Rethinking Multiculturalism

Cultural Diversity and Political Theory

Bhikhu Parekh

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Equality in a Multicultural Society

Much of the traditional discussion of equality suffers from a weakness derived from the mistaken theory of human nature in which it is grounded. As we saw earlier, many philosophers understand human beings in terms of a substantive theory of human nature and treat culture as of no or only marginal importance. Broadly speaking they maintain that human beings are characterized by two sets of features, some common to them all such as that they are made in the image of God, have souls, are noumenal beings, have common capacities and needs or a similar natural constitution; and others varying from culture to culture and individual to individual. The former are taken to constitute their humanity and are ontologically privileged. Human beings are deemed to be equal because of their shared features or similarity, and equality is taken to consist in treating them in more or less the same way and giving them more or less the same body of rights.

I have argued that this view of human beings is deeply mistaken. Human beings are at once both natural and cultural beings, sharing a common human identity but in a culturally mediated manner. They are similar and different, their similarities and differences do not passively coexist but interpenetrate, and neither is ontologically prior or morally more important. We cannot ground equality in human uniformity because the latter is inseparable from and ontologically no more important than human differences. Grounding equality in uniformity also has unfortunate consequences. It requires us to treat human beings equally

in those respects in which they are similar and not those in which they are different. While granting them equality at the level of their shared human nature, we deny it at the equally important cultural level. In our discussions of the Greek, Christian and liberal philosophers we have seen that it is also easy to move from uniformity to monism. Since human beings are supposed to be basically the same, only a particular way of life is deemed to be worthy of them, and those failing to live up to it either do not merit equality or do so only after they are suitably civilized. The idea of equality thus becomes an ideological device to mould humankind in a certain direction. A theory of equality grounded in human uniformity is both philosophically incoherent and morally problematic.

Human beings do share several capacities and needs in common, but different cultures define and structure these differently and develop new ones of their own. Since human beings are at once both similar and different, they should be treated equally because of both. Such a view, which grounds equality not in human uniformity but in the interplay of uniformity and difference, builds difference into the very concept of equality, breaks the traditional equation of equality with similarity, and is immune to monist distortion. Once the basis of equality changes so does its content. Equality involves equal freedom or opportunity to be different, and treating human beings equally requires us to take into account both their similarities and differences. When the latter are not relevant, equality entails uniform or identical treatment; when they are, it requires differential treatment. Equal rights do not mean identical rights, for individuals with different cultural backgrounds and needs might require different rights to enjoy equality in respect of whatever happens to be the content of their rights. Equality involves not just rejection of irrelevant differences as is commonly argued, but also full recognition of legitimate and relevant ones.

Equality is articulated at several interrelated levels. At the most basic level it involves equality of respect and rights, at a slightly higher level that of opportunity, self-esteem, self-worth and so on, and at a yet higher level, equality of power, well-being and the basic capacities required for human flourishing. Sensitivity to differences is relevant at each of these levels. We can hardly be said to respect a person if we treat with contempt or abstract away all that gives meaning to his life and makes him the kind of person he is. Respect for a person therefore involves locating him against his cultural background, sympathetically

entering into his world of thought, and interpreting his conduct in terms of its system of meaning. A simple example illustrates the point. It was recently discovered that Asian candidates for jobs in Britain were systematically underscored because their habit of showing respect for their interviewers by not looking them in the eye led the latter to conclude that they were shifty and devious and likely to prove unreliable. By failing to appreciate the candidates' system of meaning and cultural practices, interviewers ended up treating them unequally with their white counterparts. Understandably but wrongly, they assumed that all human beings shared and even perhaps ought to share an identical system of meaning which predictably turned out to be their own. This relatively trivial example illustrates the havoc we can easily cause when we uncritically universalize the categories and norms of our culture.

Like the concept of equal respect, that of equal opportunity, too, needs to be interpreted in a culturally sensitive manner. Opportunity is a subject-dependent concept in the sense that a facility, a resource, or a course of action is only a mute and passive possibility and not an opportunity for an individual if she lacks the capacity, the cultural disposition or the necessary cultural knowledge to take advantage of it. A Sikh is in principle free to send his son to a school that bans turbans, but for all practical purposes it is closed to him. The same is true when an orthodox Jew is required to give up his yarmulke, or the Muslim woman to wear a skirt, or a vegetarian Hindu to eat beef as a precondition for certain kinds of jobs. Although the inability involved is cultural not physical in nature and hence subject to human control, the degree of control varies greatly. In some cases a cultural inability can be overcome with relative ease by suitably reinterpreting the relevant cultural norm or practice; in others it is constitutive of the individual's sense of identity and even self-respect and cannot be overcome without a deep sense of moral loss. Other things being equal, when a culturally derived incapacity is of the former kind, the individuals involved may rightly be asked to overcome it or at least bear the financial cost of accommodating it. When it is of the latter kind and comes closer to a natural inability, society should bear at least most of the cost of accommodating it. Which cultural incapacity falls within which category is often a matter of dispute and can only be resolved by a dialogue between the parties involved.

Equality before the law and equal protection of the law, too, need to be defined in a culturally sensitive manner. Formally a law banning the

use of drugs treats all equally, but in fact it discriminates against those for whom some drugs are religious or cultural requirements as is the case with Peyote and Marijuana respectively for the American Indians and Rastafarians. This does not mean that we might not ban their use, but rather that we need to appreciate the unequal impact of the ban and should have strong additional reasons for denying exemption to these two groups. The United States government showed the requisite cultural sensitivity when it exempted the ceremonial use of wine by Jews and Catholics during Prohibition.

Equal protection of the law, too, may require different treatment. Given the horrible reality of the Holocaust and the persistent streak of anti-semitism in German cultural life, it makes good sense for that country to single out physical attacks on Jews for harsher punishment or ban utterances denying the Holocaust. In other societies, other groups such as blacks, Muslims and gypsies might have long been demonized and subjected to hostility and hatred, and then they too might need to be treated differently. Although the differential treatment of these groups might seem to violate the principle of equality, in fact it only equalizes them with the rest of their fellow-citizens.

