requests." However, aside from the aforementioned exceptions from the ban of religious symbols and duty of religious neutrality, the restrictions listed in sections three to six cannot be waived according to section 18 of the bill. Section 18 reads: "Accommodation requests on religious grounds cannot be made with respect to the duties and obligations set out in sections three to six."[44] This clause preempts the primary mode of accommodation requests with respect to the prohibition of conspicuous religious symbols: accommodation on the ground of freedom of religion. Bill 60's "framework for accommodation" is thus a refusal of accommodation on religious grounds. As religious headgear, garments, jewelry, and other physical markers are restricted because of their religious significance, one could claim that the right to freedom of religion and freedom of expression are being denied without just cause in attempts to regain the ability to wear religiously significant dress. The cause for banning religious attire in public institutions is one of the key elements of Bill 60. The argument for Bill 60 is that to exemplify, and indeed, embody, the alleged "values" of Québec (religious neutrality, secularity, and gender equality), one must be physically free from all conspicuous signs of religiosity.

[42] Ibid., 7.

[43] Ibid., 17.

[44] Ibid., 9.

The language of Bill 60 works to set up a hierarchy of rights. It seeks to amend the preamble of the *Québec Charter of Human Rights and Freedoms* to insert the following: "(40) Whereas equality between women and men and the primacy of the French language as well as the separation of religions and state and the religious neutrality and secular nature of the state are *fundamental values* of the Québec nation."[45] When rights and freedoms come into conflict, gender equality, language equality, and then the maintenance of a separation between religion and the state are to be considered first, as the title of the bill states that these values are the ones affirmed in the bill. Thus all claims of religious accommodation are subject to a test of whether gender equality is preserved within the request, alongside whether or not the separation between church and state is preserved. The reaction from Québec Liberal Opposition leader Jean-March Fournier emphasizes the precarious position of individual rights under Bill 60, as he pointed out the bill was "removing rights in order to protect other rights."[46]

Section 41 amends the Québec Charter further to state that in exercising rights and freedoms individuals must maintain "proper regard" for these fundamental values "while making allowance for the emblematic and toponymic elements of Québec's cultural heritage that testify to its history."[47] This exception for "emblematic and toponymic elements" of Québec's cultural heritage is undoubtedly a response to the 2008 Bouchard-Taylor Commission report on the public perception of an accommodation crisis in Québec, which concluded that Québécois culture was not under any extraordinary threat. However, the report also recommended in the spirit of separation of religions and state, that the crucifix that hangs in the National Assembly be

[45] Ibid.,13 (emphasis mine).

[46] Quoted in CBC News, "Quebec secular charter 'abolishes rights,' opposition says," *CBC News*, November 7, 2013, http://www.cbc.ca/.

[47] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 13.

removed.[48] The Province's response, however, was that the crucifix, while a religious symbol, was not religious in this context, but rather a symbol of historical and cultural significance. The Premier at the time Jean Charest stated: "The crucifix is about 350 years of history in Québec that none of us are ever going to erase, and of a very strong presence, in particular of the Catholic Church."[49] A more explicit reference is made in Bill 60's explanatory notes, which identifies that the bill will "specifically grant the Assembly the power to regulate the wearing of religious symbols by Members, and grant the Office of the National Assembly the power to approve *the presence of a religious symbol* in the premises of the Assembly."[50]

Bill 60 also outlines the consequences if one does not comply with the restrictions set out in sections three through six. Section 14 reads: "After a first failure by a personnel member of a public body to comply with the restriction on wearing a religious symbol, dialogue must be engaged in before any disciplinary measure is taken by the public body, in order to remind the person of their obligations and foster their compliance."[51] Section 14 makes it quite clear that the "duty to religious neutrality" is not one that can be ignored. Here, the language of "obligation" is employed, indicating that while citizens have the right to engage with public bodies, there are also specific responsibilities attached to those rights that go beyond general civic decency. Furthermore, if this obligation is not met after dialogue there will be "disciplinary measure taken by the public body." Appropriate disciplinary measures are not spelled out anywhere in the legislation, so it is not clear if refusal to comply with the restrictions is grounds for termination

[48] Bouchard and Taylor, *Building the Future: A Time for Reconciliation, Abridged Report*, 55.

[49] Quoted in Kevin Dougherty, "We'll Keep Crucifix Up, Charest Says," *Montreal Gazette*, May 23, 2008, http://www.canada.com/montrealgazette/.

[50] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests," 3 (emphasis mine).

[51] Ibid., 8.

or suspension, regardless, it is made quite clear that the restrictions in sections three through six must be followed if one is to avoid punitive action.

Bill 60 and the debate about "Québec's Values" quickly became a key issue in the 2014 election as the "Québec Charter of Values" became a central component of the Parti Québécois' platform.[52] Though popular among certain francophone segments of the province, there was great outcry at the proposed restrictions from some of the institutions, such as universities and hospitals, which would be required to enforce these restrictions.[53] The Parti Québécois lost its minority government, resulting in leader Pauline Marois' resignation, and Bill 60 was never put to a vote. However the issues that arose during the election with respect to Québec culture, identity continue to be a source of tension.[54]

Federal Bans and The Question of Security

Religious diversity is understood to be a component of any multicultural society. However, in many definitions of multiculturalism, ethnic and racial elements are what multiculturalism celebrates, preserves, or seeks to protect. These so called "celebratory models of multiculturalism" have in recent years come under heavy critique for the ways in which

[52] Canadian Press, "PQ sets stage for election fight over hijabs and turbans as hearing kicks off for Quebec values charter," *The National Post*, January 14, 2015, http://news.nationalpost.com/. Ingrid Peritz and Les Perreaux, "Quebec reveals religious symbols to be removed from public sector," *The Globe and Mail*, September 10, 2013, http://www.theglobeandmail.com.

[53] Briefs were submitted by Université Concordia (14 January, 2014); Université de Montréal (14 January, 2014); Fédération des médecins residents du Québec (14 January, 2014); Centre universitaire de santé McGill (14 January, 2014), all in opposition as institutions that would be directly affected by the dress code imposed by Bill 60.

[54] The Québec Liberal Party's introduction of Bill 62, very similar in content to Bill 94 is indicative of this, and discussed in more detail in Chapter 5. Lysiane Gagnon, "New bill on religious symbols won't end ugly debate over 'Quebec values," *The Globe and Mail*, June 17, 2015, http://www.theglobeandmail.com/. McGregor, "Niqab ban returns as Conservative bill planned for Parliament's final days."

culture is essentialized in tangible elements like dress, music, and food.[55] This celebratory model can be seen in how the Canadian Federal Government utilizes cultural dress in the Canadian Citizenship ceremony. Citizen and Immigration Canada's citizenship manual states, "The appropriate dress for candidates at a citizenship ceremony is 'business attire,' but they may choose to wear a traditional dress."[56] The video "The Canadian Citizenship Ceremony: What you need to know" on the Citizen and Immigration Canada's website goes a bit further, as the narrator states: "Most candidates dress as they would for business or a special occasion. Some wear their ceremonial outfits." The official transcript of the video, also available on Citizen and Immigration Canada's website, transcribes the background image of this section of the video as, "Citizenship candidates and witnesses are shown at the ceremony. They are dressed in office appropriate attire. A couple of candidates are wearing their cultural and ceremonial outfits."[57] The video's official transcription is the only place where the term "cultural" is linked to the attire that is permissible at citizenship ceremonies. However, the language in the official CIC manual is more ambiguous, as "traditional" could arguably reference ethnic, cultural or religious tradition.

Thus, while "traditional" dress is not only permissible but encouraged during citizenship ceremonies, the inclusion of "traditional religious dress" is somewhat ambiguous. The Canadian Citizenship Ceremony is one example where religious dress was effectively regulated, until

[55] Will Kymlicka, *Multiculturalism: Success, Failure, and the Future* (Transatlantic Council on Migration, Migration Policy Institute, 2012), 4-9.

[56] Government of Canada, "Dress code for citizenship ceremonies," *Citizenship and Immigration Canada publications and Manuals*, last modified December 19, 2013, http://www.cic.gc.ca/.

[57] Government of Canada, "The Canadian Citizenship Ceremony: What you need to know," *Citizenship and Immigration Canada,* last modified March 11, 2013, http://www.cic.gc.ca/.

February 2015.[58] This regulation took effect in 2011 when the then-Immigration Minister Jason Kenney "ruled" that to take part in a Canadian citizenship ceremony no kind of face covering could be worn during the ceremony. This meant that individuals who wear religious face coverings are required to remove them in order to be granted citizenship.[59] This unilateral decision by Kenney was part of a "series of measurements meant to strengthen the integrity of Canadian citizenship that also included raising the pass mark for the citizenship test and stricter residency and language requirements."[60] However this ban was overruled in February 2015 after it was challenged by Zunera Ishaq when she sued the Federal Government, arguing that "the ban against her wearing the niqab during the ceremony was an infringement of her charter rights."[61] During her application for citizenship in 2013, Ishaq agreed to unveil in front of an official before taking her citizenship test, but objected to removing her niqāb at the public swearing-in ceremony.[62] Ishaq argued that if she was identified prior to the public ceremony removing her veil would be unnecessary for the purposes of identification or security. She made the following statement:

[58] It should be noted that at the time of submission a Federal Court Judge has ruled that the policy requiring religious individuals who were full-face coverings to remove them for the ceremony violates the *Canadian Citizenship Act*. *Zunera Ishaq v The Minister of Citizenship and Immigration* [2015] 2015 FC 156, http://www.canlii.org/. However, as is discussed further in Chapter Five, the current Federal Government is in the process of tabling legislation which would require individuals to bare their faces during citizenship ceremonies, Milewski, "Turbans OK at security checks, but not niqabs at citizenship oath: Tim Uppal."

[59] As Selby notes, policy that deals exclusively with full-face visibility, like Bill 60 and Bill 94, disproportionally effect Muslim women, as they are in many cases the only group who would be affected by such regulation. Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in France and Québec," 441-443.

[60] Nicholas Keung, "Ex-immigration minster Jason Kenney 'dictated' niqāb ban at citizenship ceremony, court told," *Toronto Star*, October 17, 2014, http://www.thestar.com/. Payton, "Face veils banned for citizenship oaths." Though the policy has faced backlash, Kenney has continued to defend his policy and position on the issue, see Lee-Anne Goodman, "Jason Kenney defends niqab ban at citizenship ceremonies on Twitter," *The Canadian Press*, October 17, 2014, http://www.cbc.ca/.

[61] *Zunera Ishaq v The Minister of Citizenship and Immigration* [2015] 2015 FC 156.

[62] Gollom, "Niqab controversy: Judge struck down ban without referring to charter."

> My religious beliefs would compel me to refuse to take off my veil in the context of a citizenship oath ceremony, and I firmly believe that based on existing policies, I would therefore be denied Canadian citizenship. I feel that the governmental policy regarding veils at citizenship oath ceremonies is a personal attack on me, my identity as a Muslim woman and my religious beliefs.[63]

While many assumed issues of religious freedom and freedom of expression would be at the core of successfully striking down the ban, Federal Judge Keith Boswell focused on whether the government had violated the *Citizenship Act* through such a ban. The *Citizenship Act* states that a citizenship judge must allow "the greatest possible freedom in the religious solemnization" when the oath is taken.[64] The *Citizenship Act* is law, passed by Parliament, and the ban found in the Citizenship policy manual is a directive from the then-Immigration Minister Kenney, and thus "the Act naturally trumps the policy manual."[65] However, to complicate the issue further, after Boswell's ruling was announced a notice of appeal was filed from lawyers representing the Minister of Citizenship and Immigration. Prime Minister Stephen Harper was vocal about his support to appeal the ruling and claimed that covering one's face while taking the Citizenship Oath is both "offensive" and "not how we do things here."[66] Thus, while the policy was overturned, the current political majority does not support the Federal Court's decision and has gone so far as to challenge it, exemplifying how issues of religious accommodation are heavily mediated through structures of power, and in this instance, governmental structures of power.

[63] *Zunera Ishaq v The Minister of Citizenship and Immigration* [2015] 2015 FC 156, 4.

[64] *Citizenship Act* (R.S.C., 1985, c. C-29).

[65] Gollom, "Niqab controversy: Judge struck down ban without referring to charter." It is worth noting that Harper's comments were not well received, inspiring the Twitter hash tag #DressCodePM. Sonja Puzic, "#DressCodePM: Twitter responds to Harper's niqab comment," *CTV News,* March 11, 2015, http://www.ctvnews.ca/.

[66] Douglas Quan, "Harper appeals court ruling that struck down ban on wearing niqab during citizenship oath," *The National Post*, March 9, 2015, http://news.nationalpost.com/.

The requirement for full-face exposure is not limited to citizenship ceremonies. All forms of Canadian identification, such as passport photos and drivers licenses, require that the individual's full face be visible in the photograph. Here, concerns of security and identification are cited as the reason for the denial of requests for accommodation.[67] In such cases the requirement for the photograph arguably violates religious freedom, but the violation is allowable under section 1's provision of "reasonable limits" in the *Canadian Charter of Rights and Freedoms*.[68] Certain segments of the Hutterite community believe they should not be photographed and the Alberta government has previously made exceptions in licensing members of this community. However the requirement that all licensed drivers be photographed was implemented in 2003—a shift that was challenged by the Wilson Hutterite Colony as a violation of their freedom of religion. Chief Justice McLachlin argued that driving was not a right, and that the conditions attached to that right, namely the requirement that the individual be photographed—were allowable.[69] The argument concluded that the "purpose of the mandatory photo requirement and the use of facial recognition technology is to help prevent identity theft."[70] In these instances, identification and security are the cited as the reasons for denying requests for religious accommodation. It is important to note that while these examples point to the connection between civil security and the requirement that one's face be attached to

[67] While face coverings are listed as unacceptable in the guidelines for passport photos on the Canadian Federal Government's website, there have not been, to my knowledge, any cases where an individual has filed a request for religious accommodation seeking to have the requirement for their full face to be shown on their identification waived due under freedom of religion.

[68] 1. "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such *reasonable limits* prescribed by law as can be demonstrably justified in a free and democratic society." *Canadian Charter of Rights and Freedoms*, s 1, (emphasis mine).

[69] The "negative impact on the freedom of religion of Colony members who wish to obtain licences does not outweigh the benefits associated with the universal photo requirement." However, it should be noted that this was not a unanimous verdict. *Alberta v. Hutterian Brethern of Wilson Colony* [2009] 2 SCR 567, http://scc-csc.lexum.com/.

[70] *Alberta v. Hutterian Brethern of Wilson Colony* [2009] 2 SCR 567.

identification (whether in person or on pieces of identification), the Federal ban on face-coverings at citizenship ceremonies was not brought before any level of Canadian court before the ban was imposed.[71]

Citizenship ceremonies are not the only place where face coverings have been banned, as testimony in court as well as voting in elections are sites of contention. In 2007, Chief Electoral Officer Marcel Blanchet ruled that voters would be allowed to wear a veil when they received their ballot, but he reversed his decision at the urging of the major political parties. Voters are now required to show their faces in Québec polling stations.[72] In Federal elections, however, voters are allowed to wear a full-face veil and still cast their ballot. Currently Elections Canada policy states:

> To vote, an elector who has his face covered must show his face or take the Oath of Qualification to Vote. The registration officer asks the elector to show his face to confirm his eligibility to vote. If the elector decides not to remove his face covering, he advises the elector that he must show two pieces of identification and then take the Oath of Qualification to Vote administered by the deputy returning officer. If the elector cannot provide the required two pieces of identification, the registration officer asks the elector if someone can vouch for him.[73]

In 2007, when the policy took effect, Prime Minister Stephen Harper was quoted as stating "I profoundly disagree with the decision," on the grounds that it was at odds with federal legislation.[74]

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[71] This is one reason why, in the wake of Justice Boswell's decision, the Conservative government is tabling a bill that would make the ban on face-coverings during citizenship ceremonies law. Milewski, "Turbans OK at security checks, but not niqabs at citizenship oath: Tim Uppal."

[72] Natasha Bahkt, "Veiled Objections: Facing Opposition to the Niqab," in *Reasonable Accommodation: Managing Religious Diversity* ed. Lori Beaman (Washington: University of Washington Press, 2013), 93.

[73] Elections Canada, *Returning Officer's Manual: A Guide to Conducting Federal Electoral Events*, (Elections Canada, March 2010) 10-26, http://www.elections.ca/.

[74] It is unclear what federal legislation Harper understood this policy is at odds with. CBC News, "6 Niqab legal controversies in Canada."

The case of N.S. exemplifies the uncertainty courts face with the question of religious accommodation in testimony.[75] While initially required to remove her veil during her testimony in 2008, N.S.' case went all the way to the Supreme Court of Canada where the Justices were divided on the issue of whether one could wear a niqab while testifying, as religious freedom and the rights of an accused to a fair trial were both important elements to the case.[76] The ruling stated that it should be left to trial judges to decide on a case-to-case basis whether one should have to remove a face covering when testifying in court. In N.S.' case, she was ordered to remover her niqab to testify, and in the process, setting what her lawyer David Butt states is a poor precedent as "[it] risks sending the message that people who have certain religious beliefs and practices are excluded from the justice system."[77]

Concluding Remarks

As the policies and examples examined here illustrate, legislation that seeks to place limits on religious dress has appeared in Québec, and more recently at the federal level, but has yet to be passed into law at either level. Regulation of religious dress does appear on the Federal level, though this regulation is not legislated. In individual cases where there is a presumption of threat to identification and security, there is a pattern of removing the "offensive" practice. However in many of the cases where there is an expectation that the religious article of clothing be removed, such as during voting or legal testimony, only the full-face veil worn by some Muslim women is limited. The rationale behind these precedents has focused on the nature of the

[75] *R. v. N.S.,* 2012 SCC 72, [2012] 3 S.C.R. 726.

[76] Canadian Press, "Woman's fight to testify in court wearing face-covering veil may be over," *The National Post*, November 26, 2013, http://news.nationalpost.com/.

[77] Megan O'Toole, "After years and a sharply divided supreme court decision, judge rules woman must remove niqab to testify," *The National Post*, April 24, 2013, http://news.nationalpost.com/.

garment—i.e., that it covers the face—not that the garment is ostensibly religious. Bill 60 is a notable exception insofar as it is the only proposal to appear thus far in Canada that if passed, would require employees of public institutions to remove any and all "*conspicuous* religious symbols" from their person while at work. However, the question then becomes what a religious symbol is, and who gets to define it as such. With respect to dress, the boundaries between religious dress and cultural dress are incredibly blurry. The relative flexibility of the terms "religion" and "culture," and the strategic deployment of one over the other, particularly in political dialogue, makes the issue of dress in the public sphere one where power dynamics are visible in terminological usage.

These case studies and proposed policies exclude certain groups of people from the public sphere by forcing them to choose between being a public citizen or a religious citizen. The issue is not that one is not free to believe what one will, but rather that any embodiment or enactment of that belief is problematic if it leaves the private sphere. As all of the contested physical spaces are ones in which civic or public activity takes place, these policies belie a particular understanding that public spaces and by extension public services need to be free from all signs of religion to ensure equality. This works towards the creation of the idealized body of the citizen. I suggest that such policies develop from specific understandings of liberalism and secularism. Secularism is narrowly defined, not simply as a way to ensure the fair and equal treatment of all, but rather as requiring the removal of the appearance of religion. Secularism is understood as oppositional to religion, and therefore a secular society must be free of any kind of religious intrusion.[78] Though contemporary theory on secularism has demonstrated numerous

[78] The "subtraction" theory of secularism, Taylor argues is "stories of modernity in genera, and secularity in particular, which explain them by human beings having lost, or sloughed off, or liberated themselves from earlier, confining horizons, or illusion, or limitations of knowledge." In other words, the

alternatives for describing the modern state that do not rely on a binary between religion and secularity, this gap between theory and practice indicates that it is important to consider who benefits from continually using such narrow definitions of secularism, which is explored in Chapter Three.

advent of modernity yields a decline in religion. Taylor however is not satisfied with this account of the secularization of modern life. Taylor, *A Secular Age*, 22.

Chapter 3

Understanding the Foundations: Liberalism & Secularism in Canada

> First, individual rights cannot be sacrificed for the sake of the general good, and second, the principles of justice that specify these rights cannot be premised on any particular vision of the good life. What justifies the rights is not that they maximize the general welfare or otherwise promote the good, but rather that they comprise a fair framework within which individuals and groups can choose their own values and ends, consistent with a similar liberty for others.[1]
>
> - Michael Sandel

> There's nothing wrong with a religion whose laws says a man's got to wear a beard or cover his head or wear a collar. It's when violation of these laws become a crime against the State and not your parents that we're talking about lack of choice.[2]
>
> - Toby Ziegler

As outlined in Chapter Two, provincial policies that limit religious dress have been proposed (but not passed) both in Québec and at the federal level in Canada. Regulation of religious dress also appears in individual cases where religious expression has been restricted when presumptions of security threat or issues of identification are associated with the practices in question. This chapter examines how such regulatory structures were produced in a nation that constitutionally protects religious freedom alongside freedom of conscience and expression. I argue that the case studies examined here provide evidence that in issues of accommodation of

[1] Michael Sandel, "Introduction," in *Liberalism and Its Critics*, ed. Michael Sandel (New York: New York University Press, 1984), 4.

[2] "Isaac and Ishmael," *The West Wing* Season Three Episode Zero, written by Aaron Sorkin, directed by Christopher Misiano, October 3, 2001.

religious dress in Canada context is the most influential factor. When I use the term "context," I refer to both the geographical location within Canada and the socio-political location within civic space. As noted in Chapter Two, the Québec context is distinct in its approach to religion—specifically concerning public displays of religion—but similarly, civic or governmental contexts are also infused with regulatory structures in response to certain kinds of religious dress. While such a statement may seem obvious, it is important to make because there is no blanket policy with respect to religious dress in public institutions in Canada, and as such contextual policies and attitudes determine whether there are prohibitions on religious dress. Further, the response to religion in public spaces is not the same across provinces or territories. This is significant because the role of religion in politics is regularly examined at the national level, especially in comparative studies. Though conclusions can be made about the general nature of religion in Canada, provincial location adds nuances to these conclusions.

"Secular" is a common descriptor for nation states, but in the case of Canada, there cannot be an adequate discussion of secularity without an examination of its diverse instantiations across provinces.[3] In specific contexts there are policies, or attempts at policies, to regulate religious dress that are worth examining in greater detail to understand the makeup of those contexts in which a more regulatory attitude towards religious dress is emerging. This chapter will address the ideological structures that produce such regulatory contexts. I argue that particular definitions of secularism and liberalism shape the construction of public life and civic

[3] In "Modern Forms of the Religious Life: Denomination, Church, and Invisible Religion in Canada, the United States and Europe" Peter Beyer notes how national differences have been a point of inquiry with respect to secularization in the sociology of religion, but argues that instead of looking for overarching norms or "master trends" it could be productive to examine "alternative responses." As such, I argue that provincial approaches not only differ but the responses in specific contexts are also varied. Peter Beyer, "Modern Forms of the Religious Life: Denomination, Church, and Invisible Religion in Canada, the United States and Europe," in *Rethinking Church, State, and Modernity: Canada Between Europe and America*, eds. David Lyon, Marguerite Van Die (Toronto: Toronto University Press, 2000), 190-2.

spaces in the case studies examined, and it is these specific understandings that produce spaces that are seemingly inhospitable to certain kinds of religious expression.

The case studies examined here occurred within what I call "regulatory contexts," of which there are two manifestations. First, attempts to regulate religious dress have been made by both the provincial government in Québec and the federal government of Canada.[4] Second, attempts to regulate religious dress occur in civic settings in Canada more broadly. Here, "civic settings" denote spaces where constitutional rights or responsibilities and physical presence intersect, such as voting, court testimony, or government services at either the provincial or federal level.[5] These are not the only intersections of body and public life in which questions of religious accommodation arise.[6] Nevertheless, when religious dress is contested, these situations have historically led to both failed and successful attempts to regulate religious dress as it is public civic contexts where secular society takes issue with religious expression.

[4] While the instances of attempts at regulation of religious dress and requests for religious accommodation examined show a strong association to the Parti Québécois, it is not only the PQ that proposes such policies, as Bill 94 was put forward by Kathleen Weil who at the time was a member of the Québec Liberal Party. The most recent iteration of policy regulating religious dress in Québec was put forward by the Liberal Justice Minister Stéphanie Vallée. Gagnon, "New bill on religious symbols won't end ugly debate over 'Quebec values.' http://www.theglobeandmail.com/globe-debate/new-bill-on-religious-symbols-wont-end-ugly-debate-over-quebec-values/article24985977/. See also Globe Editorial, "Let them wear veils, even in Quebec," *The Globe and Mail*, June 9, 2015, http://www.theglobeandmail.com/.

[5] For example religious dress was regulated at the federal level, while the issue of whether face-coverings can be worn while voting has different outcomes depending on whether it is a federal election or a provincial election—and for the latter, there is no uniformity from province to province.

[6] As cited in Chapter Two, there are instances where religious dress has been contested and the individual or group was allowed to continue wearing the item(s) in question. These moments have significantly decreased. While not within the scope of this project, it should be noted that a comparative study of the situations where religious dress was once permitted, and is now disallowed could produce informative conclusions about when these shifts have occurred, and the political and social conditions surrounding these shifts.

Negative Freedom and the Religious Body

Policies that restrict religious dress can seem misplaced in a country that constitutionally protects religious freedom, freedom of conscience and expression. It comes as no surprise that a dominant narrative surrounding Bill 60's introduction in Québec was whether or not it would withstand a Constitutional Challenge. Historically, legislation that violates the *Canadian Charter of Rights and Freedoms* cannot be passed even if the effects of the proposed legislation are found to be inoffensive.[7] However, the regulatory contexts that appear in Canada are united in so far as both religion generally, and particular religions, are seen as a challenge or threat. In Québec, religion, and by extension the cultural Other, is perceived as a threat to Québécois identity, and to borrow the language of Bill 60, "Québec values." Between 2004 and 2008 the issue of Québécois identity was highly publicized as media attention to cases of religious accommodation in the province "fuelled the belief that Québec's identity and way of life was clashing with the cultural and religious identities of immigrant and minority populations and that a clear line needed to be drawn marking the limits of 'reasonable accommodation.'"[8] The official report from the Commission, tasked with investigating the state of Québécois culture and identity, found that despite ethnic, cultural, and religious pluralism in Québec, "collective life in Québec

[7] The government can limit an individual's Charter rights under section 1's reasonable limitation clause. However, to determine whether the limitation of Charter rights is within "reasonable limits" the proportionality test is used. The proportionality test, also known as the Oakes test determines if the limitations on rights are motivated by an objective importance that is both pressing and substantial, through 4 steps. The means to achieve the objective must be 1) proportional 2) there must be a rational connection between the measure of limitation and objective; 3) the measure of limitation is the least restrictive way of realizing the objective and; 4) the effects of the infringement on rights must be proportionate to the importance of the objective. Sujit Choudhry, "So What Is the Real Legacy of *Oakes*? Two Decades of Proportionality Analysis under the Canadian *Charter*'s Section 1," *Supreme Court Law Review* 34, (2006): 501–535. See also Mary Ann Waldron, *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada* (Toronto: University of Toronto Press, 2013), 15.

[8] Gada Mahrouse, "'Reasonable Accommodation' in Québec: the Limits of Participation and Dialogue," *Race and Class* 52, no.1 (2003): 86, doi:10.1177/0306396810371768.

is not in a critical situation."[9] In the wider Canadian context displays of religion are articulated as a threat to security or identification in some instances, or a threat to "how we [Canadians] do things" in others.[10] As the regulatory structures are primarily enforced in civic contexts, the alleged "threat" is predominantly that of mis-identification, as voting or taking the citizenship oath require individuals be identified before the act.[11] What I will suggest is that these regulatory attempts can be understood as the product of particular understandings of liberalism and secularism. In these social conceptions, secularism is understood to employ a "freedom from" model of liberalism with respect to religion which structures how religion manifests in the public sphere.

Contemporary democracy is deeply informed by the liberal tradition of John Locke and John Stuart Mill, according to which individuals are assumed to have natural rights to life liberty and property, and that government can, or should, only exert limited jurisdiction over the liberal individual.[12] Mill writes, "to individuality should belong the part in life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society."[13] However, exactly where these boundaries are drawn is ambiguous, something Mill himself concedes later

[9] Bouchard and Taylor, *Building the Future: A Time for Reconciliation,* 17.

[10] Prime Minister Stephen Harper has been quoted as supporting the niqab banning at Citizenship ceremonies because the practice is "barbaric" and "not how we do things here." While Harper by no means speaks for the entire nation of Canada, such explicit anti-religious statements coming from the Prime Minister's Office is troubling to say the least. The Conservative Party of Canada has launched an online petition for those who want to support Harper's comments, titled "Not How We Do Things Here". See http://www.conservative.ca/cpc/not-the-way-we-do-things-here/. Clifford Orwin, "Stephen Harper's veiled attack on religious freedom," *The Globe and Mail*, February 18, 2015, http://www.theglobeandmail.com.

[11] It is important to note that when an issue of identification was presented in the case studies examined in Chapter Two, reasonable measures for accommodation, such as taking the Citizenship oath in front of a female officer, were denied. Quan, "Zunera Ishaq on why she fought to wear a niqab during citizenship ceremony: 'A personal attack on me and Muslim women."

[12] John Locke, *The Second Treatise of Government* (Indianapolis: Hackett, 1980). John Stuart Mill, *On Liberty*, (The Floating Press, 2009).

[13] Mill, *On Liberty*, 126. See also 168-9.

in *On Liberty*.[14] Religion interests both the individual and society as it manifests as personal commitment(s) for the individual, and a tool for social and political organization for the state. To whom then does religion belong? The dominant narrative of modern social secularization would imply that while historically religion was primarily in the realm of the social, the decline in authority of religious institutions in the West means that religion is now primarily a concern of the individual (though many theorists have successfully shown that this oversimplified narrative does not accurately depict the contemporary situation).[15] It is at the intersection of the individual and the social that this project finds productive space, as regulatory attempts are only made when religious commitments manifest visually.

Drawing on Isaiah Berlin's treatment of the concept of positive and negative freedom, which has influenced late twentieth century conceptions of liberty, pluralism and toleration, I argue that a particular understanding of liberalism fosters these regulatory policies; conceptualizing modern society in terms of negative liberalism structures the secular response to religion in the public sphere.[16] Berlin argues that positive and negative liberty are two distinct kinds of liberty which "historically developed in divergent directions, not always by logically

[14] Mill, *On Liberty*, 135-6.

[15] Taylor, *A Secular Age*. See also Talal Asad, *Formations of the Secular* (Stanford: Stanford University Press, 2003). José Casanova, "The Secular, Secularizations, Secularisms," in *Rethinking Secularism*, eds. Craig Calhoun, Mark Juergensmeyer, Jonathan VanAntwerpen (Oxford: Oxford University Press, 2011), 54-5. *Varieties of Secularism in a Secular Age,* eds. Michael Warner, Jonathan VanAntwerpen, Craig Calhoun (Boston: Harvard University Press, 2010).

[16]In "Two Concepts of Liberty" Berlin states that when he discusses political liberty or freedom he uses "both words to mean the same" and as such in this chapter I follow Berlin in utilizing "positive and negative freedom" to mean positive and negative liberty as two distinct liberal positions. Berlin, "Two Concepts of Liberty," 169. Maria Dimova-Cookson, "Defending Isaiah Berlin's Distinction Between Positive and Negative Freedoms," in *Isaiah Berlin and the Politics of Freedom "Two Concepts of Liberty" 50 Years Later* eds. Bruce David Baum and Robert Nichols (New York: Routledge, 2013), 73-86.

reputable steps, until, in the end, they came into direct conflict with each other."[17] Negative liberty is an absence of barriers that would prevent individuals from acting as they see fit. As Berlin defines it, "political liberty in this sense [negative liberty] is simply the area within which a man can act unobstructed by others. If I am prevented by other persons from doing what I could otherwise do, I am to that degree unfree."[18] Thus, an increase in negative freedom decreases the obstacles between the individual and their objectives. This negative mode of liberty is juxtaposed with positive liberty: "The 'positive' sense of the word 'liberty' derives from the wish on the part of the individual to be his own master." [19] Positive liberty is the freedom to control one's actions; it can be understood in terms of an individual's ability to act instead of being acted upon, and the ability to cultivate autonomy.[20] Berlin's two conceptions of liberty are seemingly incompatible when applied to a single political ideal. Nevertheless, this tension can be productive, as Maria Dimova-Cookson argues: "the distinction between a negative and a positive concept of freedom… is a necessary one as it reflects tensions intrinsic to the personal experience and the social practice of freedom."[21] Berlin's concept of negative liberty can be applied to the treatment of religion in the Canadian public sphere where, I argue, liberalism works to protect society, as religion is often constructed as an obstacle to autonomous agents reaching their desired outcome within a secular society. Let me say more about this.