In a culturally homogenous society, individuals share broadly similar needs, norms, motivations, social customs and patterns of behaviour. Equal rights here mean more or less the same rights, and equal treatment involves more or less identical treatment. The principle of equality is therefore relatively easy to define and apply, and discriminatory deviations from it can be identified without much disagreement. This is not the case in a culturally diverse society. Broadly speaking equality consists in equal treatment of those judged to be equal in relevant respects. In a culturally diverse society citizens are likely to disagree on what respects are relevant in a given context, what response is appropriate to them, and what counts as their equal treatment. Furthermore, once we take cultural differences into account, equal treatment would mean not identical but differential treatment, raising the question as to how we can ensure that it is really equal across cultures and does not serve as a cloak for discrimination or privilege.

In this chapter I shall discuss the kinds of difficulties raised by the principle of equality in a multicultural society. Rather than discuss them in abstract theoretical terms or by means of hypothetical examples which rarely capture their complexity, I shall analyse the real dilemmas multicultural societies have faced and the ways in which they

have sought to deal with them, and end by briefly drawing out their important theoretical implications.

Equality of difference

In multicultural societies dress often becomes a site of the most heated and intransigent struggles. As a condensed and visible symbol of cultural identity it matters much to the individuals involved, but also for that very reason it arouses all manner of conscious and unconscious fears and resentments within wider society. It would not be too rash to suggest that acceptance of the diversity of dress in a multicultural society is a good indicator of whether or not the latter is at ease with itself.

In 1972, British Parliament passed a law empowering the Minister of Transport to require motor-cyclists to wear crash-helmets. When the Minister did so, Sikhs campaigned against it. One of them kept breaking the law and was fined twenty times between 1973 and 1976 for refusing to wear a crash-helmet. Sikh spokesmen argued that the turban was just as safe, and that if they could fight for the British in two world wars without anyone considering their turbans unsafe, they could surely ride motor-cycles. The law was amended in 1976 and exempted them from wearing crash-helmets. Although this was not universally welcomed, Parliament was right to amend the law. Its primary concern was to ensure that people did not die or suffer serious injuries riding dangerous vehicles, and it hit upon the helmet meeting certain standards as the best safety measure. Since the Sikh turban met these standards, it was accepted as an adequate substitute for the helmet.[1]

This became evident in the subsequent development of the law as it related to Sikhs. Although the Construction (Head Protection) Regulation 1989 requires all those working on construction sites to wear safety helmets, the Employment Act 1989 exempts turban-wearing Sikhs. The latter does so because it is persuaded by its own scientific tests that the turban offers adequate though not exactly the same protection as the helmet, and is thus an acceptable substitute for it. One important implication of this argument is that if a turbaned Sikh were to be injured on a construction site as a result of another person's negligence, he would be entitled to claim damages for only such injuries as he would have suffered if he had been wearing a

safety helmet. The law does not allow anyone to work on a construction site without an acceptable head-gear. However, it is willing to compromise on the helmet if two conditions are satisfied. First, the alternative head-gear should offer an equivalent or at least acceptable level of protection. And second, those opting for it should themselves bear the responsibility for such *additional* injury as it may cause. The law lays down a minimally required level of protection and uses it to regulate the permissible range of cultural diversity. So far as the minimum requirement is concerned, it places the burden of injury on those causing it. The burden of additional injury is borne by those who for cultural reasons choose to meet the minimum requirement in their own different ways. Such an arrangement respects differences without violating the principle of equality, and accommodates individual choice without imposing unfair financial and other burdens on the rest of their fellow-citizens.

In Britain, Sikhs in the police and armed forces are entitled to wear turbans. In Canada it has led to a heated debate. Although most major police forces across the country allowed Sikhs to wear turbans, the Royal Canadian Mounted Police did not. When it finally decided to allow them, a group of retired officers organized a campaign involving 9000 letters and a petition signed by 210 000 people. They argued that the RCMP should be, and seen to be, free from political and religious bias and that the Sikh's turban, being a religious symbol, 'undermined the non-religious nature of the force' and violated other Canadians' 'constitutional right to a secular state free of religious symbols'. They also contended that since the Sikhs insisted on wearing the turban, they gave the impression of valuing their religion more than their police duties and would not be able to inspire public trust in their impartiality and loyalty to the state. In the eyes of the critics, Canada had taken its multiculturalism too far and should insist on the traditional Stetson. The matter went to the Trial Division of the Federal Court of Canada, which ruled that the objection to the turban was 'quite speculative and vague', and that the turban did not compromise the non-religious character of the RCMP. Three retired officers of the RCMP appealed to the Supreme Court, which dismissed the appeal and upheld the right of Sikhs to wear the turban.

Although the objection against the turban smacks of cultural intolerance and treats Sikhs unequally, it is not devoid of merit. The RCMP is a powerful and much-cherished national institution and, since Canada has few national symbols, there is something to be said for retaining the

Stetson. However, one could argue that precisely because the RCMP is a national institution, it should permit the turban and become a representative symbol of the country's officially endorsed multicultural identity. Furthermore, several provincial forces as well as the Canadian Courts and House of Commons allow Sikhs to wear turbans with no suggestion that this compromises the discharge of their official duties, diminishes their loyalty to the state, or detracts from the country's secular character. There is no reason why the RCMP should be different. Besides, wearing a turban does not signify that the wearer values his religion more than his professional integrity, nor does his replacing it with a Stetson indicate the opposite. Pushed to its logical conclusion, the criticism of the turban would imply that those wearing the traditional Stetson are likely to be partial to whites and hostile to others. One would therefore have to replace the Stetson with a culturally neutral headgear, which would have the double disadvantage of satisfying neither Sikhs nor whites and leaving the basic problem unsolved. Again, it is not at all true that Canada is committed to a narrow and bland form of secularism. If it were, it would have to change its coat-of-arms, disallow prayer in the Federal Parliament, expunge reference to God in the swearing-in ceremony of Cabinet ministers, and so on. Since opponents of the turban are unsympathetic to these changes, their objection is specious and discriminatory.