In the cases examined here, where religious dress is prohibited, there is an underlying assumption that civic space must be free from the appearance and practice of religion to be a

[17] Berlin, "Two Concepts of Liberty," 179.

[18] Ibid., 169.

[19] Ibid., 178.

[20] Ibid., 178-9.

[21] Dimova-Cookson, "Defending Isaiah Berin's Distinction Between Positive and Negative Freedoms," 74.

liberal space. In order to justify such legislation, the barrier to a rational productive public sphere is understood not only to be religion, but specifically religious bodies. This is what Carlos Colorado terms the "anti-pluralist side of negative freedom."[22] Negative liberalism can "undermine a practical commitment to multiculturalism" Colorado argues, and the examples here provide evidence to this claim.[23] Difference, instead of being supported, is challenged. In the cases of visible religious commitment outlined in Chapter Two, it would appear as though maintaining society's secular structure is privileged over the religious citizen's right to freedom of religion, and freedom of expression of this religion. This is most clearly outlined in the example of Bill 60, where the right to state services requires the denial of the right to freedom of certain kinds of religious expression because the secular structure of the state is extended to both service providers and recipients of state service.[24] The religious individual's freedom is restricted in order to maintain this secular structure. Bill 94 provides a similar example where institutional structure is privileged over individual freedom. In Bill 94 requests for accommodation are to be measured by the imposition of hardship on the granting body. Accommodation is permissible if it "does not impose on the department, body or institution any undue hardship with regard to, among other considerations, related costs or the impact on the proper operation of the department, body or institution or the rights of others."[25] Here the institutional body that grants the accommodation is given primacy over the individual who makes a request for

[22] Carlos Colorado, "Canadian Ethno-Religious Utopias and the Dynamics of Liberal Multiculturalism," in *Prophéties et utopies religieuses au Canada*, ed. Bernadette Rigal-Cellard (Bordeaux: Presse Université Bordeaux, 2012), 199.

[23] Ibid., 200.

[24] As is discussed later in Chapter Four, there are certain kinds of religious expression that are permissible in secular society, namely those that are not embodied or visible.

[25] Bill 94, "An Act to establish guidelines governing accommodation requests within the Administration and certain institutions," 4.

accommodation as the hardship of accommodation on the *institution* is the standard, not the hardship of the policy on the *individual* who is making the request for accommodation. In these examples, the physical bodies with markers of religious commitment are regulated, not just the abstract presence of religion in the public sphere. These policies imply that the physical manifestation of religion obstructs the secular public sphere.

Policies like those outlined in Chapter Two are the result of conceptualizing contemporary society as characterized by negative liberalism, in so far as these policies work to remove "barriers" to a secular public sphere, primarily visible evidence of religion. Negative liberalism, however, removes barriers that would prevent individuals from *acting* how they see fit. Thus, these policies can be understood as working to instantiate "correct secular action" in contemporary society. These policies ultimately regulate action. These policies require an embodied secularity, and as Bill 60 states, any symbol, object, dress that overtly indicates religious affiliation is an obstacle to enacting secularity in physical state spaces. Thus the obstacle, visible religiousity, is removed so that "correct" secular action can be achieved.

If religion is understood as an obstruction to secular freedom, then it must be removed in order for the individual be "liberated." However, issues arise when all citizens do not agree with the conception of society within which religion is an obstacle to secular society and civic practice and therefore must be removed in order for increased individual freedom. For religious citizens, for example, the obstacle is policy that restricts their freedom to enact religious commitment(s).

Ian Harris notes how Berlin understood that not all "good" things are compatible and, subsequently not all ideological positions can be made to work in concert. As such, "choice amongst them [ideological positions] was necessary and therefore so was the freedom to exercise

choice that the provision of negative freedom would facilitate."[26] Negative freedom provides space for choice, but when particular groups of *people* are seen as the obstacle that negative freedom must remove, negative liberty ought not to be the foundation from which to produce public policy. Public policy that is developed from this kind of understanding of negative freedom can be problematic if the obstacles that must be removed to allow individuals to act unobstructed are particular practices by specific groups of people. As the reception of Bill 60 illustrates, the assumption that religion is an obstacle to the realization of a productive civil space that embodied "Québec values" was not a majority position. However, it was a position that was held by some, particularly those with political power.[27] In order to propose policy with regulation of individual freedom, like Bill 60, liberty would need to be understood to function in terms of negative freedom, where the realization of the civic ideal of secular society was the "correct action" and through Bill 60 a barriers to the realization of that civic ideal of secular society—embodied religiosity—was being removed. A possible objection to Bill 60 might involve a differing conception of the individual and this particular issue, that the freedom of the religious citizen to wear religious dress in civic spaces was the objective and any interference to this end should be removed. One could argue that policies like Bill 60, which restrict the individual's ability to embody religious commitment, are an obstruction to the civic ideal of, and legal right to, freedom of expression. If negative liberty removes obstacles to what one might otherwise be able to do, there is a legal argument to be made that the policies and precedents which restrict

[26] Ian Harris, "Berlin and His Critics," in *Liberty* (Oxford: Oxford University Press, 2002), 354.

[27] Pauline Marois, the leader of the Parti Québécois who proposed Bill 60, is quoted as stating, "The Charter of Québec Values will become a strong unifying factor for Quebeckers… "What divides Quebeckers is not diversity, it is the absence of clear rules so that we can move onward in harmony…To recognize secularism as a Quebec value is to take cognizance of the evolution of a people which, for the past half century, has become increasingly secular and has taken the confessional character out of its institutions." Sophie Cousineau, "Marois believes Quebec will rally behind controversial secular charter," *The Globe and Mail,* August 25, 2013, http://www.theglobeandmail.com/.

freedom of religion do not advance secular society, but rather create categorically illiberal conditions. While Bill 60 is an especially effective example of how understandings of liberalism structure how religion manifests in civic spaces, the same principle applies to the singular cases where religious dress was restricted.

Many of the individual case studies examined both in and out of Québec deal exclusively with the niqab, and the same understanding of negative liberalism applies. For example, in Federal elections citizens are not required to remove religious head coverings, such as the niqab or burqa. The obstacle to civic participation is the identification of Muslim women voters. However in this instance the obstacle is removed through providing a variety of ways to identify voters.[28] In Québec, where women cannot wear a niqab or burqa when they go to vote in provincial elections, the obstacle to civic participation is the face-covering. Accommodation is not provided as an option, and as such the understanding is that the practice of veiling is the obstacle to civic participation.[29] In the first case, any obstacle that prevents Muslim women from being both Muslim and Canadian while voting is removed, whereas in the second case the obstacle to civic participation is the Muslim practice of veiling. Thus, negative freedom can be used as a justification for advancing the individual's freedom of religion in a democratic society, if the government produces policies which seek to remove obstacles that prevent religious practice. However, in the majority of instances where religious dress in civic spaces is contested, the appearance of religion is understood as the barrier to a productive civil space, producing an "antireligious form of liberalism," because civil space is conceptualized as secular, in a very particular sense of the word.[30]

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[28] Elections Canada, *Returning Officer's Manual: A Guide to Conducting Federal Electoral Events*.

[29] Bahkt, "Veiled Objections: Facing Opposition to the Niqab," 93.

[30] Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004), 10.

Regulatory structures develop out of a commitment to negative liberty where religion is understood an obstacle to "correct" civic participation. In the cases examined, it is particular manifestations of religious commitment—ones that are embodied or physically present—that visibly contest the secular narratives of the state. Talal Asad notes, "In theory, the self-owning liberal subject has the ability to choose freely, a freedom that can be publicly demonstrated. The reality is more complicated."[31] The complications that arise in in Québec and Canada more broadly are not with religious commitment or religious ideology per se, but rather the physical markers of this commitment that are seen as prohibitive to ensuring civic spaces and civic practices remain secular.

Defining Secularism

One must understand liberty in terms of negative freedom in order to justify the regulatory contexts in which religious dress is prohibited or regulated. The understanding that civic spaces are to be free from obstacles to civic participation can imply that religious commitment is an obstacle to equal civic participation. Thus, alongside a particular understanding of liberalism, these regulatory contexts are produced by a particular understanding of the nature of the public sphere (specifically civic spaces and practices): they are to be completely secular. However, secularism in these instances is narrowly defined, not just as the separation of church and state but rather as the removal of religion from public life.

Secularism is a concept that is not easily, nor clearly, defined. As the contemporary political landscape demonstrates, secularism comes in all shapes and sizes both ideologically and practically, and Canada is no exception. Canada has not had a state church since 1857, but

[31] Talal Asad, "Free Speech, Blasphemy, and Secular Criticism," in *Is Critique Secular* (California: Doreen B. Townsend Center for the Humanities, 2009), 29.

interestingly does not have a constitutional separation of church and state.[32] Nonetheless, there is still a pervasive sentiment throughout the country that the church and state should remain separate—a sentiment that is noticeably more prominent in Québec.[33] As such, Canada is described as, and describes itself as, a secular nation.[34] Secularism is a highly contextual term, one that Saba Mahmood, among others, argues needs to be understood as not only contextually dependent, but as a historically shifting category with a "variegated genealogy."[35] Therefore it is important to clarify that I am not arguing that the subsequent articulation of secularism is employed monolithically across Canada. However, in order to produce regulatory structures, secularism tends to be understood not just as the structure of social reality, but a social reality in which religion should be removed from public life. This particular definition of secularism employs what Charles Taylor terms a "subtraction story," in which the rise of modern society and its dependence on science necessitates the decline of religion and the "social significance of

[32] William A. Stahl, "Is Anyone in Canada Secular?" in *Secularism and Secularity: Contemporary International Perspectives* eds. Barry A. Kosmin and Ariela Kaysar (Hartford: Institute for the Study of Secularism in Society and Culture: 2007), 60.

[33] Pierre Anctil argues, "The will of the Church to manage large sections of the institutional structure of French Canada was completely rejected at the time of Quebec's modernization, to the point where this rejection may explain in part why the demands of religious minorities are often less well treated in this context than in English Canada." Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," 30.

[34] Some scholars, such as William Stahl argue that "secular" does not describe Canada well, and argues that "disembedding" (developed by Anthony Giddens and Charles Taylor in *The Consequences of Modernity,* and *Modern Social Imaginaries* respectively) is a more accurate description of the religious dimension of Canadian society. Stahl, "Is Anyone in Canada Secular?" 59. Though Stahl makes a convincing argument that secularism may not be the most comprehensive descriptor of Canadian society, the conflicts examined in this thesis provide evidence for the argument that Canada my have an implicit secularity, or at the very least that there are certain political motivations between marking the public sphere in increasingly restrictive terms, moving towards an increasingly restrictive definition of secularism.

[35] Saba Mahmood, "Secularism, Hermeneutics, and Empire: The Politics of Islamic Reformation," *Public Culture* 18, no. 2 (2006): 323-347, doi:10.1215/08992363-2006-006.

religious belief, commitment and institutions" in everyday modern life.[36] For Taylor, the subtraction story of secularism is an inadequate account of Western modernity and its secularity. He argues "that Western modernity, including its secularity, is the fruit of new inventions, newly constructed self-understandings and related practices, and cannot be explained in terms of perennial features of human life."[37] Asad argues that the secularization thesis "does not have to be true or false;" rather, the concept of "the secular" which emerges historically in a particular fashion with specific *practical* tasks is what warrants investigation, both because of, and despite the fact that "no one pays attention to the concept."[38] This shifts the discussion from the question of why and how it is that we became secular, to what changes because of the proliferation of "the secular."[39] It is this question of what changes because of the proliferation of "the secular" and ways of "being secular" that is addressed here.

José Casanova posits that "the secular" has become a central epistemic category, used to construct and experience "a realm or reality differentiated from 'the religious.'" He goes on to state that secularization, by contrast, "usually refers to actual or alleged empirical-historical patterns of transformation and differentiation of 'the religious' and 'the secular' institutional spheres from early-modern to contemporary societies." Finally, secularism refers to a wide range of modern "secular" worldviews and ideologies, or the "taken-for-granted normal structure of

[36] Taylor, *A Secular Age.* José Casanova also argues that secularization speculates a decline in religious beliefs and practices, the privatization of religion and the differentiation of the secular spheres that can be understood as "emancipation" from religious institutions. José Casanova, "Rethinking Secularization: A Global Comparative Perspective," *The Hedgehog Review* 8, no. 1-2: (Spring/Summer 2006), 7-22. Much of the argument stems from Casanovas earlier work, José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994). See Asad's discussion of Casanova's position in Asad, *Formations of the Secular*, 181-2.

[37] Taylor, *A Secular Age*, 22.

[38] Asad, *Formations of the Secular*, 183 (emphasis mine).

[39] Ibid., 17.

modern reality."[40] Asad agrees with Casanova insofar as he also understands "the secular" to be an epistemic category, but Asad's research program emphasizes "secularism" as a political doctrine.[41] Asad's study of the secular operates from a premise in which "the secular is conceptually prior to the political doctrine of secularism" and that "the secular" is formed over time through a variety of concepts, practices and sensibilities.[42]

At its most basic level, secularism can be understood as a "political and legal system whose function is to establish a certain distance between the state and religion."[43] However, the degree of distance and how this distance is articulated in practice are incredibly varied.[44] In *A Secular Age,* Charles Taylor presents what he calls the "story of secularism" and articulates how it is that modern society has progressed to this point from "previous ages of faith or piety."[45] Taylor indicates that the shifts that enable modern secularity—Reform, the rise of deism (which emphasizes natural religion and morality), changing understandings of time (where sacred time is afforded less, if any, significance), and the proliferation of the "unbelieving perspective" (in which the Immanent Frame emerges and exclusive humanism comes to be understood as the normative moral position)—also allow for the creation of a different understanding of selfhood

[40] Casanova, "The Secular, Secularizations, Secularisms," 54-5.

[41] Asad, *Formations of the Secular,* 1.

[42] Ibid., 16.

[43] Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience* (Cambridge Harvard University Press, 2011), 3.

[44] Jonathan Fox argues that separationism "constitutes a state neutrality toward religion where the state, constitutes a state neutrality toward religion where the state…gives preference to no particular religion but does not restrict the presence of religion in the public sphere, while secularist-laïcist model "specifically declares that not only does the state not support any religion, it also restricts the presence of religion in the public sphere." Fox, "Separation of Religion and State and Secularism in Theory and in Practice," 385.

[45] Taylor, *A Secular Age*, 2.

in modernity.[46] Taylor argues that these shifts constitute the complicated slide of society to a position where secularity is assumed as both the normative, and requisite position for democracy.[47] A component of both Taylor and Casanova's definitions of the secular is that it becomes the "new normal." This is to say that "the secular" is no longer a residual category, but a naturalized reality:

> The secular is often assumed to be simply the other of the religious, that which is nonreligious… But paradoxically, in our modern secular age and in our modern secular world, the secular has come to encompass increasingly the whole of reality, in a sense replacing the religious. Consequently, the secular has come to be increasingly perceived as a natural reality devoid of religion, as the natural social and anthropological substratum that remains when the religious is lifted or disappears.[48]

Casanova argues further, "the religious is increasingly perceived not only as the residual category, but also as a superstructural and superfluous additive, which both humans and societies can do without."[49] Regulatory structures depend on this perception of religion as a "superfluous additive," in order to require its removal. In this now normative opposition of the religious and the secular regulatory structures flourish as the integrity of secular public space can only be maintained if it is *sans* religion.

Casanova makes a helpful distinction when he outlines three distinct ways of "being secular." First, that of *mere secularity* which refers to "living in a secular world, in a secular age, where being religious may be a normal viable option." Second, that of *self-sufficient and exclusive secularity*, living without religion, where this is the normal, natural, taken-for-granted

[46] Taylor argues that the existential conditions of existence have changed. The pre-modern self can be understood as "porous" as it exists in an enchanted world where there is no sharp distinction between the human mind and the world of sensibility, while the modern self is "buffered" as there is the possibility to disengage from everything outside the mind (including the thinking agent's own body). Ibid., 38-41.

[47] Charles Taylor, "What Does Secularism Mean?" *Dilemmas and Connections* (Cambridge: Belknap Press of Harvard University Press, 2011), 309.

[48] Casanova, "The Secular, Secularizations, Secularisms," 55.