The diversity of headdress has raised problems in other societies as well, especially in relation to the armed forces and the police, the official symbols and guardians of national identity. Samcha Goldman, an orthodox Jew serving in the secular capacity of a clinical psychologist in the United States Air Force, was asked to resign when he insisted on wearing his yarmulke, which the Air Force thought was against its standard dress requirement. When the matter reached the Supreme Court, it upheld the decision of the Air Force by a majority of one, arguing that the 'essence of the military service is the subordination of the desire and interests of the individual to the needs of the service'. It is striking that the Court saw the yarmulke as a matter of personal desire or preference rather than a religious requirement which Goldman was not at liberty to disregard (Sandel, 1996, pp. 69f). Justifying the Court's decision, the Secretary of State argued that the uniforms of the armed forces were the 'cherished symbols of service, pride, history and traditions', and that allowing variations in them was bound to 'operate to the detriment of order and discipline', foster 'resentment and divisiveness', 'degrade unit cohesion', and reduce

combat effectiveness. The Supreme Court decision rightly outraged many members of Congress, which by a sizeable majority passed a law permitting religious apparel provided that it did not interfere with military duties and was 'neat and conservative'.

There is much to be said for uniforms in the armed forces. Since they are closely identified with the state and symbolize its unity, their uniforms reinforce the consciousness of their national role and create an appropriate corporate ethos. And it goes without saying that they should be suitable for combat. However, this has to be balanced against other equally important considerations. If the yarmulke, turban and other religious apparels were to be disallowed, Jews, Sikhs and others would be denied both an avenue of employment and an opportunity to serve their country. Furthermore, the United States is a culturally diverse society made up of people of different religious faiths. There is no obvious reason why its national symbols including military uniforms should not reflect that fact. Besides, if differences of mere headdress are likely to detract from collective solidarity and unit cohesion, the differences of colour, accent and facial features are likely to do so even more, and we would have to exclude blacks, Asians and others from joining the armed forces. In short, while the uniform should not be discarded, it should be open to appropriate modification to accommodate genuine religious, cultural and other requirements, provided of course that they do not compromise military effectiveness.

The controversy concerning uniforms occurs in civilian areas of life as well, where it raises issues that are at once both similar and different. Since no question of national unity or symbolism is involved, the controversy has no political significance. However, it involves far more people, usually women, and has a great economic significance.

Many Asian women's refusal to wear uniforms in hospitals, stores and schools has led to much litigation and contradictory judgements in Britain. A Sikh woman who, on qualifying as a nurse, intended to wear her traditional dress of a long shirt (*quemiz*) over baggy trousers (*shalwar*) rather than the required uniform, was refused admission on a nursing course by her Health Authority. The Industrial Tribunal upheld her complaint on the ground that since her traditional dress was a cultural requirement and did not impede the discharge of her duties, asking her to replace it with a uniform was unjustified. The Tribunal was overruled by the Employment Appeal Tribunal, which took the opposite and much criticized view. Since rules about nurses' uniforms are laid down by the General Nursing Council, the latter promptly intervened under government pressure and made more flexible rules. This enabled the Health Authority to offer the Sikh woman a place on the course on the understanding that as a qualified nurse her trousers should be grey and the shirt white.

This was one of many cases in which lower courts took one view and the higher courts another, or the same court took different views in similar cases. The discrepancy arose because courts used two different criteria in deciding such cases. Sometimes they asked if the job requirements were *plausible* or understandable; that is, if 'good reasons' could be given for them. On other occasions they thought that such a criterion justified almost every demand, and insisted that job requirements should be *objectively necessary*; that is, indispensable for discharging the duties of the jobs concerned. It sounds plausible to say that since loose hairs could cause infection or pose a risk to public health, surgeons or those working in chocolate factories should not be allowed to sport beards. However, the requirement turns out to be objectively unnecessary, for beards do not mean loose hair and, if necessary, they can always be covered by a suitable clothing. After all, we do not ask people in these jobs to shave hair off their heads and arms.

Although the test of objective necessity is reasonable, it runs the risk of taking a purely instrumental view of job requirements and stripping the organizations concerned of their cultural identity. Take the case of nurses' uniforms. One could argue that since these are not objectively necessary for carrying out the required medical tasks, anyone may wear anything. This is to miss the crucial point that they symbolize and reinforce the collective spirit of the nursing profession and structure the expectations and behaviour of their patients. The instrumental view of rationality implicit in the test of objective necessity is also likely to provoke resentment against minorities whose cultural demands might be seen to undermine a much-cherished tradition. It is also unjust because, while it respects the cultural identity of the minority, it ignores that of the wider society. The concept of objective necessity should therefore be defined in a culturally sensitive manner and do justice to both the minority and majority ways of life. This means that uniforms should be kept in hospitals, schools and wherever else they are part of the tradition and perform valuable symbolic, inspirational, aesthetic and other functions, but be open to appropriate modifications when necessary. Such an arrangement neither deculturalizes the organizations

concerned and renders them bland, nor eclectically multiculturalizes them and renders them comical, but preserves and adapts the tradition to changing circumstances and facilitates minority integration into the suitably opened-up mainstream society.

Equal treatment

In the cases discussed so far, it has been relatively easy to identify what aspects were relevant and what equal treatment consisted in. Situations sometimes arise when such judgements are not at all easy.

In most societies the law declares that a marriage is void if contracted under duress, a concept not easy to define in a culturally neutral manner. A British Asian girl, who had married her parentally-chosen husband because of the threat of ostracism by her family, asked the court to annul her marriage on grounds of duress. The court declined, arguing that duress only occurred when there was a 'threat of imminent danger to life and liberty'. This culturally insensitive interpretation of duress was rightly criticized. Not surprisingly the court did a complete *volte face* a few years later and declared void the marriage of another Asian girl under similar circumstances. It took the view that although acute social pressure did not amount to duress for a white British girl, it did so for her Asian counterpart.

The Asian girl is clearly treated differently, raising the question whether the difference amounts to privileging her. *Prima facie* it would seem that she is offered an *additional* ground for dissolution of marriage, and is thus being privileged. However, this is not the case. The law lays down that absence of duress is the basis of a valid marriage. Since ostracism by the family virtually amounts to social death and hence to duress in Asian society but not in white British society, the differential treatment of the Asian and white girls does not offend against the principle of equality. It does not give the Asian girl an additional ground for divorce, only interprets the existing one in a culturally sensitive manner.

The recognition of cultural differences might sometimes entitle a person to do things others cannot do without necessarily implying unequal rights. Many countries allow Sikhs to carry a suitably covered *kirpan* (a small dagger) in public places on the ground that it is a mandatory symbol of their religion. If other citizens asked to do that, their request would be turned down. This raises the question whether

non-Sikhs can legitimately complain of discrimination or unequal treatment. There is no discrimination because their religious requirements are just as respected as those of the Sikhs. As for the complaint of inequality, there is a *prima facie* inequality of rights in the sense that the Sikhs can do things others cannot. However, the inequality arises out of the different demands of the same basic right to religion and does not confer a new right on the Sikhs. Some religions might require more of their adherents than do others, and then the same right would encompass a wider range of activities. Their adherents have the same right as the rest and its scope too is the same, only its content is wider.

Contextualizing equality

Sometimes we know what is relevant in a given context, but find it difficult to decide if two individuals are equal in relation to it. Take *l'affaire du foulard* which first surfaced in France in September 1989 and has haunted it ever since.[2] Three Muslim girls from North Africa, two of them sisters, wore *hijab* (head scarf) to their ethnically mixed school in Creil, some 60 kms north of Paris. In the previous year 20 Jewish students had refused to attend classes on Saturday mornings and autumn Friday afternoons when the Sabbath arrived before the close of the school, and the headmaster, a black Frenchman from the Caribbean, had to give in after initially resisting them. Worried about the trend of events, he objected to the Muslim girls wearing the *hijab* in the classroom on the grounds that it went against the *laicitée* of French state schools. Since the girls refused to comply, he barred them from attending the school. As a gesture of solidarity many Muslim girls throughout France began to wear *hijabs* to school and the matter acquired national importance. To calm the situation the Education Minister, Lionel Jospin, sought an opinion (*avis*) from the *Conseil d'Etat*. The *Conseil* ruled in November 1989 that pupils had a right to express and manifest their religious beliefs within state schools and that the *hijab* did not violate the principle of *laicitée*, provided that such religious insignia did not 'by their character, by their circumstances in which they were worn... or by their ostentatious or campaigning nature constitute an act of pressure, provocation, proselytism or propaganda', the decision on which was to be made by the local education authority on a case-by-case basis.

The vagueness of the ruling not only failed to give the headmaster clear guidance but publicly revealed the ambiguities of the official policy. Soon there were more incidents of *hijab*-wearing and protests by Muslims, provoking counter protests by secular Frenchmen. The standoff was finally resolved when one of the girls voluntarily, and the other two under pressure from King Hassan of Morocco, agreed to drop the scarves to the shoulders in the classroom. The issue flared up again in November 1993 when the principal of a middle school in another city barred two girls from the school for wearing the *hijab*. In response, hundreds of Muslim girls, their number at one stage reaching 2000, started wearing *hijab* to the school. On 10 September 1994 the Education Minister, Francois Bayrou, ruled that while wearing 'discreet' religious symbols was acceptable, 'ostentatious symbols which in themselves constitute elements of proselytism or discrimination' were unacceptable and that the *hijab* fell under that category. Headscarves were now banned as a matter of public policy, and school decisions to the contrary were declared void.[3]

The national debate on the *hijab* went to the heart of the French conceptions of citizenship and national identity and divided the country. Some advocated *laicitée ouverte*, which largely amounted to a search for a negotiated solution with the Muslims. Some others, including Madame Mitterrand, saw no reason for banning the *hijab* and advocated the right to difference and the concomitant celebration of plurality. Yet others questioned the rigid application of the principle of *laicitée* and argued for the teaching of religion in schools, both because of its cultural importance and because pupils would not be able to make sense of contemporary global conflicts without some knowledge of it.

These views, however, were confined to a minority. The dominant view was firmly committed to the practice of *laicitée* and hostile to any kind of compromise with the Muslim girls. It was eloquently stated in a letter to *Le Nouvel Observateur* of 2 November 1989, signed by several eminent intellectuals and urging the government not to perpetrate the 'Munich of Republican Education'. As the 'only institution consecrated to the universal', the school must be a 'place of emancipation' and resist 'communal, religious and economic pressures' with 'discipline' and 'courage'. For the signatories to the letter, as for a large body of Frenchmen, France was a single and indivisible nation based on a single culture. The school was the central tool of assimilation into French culture and could not tolerate ethnic self-expression. The *hijab* was particularly objectionable because it symbolized both a wholly alien culture and the subordinate status of women. Wearing it implied a refusal to become French, to integrate, to be like the rest. Since *laicitée* was a hard-won principle of long historical standing, the French state could not compromise with it without damaging its identity. As Serge July, the editor of *Liberation*, put it, '...behind the scarf is the question of immigration, behind immigration is the debate over integration, and behind integration the question of *laicitée*'.

The principal argument against allowing Muslim girls to wear the *hijab* then, was that it violated the principle of *laicitée* and went against the secular and assimilationist function of state schools. If Muslim spokesmen were to argue their case persuasively, they needed to counter this view. While some tried to do so, most realized that it raised many large and complex questions that did not admit of easy and conclusive answers, and that such a debate would take years to settle and did not help them in the short run. As it happened, French state schools did not strictly adhere to the principle of *laicitée*, and allowed Catholic girls to wear the cross and other insignia of religious identity and the Jews to wear the *kipa*. Muslims decided to articulate their demand in the language of equality and argued that, since they were denied the right enjoyed by the other religious groups, they were being treated unequally.