[49] Ibid.

condition of life. Third, *secularist secularity,* where one is "not only passively free but also actually …liberated from 'religion' as a condition for human autonomy and human flourishing."[50] While all three ways of being secular are possible in modern life, the social context determines the availability of these options. I would argue that within the Canadian context, all three ways of "being secular" are available to varying degrees, depending on one's social, political, and even geographical location in Canada. Québec, however, seems to be increasingly moving towards Casanova's third category, *secularist secularity,* in its civic spaces. The regulatory contexts stem from an understanding of secularism in which all ways of "being secular," as Casanova articulates, are possible but not preferable. In the examples examined one is free to maintain one's religious commitments as long as they are not manifest *in public* as religious commitments. One has to understand secularism as the removal of religion from public life in order to advocate for legislation or precedent, which would establish such practice. If society is understood to support *"mere secularity"* where religious belief is still an option, physical manifestations of that belief should not be problematic. However, if society understands secularism in terms of the subtraction story, which necessitates the removal of all signs of religion from civic space, physical manifestations of religious belief present a challenge.

Regulatory structures are produced when narrow definitions of secularism are utilized that position religion as incompatible with a secular public sphere. In doing so, "the secular" is understood as that which is devoid of religion. Casanova argues that this particularly narrow understanding of secularization does not happen as a direct consequence of the process of modernization, but rather is mediated by "other particular historical experience."[51] As many of the instances where religious dress was prohibited or regulated deal exclusively with the Muslim

[50] Ibid., 60.

[51] Casanova, "The Secular, Secularizations, Secularisms," 59.

niqab or burqa, one can argue that this particularly rigid response to embodied religion is largely a response to the post 9/11 Western suspicion of radical Islam.[52] Similarly, the historical experience of religion in Québec is distinct from other Canadian provinces, and its seemingly more drastic responses to religious expression must be seen against a sociocultural backdrop in which religion played a central role in state affairs until the Quiet Revolution, which I turn to now.

Secularism in Québec

As argued above, provincial location in Canada is a key factor in instances where regulatory contexts are produced. For example, depending on the province, the rules for headgear while playing hockey differ; in Ontario female hockey players can wear a hijab, whereas in Québec, a Muslim referee has said they cannot.[53] Many of the regulatory contexts produced in Canada occur in Québec. When it comes to voting, hijabs can be worn while one votes during a federal election, but not in a Québec provincial election.[54] Why is this the case? Why have regulatory contexts been observed only in select federal civic instances, but repeatedly in Québec?

[52] Sharify-Funk, "Governing the Face Veil: Quebec's Bill 94 and the Transnational Politics of Women's Identity." Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in France and Québec." Conway, "Quebec's Bill 94: What's 'Reasonable'? What's 'Accommodation'? And what's the Meaning of the Muslim Veil?"

[53] Howard Adelman, "Monoculturalism vs Interculturalism in a Multicultural World," in *Religion, Culture and the State*, eds. Howard Adelman and Pierre Anctil (Toronto: University of Toronto Press, 2011), 45.

[54] See Chapter 2, notes 73 and 74.

According to Gregory Baum, "Québec moved rather late into cultural and political modernity."[55] This is due, in part, to the distinct role the Catholic Church held in Québec society prior to the 1960s. There was no Ministry of Education, Ministry of Health or Ministry of Social Welfare as the Catholic Church controlled education, health services and other social programs. Thus the Catholic Church held a position of "social establishment" in Québec society. Though both the state and the political parties in Québec were *officially* secular during this time there was a "strong religious presence in political life due mainly to the adherence of the vast majority of French-speaking people to the Catholic faith," and the dominant socio-political role of the Catholic Church.[56] This Catholic influence on Québec society included protection of traditional and cultural ideals and a "restricted religious and political pluralism."[57] As one of the only dominantly Catholic provinces historically, Québec developed a distinct identity within Canada that was based in differing language, traditions, and religion in part because the Catholic Church "defined Québec's cultural identity in opposition to the Protestant and secular culture of North America."[58]

The 1960s, however, were a time of significant change and "initiated a gradual process of secularization"[59] in Québec, often referred to as the Quiet Revolution. Though Baum uses the term "gradual," David Seljak argues the speed at which the Catholic Church lost control was "rapid;" in just twelve years "not a single significant movement or party was openly [Catholic]"

[55] Gregory Baum, "Catholicism and Secularization in Quebec," in *Rethinking Church, State, and Modernity: Canada Between Europe and America*, eds. David Lyon and Marguerite Van Die (Toronto: Toronto University Press, 2000), 149-50.

[56] Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," 30.

[57] Baum, "Catholicism and Secularization in Quebec," 150. Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," 30.

[58] Baum, "Catholicism and Secularization in Quebec," 150.

[59] Ibid., 151.

while twelve years prior, every important nationalist movement or party had been.[60] During this time the Catholic Church lost control over the social bureaucracy of the state and Québec's self-perception began to change drastically from one rooted in a strong religio-cultural identity to one of uncertainty in the midst of Anglophone Canada as "Catholicism [had] provided the basic elements of French Quebecker's civil religion."[61] The Quiet Revolution, however, was not simply a cultural move to distance political culture in Québec from the Catholic Church. The Revolution was a "rejection of the dominant position of the Catholic church" insofar as the model of civil space began to look increasingly like the French policy of *laïcité*.[62] A distinct form of secularism began to fill the void Catholicism had left behind, both in terms of how Québec self-defined and how it was understood by the rest of Canada.

John Bowen argues *laïcité* is "hard to translate," as it does not merely denote 'secularism.' In principle, "it [*laïcité*] designates not a specific set of rules regarding religious expression but rather a protected, privileged, multifunctional social space within which [French] Republican principles could survive and prosper."[63] Casanova defines laicization as a particular form of secularization that "aims to emancipate all secular spheres from clerical-ecclesiastical control, and in this respect, it is marked by a laic/clerical antagonism." Casanova goes on to argue that the boundaries between the religious and the secular are particularly rigid when *laïcité* is the form of secularization employed, and that these boundaries are "pushed to the margins, aiming to contain, privatize, and marginalize everything religious, while excluding it from any

[60] David Seljak, "Resisting the 'No Man's Land' of Private Religion: the Catholic Church and Public Politics in Quebec," in *Rethinking Church, State, and Modernity: Canada Between Europe and America*, eds. David Lyon, Marguerite Van Die (Toronto: Toronto University Press, 2000), 133.

[61] Ibid., 132.

[62] Adelman, "Monoculturalism vs Interculturalism in a Multicultural World," 44.

[63] John Bowen, *Why the French Don't Like Headscarves* (Princeton: Princeton University Press, 2007), 2; 29.

visible presence in the secular public sphere." "The secular" quickly becomes removed from its binary, "the religious" as *laïcité* constitutes a "self-enclosed reality."[64] In practice, states that declare *laïcité* as their model of secularism tend to be very clear about the availability, or lack of any kind of religious expression in public space for any kind of religious expression. However, *laïcité* has become more than a particular iteration of secular society. France, "claims secularism (*laïcité*) as a constitutive element of its national identity,"[65] and Jean-Francois Dupré argues there is a growing emphasis on *laïcité* as an identity marker in Québec.[66] However, if *laïcité* is a constitutive maker of this distinct provincial identity, religious individuals will not recognize themselves in it. As Elizabeth Shakman-Hurd states, in a society characterized by *laïcité* "religious belief, practices, and institutions have lost their political significance, fallen below the threshold of political contestation, or been pushed into the private sphere."[67] Unlike Casanova's spectrum of secularization in which religion manifests in different capacities, *laïcité* is argued to produce a "fixed and final separation."[68] If this is the particular iteration of secularism that is used as an identity marker, then there is no ideological space for religious individuals, but more to the point of this project, the ideological bifurcation creates an idealized citizen body as the religious individual cannot physically gain access to the physical public sphere unless she enters as "neutral"—which is to say an a-religious—citizen.

[64] Casanova, "The Secular, Secularizations, Secularisms," 57.

[65] Craig Calhoun, Mark Juergensmeyer, Jonathan VanAntwerpen, "Introduction," in *Rethinking Secularism,* eds. Craig Calhoun, Mark Juergensmeyer, Jonathan VanAntwerpen (Oxford: Oxford University Press, 2011), 9.

[66] Dupré, "Intercultural Citizenship, Civic Nationalism, and Nation Building in Québec: From Common Public Language to *Laïcité,*" 227.

[67] Shakman-Hurd, *The Politics of Secularism in International Relations*, 5.

[68] Ibid.

This historical relationship with the Catholic Church, the subsequent struggle against religious authority, and a growing identification with a particular understanding of what it means to be secular have made fundamental contributions to how modern identity is constructed in Québec. While Québec may be institutionally moving towards a version of *laïcité*, Quebeckers themselves encompass the gambit of Casanova's three iterations of "being secular," moving from *mere secularity*, where religion was a viable option in a secular world, through to *secularist secularity*, where religion is seen as something that society must be "liberated from" to ensure autonomy and flourishing.[69] Arguably, bills like Bill 60 can only receive broad support if one operates under the conditions of *secularist secularity*, as all other iterations provide space for religion in a secular world. Tensions surface when members of Québec society understand all three ways of "being secular" as viable options, and their government does not. As past-leader of the Parti Québecois Pauline Marois made clear through Bill 60 and the PQ's response to Bill 94, the PQ understood secular society to be one in which religious symbols were not welcome, a position not every Quebecker, nor Québécois institution, endorsed. Collective identity becomes further fragmented if *laïcité* is an identity marker for the Québécois that is employed by some, but not all. Similarly, in individual legal cases, how a judge sees Québec society—as one that either welcomes religious expression or requires a religion be muted or non-existent in the public sphere—affects what precedents are set concerning religious expression in the public sphere.

In an effort to distance itself from its overtly Catholic past, Québec has imposed a strict separation of church and state and has become what some argue to be "the most secular province of Canada."[70] However it is not just Québec's distinct iteration of secularism within Canada that

[69] Casanova, "The Secular, Secularizations, Secularisms," 60.

[70] Baum, "Catholicism and Secularization in Quebec," 149. Though Baum makes this assertion, and contemporary conflicts may indicate that Québec's specific iteration of secularism is unlike other

works to produce regulatory structures, as Québec also has its own version of multiculturalism which means how cultural difference is addressed and legislated in Québec society is a bit different from the rest of Canada.

Québec's policy of interculturalism is a product of the Quiet Revolution, and gained prominence at the end of the 1970's. Interculturalism takes the "basic principles of the federal ideology [of multiculturalism]" and "adds a linguistic component designed to guarantee that immigrants [will] integrate into the Québec-French speaking majority."[71] Thus interculturalism is distinct from multiculturalism—though it does emphasize the acceptance of, and communication and interaction between different cultural groups, there is not an assumed equality between these groups. As Pierre Anctil argues, "diversity is tolerated and encouraged, but only within a framework that establishes the unquestioned supremacy of French in the language and culture of Québec."[72] Interculturalism works to highlight certain distinct features of Québec society, namely the French language and culture that is not found elsewhere in Canada. It is this French Canadian majority in Québec that Dupré argues "remains the frame of reference in delineating the symbolic boundaries of citizenship in the province."[73] This feature of Québec society does not necessarily lead to attempts to regulate the cultural or ethnic Other, but when paired with a particularly rigid definition of secularism, French language, culture and the "civic religion" of *laïcité* are the dominant positions that all other commitments must fit under.

provinces in Canada, I would argue secularism cannot necessarily be quantified as such. While there are "ways of being secular" which create social realities that are more or less hospitable to religious expression, the "most secular" is a difficult attribution as secularism has yet to be empirically measured as such, though I do not know how one could go about such an empirical project.

[71] Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," 23.

[72] Ibid. See also Dupré, "Intercultural Citizenship, Civic Nationalism, and Nation Building in Québec: From Common Public Language to *Laïcité*, 228.

[73] Dupré, "Intercultural Citizenship, Civic Nationalism, and Nation Building in Québec: From Common Public Language to *Laïcité*, 228.

Interculturalism does not assume equality of different lingual or cultural groups. As such, a hierarchy of rights is produced, in which all rights, such as the right to religious expression, are subject to the application of Québec values, which are given primacy in the model of interculturalism, such as "equality between men and women, and the primacy of the French language" which can be seen explicitly in the language of Bill 60.[74] Claims for religious accommodation under the bill would only be successful if the primacy of the French language, state neutrality and gender equality were preserved.

The distinct approach to secularism and cultural difference in Québec can be understood as contributing factors to instances where regulatory contexts are produced. Casanova argues that secularization is "mediated phenomenologically by some other particular historical experience," and the history of religion in Québec arguably contributes to the adoption of interculturalism over multiculturalism and a more rigid employment of secular policy.[75] Pierre Anctil makes this argument: "The will of the Church to manage large sections of the institutional structure of French Canada was completely rejected at the time of Québec's modernization, to the point where this rejection may explain in part why the demands of religious minorities are often less well treated in this context than in English Canada."[76] The policies of interculturalism and a *laïcité*-like secularism provide one explanation as to why regulatory contexts appear in Québec more than other provinces in Canada, and perhaps why issues of religious accommodation are a ongoing topic in Québec political discourse.

[74] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests."

[75] Casanova, "The Secular, Secularizations, Secularisms," 59.

[76] Anctil, "Reasonable Accommodation in the Canadian Legal Context: A Mechanism for Managing Diversity or a Source of Tension," 30.

Power and Privilege

This chapter outlined the ideological underpinnings of the regulatory contexts examined in Chapter Two in an effort to understand how moments where religious dress was limited or legislated in a particularly restrictive manner could be produced in a country that constitutionally protects freedom of religion, conscience, and expression. I argue that these regulatory contexts, which prohibit religious dress, come out of particular understandings of liberalism and secularism. First, liberalism, with respect to religious expression, is understood in terms of negative freedom, or 'freedom from'; individuals are to be free *from* the intrusion of religion in the public sphere. Second, the public sphere is understood to be secular, where secularism is understood not just as religious neutrality, but as the absence of religion. These conditions do not necessitate regulatory contexts, however, they are apt to produce them.

The examples examined in Chapter Two are regulatory contexts found primarily in Québec, and very often within the bounds of civic spaces or participatory practices. These regulatory contexts are produced because there are those that have a vested interest in continuing to employ negative freedom and rigid secularism. How, where, and by whom are the boundaries between the religious and the secular drawn? What gets to "count" as religious and what is labeled "cultural" so that certain practices are allowed in the public sphere? What is the benefit in defining certain practices as religious instead of cultural to ensure they are not allowed into the secular public sphere? Brenna Bhander argues that such definitions and classifications of practices or beliefs work to protect the political values of the nation state—secularism and tolerance of difference—at the expense of "ways of being that are perceived as threatening this

unity." This is achieved, she argues, through the opposition between secular political culture and religiosity.[77]

One does not have to look very far in the Canadian context to see how narratives of "threat" run through many of the regulatory contexts examined.[78] Both Prime Minister Stephen Harper and former Parti Québécois leader Pauline Marois justified their positions of banning the niqab in citizenship ceremonies, and banning religious symbols in civic spaces respectively, based on the notion that the practices they banned/were attempting to ban, threatened Canadian or Québécois values.[79] Not surprisingly, this narrative of "threat" is often linked to Islamic traditions and practices:

> in such a climate, appeals to secularism succeed in creating a moral panic and legitimize surveillance and regulation of Muslim populations. In the post-9/11 atmosphere of a 'clash of civilizations', discussions of secularism inevitably become racialised, serving to separate the modern from the pre-modern, and positing Islam as the ultimate threat of barbarism facing the West.[80]

As the case studies evidence, Islamic practices are often those that are regulated. In particular, Muslim women's veiling practices are often interpreted as "threat" and become a symbol of "demarcation, distinction, exclusion and discrimination between Muslim and non-Muslim

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[77] Brenna Bhander, "The Ties that Bind: Multiculturalism and Secularism Reconsidered," *JOLS Journal of Law and Society* 36, no. 3 (2009): 303, doi:10.1111/j.1467-6478.2009.00469.x. See also Roger O'Toole "Canadian Religion: Heritage and Project," in *Rethinking Church, State, and Modernity: Canada Between Europe and America*, eds. David Lyon, Marguerite Van Die (Toronto: Toronto University Press, 2000), 34-51.

[78] See Chapter Three, note 10.

[79] While these positions are incredibly problematic, their explicitness is important as they transcend the trap of "toleration talk." In *Regulating Aversion: Tolerance in the Age of Identity and Empire* Wendy Brown argues that power relations quickly become disguised in liberal societies when majority and minority relations are guised in the language of toleration. So while their positions remain problematic, they do bring to the fore issues that are percolating in society, and in doing so make space for dialogue and discussion. Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2008).