Defenders of the ban, including the Minister of Education, rejected the Muslim charge of discrimination on the ground that the *hijab* was not equivalent to the cross, and that the two groups of girls were *not* equal in relevant respects. First, unlike the 'discreetly' worn cross, the 'ostentatious' *hijab* was intended to put pressure on other Muslim girls and entailed 'proselytization'. Second, unlike the freely-worn cross, the *hijab* symbolized and reinforced women's oppression. Third, unlike the unself-consciously worn cross, the *hijab* was an ideologically motivated assertion of religious identity inspired by a wider fundamentalist movement which the schools had a duty to combat.[4]

Although there is a good deal of humbug, misplaced anxiety and false alarm in these arguments, they are not totally devoid of substance. Both the cross and the *hijab* are religious symbols, and hence bases of equal claims. However, religious symbols cannot be defined and compared in the abstract, both because they rarely have exactly equivalent significance and because they acquire different meanings in different contexts and historical periods and might sometimes even cease to be religious in nature. We need to contextualize them and compare them

not abstractly or 'in themselves' but in terms of the character and significance they might have acquired at a particular point in time. The question is not whether the *hijab* is the Islamic equivalent of the Christian cross, but whether in contemporary France wearing the *hijab* has broadly the same religious significance for Muslims as wearing the cross has for Christians. Since we cannot therefore dismiss the ban in the name of an abstract right to equal religious freedom, we need to take seriously the three arguments made in support of it and assess their validity.

As for the first argument, the *hijab* is certainly visible but there is no obvious reason why religious symbols should be invisible or be of the same type. Besides, there is no evidence to support the view that the *hijab* was intended to proselytize among non-Muslims or to put religious pressure on other Muslim girls beyond the minimum inherent in the wearing of religious symbols. Conversely, the cross is not necessarily discreet for Catholic girls do sometimes display, flaunt and talk about it, it is clearly visible when they engage in sports, swimming and such other activities, and it is visible even otherwise except that we do not see it because of its familiarity. Once the *hijab* is allowed, it too would become invisible.

The second argument which contrasts the freely-worn cross with the coerced *hijab* is no more persuasive. It assumes that parental pressure is necessarily wrong, a strange and untenable view, and that choices by adolescent girls are always to be preferred over parental preferences, which is no more tenable. Furthermore, we have no means of knowing that wearing the cross was a free choice by Catholic girls and that Muslim girls wore the *hijab* only under parental or communal pressure. It is true that the latter had hitherto avoided it. However, nothing follows from this for it is quite possible that they now defined their identity differently or felt more confident about expressing it. Indeed, the father of the two Creil girls said that the decision to wear the *hijab* was theirs and that he had been trying to convince them out of it. Since he might be saying this under pressure or to avoid embarrassment, we might refer to the remark of a young girl who was inspired by the three Criel girls to start wearing the headscarf in 1994:

> I feel completely liberated by the veil. As soon as I put it on, I felt as if I'd blossomed. The veil allows a woman no longer to be a slave to her body. It is the belief that a woman can go far through means other than using her body.

The third argument for the ban is equally unconvincing, for wearing the *hijab* need not be a form of ideological self-assertion any more than wearing the cross is. As for the fears about the rise of fundamentalism, a term that was never clearly defined, they were speculative and irrelevant to the argument. Only three out of scores of Muslim girls had worn the *hijab*, and the father of two of them had not only no history of religious activism but was positively embarrassed by the publicity. There was not much evidence either that most of the French Muslim community was becoming religiously militant. Some of them did show considerable sympathy for traditional values but that was not against the law, represented a kind of cultural conservatism shared by many a Frenchman, and hardly amounted to fundamentalist militancy.

Allowing the cross and other Christian symbols but not the *hijab* then clearly amounted to treating Muslim girls unequally. Some French leaders conceded this, but insisted that the inequality was justified in order to liberate the girls from their traditional patriarchal system and to prepare them for an autonomous life. There is something to this argument, as equality is one value among many and needs to be balanced against others. However, it is open to several objections. It assumes without evidence that the girls' decision to wear the *hijab* was not autonomous. Furthermore, autonomy is difficult to define and impossible to measure or demonstrate, and any attempt to violate equality in its name opens the door to all manner of specious reasoning and arbitrary interference with pupils' ways of life. What is more, if the school started aggressively promoting autonomy, it would create a threatening and alienating environment in which girls would not feel relaxed enough to pursue their education. Parents, too, would lose confidence in it and deny it their support and cooperation.

The widely shared belief that the *hijab* symbolizes and reinforces female subordination ignores its complex cultural dialectic. Muslim immigrants in France, Britain and elsewhere are deeply fearful of their girls entering the public world including the school. By wearing the *hijab* their daughters seek to reassure them that they can be culturally trusted and will not be 'corrupted' by the norms and values of the school. At the same time they also reshape the semi-public world of the school and protect themselves against its pressures and temptations by subtly getting white and Muslim boys to see them differently to the way they eye white girls. The *hijab* puts the girls 'out of bounds' and enables them to dictate how they wish to be treated. Traditional at one level, the *hijab* is transgressive at another, and enables Muslim girls to

transform both their parental and public cultures. To see it merely as a sign of subjection, as most secular Frenchmen and feminists did, was to be trapped into crude cultural stereotypes and fail to appreciate the complex processes of social change and intercultural negotiation it symbolized and triggered. This is not at all to say that all Muslim girls saw the *hijab* in this way, but rather that at least some did. Since the school and local authorities had no reliable means of ascertaining who wore it for what reasons, and since female subordination is too large an issue to be tackled by banning the *hijab*, they should have restrained their republican zeal and left the girls alone subject to the requirement of non-proselytization.

The issues raised by the *hijab* are not confined to France. In Britain the state funds thousands of Anglican, Catholic and Jewish religious schools, but it has until recently rejected Muslim requests for similar schools. Its real reasons, often stated in private and sometimes hinted at in public, are mainly two. First, the state funds religious schools because it expects that in addition to grounding their pupils into the basic principles of their religion, they will also develop their analytical and critical faculties, provide secular knowledge, and prepare them for life in a democratic and secular society. This is a difficult balance to strike, which non-Muslim religious schools have been able to achieve after a long struggle. Since Muslim schools are likely to become nurseries of reactionary ideas in the current fundamentalist phase of Islam, they are unlikely to achieve the basic objectives of education. Second, state funding of religious schools in Britain is the result of particular historical circumstances. British society now realizes that such schools lead to ghettoization and are in general undesirable. Since it cannot renege on its past commitments to existing schools, it can at least stop perpetuating the problem by refusing to fund new ones.

Opponents of Muslim schools therefore argue that no inequality is involved in denying state funding to Muslim schools while continuing to provide it to other religious schools. Equality requires equal treatment of those who are equal in relevant respects. The relevant respect here is the capacity to provide a balanced religious and secular education. Since Muslim schools lack that capacity, they cannot be treated on a par with other religious schools. The second argument has a different thrust. It does not say anything about whether or not the two kinds of

schools are equal in relevant respects, but it asserts that the state has decided to change its policy on funding religious schools. Since it cannot abrogate its past commitments, it must continue to fund Christian and Jewish schools. Although this involves treating Muslims unequally, such inequalities are inherent in social life and cannot be avoided. Long-established groups often enjoy rights based on past commitments and policies. When the policies are changed, they retain rights that are no longer available to newcomers.

Opponents of state funding for Muslim schools make the important theoretical point that equality should not be understood in purely formal and abstract terms. Just because some religious communities enjoy state-funded schools, it does not *necessarily* follow that denying them to Muslims amounts to inequality, for they might not be able to fulfil the socially prescribed objectives of education or the state might sincerely wish to discontinue such schools. Rather than accuse their opponents of being anti-Muslim, racists, and so forth on the basis of an abstract and untenable view of equality, we need to ask if their arguments have any merit.

The first argument is suspect. To say that Islam is currently going through a fundamentalist phase is a gross exaggeration, true at best of some but not of all Muslim countries. More to the point, it is not at all true of British Islam. Since the British government allows privately-funded Muslim schools, it evidently shares this view and is wrong to raise the bogey of fundamentalism only when state funding is involved. There is also a rise in Christian and Jewish fundamentalism, but the British government has shown no interest in acquiring greater control over or issuing suitable warnings to state-funded Christian and Jewish schools. It is, of course, possible that Muslim schools could become nurseries of fundamentalism and fail to achieve their objectives. However, there are ways of guarding against this. The government has the right to inspect and regulate schools including their curriculum, pedagogy and general ethos, and has enough power to counter such forms of fundamentalism as might arise in Muslim schools. The power is bound to be greater, and its exercise more acceptable, if the state also funds them.

The second argument is no better. The British state certainly has the right to change its policy on funding religious schools. This involves not only denying state funding to new schools, but also phasing out the existing ones over a mutually agreed period of time, something which the British state shows not the slightest sign of doing. There is no evi-

dence either that it is putting pressure on them to become secular or even to reduce the religious content of their curriculum. Since neither of the two arguments advanced by the government is valid, the denial of state funding to Muslim schools is unjustified.

In the light of our discussions of the *hijab* controversy in France and the state funding of Muslim schools in Britain, it should be clear that equal treatment of cultural communities is logically different from that of individuals. Unlike the latter, it is deeply embedded in and inseparable from the wider cultural and political relations between the communities involved. Besides, cultural communities often contain a wide variety of views on a subject and cannot be homogenized and reified. The case for intercultural equality should not therefore be made in such abstract and ahistorical terms that it ignores genuine differences between and within the communities involved or fails to address the deepest anxieties of the wider society. We should take a contexualized view of equality, identify what respects are relevant, and demand equal treatment of those shown to be equal in these respects. *If* the *hijab* really is different from the cross (which it is not), then Muslim girls may legitimately be denied the right to wear it without incurring the charge of discriminating against them. And *if* Muslim schools do really run the risk that their critics fear (which they do not), or if the British state does really wish to discontinue religious schools (which it does not), then they may legitimately be denied state funding without offending against the principle of equality.

Taking such a contextualized and politically and historically sensitive view of equality, no doubt, creates its own problems. We leave too much space for specious reasoning and alarmist fears, and run the risk of not knowing how to compare differences, how to separate relevant from irrelevant differences, how to determine and assess the context, and so on. It is therefore tempting to take the more dependable route of insisting on the general right to equality, and argue that since Christians and Jews have a right to their schools, Muslims too must have a right to state-funded schools. In the light of what I have said, the temptation should be resisted. If we ask the law to take such a mechanical and simplistic view of equality, then we cannot consistently ask it to take cultural differences into account in the case of the Sikhs and the marriage of the Asian girl discussed earlier. The question therefore is not whether Muslims have a right to religious freedom but what, if anything, that

right entails in a specific context, and that involves deciding *what* features of the context are relevant and whether Muslims are equal in respect to *them*. The movement from a general right to equality to the right to a specific treatment in a specific context, that is, from a general right to religion to the right to wear the *hijab* in the school, is not direct and deductive but contexually mediated.

The danger that such a contextualized view of equality might encourage discrimination and disingenuous reasoning is real. The French ban on the *hijab* and the British government's denial of publicly funded Muslim schools were at least in part motivated by anti-Muslim sentiments, and we need to guard against this. We can do so in two ways. We should insist that equality requires identical treatment and place the onus of justification on those seeking to depart from it. Thus British Muslims should be assumed to be entitled to state-funded schools, and it is up to the government to show to the satisfaction of all concerned why such schools might legitimately be denied to them. Secondly, it should be possible for the unconvinced minorities to appeal against government decisions to such public bodies as the courts or the Commission on Human Rights. The reason why the controversy dragged on for years in France and Britain and still remains unresolved in France has to do with the fact that Muslims had no recourse to such a body. Neither country has a Commission on Human Rights although Britain is now moving in that direction, and allows appeal against such 'administrative matters'.