[80] Mahrouse, "'Reasonable Accommodation' in Québec: the Limits of Participation and Dialogue," 92.

between men and women, between tradition and modernity, and between accepted and rejection."[81]

Concluding Remarks

My intent is not to place a value judgment on the positions that generate regulatory contexts outlined above. How these concepts are defined and employed must be read in context, and as such assessment of their application in the Canadian context is my primary objective. The employment of negative liberty, *laïcité*, or other rigid forms of secularism can be understood as part of the ideological foundation of regulatory contexts in Canada.[82] Having examined what regulatory contexts are, and postulating how such instances could be produced in a liberal democratic society, I now turn to why this matters. What are the consequences of employing negative liberty and rigid forms of secularism? What happens to the public sphere when these ideological positions are woven into policy and practice? Chapter Four outlines the consequences for the religious individual and the public sphere when religious expression in the public sphere is mediated, regulated or restricted. When rigid definitions of secularism are employed, the boundaries between public and private life are accentuated as all things deemed "non-secular" are relegated to the private sphere, especially religion and religious expression. The examples in this project are case studies where religious expression is present in the form of religious dress, and as such religious expression in these instances is inextricably intertwined with the physical body. As such, the assumption that religion should be relegated to the private sphere is not only problematic, but disadvantages religious believers for whom dress and daily practice are integral

[81] Adelman, Monoculturalism vs Interculturalism in a Multicultrual World," 37.

[82] These are not the only contributing factors to instances where religious dress has been regulated, but I argue that these positions must be held to some degree in order to justify regulation of religious expression in a country that protects this right.

elements of tradition. A modern solution for the public private divide is that religiously motivated positions can only enter the public sphere if they are translated into the "secular" language of reason and rationality (i.e. non-religious).[83] However, this "solution" does not work when the practices in question are non-verbal acts. The body cannot be translated as such, and refusing to allow an individual to embody his/her religious commitments arguably cannot, and ought not, be the practice of a liberal democratic nation like Canada.

[83] Rawls, *Justice as Fairness*. Rawls, "The Idea of Public Reason Revisited."

Chapter 4

Embodiment, Identity, and the State

> "Depending on the religion the relation to the public will be different."[1]
> - Judith Butler

> "There is no private life which has not been determined by a wider public life."[2]
> - George Eliot

Thus far I have examined legislation and case studies where religious dress is regulated, and provided one explanation of how and why such "regulatory contexts" could appear in a liberal democracy like Canada. The necessity of the body ties all of these instances together. The conflicts I examine are notable because the physical body is central to each conflict, and in these cases religion is explicitly embodied and thus it is the combination of bodily and religious expression that leads to conflict. Here, religion makes itself known in the public sphere as inextricably intertwined with the individual wherever they are physically present and complicates the philosophical discussions of the conditions of life secularism necessitates, as well as the "appropriate" place for religion in liberal democracies or civil deliberation. Sociologist of religion Bryan S. Turner argues there has been "little attention given to the role of the human body and history of religions," maintaining that even in the canonical works on religion of Weber, Durkheim, and Simmel there is "little or no reference to the human body and embodiment." Turner, however, has worked to remedy this and posits a "growing concern to

[1] Judith Butler, "Is Judaism Zionism?" in *The Power of Religion in the Public Sphere* eds. Eduardo Mendieta and Jonathan VanAntwerpen (New York: Columbia University Press, 2011), 70.

[2] George Eliot (Mary Anne Evans) *Felix Holt, The Radical* (Boston: Estes and Lauriat, 1886), 53.

understand the central place of the body in religious belief and practice."[3] This thesis, and this chapter in particular, contribute to the work of attending to the place of the religious body, specifically when the religious body intersects with the public sphere. I argue the religious body complicates the assumed separation of religion and the state where religion is understood to be an element of private, not public, life. The religious body also challenges policies that seek to limit and regulate the religious body in public or civic spaces through the creation of an "ideal" secular citizen.

Understanding the Religious Body

The religious body is a complex site. First, there is the undeniable and ineluctable presence of the physical body. Second, there is the undeniable presence of dress, symbols, or objects that connect the physical body to a particular social formation. Third, the attire, symbols, and objects indicate some degree of alignment with a particular way of being in and understanding of, the world. As such, the religious body can be understood as an expression of one's internal self on the external body as some of one's ideological commitments are made manifest on the body. Turner conceptualizes the exterior body as follows: "The exterior body can be conceived as the medium through which feelings and emotions are expressed, that expressions have to assume a socially acceptable form, if they are not to disrupt the normal flow of interpersonal actions. The exterior-body problem is not one of restraint, but of normative representation."[4] The religious body is one where ideas of "normative representation" are contested, as the individual is at once a citizen of a secular state, and a religious individual. The

[3] Bryan S. Turner, *Religion in Modern Society: Citizenship, Securitization and the State,* (Cambridge: Cambridge University Press, 2011), 17.

[4] Bryan S. Turner, *Religion and Social Theory* (London: Sage Publications, 1991), 117.

definition of "appropriate comportment" in the public sphere is at the crux of conflicts surrounding religious dress because the exterior-body of a religious individual is sometimes understood as a "socially unacceptable form" of expression in the secular public sphere. David Robertson Cameron terms these forms of expression "manifestations of identity," and when articulated as such, it raises the question: how can one restrain or censure these "presentations of self or assertion of community membership" in a liberal democratic society, especially ones that claim to support and encourage all forms of diversity?[5]

Taking Turner's assertion that "the body plays a critical role as the expression of society as a whole," one can argue that both religion and the state have a vested interest in what the body publicly expresses.[6] In *Religion and Social Theory,* Turner makes this connection explicit:

> Religion has historically been fundamental to these four societal tasks [restraint, representation, registration and reproduction]. In entomology, religion derives from *religio* (bond or obligation), but is also related to *regulare* (rule) and *ritus* (ceremonies)…Religion is thus regarded as a system of bonding and binding through which human bodies are controlled and disciplined. Within this framework, secularization can be regarded as the transfer of religious disciplinary practices to the secular domain of the *polis*.[7]

The examples outlined in Chapter Two support Turner's assertion that secularization impacts how bodies are disciplined and controlled in modern society. This is especially prevalent in the increased control of Islamic practices in the West.[8] It is largely a matter of individual concern how individuals dress or present themselves to the public. However, religious bodies signify

[5] David Robertson Cameron, "An Evolutionary Story," in *Uneasy Partners: Multiculturalism and Rights in Canada* eds. Janice Gross Stein et al. (Ontario: Wilfred Laurier Press, 2007), 89.

[6] Turner, *Religion in Modern Society: Citizenship, Securitization and the State*, 18.

[7] Turner, *Religion and Social Theory*, 118.

[8] It should be noted that many of the case studies examined deal exclusively with Muslim veiling practices. While regulatory conflicts in Canada have affected and would affect Muslim women more than any other group, there is not space in this project to deal extensively with the implications of this disproportionate effect. Please see Selby, "Un/veiling Women's Bodies: Secularism and Sexuality in Full-face Veil Prohibitions in France and Québec." Sharify-Funk, "Governing the Face Veil: Quebec's Bill 94 and the Transnational Politics of Women's Identity." for thorough examinations of the ramifications for Muslim women of the debate on veiling practices in the public sphere.

group identification as the dress, signs, or objects that one wears are primarily understood as signs of, or indications of, a particular religious commitment. The religious body functions simultaneously as an expression of individual and group identity, and manifests ideological convictions in a way that brings the internal to bear on the external-body.

Michael Warner notes that the role of the body in understandings of "public-ness" in the 21st century is changing.

> In earlier varieties of the public sphere, it was important that images of the body *not* figure importantly in public discourse. The anonymity of the discourse was a way of certifying the citizen's disinterested concern for the public good. But now public body images are everywhere on display, in virtually all media contexts. Where printed discourse formerly relied on a rhetoric of abstract disembodiment, visual media ... now display bodies for a range of purposes: admiration, identification, appropriation, scandal and so forth. To be public in the West means to have an iconicity.[9]

Religious bodies are just one example of the tension between public bodies and iconicity. While Warner argues, "to be public in the West means to have an iconicity," bodies in the West are not necessarily always under their own control. As Warner points out, admiration, identification and appropriation are just a few of the ways that the body is manipulated in contemporary public contexts. Religious bodies, and religious dress are emblematic of this. Certain signs and symbols take on specific meanings and connotations independent from the wearer's intent. For example, some orthopraxic religious signs can be read as subscribing to fundamentalist strains of particular religious groups, while the wearer perhaps holds moderate positions about religious practice and theological positions. The degree of commitment to particular ideological positions and practices cannot be assumed to correlate directly to certain ways of dressing or public presentation. Nonetheless, certain means of religious public presentation become iconic

[9] Michael Warner, "The Mass Public and the Mass Subject," in *The Phantom Public Sphere* ed. B. Robbins (Minneapolis: University of Minnesota Press, 1993), 242. Quoted in Luke Goode, *Jürgen Habermas: Democracy and the Public Sphere* (London: Pluto Press, 2005), 52.

representations of one approach to particular religious commitment, and religious individuals must negotiate this iconicity when they enter the public sphere.

In her work on the body and veiling practices, Sonja van Wichelen argues that political theorists are preoccupied with how liberal democracy in secular states is affected by particular religious expressions, such as veiling. This perspective, however, views the body as *sign*: "Concerned with what the veiled body *means*, it places central the hermeneutics of the veil in uncovering its influence on society and social life. What do veiled bodies represent in public space? What does it signify? Here, the veil is a mediated symbol, which can be used as pawn in ideological struggles or as a tool for collective mobilization."[10] I extend Van Wichelen's logic to the religious body more generally. What does a religious body signify? How does the religious body influence society and social life? In turn, what is the effect *on* the religious body if it is not allowed to enter society and social life? It is perhaps the religious body's perceived potential of influence on society and social life that drives the increased rigidity of the separation of religion from "secular" public life and attempts to further relegate religion to the private sphere. Van Wichelen states, however, that the religious body as *sign* is not the only way to conceptualize the religious body as empirical work approaches the body as *site*. She maintains "there is a third analytical realm in which we can situate the veiled body and that is the way in which this body moves in the social world when *site* and *sign* are conflated."[11] Conceptualizing the religious body as both *site* and *sign* provides a framework for analyzing how the physical nature of certain types of religious expression challenge dominant models of secular society where religion is assumed to be part of the private sphere and denied a place in the public sphere. The religious

[10] Sonja van Wichelen, "The Body and the Veil," in *Routledge Handbook of the Body* ed. Bryan S. Turner (London: Routledge, 2012), 211.

[11] Ibid.

body as *sign* is often the issue when conflicts of religion arise in the public sphere. When the body manifests signs of religious commitment the body itself becomes a sign of that particular religious commitment or identity and therefore the body does not adhere to the assumed secularization of the public sphere. However, the religious body is simultaneously a *site* insofar as liberal democracies recognize the individual as the locus of freedom of expression. Thus, because religious bodies are both site and sign, they problematize the assumed divide of secular society in which religion is relegated to the private sphere.

Religious Bodies: Between Public and Private

In the Western tradition "public" and "private" have been theorized as "distinct zones" of society, and there has been much debate about whether either category has meaning independent of the other.[12] The constitutive nature of these categories is troubling if one defines "the public" as simply "that which is not private," and further if one assumes that division of life can be so neatly parsed into such categories. Theories of secularism, however, depend on these categories, as religion needs "a place" in society if public space is to be understood as "secular," "neutral," or a-religious as it is variously conceptualized. In distinguishing "public" and "private" as separate in both theory and practice, it is implied that the integrity of each is only possible through maintaining their separation. In "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," Nancy Fraser argues that general critical theory "needs to take a harder, more critical look at the terms 'private' and 'public," as "these terms, after all, are not simply straightforward designations of societal spheres, but rather cultural

[12] Michael Warner, "Public and Private," in *Publics and Counterpublics* (New York: Zone Books, 2005), 26. Lori Beaman, "Between the Public and Private: Governing Religious Expression" in *Religion and the Public Sphere* eds. Solange Lefebvre and Lori Beaman (Toronto: University of Toronto Press, 2014), 45.

classifications and rhetorical labels." Fraser maintains that particularly in political discourse the terms "public" and "private" are deployed to delegitimize certain interests, views, and topics and valorize others.[13] When it comes to religion, one can see how this is certainly the case. The categorization of religion as a private interest works to remove political power from those social groups that find part of their identification in religious ideology. These linguistic choices, however, have physical ramifications. For those who identify as part of an orthopraxic tradition in which daily life is infused with physical markers of belief—such as a kirpan, kara, turban, yarmulke, niqab, hijab, habit or, cross—their lives and identity are thus categorized as private. Their admittance to civic or public life requires that the "private" elements stay private. While the word "private" can connote something one holds dear and wants to protect, it is also carries with it an understanding that those things which are categorized as private ought *not* be public. This is certainly the case with religion in secular society. The normative assumption becomes that to ensure public life remains secular religiosity in all its forms must remain private. In their introduction to *Religion in the Public Sphere,* Lori Beaman and Solange Lefebvre open by stating: "religion is frequently referenced in relation to its presence or absence from the public sphere or its relegation to the private sphere."[14] However, as many contemporary issues indicate (not least of which are those that center around religious dress), the seemingly sharp distinction between the public and private is continually blurred as the fantasy space of "either/or" gives in to the reality of the "both/and."[15] Even in societies that employ the strictest form of secularism, religion is not completely absent from public life. Nevertheless, *how* religion manifests continues

[13] Nancy Fraser," Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text* 25/26, (1990): 73, doi:10.2307/466240.

[14] Lori Beaman and Solange Lefebvre, "Introduction," in *Religion in the Public Sphere: Canadian Case Studies*, (Toronto: University of Toronto Press, 2014), 1.

[15] Warner, "Public and Private," 27.

to change.

The Problem of the Public Sphere

Why does the presence of religion in the public sphere cause such tension? The pervasive understanding that secular society requires a secular public sphere is one answer, but I would argue that the conceptualization of the idea of "the public sphere" itself has an a-religious tone. Theories of the public sphere have stemmed from, or at the very least pay homage to, Jürgen Habermas' foundational work *The Structural Transformation of the Public Sphere,* published in 1963. One of the first scholars to formally conceptualize the public sphere, Habermas examines the rise of the public sphere in the 18th century. He argues the rise of the public sphere was shaped by the rise of print culture that led to a new and articulate public opinion. Before the 18th century, Habermas contends the understanding of "the public" was tied to kings, noblemen and lords who were understood to be literal embodiments of the state.[16] Print media, newspapers, books and pamphlets, which could be distributed to the masses after the invention of the printing press, changed the location of "the public." This created a shift in the collective consciousness as the masses were now able to address themselves and thus be brought together around ideas. This coalescence around ideas becomes the public sphere; "the idea of a public sphere is that of a body of 'private persons' assembled to discuss matters of 'public concern' or common interest."[17] Habermas does not address, however, what happens when elements of the "private

[16] Habermas states that noblemen carried an "embodiment of gracefulness, and in this publicity he ceremoniously fashioned an aura around himself." Jürgen Habermas, "Introduction: Preliminary Demarcation of a Type of Bourgeois Public Sphere," in *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Boston: Polity Press, 1962), 13.

[17] Quoted in Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," 58.

person" are made manifest in their public assembly.[18] Religion, as already stated, is both practice of "private persons" and social formations that are matters of "public concern," and religious bodies are one site where these interests converge.

While Habermas uses the language of public and private in his soft definition of the public sphere, his construction offers three critical features that shape subsequent theories of the public sphere. First, he argues that the public sphere must be a "neutral" space, which is to say that all those who enter are not assumed to be equal, but status (economic, social or other) must still be disregarded in the public sphere.[19] Second, rational argument is central to the functioning public sphere. Issues must be resolved through rational argument and decided in favor of the most rational argument. Third, texts are central to the creation of "the public sphere." In the 18th century texts were limited to books, journals, newspapers and other forms of print media. These texts provided access to the public sphere, as those who had access to cultural products were

[18] The question of the physical body, to my mind, is not thoroughly addressed in *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Habermas does attend to the physical body in his theory of communicative action when he outlines "dramaturgical action" which he defines in part as a stylized "presentation of self" in social interaction and communication. The body is a facet of presentation, and as communication can take place in interaction with other people, how one presents oneself is important as one "more or less purposefully [discloses] his subjectivity." See Jürgen Habermas, *Reason and the Rationalization of Society,* Volume 1 of *Theory of Communicative Action Volume 1*, 85-6 for a short discussion of "dramaturgical action." However, how dramaturgical action relates to his construction of the concept of the public sphere is a different, albeit important, discussion from that of this thesis. Jürgen Habermas, *Reason and the Rationalization of Society,* Volume 1 of *Theory of Communicative Action Volume 1* trans. Thomas McCarthy (Boston: Beacon Press, 1987), 85-6.

[19] Nancy Fraser argues that social inequalities were never really effectively bracketed, even in the "ideal bourgeois public sphere." Those who could not follow the "protocols of style and decorum" were prevented from participating as peers and as such were markers of inequality. Thus "such bracketing usually works to the advantage of dominant groups in society and to the disadvantage of subordinates." Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in *Habermas and the Public Sphere,* ed. Craig Calhoun (Massachusetts: MIT Press, 1993),119-20.

given a voice in the space where culture was to be discussed, formed, and refined.[20] In this initial conception of the public sphere, it is arguable that particularities are not welcome. All are to enter the public sphere as citizens, and as such the variety of statuses that work to create an individual's identity are to be disregarded once one enters the public sphere.[21] This central feature of "a-particularity" or "neutrality" is one I argue has permeated the normative academic and popular understandings of how the public sphere should be theorized and realized. Neutrality is the objective rather than common practice of the Canadian public sphere. There are certain markers of identity, be they religious, social, economic, or otherwise, that are "allowed" in, and arguably structure, the public sphere in such a way that it cannot be understood as neutral.

The "neutrality" of a traditional Habermasian public sphere, where "every citizen must know and accept that only secular reasons count beyond the institutional threshold separating the informal public sphere from parliaments, courts, ministries, and administrations," is something that political theorist John Rawls also supports.[22] In *Political Liberalism* Rawls argues that the

[20] Habermas, "Introduction: Preliminary Demarcation of a Type of Bourgeois Public Sphere," 27-30. The importance technology plays in constituting a society in which a public sphere as such could theoretically become possible is something that contemporary theories of the public sphere must attend to. While the body is one area that troubles this public/private divide, contemporary technology does so as well. Internet technology blurs the lines between public and private in ways that have yet to be formally examined. Such an examination is not within the scope of this project, but is an avenue for future research both within public sphere theory as well as theories of embodiment.

[21] Clearly this is easier said than done as visible difference has, and continues to, shape who has access to, and power in, the public sphere.

[22] Jürgen Habermas, "Religion in the Public Sphere: Cognitive Presuppositions for the 'Public Use of Reason' by Religious and Secular Citizens," *in Between Naturalism and Religion,* trans. Ciaran Cronin (Cambridge, Polity Press, 2008), 114, 130. It is important to note that in recent writings Habermas has made a distinction between the formal and informal public spheres, where "an informal opinion-formation that prepares and influences political decision making is relieved of the institutional constraints of formal proceedings programmed to reach decisions." Jürgen Habermas, *Between Facts and Norms* trans. William Rehg (Cambridge: Polity Press, 1997), 171. Maeve Cooke argues that Habermas does not expect all religious individuals to justify political positions independent from religious reasons, though "his [Habermas'] expectation holds only for those who occupy public office (for example, politicians operation within state institutions) or who are candidates for such offices…or who are candidates for such office." Further, "his insistence that religious reasoning should be prohibited in the democratic political

reasons one brings into the public sphere must be in a "language that all understand," which he terms "public reason." Though there will be competing positions, Rawls maintains that an "overlapping consensus" is possible through the use of public reason.[23] While Rawls' notion of "overlapping consensus" is specific to political deliberation, it is nonetheless this notion of translation which structures normative conceptions of how individuals are to enter the public sphere. "Translation" is often associated with discussions of religion and the public sphere, as religiosity must be "translated" into "neutral" language in order to preserve the secular nature of the public sphere. When one applies this logic of "translation" to embodied religion, however, it quickly unravels. One cannot "translate" embodied practice. To change the way one dresses would be to remove the embodied element of religious commitment. Lived elements of religion either are, or are not. The middle ground "translation" provides is not a physical reality.[24] The question then becomes whether one is permitted to engage in political deliberation if her person is read as a "sign" of a particular religious commitment. If the public/private binary is how modern society is understood to function, what becomes of religious bodies? At the very least, their potential for civic action and capacity for meaningful citizenship is degraded as their agency is relegated to the private sphere.

Embodiment is conspicuously missing from both Rawls and Habermas' construction of the public sphere.[25] This is problematic because those who enter political deliberation necessarily enter as embodied selves. Though we can talk of political deliberation in terms of abstracted

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process holds only for the formal public sphere." Maeve Cooke, "Violating Neutrality? Religious Validity Claims and Democratic Legitimacy," in *Habermas and Religion* eds. Craig Calhoun, Eduardo Mendieta and Jonathan VanAntwerpen (London: Polity Press, 2014), 249.

[23] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

[24] Though it should be noted that translation is never neutral, as any linguistic translation is always an act of interpretation.

[25] See Chapter Four, note 18.

discussions, this is not how all deliberation takes place. If one can only enter political deliberation utilizing the language of public reason, what of the body that produces that language? Speech is privileged by Western political thought, but the body apart from speech also communicates through physical expression such as gesture, facial expression, or the use of spaces.[26] The body that enters the public sphere with the potential for political deliberation cannot be translated into a body that conforms to the standards of secular "public reason." In response to the French ban on hijabs, Jewish skullcaps, and large Christian crosses in public schools and state institutions in 2004, one author wrote, "The veil, the yarmulke and the cross enter the room a few steps before the wearers, identifying them as part of a group before they have an opportunity to define themselves as individuals."[27] This understanding of the religious body is insightful as the author describes religious identification as the first sign one reads off a religious body, and argues it is the primacy of religious identification that interferes with the possibility of any other type of individual identification.[28] The problem the author identifies is that the body is understood in terms of religious affiliation and not in terms of individual

[26] The field of kinesics works to interpret body motion communication based on the idea that all body movements have meaning. Ray Birdwhistell *Kinesics and Context* (Philadelphia: University of Pennsylvania Press, 1970).

[27] R. Givhan quoted in Byng, "Symbolically Muslim: Media, Hijab, and the West," 115.

[28] Whether religious identity is what one reads first off the body is a statement that is hard to substantiate, as gender, socio-economic status and ethnicity are all facets of identity with visible markers. I would argue that religion is a sign that can be read off the body, but it is not always the first collective association an individual will read onto a body. Similarly, context is key as certain signs and symbols are neutralized in different contexts. For example in societies with strict policies of *laïcité* a cross worn around the neck might be read as an overt sign of religious affiliation, whereas in the southern United States such a symbol would not be as overt since such apparel is a normative practice. Further to this point, in different contexts gender, socio-economic status, or ethnicity may be given primacy in how bodies are identified because contextually these are elements of identity where tension is located. The important thing to note here is that religion *can and is* read off the body.

identity. The issue, then, is that individual identity is "subsumed by" a religious one.[29] However, this identification assumes that there is a uniform understanding that the signs present are in fact signs of religious affiliation or commitment. Symbols do not produce just one meaning, and interpretation is always dependent on context. For example, a Muslim woman's niqab is only understood as such when it is on her body. When the fabric is detached from her body, its meaning and significance are diminished, as it is the particular placement and arrangement on her body that produce the meaning as such. The meaning is socially constructed in ways that are "appropriate to the interests that dominate these contexts."[30] Thus, *removing* these signs and symbols from the public sphere speaks to the interests behind the creation of particular kind of secular society. The multiplicity of meanings that can be read from a single symbol can be problematic if *how* the wearer wears the sign does not factor into the discussion, especially in the case of religious dress. Individuals could arguably identify as "culturally Jewish", or "culturally Muslim," for example, and thus utilize these signs to denote affiliation to a group without a theological commitment. The assumption that these signs only signify religious commitment adds another layer of complexity to the religious body. If the public and private dichotomy creates a more hospitable public sphere for embodied *cultural* identity and an increasingly inhospitable space embodied *religious*, how embodied signs and symbols are interpreted has

[29] It is worth noting that this is only an issue if individual identity is understood as what *should* be the primary mode of identity in the public sphere. This assumes a hierarchy of identity in the public sphere in which individual commitments are to be prioritized over collective or group identities. This individual-centric understanding of identity is a very Western way to conceptualize the self, and perhaps it is this way of understanding the individual that contributes to the issue of religious identification in modern society.

[30] Theo van Leeuwen and Gunther Kress, "Discourse Semiotics," in *Discourse Studies: A Multidisciplinary Approach (Second Edition),* ed. Tuen A. Van Dijk (California: Sage Publications, 2011), 113.

significant consequences.[31] Moreover, who makes these distinctions between cultural and religious identity is incredibly indicative of the power imbalances that structure the public sphere.

As signs are polyvalent and generally polysemic, the normative understanding within particular contexts is incredibly important. In questions of legislating religious bodies, power dynamics are easily visible. The issue of veiling practices during Canadian citizenship ceremonies is a key example. As cited above, Canadian Citizenship and Immigration emphasizes the importance of "traditional" or "cultural" attire as part of the Canadian citizenship ceremony. Culture is understood as something to be celebrated, and cultural diversity is something that is both supported and promoted as a Canadian ideal through both public sentiment and official policy of multiculturalism in Canada.[32] However, examples such as the policy put in place in 2011 by the then-Immigration Minister that banned face-coverings during citizenship ceremonies indicate that the celebration of diversity has limits. While the unilateral nature of the decision was problematic in and of itself, the bigger issue is that a government office assumed control of what the veil signified, namely that it was a patriarchal religious practice that was not supported in Canada. Of course the irony of telling women that they are not allowed to veil because of the patriarchal nature of the practice removes women's agency or choice in the matter of how they present themselves to the public, which in and of itself is a patriarchal move. One can argue that within the context of the citizenship ceremony the veil was abstracted first as a religious symbol and second as a cultural symbol, if understood as a legitimate cultural symbol at all. If cultural

[31] This is not to say that the public sphere is supportive of all cultural identities all the time. In Canada the *Zero Tolerance for Barbaric Cultural Practices Act*, passed on June 16 2015, amends the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code* to disallow cultural practices the *government* deems "barbaric."

[32] See especially, *Canadian Multiculturalism Act*, RSC 1985, c 24 (4th Supp).

attire is to be worn and celebrated at these ceremonies, this specific attire is designated as religious in order that its prohibition fit under the public/private divide of secular state/religious individual. If the practice is identified as cultural it is harder to justify under the current celebration of diversity why it is excluded.

It should be noted, however, that embodiment is not missing from all debates on the construction of the public/private divide. In *Publics and Counterpublics,* Michael Warner asserts the orientations of public and private are rooted in Pierre Bourdieu's concept of *habitus*, conventions by which experience is mediated. Warner posits that there are differences between what one experiences as public and private, though these distinctions are learned. This distinction, Warner argues, is "quasi-natural," and it is the visceral nature that often makes the distinction between what is public and private "difficult to challenge."[33] The argument that the public/private divide is "felt" indicates that the body plays a role in how the public and private are realized "on the ground," but perhaps not theorized. The argument of visceral attributions of public and private is, however, highly subjective. What one person "feels" is private, to another might "feel" to be public. I would argue that religion is one example of Warner's connection of *habitus* and the conception of public and private spheres. If religious practice is learned, then its place in the world is also learned. Within specific traditions religious expression is manifest on the body, and in others it is not. As such, how one experiences religion influences the spheres in which one "feels" religion should operate.

For some, religion does not fit solely within the confines of private life—this means that the conditions of secular society that argue that religion ought to remain in the private sphere need to be challenged. Warner agrees that the designation of either/or when it comes to public

[33] Warner, "Public and Private," 23-4.

and private is problematic. However, for Warner it is not the categories themselves that are difficult to challenge, but rather how these terms are used to shape and determine the legitimacy of certain ways of being in the world. Warner explicitly critiques Habermas' bourgeois public sphere specifically articulating a lack of attention to the relationship between the body and the public sphere.[34] This critique is offered on the grounds that the "universal reason" which structured the bourgeois public sphere was dependent on the participant's abilities to detach from their particularities. However, Warner argues, "the ability to abstract oneself in public discussion has always been an unequally available resource."[35] The religious body is a key example of how the ability to abstract oneself is not uniformly available, even across religious individuals. Various religious groups employ a wide range of practices and traditions, some in the form of material signs on the body, which makes "abstraction" difficult when in the presence of others. Just as the idea of "translation" does not account for moments of embodied interaction, neither do the requirement of "abstraction" and the requirement of "a-particularity" as one enters the Habermasian public sphere.

Whose Religion?

The ability to abstract oneself is also not uniformly available to religious individuals because of the way religion is loosely understood in Habermas' conception of the public sphere. Arguably, the bourgeois public sphere, the model that has structured much of the subsequent work on the concept of the public sphere, is heavily influenced by a protestant definition of religiosity. In *The Impossibility of Religious Freedom,* Winnifred Sullivan makes a

[34] Goode, *Jürgen Habermas: Democracy and the Public Sphere*, 52.

[35] Warner, "The Mass Public and the Mass Subject," 242. Quoted in Goode, *Jürgen Habermas: Democracy and the Public Sphere*, 52.

complementary argument. Sullivan argues that religion is primarily conceptualized in two ways, as either "protestant, private, voluntary, individual, textual and believed," or, "public, coercive, communal, oral and enacted."[36] Sullivan's analysis is primarily legal; she argues the courts understand religion through the former iteration, and define religion as such, privileging religious commitments that manifest as private, individual, text- and belief-based. Sullivan contends that because this is how religion is conceptualized in the legal system, the effects of this conceptualization create a hierarchy of religious orthodoxy, and as a direct result the possibility of religious freedom as a "legally defendable and definable right" is destroyed.[37] Though Sullivan makes this argument within the legal system, it can be applied to how religion is conceptualized in both political and social space in modern society. The result, I argue, is similar to Sullivan's conclusion. Religions that are private, individual, text- and belief-based are privileged in the modern context, as the bifurcation of life into public and private spheres does not affect religious commitment to the degree that it is affected for those whose religion is "public, communal, oral and enacted." The public/private divide works to minimize religion in Sullivan's second conception. As such, the public/private divide works with a definition of religiosity much like Clifford Geertz defines it: "*(1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing those conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic*."[38] Religion is conceptualized primarily as a "mood or motivation" where the interiority of conviction or

[36] Winnifred Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press), 8.

[37] This is Beaman's analysis of Sullivan's argument in Lori Beaman, "Is Religious Freedom Impossible in Canada?" *Law, Culture and the Humanities* 8 no. 2 (2010): 267, doi:10.1177/1743872110366653.

[38] Clifford Geertz, "Religion as a Cultural System," in *The Interpretations of Cultures* ed. Clifford Geertz (US: Basic Books Inc., 1973), 90. Italics in original.

experience is central to this understanding. While many have critiqued Geertz definition, it works to articulate how religion was perhaps initially conceptualized, and how some still understand religion to function with respect to the public sphere. Religious expression is not limited to interior manifestations and, as such, must be understood as something that for some cannot be 1) translated into a secular or "neutral" iteration or, 2) separated from daily, embodied life, which forms the core of many contemporary orthopraxic religious traditions.[39]

Religious expression is one facet of modern life that complicates the public/private binary. Not all theorists of modern society argue that the social world of human expression is simply separated into public and private. Hannah Arendt argues society is not comprised of just the public and private spheres, but that there is a middle ground that shapes both the public and private which she terms "the social world." Modern conceptions of privacy, she argues, were "discovered as the opposite not of the political sphere but of the social to which it is more closely and authentically related."[40] Now, freedom is associated with the protection of the private individual, resulting in a decline of investment in the activity of public life. Arendt goes further to argue that mass society, the realm of the social, not only destroys the public realm but the private as well as individuals are deprived of both their places in the world and their private homes because the social realm is neither public nor private.[41] Modeled after the Greek *polis*, Arendt argues for an understanding of privacy as what is one's own, and the public, as that which is always both common to all and political in nature. Arendt does not theorize an idealized public sphere like Habermas, but rather articulates what she sees as the reality of social life in

[39] This is part of Talal Asad critique of Geertz' position. Asad, *Genealogies of Religion*,15-18.

[40] Hannah Arendt, "The Public and the Private Realm," in *The Human Condition* (Chicago: The University of Chicago Press, 1958), 38.

[41] Ibid., 28, 59.

modernity: a decline in the realm of speech and action, the public, and a rise in the social, which mixes the public and private as personal concerns are brought out of the private sphere and discussed in the realm of the social. The public realm, Arendt argues, takes on new characteristics and becomes the site of individuality. Arendt is clear that she understands individualism to enrich the public sphere, as the public sphere is "the place where men could show who they really and inexchangeably were."[42] This understanding of the public sphere as a space in which "authentic" identity is celebrated resonates with the modern Canadian context, however, it is also the case in Canada that not all identities are understood as equal in the public sphere. Certain types of expression are celebrated, while other are regulated. Though in Arendt's model translation of religiosity is not an issue, recognition of religious identity becomes one.