Limits of equality

It is sometimes difficult to decide what constitutes equal treatment because several different forms of treatment fit that description. England has long had an established church which enjoys rights not available to other religions. Two archbishops and 24 bishops sit in the House of Lords, the Church of England alone has the right to officiate at such state ceremonies as coronations and royal weddings and to perform pastoral duties in the armed forces, the reigning monarch is the 'Defender of the Faith' (a title conferred by the Pope on Henry VIII), their children can marry only Protestants, and so on. England also has a law proscribing blasphemy against Christianity. In return for these privileges the monarch, or more accurately, the government of the day exercises several powers over the church. It appoints senior bishops and

has a right to intervene in the internal affairs of the church, bishops take an oath of loyalty to the monarch, changes in the constitution of the church have to be ratified by Parliament, and so forth. The Anglican clergy are also barred from becoming members of Westminster Parliament.[5]

In the aftermath of the Rushdie affair in 1989, leaders of non-Christian religions, especially Islam, began to complain that the established church and the anti-blasphemy law privileged Christianity and treated them unequally. Their complaint received two different responses. Some, mainly conservatives, rejected it on the ground that since Britain was a Christian *society* in the sense that Christianity meant much to most of its members and was a source of many of their moral values, and also a Christian *state* in the sense that a historical settlement between the state and the Church of England had made Christianity an integral part of the former's corporate identity, Christianity rightly enjoyed a special political status. It was woven into the very structure of British national identity, and could not and should not be treated as just one religion amongst many. Others, mainly but not only the liberals, conceded the Muslim charges of discrimination, and mostly agreed that the principle of equality required disestablishment of the Anglican church, but disagreed about the anti-blasphemy law, some advocating its abolition and others its extension to all religions.

Most Muslim spokesmen rejected the conservative response. First, no historical settlement could claim permanence as it was a product of its time and subject to revision in the light of new circumstances, Second, such a positivist argument justified existing privileges and denied justice to newcomers. Third, the principle of equality, which Britain claimed to uphold, required that all religions should be treated equally irrespective of their age and historical role. So far as the liberal view was concerned, Muslim response was, again, generally hostile. While some endorsed the disestablishment of the Anglican church, most were opposed to it. In their view the established church gave religion a valued public status and should be extended to other religions as well. As for the anti-blasphemy law, almost all Muslim spokesmen endorsed its extension and strongly disapproved of its abolition. The latter gave them only a negative and formal not a positive and real equality. Indeed, since there was a vast inequality of power and status between the two religious communities, the abolition was likely to make no difference to the securely established Christianity but bound to have disproportionately adverse effects on minority religions. Some Muslim spokesmen also argued that their religion was under particular threat in the current climate, and that it was consistent with the principle of equality to grant special protection to the weak.

We are confronted with a wide variety of views concerning what the principle of religious equality requires in relation to both the established church and the anti-blasphemy law, and need to decide which of them is more persuasive. Religious equality could be understood in two senses. It could mean equal respect for religions taken as collective wholes or for the religious beliefs and practices of individuals; that is, it could mean equality *of* religions or equal right *to* religion. The latter is beyond dispute in a liberal and indeed any decent society. The former is not so simple. Like all other societies Britain has a distinct history, traditions and way of life, and hence a particular cultural character which makes it the kind of society it is and distinguishes it from others. Among other things it is profoundly shaped by Christianity, as is evident in its moral life, myths, political and moral discourse, literature, art and self-understanding. Since Britain cannot leap out of its cultural skin, to deny the Christian component of its identity a privileged status is wrong (because it denies the bulk of its citizens their history) and likely to provoke widespread resentment. It is also dangerous because when sentiments and sensibilities that are deeply inscribed in a way of life are denied legitimate public expressions, they often tend to reappear at other levels in ugly forms. Besides, once the religious beliefs of all citizens are equally respected, no apparent injustice is done to minorities if the religion of the overwhelming majority is given some precedence over theirs, especially when it is a long-established part of the structure of the state and doing so has no adverse effects on their rights and interests.

While all this is true, it is also the case that Britain has undergone marked demographic changes in recent decades. It now has a sizeable number of religious minorities with their own distinct histories and traditions, about which they feel just as strongly as the rest of the British citizens do about theirs. The minorities are an integral part of British society, and deserve not only equal religious and other rights but also an official acknowledgement of their presence in both the symbols of the state and the dominant definition of national identity. The acknowledgement cannot be equal because they have not shaped the British identity as decisively as Christianity has, are not an equally deep and pervasive presence in British political culture, and do not

form as integral and central a part of British society as Christianity does. Since they are not equal in *this* respect, they cannot demand *equal* recognition in its self-definition. They are, however, an integral part of British society and can rightly demand at least *some* public recognition by the state.

Any reasonable interpretation of religious equality, understood as equality of religions, must take account of both these facts. The only way to do so is both to accept the privileged status of Christianity and give some public recognition to other religions. Christianity may rightly remain the central component of British collective identity, provided that other religions receive adequate, though not necessarily equal, recognition and representation in the institutions, rituals and ceremonies of the state. For example, representatives of other religions could be appointed to the House of Lords along with Anglican bishops; state ceremonies such as the coronation and Remembrance Day could be broadened to include a non-Christian component; and the ruling monarch could patronize non-Christian festivals and events. In so doing, British society both retains its historically acquired religious identity and publicly acknowledges its current multireligious composition. Britain might, of course, decide to disestablish the Anglican church as many within and outside the church think it should, but that is an altogether different matter and is not required by the principle of religious equality. *So long as* it retains the established church, it may legitimately privilege Christianity provided that other religions receive their due.