Religion and the Recognition of Identity

The argument that the secularization of modern life necessitates a secular public sphere and religion is thus *ipso facto* limited to the private sphere is one that the religious body contests on a daily basis. Policies that seek to further impose this public/private divide, like Bill 60, advance the idea that public life is to be secular. Seeking a rigid enforcement of secularity in public life, however, limits the bodies that can engage in public life. Luke Goode argues, "bodily identity is most readily disregarded when a citizen belongs to the dominant or 'default' group, which was white and male in the case of the bourgeois public sphere."[43] In Canada religious individuals that have distinct external manifestations of religious affiliation are certainly a minority. The majority/minority power structures in Canadian society thus contribute to power dynamics in which minority religious individuals are denied expression as "full selves" in the

[42] Ibid., 41.

[43] Goode, *Jürgen Habermas: Democracy and the Public Sphere*, 52.

public sphere. Minority religious identities are therefore faced with pressure to assimilate to the "proper comportment" of a secular public sphere. The implication is that religious expression is thus only a Constitutional right in theory, not in practice. This is Sullivan's stance in *The Impossibility of Religious Freedom*; religious freedom as a legal promise is unsustainable. Lori Beaman takes issue with Sullivan's argument and argues that, while such an argument is "plausible and convincing in the context of the United States", the idea that religious freedom is untenable is less applicable in Canada for three reasons:

> First, the embeddedness of Roman Catholicism in Canadian social structure has resulted in a textured and nuanced understanding of religion, or, at the very least, a recognition that religion is in some measure a multifaceted notion. Secondly, the recognition of group rights, however defined, means that there is a space created for alternative religious discourses, in part because of the constitutional recognition of multiculturalism. Thirdly, the recent turn by the Supreme Court of Canada to an understanding of the subjectivity of religious freedom strengthens the idea that religion must be conceptualized in relation to the ways in which individuals understand and practice it in their day to day lives. However, there are shades of grey in this argument as evidenced by the courts' continued emphasis on belief as the focal point for assessments of religious freedom and the insistence that belief and practice can be separated. These are in turn made even more complex by the multiplicity of ways in which people are religious.[44]

Beaman's argument that the constitutional recognition of multiculturalism alongside the historical role of Catholicism in Canadian society works towards creation of space for a multiplicity of religious expression in Canada are two of the factors that I have argued here can also work *against* the realization of religious difference in Canadian society. In Québec, notably where much of this legislation has arisen, interculturalism, not multiculturalism, is official policy. Further, the historical role of Catholicism in state affairs has certainly contributed to the mistrust of any kind of religious expression or any formal role of religion in the public sphere. Subjectivity in court decisions surrounding issues of religion can work both in favor of and against the religionist. Beaman argues that this subjectivity provides productive space for the

[44] Beaman, "Is Religious Freedom Impossible in Canada?" 267.

potential of multiple interpretations of religion, which could allow for favorable decisions for the religious individuals, if the definition of religion were to extend past that of an interiorized belief system and recognize other forms of religiosity. However, the opposite could also happen, as the definition could be further narrowed to exclude "lived religion." Beaman makes this explicit as she states the courts still operate under the assumption that religious "belief and practice can be separated."[45]

Regulation of religious dress reinforces a divide between the public and private spheres of life insofar as certain manifestations of religion are denied access to the public sphere because of their embodied nature. The consequences of this are not only that religious individuals are denied space to enact their multifaceted identity, but that they can also then be forced to choose between their religious commitments and their place as citizens in the public sphere. If religion is understood as something antithetical to public life, then in the spaces in which one is a citizen, one ought not show evidence of religious commitment. This is significantly more complicated for religious commitments that are enacted through bodily practices. Thus, policies and/or precedent that limit religious dress in civic spaces work to create the idealized, secular citizen. In the case of Bill 60, the legislation produced the literal "face of the state" insofar as all those who were employed by the state would have to look a certain way. The "face of the state" would be one that embodied Québécois values: secularism and equality, through the removal of any indication that individual's held individual religious commitment. Defining certain elements of dress as cultural and others as religious is a tool that works to maintain current structures of power in which the binary between public and private is kept in tact as a way to marginalize the political potential of religious positions. Turner argues that due in part to the "spread of various

[45] Ibid.

forms of radical religion, the state management of religion has become more routine and more extensive. Form a historical point of view these strategies can be construed as a secularization of society, because the state regulates where and how religion can operate."[46] Here the state becomes an agent of secularization, but furthermore also becomes the guarantor of what constitutes "appropriate manifestations" of religion.

In "Secularism and Religion in a Multicultural Age" Geoffrey Levey argues that religious identity must be differentiated from other forms of identity in the context of any liberal society. He observes that religion is integral to the history of liberalism since it is through the religious wars of the 16th and 17th century that liberal consideration and practice emerged in their contemporary form. The rise of the nation state created a new form of political authority, which then articulated and enforced particular language and cultural identities within the nation. Within a democratic liberal context, however, the nation state is limited in how far a particular national identity can be imposed, in part because the state is understood to have a fundamental responsibility to the individual and the individual's democratic rights.[47] In other words, the state's goal to form a cohesive national identity is confronted by the necessary recognition that the individual's freedom to individual identity is something the nation state, in Canada, has legislated to protect and support.[48] The democratic protection of the individual comes at the price of a more cohesive nation state, as a liberal view of multicultural citizenship does not take "one group as the model to whom all others have to conform."[49] Scholars such as Johann Herder argue

[46] Brian S. Turner, *The Religious and the Political* (New York: Cambridge University Press, 2013), 253.

[47] Geoffrey Brahm Levey, "Secularism and Religion in a Multicultural Age," in *Secularism, Religion, and Multicultural Citizenship* eds. Geoffrey Brahm Levey and Tariq Modood (Cambridge: Cambridge University Press, 2009), 5.

[48] In the Canadian context the *Multiculturalism Act* of 1985 is the dominant example. Canadian *Multiculturalism Act*, RSC 1985, c 24 (4th Supp).

[49] Tariq Modood, *Multiculturalism* (Cambridge: Polity Press, 2007), 20.

that national identity is a component of the individual identity and as such, the state's values can ostensibly become the values of the individual, to varying degrees.[50] National identity can be discussed in terms of "core values" which describe what it is that defines the uniqueness of "who we are as a nation."[51] From this view, it would appear as though national identity is somewhat constant. However, the reality of multiculturalism brings with it an increasingly varied landscape in which the implication is that new ethnic minorities both abide and take pride in the core values of the nation into which they have been "granted entry, and, eventually, *full* membership."[52] It is this implied and sometimes required identification with the nation that multicultural democracies require of their citizens. However, citizenship must rate as an important component of one' identity in order for it to matter more than the things that will divide citizens.[53] Even in the context of a multicultural state the state functions through homogeneous language, cultural practices and ideological ways of being, thus it becomes exponentially harder to succeed in a nation state within which one is unable to identify with the dominant practices. This results in a divide between those that embody the dominant identity and other ways of being in the nation.

Through legislating the creation of the ideal citizen the state enforces a particular understanding of nationalism, and in legislating this, implies that national identity should be the primary mode of identification (though nationality is only one source of collective identification

[50] Kwame Anthony Appiah, "Identity, Authenticity, Survival: Multicultural Societies and Social Reproduction," in *Multiculturalism: Examining the Politics of Recognition,* ed. Amy Gutmann (Princeton: Princeton University Press, 1994), 155.

[51] Rattansi, *Multiculturalism: A Very Short Introduction,* 120.

[52] Ibid., 119 (emphasis mine).

[53] Charles Taylor, "Nationalism and Modernity," in *Dilemmas and Connections* (Cambridge: Belknap Press of Harvard, 2011), 90.

among the many others modern Canadians draw upon).[54] Craig Calhoun argues that national identity has "nearly always been perceived as more important and categorical than other identities of the modern subject," and the introduction of Bill 60 provides evidence of this assertion, as Québécois identity is given primacy over all others, since the requirement to be "part" of the state body, or enter into state affairs, is that one must not only support, but *embody* the ideas of the state.[55] Kwame Appiah argues that existing together in a nation requires a commitment by individuals to the organization of the state, however "this does not require that we have the *same* commitments to those institutions, in the sense that the institutions must carry the same meaning for all of us."[56] This assumes agency on behalf of the individual to have the power to exist in the public sphere alongside those who have higher expectations and requirements for participation. As identity is constructed through the concepts and practices made available, society provides the discursive framework that will shape identity. Thus if a group feels that the dominant or national identity does not reflect them, and the majority will not modify the definition of common identity to make space for a multiplicity of identities, then these individuals, Charles Taylor argues, "feel like second-class citizens and consequently experiences assimilative pressure."[57]As the case studies outlined in Chapter Two demonstrate, engaging in certain civic practices such as voting or providing testimony can challenge particular individuals to choose between a civic or national identity and a religious one, as one cannot be both in the spaces where these civic practices take place.

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[54] Jocylen Maclure, *Quebec Identity: The Challenge of Pluralism* (Montreal: McGill-Queen's University Press, 2003), 122.

[55] Craig Calhoun quoted in Maclure, *Quebec Identity: The Challenge of Pluralism*, 121.

[56] Kwame Anthony Appiah, "Identity Against Culture: Understandings of Multiculturalism," in *Avenali Lecture Series* (Berkley: Occasional Papers of the Doreen B. Townsend Centre for Humanities no. 1, 1994), 30.

[57] Taylor, "Nationalism and Modernity," 90.

Gary Miedema argues that the creation of Canada was a reimagining of a country that was to be "more inclusive and tolerant" and "built upon a secure foundation of religious and ethnic pluralism." However, as any scholar of Canadian identity knows, the idea that Canada derives its national identity from its commitment to diversity and pluralism is challenging if not somewhat contradictory.[58] Miedema's work examines how Canadians attached religion to their national identities, and argues that in celebrating difference, religion was thus not antithetical to the development of a national identity. In his seminal text in Canadian Studies, *Lament for a Nation*, George Grant argues that in Canada there is no "deeply rooted culture" outside of Québec.[59] This is perhaps why issues of embodied religious practice do not appear in other Canadian provinces. While Québec has what it imagines to be cultural values and practices, other provinces and Canada more broadly do not recognize nationalism in such explicit terms. Embodied practice makes religious commitments visible, and as such the primacy of "state" or national identity is challenged. Regardless of the commitment one has to state institutions, the strict separation of public and private spheres enforces categorical identification, regardless of the individual's preference. In this way, the state plays a substantive role in identity formation as it controls which elements of identity can be present and articulated in the public sphere and which parts of identity are relegated to the private sphere. Identity must be equally understood, as Judith Butler conceptualizes it, not as something one has, but rather something one does and performs through exchange and interaction.[60] For those who cannot disentangle their religiosity from their every day, the inability to enter the public sphere as someone shaped and motivated

[58] Miedema, *For Canada's Stake: Public Religion, Centennial Celebrations, And the Re-making of Canada in the 1960s,* xviii.

[59] George Grant, *Lament for a Nation* (Montreal: McGill-Queen's University Press, 2000), 42.

[60] Anna De Fina, "Discourse and Identity," in *Discourse Studies: A Multidisciplinary Approach (Second Edition),* ed. Tuen A. Van Dijk (California: Sage Publications, 2011), 266.

by, religion is exceedingly oppressive and works against forming an inclusive national identity necessary to make a success of multicultural society by respecting and building up the identities people value.[61] As the case studies examined earlier exemplify, these instances do not accord with the understanding of Canada as a state that not only welcomes but moreover celebrates diversity. Not only is difference seen as something of a material reality, but in the Canadian social imaginary, it is understood as a public good and a core constitutive element of Canadian identity.

Turner aptly notes that the body is an important nexus between the individual and the state and that especially in modern times the body has become "a site of political conflicts."[62] When society is conceptualized and realized as broken into spheres in which certain ways of being are dis/allowed, both individuals and groups lose their potential for action if they do not conform to the standards set by the power structures which control spheres of action. As the case studies introduced in Chapter Two exemplify, religious dress is one issue in which there has been some movement towards a neutralization of religious commitment that manifests itself on the body. These conflicts indicate that legislation which regulates one's ability to embody religious commitments in the Canadian public sphere has yet to be broadly applied to Canadian society. However, the way the "issue" of embodied religion in the public sphere has been discussed implies that for some the nation state is understood to be characterized by the secular nature of the public sphere, and thus the citizen must present herself as secular to be recognized as citizen. In *Rethinking Secularism,* Calhoun argues that "it is necessary to rethink the secularism implicit in established conceptions of citizenship" as unreflective secularism perhaps distorts liberal understandings of the world. As outlined in Chapter Three, secularism can encourage the

[61] Modood, *Multiculturalism*, 150.

[62] Turner, *Religion in Modern Society: Citizenship, Secularization and the State*, 26.

employment of negative liberalism where religion is understood as an obstacle to secular society. The result is that religious worldviews are only permitted into the public sphere if they can be translated or "rendered 'neutral."[63] As outlined above, this does not work when one understands religion to function in some cases as embodied experience, practice, and manifestation. Claims to authority over what is religious and what is cultural, and by extension what elements of identity are permissible in the public sphere, are made by those in political and judicial power as they make decisions regarding religious dress. I agree with Goode's assertion that "aesthetic symbols can mediate large-scale 'imagined communities' in Benedict Anderson's sense, but it is also true that they can feed irrational hatreds and exclusions."[64] Issues surrounding religious dress in civic spaces draws on this conception of the power of symbols to both unite and exclude. While symbols can bring together an "imagined community," how identification as part of this community is received in the broader public or social context is not always positive. Nevertheless:

> Canada is a country of immigrants from many different lands and cultures; this is the fact. But [here] multiculturalism enjoys a higher status than is justified by its existence of the simple social reality. If the intent is to preserve and enhance cultural pluralism in Canada, this means, *at a minimum, the ethnic, religious and linguistic differentiations of some kind is seen as a positive benefit*.[65]

[63] Calhoun, "Introduction," 22.

[64] Goode, *Jürgen Habermas: Democracy and the Public Sphere*, 52.

[65] Cameron, "An Evolutionary Story," 91 (emphasis mine).

Chapter 5

Freedom of Religion and the Politics of Fear

> I am not looking for Mr. Harper to approve my life choices or dress… To me, the most important Canadian value is the freedom to be the person of my own choosing. To me, that's more indicative of what it means to be Canadian than what I wear.[1]
>
> - Zunera Ishaq

> This government is willing to confuse and conflate the issues in ways that encourages ignorance about these various elements and quite frankly stokes fears and anxieties at a time where people are worried about terrorism and extremism.[2]
>
> - Justin Trudeau

In this thesis, I have demonstrated that issues of embodied religiosity in the form of dress, symbols, or objects on the physical body are distinct insofar as the physical nature of religious commitment troubles the established structural binaries of public/private and secular/religious that are often used to discuss the role of religion in the public sphere. The embodied nature of particular religious commitments complicates at least one of the proposed solutions to the "problem" of religion in the public sphere: translation of religious rationale into secular reason. Those that contribute to political deliberation are not a-particular, and when these particularities are visible, they challenge the assumed a-particular structure of the public sphere. As Chapter Three established, policies that seek to regulate the religious body in public spaces stem from specific understandings of how the public sphere should be characterized: it is secular

[1] Cited in Gerald Caplan, "I used to dislike the niqab. Harper showed me how wrong I was," *The Globe and Mail*, March 23, 2015, http://www.theglobeandmail.com.

[2] Cited in Chase, "Niqabs 'rooted in a culture that is anti-women, Harper says."

and employs and encompasses a specific type of liberalism. However, these are not the only similarities between the case studies and legislation examined in Chapter Two.

The policies in these case studies seek to actively create an idealized citizen body. These policies and precedents define what practices cannot be part of public life or particular civic spaces. As a direct result, certain groups are excluded from the public sphere and this exclusion implies those particular ways of being in the world are unacceptable. Prime Minister Stephen Harper's remarks on veiling during citizenship ceremonies exemplified this when he made the following statement to the House of Commons in March 2015: "We do not allow people to cover their faces during citizenship ceremonies. Why would Canadians, contrary to our own values, embrace a practice at that time that is not transparent, that is not open and frankly is rooted in a culture that is anti-women. That is unacceptable to Canadians, unacceptable to Canadian women."[3] The binary of the public and private spheres of life are emphasized through the construction of the idealized body of the citizen. Since society is understood to be secular, this secular character structures public and civic spaces. The binary of public and private is often employed to ensure that religion is part of the private sphere in order to maintain the secular character of the public sphere. This binary structure, however, excludes certain kinds of religious individuals, particularly those with embodied markers of religious commitment, from full participation in the public sphere. These individuals are therefore unable to be both public citizens and religious citizens if their religious commitment extends to embodied practice. I agree with Bruce Ryder's assertion that "the pressure to adopt policies that force people of faith to

[3] Cited in Chase, "Niqabs 'rooted in a culture that is anti-women, Harper says."

choose between adherence to their faith and full membership in Canadian society need to be vigorously resisted in the current context."[4]

The Politics of Fear

As briefly mentioned in Chapters Two and Three, the politics of fear are present where religious dress is contested in public spaces. This fear is arguably made explicit because of the *visibility* of difference that these moments create. In these situations it is both the visibility of difference and the association that such visibility signifies that pose a "threat" to the normative way of life. In the Canadian context Ryder posits,

> opposition to religious claims for accommodation often takes the form of demands to assimilate or abandon claims to "special right." Moreover, in a global context of growing concern about the rise of religious fundamentalism, and especially radical versions of politicalized Islam, religious expression and practice are readily cast in political discourse as a threat to equality rights or public security, creating significant downward pressure on the degree to which religious right as are respected.[5]

Canadians know that different religious ideologies exist within Canadian society, but only particular embodied religious practices possess the "iconicity" that Michael Warner discusses as part of the way bodies now function in the public sphere.[6] It is no coincidence that the majority of regulatory contexts outlined restrict Islamic practices, as post 9/11 the association of Islamic practices with radical fundamentalism is dominant in both popular and political discourses.[7] Lori Beaman argues that the public perception of minority faiths has "become hegemonic through

[4] Ryder, "The Canadian Conception of Equal Religious Citizenship," 107.

[5] Ibid., 89.

[6] Warner, "The Mass Public and the Mass Subject," 242. Quoted in Goode, *Jürgen Habermas: Democracy and the Public Sphere*, 52.

[7] Caplan, "I used to dislike the niqab. Harper showed me how wrong I was." See also, Jasmin Zine, "Unveiled Sentiments: Gendered Islamophobia and Experiences of Veiling among Muslim Girls in a Canadian Islamic School," *Equity & Excellence in Education* 39 (2006): 239-252, doi:10.1080/10665680600788503. Rita Dhamoon, and Yasmeen Abu-Laban, "Dangerous (Internal) Foreigners and Nation-Building: The Case of Canada," *International Political Science Review* 30 no. 2 (2009): 163-183, doi:10.1177/0192512109102435.

negative media coverage actions of societal opinion leaders. Thus, the newer groups are not only strangers, they are feared strangers, requiring normative intervention by those decision makers."[8] An "us" vs. "them" dichotomy is employed in many of the cases examined in which the religious other is understood as a threat to majority culture. Religious practices, or requests for accommodation, are constructed as "problematic" interruptions to the way that civic practices are conducted (voting, testimony, swearing an oath), or "problematic" insofar as embodied religious practice threatens "normative" cultural values.[9] However, the majority of issues with religious dress are confined to the realm of civic practice or political policy. Accepting Howard Adelman's assertion that "a political culture defines the boundaries and limits in respecting difference," the recent development of regulatory contexts in Canada is incredibly problematic as these political responses to visible religious difference has been both exclusionary and reactive.[10] While the rationale for such policy has been justified under claims of gender equality, "values," and security, the underlying narrative is that visible religious difference challenges or threatens these aspects of Canadian life. This is unfortunately not surprising, since "in the current climate characterized by fear and outrage directed at the violence and oppression perpetrated in the name of religious fundamentalism, religion is too readily seen as a threat to equality or security and all religious freedoms become vulnerable to being too lightly overridden."[11]

What Does Freedom of Religion Entail?

[8] Lori Beman, *Defining Harm: Religion Freedom and the Limits of the Law* (Vancouver: University of British Columbia Press, 2008), 44-5.

[9] This is clear from Harpers remarks cited above, as well as the explicit connection made by Bill 60 to "Québec values."

[10] Adelman, "Monoculturalism vs Interculturalism in a Multicultural World," 38.

[11] Ryder, "The Canadian Conception of Equal Religious Citizenship," 107.

As this thesis began with the *Canadian Charter of Rights and Freedoms*, it is fitting that it should close with it as well. Religious freedom is a fundamental freedom guaranteed to Canadian citizens.[12] However, as Margaret Ogilvie, noted Canadian legal scholar states, the Charter does not define what exactly is to be protected.[13] Ogilvie goes on to argue that "for post-modern courts, religion can be whatever they want it to be, and, indeed, be nothing in particular, which merits protection or not at the whim of these courts."[14] This is reflected in the Supreme Court of Canada decision that whether one must remove her face covering during testimony will be decided on a case-to-case basis.[15] Historically, "The courts have assumed that their role was to protect the individual believer from the state and have emphasized personal autonomy, personal choice of beliefs, subjective notions of religion and the importance of self-definition."[16] Against this, the more prohibitive examples—such as Bill 60 and the ban on face-coverings during Canadian citizenship ceremonies—explicitly position the state against the religious citizen. In these instances, the state defines what elements of religion are permissible, and further seeks to limit certain practices. The examples presented in this thesis are distinct insofar as it is only specific *embodied* religious practices that are contested. This arguably leads one to ask, why is freedom of religion not extended to embodied religious practice? Richard Moon argues, "if autonomy is the value that underlies our commitment to freedom of religion or conscience, then the freedom's protection should extend equally to religious and non-religious beliefs and

[12] *Canadian Charter of Rights and Freedoms*, s 2 (a) Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. *Citizenship Act* (R.S.C., 1985, c. C-29).

[13] Ogilvie, "And Then There Was One: Freedom of Religion in Canada – the Incredible shrinking Concept," 197.

[14] Ibid.

[15] *R. v. N.S.*, 2012 SCC 72, [2012] 3 S.C.R. 726.

[16] Ogilvie, "And Then There Was One: Freedom of Religion in Canada – the Incredible shrinking Concept," 201.

practices.[17] Freedom of religion and freedom of expression should arguably protect both belief and practice. Ryder supports this argument as well:

> It is a common observation that the freedom to act on beliefs is generally narrower than the freedom to hold and express beliefs. But this observation is less true when we are dealing with acts that are religious practices, for the freedom to hold religious beliefs and the freedom to act in accordance with them – to engage in religious practices – equally fall within the scope of constitutionally protected religious rights.[18]

As articulated in Chapter Four, legal definitions of religion have often characterized religion as "protestant, private, voluntary, individual, textual and believed."[19] Thus, what is both created and protected under law is religiosity that is, unsurprisingly, "protestant, private, voluntary, individual, textual and believed."[20] Embodied religious practices challenge such narrow conceptions of religion, as they are a visible, undeniable presence.

Though the examples and case studies here are isolated incidents where individuals have been asked or ordered to remove religious attire, or proposed policy restricting religious dress that was not passed into law, there is evidence that the issue of how to deal with visible religious commitment in Canadian society will continue to be a public and politicized issue. These examples set precedent for how public discussion of embodied religious practice takes place and, moreover, whether similar regulatory contexts will be produced in Canada.

Bill 94 and its successor Bill 60, while not passed, have inspired the most recent iteration of a similar regulatory attempt in Québec, as Québec Minister of Justice Stéphanie Vallée has proposed a "watered-down version of the appalling Charter of Québec Values," Bill 62 titled, "An Act to foster adherence to state religious neutrality and, in particular, to provide a

[17] Richard Moon, "Government Support for Religious Practice," in *Law and Religious Pluralism in Canada,* ed. Richard Moon (Vancouver: University of British Columbia Press, 2008), 219.

[18] Ryder, "The Canadian Conception of Equal Religious Citizenship," 89.

[19] Sullivan, *The Impossibility of Religious Freedom*, 8.

[20] Ibid.

framework for religious accommodation requests in certain bodies."[21] The central restriction in Bill 62 is that faces must be uncovered to both provide and receive government services, similar to the restrictions outlined in Bill 94 and Bill 60.[22] Likewise, though the ban on face-coverings during the Canadian Citizenship ceremony has been ruled in violation of the *Citizenship Act,* Prime Minister Harper was vocal that the Federal Government would challenge this ruling, and legal action to this effect has taken place. Furthermore, on June 10, 2015 Multiculturalism Minister Tim Uppal announced a "last-minute bill coming to ban face coverings at citizenship ceremonies" before Parliament rises for the summer.[23] Uppal is quoted as stating: "Our government will be moving forward in the coming days with legislation with respect to the face coverings at citizenship ceremonies, and we will consider what other measures may be necessary."[24] This is significant, as the previous ban was only a procedural directive in the operations manual for Citizenship and Immigration Canada. If a bill is produced and passed, the ban on face coverings at citizenship ceremonies could become law. Judges will be making individual decisions about whether or not women can veil while providing testimony in court, as per the Supreme Court ruling in the case of N.S. The issues outlined here are perhaps just the beginning of conflicts of religious dress in Canada, and as such it is important to consider the ramifications of restricting certain kinds of individuals from full access to the public sphere, as outlined in this thesis.

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[21] Bill 62, "An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies," *Québec National Assembly Proceedings* 1st Reading June 10, 2015, 41st Legislature 1st Session, 2015. http://www.assnat.qc.ca/

Globe Editorial, "Let them wear veils, even in Quebec."

[22] Section 6, and sections 6 and 7 respectively.

[23] McGregor, "Niqab ban returns as Conservative bill planned for Parliament's final days." See also Milewski, "Turbans OK at security checks, but not niqabs at citizenship oath: Tim Uppal."

[24] McGregor, "Niqab ban returns as Conservative bill planned for Parliament's final days."

Out of Sight: Out of Mind

I would like to conclude this project by drawing attention to the title: "Out of Sight, Out of Mind: The Role of the Body in Canada's Multicultural Religious Identity." I began this project with the premise that Canada's multicultural heritage and subsequent policy initiatives form the backdrop for the conflicts of religion in the public sphere here examined. The social reality of multiculturalism means that the "multi-" extends into all areas of social life, which arguably includes religion. As such, the structure of Canada's religious identity is deeply embedded in the changing landscape of the individuals who make Canada their home. "Visible difference," be that cultural, ethnic, racial, religious, or otherwise, is something that is perhaps theoretically supported, but not always practically embraced in Canada. In *Defining Harm: Religious Freedom and the Limits of the Law,* Lori Beaman articulates how difference is sometimes manifest: "religious symbols come to act as signifiers of membership, and they reproduce the constructive markers of difference. This is so both for the hegemonic voices of religion as well as for those on the margins."[25] When one is confronted with the visible religious "Other," what is the response? The embodied nature of the encounter with the "visible Other" means that difference cannot be ignored. If Canada truly is a "nation of immigrants," then the boundaries of "Other" are constantly being re-negotiated. The social and political backdrop that creates the conditions for the engagement with "Other" need to be identified and critiqued in order to work towards conditions in which pluralism and diversity can indeed flourish.

[25] Beaman, *Defining Harm: Religious Freedom and the Limits of the Law*, 3.

Where religion—however we understand, define, or categorize it—fits in modern society is something that has been, is, and will be continually contested. How religious individuals are treated, however, is something that should not be up for debate.

> When the state treats the individual's religious practices or beliefs as less important or less true than the practices of others, or when her religious community is marginalized by the state in some way, the individual adherent may experiences this not simply as a rejection of her views and values but also as a denial of her equal worth or desert, as a unequal treatment that affects her dignity.[26]

When individuals embody religious commitments it is their very person that is denied when certain religious practices are regulated. Judith Butler writes that scholars must be careful when assessing concepts that are attributed to particular temporal and cultural locations, as the tendency is to read history as progressive, where this progress increases the freedoms of the individual.[27] Thus, freedom takes on a temporal quality in which they were historically restricted, and with the progression of time, become increasingly liberated from "pre-modern" constraints. This progression of understanding freedom is intimately tied to how the "hegemonic culture," of which the public sphere is a part, is qualified. Butler's notion of progress can be applied to the public sphere. The public sphere is said to develop to become better, more inclusive, and thus stronger. This ideal is what is discussed but the reality of persistent structural inequalities is too often ignored. While it is worthwhile to renew hope in the liberal project, the current status of how the public sphere actually functions is integral to producing a world in which things *are* better. We should not just retroactively insert marginalized groups into theories

[26] Moon, "Government Support for Religious Practice," 217.

[27] Judith Butler, "Sexual Politics, Torture and Secular Time," *The British Journal of Sociology* 59 no. 1 (2008): 6, doi:10.1111/j.1468-4446.2007.00176.x.

of society created when these groups were excluded, but rather work to develop theories that actively attend to the multiplicity of "concrete others."[28]

Canada has always been at the fore of the development of multiculturalism as a concept, and in the construction of multicultural policy. To continue in this tradition, however, Canada needs to work towards how best to practice multiculturalism, with all the types of difference multiculturalism entails. Within Canada there are alternative conceptions of how best to deal with difference, as Québec's model of interculturalism has specific provisions for a culture that is the majority within Québec, but a minority within the rest of Canada.[29] In both the multicultural and intercultural models, however, religious difference is one element of multicultural society that must be addressed. This is a matter of freedom: freedom to choose to embody religious commitments, freedom to choose to associate with a particular religious institution or institutions, freedom to choose *not* to engage with religious belief or practice. Anything less—anything that does not maintain the fundamental freedoms as set forth in the Canadian Charter—is not only ideological but legally, to borrow Prime Minister Harper's language, "not how we do things here."

[28] "Concrete Other" is a term developed by Seyla Benhabib, which "requires us to view each and every rational being as an individual with a concrete history, identity, and affective-emotional constitution. In assuming this standpoint, we abstract from what constitutes our commonality" as opposed to only utilizing the standpoint of the "generalized other" which, "requires us to view each and every individual as a rational being entitled to the same rights and duties we would want to ascribe to ourselves. In assuming this standpoint, we abstract from the individuality and concrete identity of the other." Seyla Benhabib, "The Generalized and the Concrete Other," *Situating the Self* (New York: Routledge:1992), 158.-9.

[29] Mahrouse, "'Reasonable Accommodation' in Québec: the Limits of Participation and Dialogue," 86.

Appendix A: Schedule 1 Bill 60

SCHEDULE I (Section 2, par. 1)

PUBLIC BODIES
(1) government departments;

(2) budget-funded bodies, bodies other than budget-funded bodies and government enterprises listed in Schedules 1 to 3 to the Financial Administration Act (chapter A-6.001), and the Caisse de dépôt et placement du Québec;

(3) bodies whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1);

(4) government agencies listed in Schedule C to the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2);

(5) municipalities, metropolitan communities, intermunicipal boards, public transit authorities, local development centres, regional conferences of elected officers and municipal housing bureaus, with the exception of municipalities governed by the Cree Villages and the Naskapi Village Act (chapter V-5.1) or the Act respecting Northern villages and the Kativik Regional Government (chapter V-6.1);

(6) school boards established under the Education Act (chapter I-13.3), the Comité de gestion de la taxe scolaire de l'île de Montréal, general and vocational colleges established under the General and Vocational Colleges Act (chapter C-29), and university-level educational institutions listed in paragraphs 1 to 11 of section 1 of the Act respecting educational institutions at the university level (chapter E-14.1);

(7) health and social services agencies and public institutions governed by the Act respecting health services and social services (chapter S-4.2), except the regional board and public institutions referred to in Part IV.1 of that Act and the public institution referred to in Part IV.3 of that Act, joint procurement groups referred to in section 383 of that Act, and health communication centres referred to in the Act respecting pre-hospital emergency services (chapter S-6.2);

(8) persons appointed or designated by the National Assembly to an office under its authority;

(9) bodies to which the National Assembly or any of its committees appoints the majority of the members; and

(10) persons listed in Schedule 1 to the Financial Administration Act, or whose personnel is appointed in accordance with the Public Service Act.[1]

[1] Bill 60, "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests."

Appendix B: Parti Québécois Bill 60 Infographic

Translation: A Neutral State to Serve All

Left: examples of non-ostensible signs which State personnel would be allowed
Right: examples of ostensible signs which State personnel would not be allowed.

Image source: Ici Radio-Canada, "Les députés ontariens votent unanimement contre une charte des valeurs," *Radio-Canada.ca,* September 19, 2013, http://ici.radio-canada.ca/regions/ontario/2013/09/19/005-charte-valeurs-motion-debats.shtml.

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