As for the anti-blasphemy law, it is only contingently related to the established church. In an earlier era the two went together; in today's liberal climate they need not. There are four possible ways of dealing with the law; namely, to keep it as it is, to abolish it, to extend it to all religions, or to protect only the religion(s) under threat. The anti-blasphemy law relates to people's religious beliefs and practices and seeks to protect them against scurrilous, abusive or offensive attacks. Since the religious beliefs and practices of all citizens deserve equal respect, the first alternative which privileges Christianity is discriminatory and deserves to be rejected. The fact that Christianity is the religion of the majority is relevant in other contexts but not in this one, for here we are concerned with civil rights and not with the political expression of national identity. Since every religion can claim to be under threat and there is no way to adjudicate their claims in a collectively acceptable manner, the fourth alternative too is ruled out. This

leaves us with the second and third interpretations. Since Christianity enjoys cultural and political preeminence and minority religions are relatively powerless, abolition of the anti-blasphemy law would have a disproportionately adverse effect on them. Unless there are other reasons for abolishing the law, the third interpretation that it should be extended to all religions has most to be said in favour of it *so far as* the principle of equality is concerned. Equality, however, is not the only value. We also need to take into account the importance of free speech, the claims of secular citizens, the difficulties of defining religion and blasphemy, the merits and demerits of the state's endorsement of religion, and so on. When we do that, we might perhaps conclude that the law deserves to be abolished.

Implications

In the light of our discussion of the problems involved in applying the principle of equality in a multicultural society, several important conclusions follow. When we take legitimate cultural differences into account, as we should, equal treatment is likely to involve different or differential treatment, raising the question as to how we can ensure that the latter does not amount to discrimination or privilege. There is no easy answer to this. As a general rule it would seem that different treatments of individuals or groups are equal if they represent different ways of realizing the same right, opportunity or in whatever other respect they are intended to be treated equally, and if as a result none of the parties involved is better-off or worse-off. The Sikh who is allowed to carry a *kirpan* and a Christian who is not are treated differently but equally because they are both exercising the same right in different ways and because the former does not secure an advantage over or at the expense of the latter. And an Asian girl whose marriage is declared void when contracted under threat of parental ostracism, and a white girl whose marriage under similar circumstances is not, are both treated equally though differently because they are subject to the same general rule that duress voids a marriage. In all such cases we need to consider the nature and the purpose of the right or the rule involved, and show that the differential treatment is justified in terms of it. Disagreements are bound to arise at both levels, especially the former. Since there is no way to resolve them conclusively, cross-cultural application of equality

will always remain vulnerable to the opposite charges of privileging or discriminating against a particular group.

In a multicultural society one might sometimes need to go further and grant not only different but also additional rights to some groups or individuals. This may be necessary either to equalize them with the rest or to achieve such worthwhile collective goals as political integration, social harmony and encouragement of cultural diversity. If some groups have long been marginalized or suppressed, lack the confidence and the opportunity to participate as equals in mainstream society, or are subjected to vigorous assimilation, we might need to give them rights not available to others, such as special or disproportionate representation in parliament, the cabinet and other government bodies and the right to consultation and even perhaps a veto over laws relating to them. The purpose of such additional rights is to draw the groups involved into the mainstream of society and give substance to the principle of equal citizenship.

There may also be groups in society who have been traumatized by their recent history, or feel culturally insecure, or are under particular threat. We may then need to give them rights not available to the majority in order to reassure them, promote social harmony, give them a stake in the country's political stability and foster a common sense of belonging. Born in the trauma of the partition of the country and the enormous intercommunal violence that accompanied it, the Constitution of India wisely decided to grant its minorities several additional rights. In Canada and the USA, indigenous peoples enjoy negative and positive rights required to protect their ways of life that are not available to others. Some countries such as Australia, Canada and India place a high value on cultural diversity and give extra resources and rights to their cultural minorities to help them flourish and contribute towards the creation of a rich and plural society. In these and other cases minorities are clearly favoured and in some respects even privileged, but that is justified if it is in the larger interest of society. Such additional rights and resources can easily arouse a sense of injustice and resentment among the majority, and even become a cloak to buy minority electoral support. They must therefore be granted only when justified, and their purpose should be clearly stated and explained.

Liberals, who insist that all citizens should enjoy equal rights, feel troubled by such additional rights to minorities, and either disapprove of them or justify them on the ground that they are intended to equalize these groups with the rest of their fellow-citizens. Their first response represents the triumph of dogma over prudence and is sometimes a recipe for disharmony and disorder in a multicultural society. Their second response makes moral and political sense but misrepresents the basis of the rights. While some additional rights of minorities are meant to equalize them with the rest, others are designed to promote such worthwhile collective goals as social harmony, cultural diversity and a common sense of belonging. Like equality, they too are important values and we need to balance their competing demands.

Although society has a duty to treat all its citizens equally, its ability to do so is necessarily limited. It has a dominant language, and no language is culturally neutral. While it should cherish its minority languages and help their speakers acquire competence in the dominant language, it cannot always give these an equal public status. Every society also has a historically inherited cultural structure which informs its conduct of public life. While it has a duty to modify it to accommodate the legitimate demands of its minorities, it cannot do so beyond a certain point without losing its coherence and causing widespread disorientation, anxiety and even resistance. This is likely to lead to unequal treatment of its cultural minorities in certain areas, about which in spite of all its good intentions it might be able to do little. In all western societies Sunday is a day of rest for obvious cultural and religious reasons. This puts Muslims at a disadvantage who, unlike Christians, cannot join communal prayer on Friday, their holy day. Although provisions should be made to accommodate Muslim employees and reduce the inequality, it is difficult to see how it can be eliminated altogether without unscrambling the prevailing cultural structure and incurring an enormous social and financial cost. Such inescapable inequalities occur in even more acute forms in other areas of life as well. Which inequalities are eliminable, at what cost, and who should bear it are bound to be a matter of dispute. Since often there is no one just or rational way to resolve the disputes, they are best settled by discussion, negotiation and compromise.